**ALASKA STATE LEGISLATURE**
**HOUSE JUDICIARY STANDING COMMITTEE**
March 31, 2001
11:19 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Scott Ogan, Vice Chair
Representative Albert Kookesh

**COMMITTEE CALENDAR**

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."

- MOVED CSHB 40(JUD) OUT OF COMMITTEE

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

- HEARD AND HELD

HOUSE BILL NO. 177
"An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to

disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date."

- MOVED CSHB 177(STA) OUT OF COMMITTEE

HOUSE BILL NO. 179
"An Act relating to underage drinking and drug offenses; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

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 |
| 03/28/01 | | (H) | Heard & Held MINUTE(JUD) |
| 03/31/01 | | (H) | JUD AT 11:00 AM 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<br>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<br>MINUTE(JUD) |
| 03/19/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/19/01 | | (H) | Heard & Held |
| 03/19/01 | | (H) | MINUTE(JUD) |
| 03/23/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/23/01 | | (H) | Heard & Held |
| 03/23/01 | | (H) | MINUTE(JUD) |
| 03/26/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/26/01 | | (H) | Heard & Held<br>MINUTE(JUD) |
| 03/28/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/28/01 | | (H) | Heard & Held<br>MINUTE(JUD) |
| 03/29/01 | | (H) | JUD AT 10:40 AM CAPITOL 120 |
| 03/29/01 | | (H) | Heard & Held<br>MINUTE(JUD) |
| 03/30/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/30/01 | | (H) | Scheduled But Not Heard |
| 03/30/01 | | (H) | MINUTE(JUD) |
| 03/31/01 | | (H) | JUD AT 11:00 AM CAPITOL 120 |

BILL: HB 177
SHORT TITLE:CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS
SPONSOR(S): RLS

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 03/12/01 | 0543 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/12/01 | 0543 | (H) | STA, JUD |
| 03/22/01 | 0683 | (H) | STA RPT CS(STA) NT 5DP 2NR |
| 03/22/01 | 0683 | (H) | DP: WILSON, STEVENS, JAMES, FATE, |
| 03/22/01 | 0683 | (H) | COGHILL; NR: CRAWFORD, HAYES |
| 03/22/01 | 0683 | (H) | FN1: (ADM) |
| 03/22/01 | 0695 | (H) | FIN REFERRAL ADDED AFTER JUD |
| 03/22/01 | | (H) | STA AT 8:00 AM CAPITOL 102 |
| 03/22/01 | | (H) | Moved CSHB 177(STA) Out of Committee |
| 03/22/01 | | (H) | MINUTE(STA) |
| 03/30/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/30/01 | | (H) | Heard & Held |
| | | | MINUTE(JUD) |
| | | | MINUTE(JUD) |
| 03/31/01 | | (H) | JUD AT 11:00 AM CAPITOL 120 |

BILL: HB 179
SHORT TITLE:OFFENSES RELATING TO UNDERAGE DRINKING
SPONSOR(S): JUDICIARY

| Jrn-Date | Jrn-Page | | Action |
|---|---|---|---|
| 03/13/01 | 0560 | (H) | READ THE FIRST TIME - REFERRALS |
| 03/13/01 | 0560 | (H) | JUD, FIN |
| 03/13/01 | 0560 | (H) | REFERRED TO JUDICIARY |
| 03/28/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/28/01 | | (H) | <Bill Postponed TO 3/30/01> |
| 03/30/01 | | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 03/30/01 | | (H) | Heard & Held |
| | | | MINUTE(JUD) |
| 03/31/01 | | (H) | JUD AT 11:00 AM CAPITOL 120 |

**WITNESS REGISTER**

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: Offered amendments to HB 40 and answered questions; testified on amendments to CSHB 4(TRA) and answered questions; testified on amendments to HB 179 and answered questions.

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

LAUREE HUGONIN, Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
130 Seward Street, Room 209
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 4, testified on proposed Amendment 39B and responded to questions.

MIKE FORD, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: During discussion of HB 4, answered questions about 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 questions relating to HB 179; testified on amendments to CSHB 4(TRA) and answered questions.

ROBERT BUTTCANE, Legislative and Administrative Liaison
Division of Juvenile Justice
Department of Health and Social Services
PO Box 110635
Juneau, Alaska 99811-0635
POSITION STATEMENT: Answered questions relating to HB 179.

LOREN JONES
CMH/API Replacement Project Director

Division of Mental Health & Developmental Disabilities
Department of Health & Social Services
PO Box 110620
Juneau, Alaska 99811-0620
POSITION STATEMENT: Answered questions relating to HB 179.

ERNIE TURNER, Director
Division of Alcoholism & Drug Abuse
Department of Health & Social Services
PO Box 110607
Juneau, Alaska 99811-0607
POSITION STATEMENT: Answered questions relating to HB 179.

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner
Department of Corrections
431 North Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 179, answered questions relating to confiscation of an offender's permanent fund dividend (PFD); during discussion of HB 4, answered questions relating to proposed amendments to CSHB 4(TRA).

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: Testified in support of HB 179 and answered questions; answered questions relating to proposed amendments to CSHB 4(TRA).

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: Provided testimony on HB 179 and answered questions; answered questions relating to proposed amendments to CSHB 4(TRA).

ELMER LINDSTROM, Special Assistant
Office of the Commissioner
Department of Health and Social Services (DHSS)
PO Box 110601
Juneau, Alaska 99811-0601

POSITION STATEMENT: Answered questions relating to proposed Conceptual Amendment 2 to HB 179.

**ACTION NARRATIVE**

TAPE 01-49, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 11:19 a.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order.

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

Number 0286

CHAIR ROKEBERG announced the first order 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." [Possible amendments had been suggested and discussed at the previous meeting, but none had been adopted.]

Number 0294

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), provided two written amendments, both of which he indicated were requested by Representative Berkowitz; he referred to his own testimony at previous hearings and noted that he had no objection from the administration's standpoint.

MR. GUANELI first discussed Amendment 1, which read [original punctuation provided]:

> In Section 2 of the bill, add a new subsection as follows:
>
> (e) The findings made by the court under (a) of this section are not admissible in a civil, criminal or administrative action arising out [sic] the motor vehicle accident.

MR. GUANELI explained that the findings the court has to make to revoke someone's license for a year are: that the person operated the motor vehicle, that the accident caused the death of another person, and that the violation of the traffic laws was a contributing factor. Those findings, which may be made by a magistrate, perhaps in a perfunctory hearing, would not be admissible in any further civil, criminal, or administrative action.

MR. GUANELI told members he saw no problem with that, and that the action should stand alone; if there were going to be further civil litigation, for example, he believes the person ought to have the opportunity to prove there was contributory negligence [on the part of another] or to use another defense. He noted that this amendment also was requested by the private attorney [Mr. Carter] who had testified from Anchorage during the first hearing.

Number 0412

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1.

CHAIR ROKEBERG objected. He mentioned a supreme court case allowing evidence [from] a criminal trial to be used as prima facie evidence in a civil action; he asked how that differs here.

REPRESENTATIVE BERKOWITZ answered that his own concern is logistical as much as anything else. If evidence from a [hearing before] a magistrate involving a traffic violation [is allowed to be used in further proceedings], then it magnifies everything else tied to the case and the significance of what happened in front of the magistrate; logistically, there will be delays and more costs. If the objective of the bill is to ensure that someone who has killed someone else while driving doesn't have his or her license, [the language in Amendment 1] is the fastest way to make sure it happens. He pointed out that other civil remedies, criminal cases, or administrative consequences would still exist, but [Amendment 1] would remove a serious logistical impediment to taking someone's license right away.

Number 0536

REPRESENTATIVE JAMES noted that [Amendment 1] says, "The findings made by the court". She pointed out that it doesn't eliminate any evidence or negate having those same findings

found by someone else; therefore, it doesn't remove anybody else's ability to try the case in any civil, criminal, or administrative action.

CHAIR ROKEBERG asked whether the fact that there was a conviction and a loss of the person's license still would be admissible [in a further proceeding] because that wouldn't be a finding, but would be a matter of public record.

MR. GUANELI said that is his own view of it, that the conviction of the offender would remain [admissible], and that [Amendment 1] applies to the further findings.

REPRESENTATIVE BERKOWITZ clarified that the fact that the person was convicted for crossing a double yellow line would be admissible, for example, but not the finding that the crossing of the double yellow line led to the accident and the other consequences.

Number 0625

CHAIR ROKEBERG withdrew his objection. There being no further objection, Amendment 1 was adopted.

Number 0654

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 2, which read [original punctuation provided]:

> Section 2, Page 2, lines 12-23, delete and replace with:
>
> (c) A court revoking a person's driver's license, privilege to drive, or privilege to obtain a license under (a) of this section may consider a request for a limited license by the person. A court may not grant a limited license if another statute prohibits a limited license for violation of its provisions. A court shall require a certification of employment to prove a claim based on the person's employment, **and a certification of need by a licensed health care practioner [sic] to prove a claim based on care for another person.** After a review has been made of the person's driving record and other relevant information, the court may grant limited license privileges for all or part of the period of revocation if the court finds that limitations can be placed on

the license that will enable the person to drive without danger to the public, and that without a limited license

(1) the person's ability to earn a livelihood would be severely impaired; or

(2) **the person would be severely impaired in acting as the primary care giver for someone with a debilitating medical or mental condition**.

REPRESENTATIVE BERKOWITZ referred to discussion at the previous hearing about the impacts on people who require a caretaker [who drives], in addition to impacts on people's livelihood. He concluded that Amendment 2 allows a person to maintain a partial license in order to care for someone else.

Number 0694

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

Number 0715

REPRESENTATIVE MEYER moved to report HB 40 as amended out of committee with [individual recommendations and] the attached fiscal notes. There being no objection, CSHB 40(JUD) was reported out of the House Judiciary Standing Committee.

HB 4 - OMNIBUS DRUNK DRIVING AMENDMENTS

Number 0732

CHAIR ROKEBERG announced the next order of business would be, 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) and proposed amendments.]

[Because of their length, some amendments to CSHB 4(TRA) discussed or adopted during the meeting are found at the end of the final section of minutes for this date on HB 4. Shorter amendments are included in the main text.]

CHAIR ROKEBERG stated his understanding that Amendments 24 and [26] were no longer necessary because of the deletion of the diversion program; Amendment 32 was included in Amendment 11; and Amendment [33] was included in Amendment 34, as amended.

REPRESENTATIVE BERKOWITZ, as sponsor of Amendments 24, [26], 32, and [33], concurred.

CHAIR ROKEBERG called an at-ease from 11:30 a.m. to 11:32 a.m.

Number 0862

REPRESENTATIVE BERKOWITZ remade the motion to adopt Amendment 25, which had been withdrawn on 3/29/01 and which read [original punctuation provided]:

Page 11

Delete, lines 2 - 11

Renumber accordingly

REPRESENTATIVE BERKOWITZ explained that he had concern about this type of crime [of enabling]. Usually, crimes are written about in the negative, "thou shalt not kill" or "thou shall not steal." Here, however, people are affirmatively being required to do something since anyone who allows a person who is not validly licensed to drive is guilty of a crime. He suggested that in a small community, most people would know whether someone has a DWI (driving while intoxicated) conviction and is not allowed to drive. He asked what happens if a neighbor sees a person driving away, for example.

CHAIR ROKEBERG asked Ms. Seitz to explain what the current "enabler" situation is, and what is being done in Section 18, which [Amendment 25] would amend.

Number 0934

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that it is already a class A misdemeanor to knowingly allow a person who is not validly licensed to drive a motor vehicle. [Section] 18 keeps that same standard of "knowingly allowing" and still makes it a class A misdemeanor. However, if a person knows that someone isn't validly licensed because of a drunk-driving conviction and still lets an unlicensed driver drive a motor vehicle, then that first

person's license can be revoked and there is a minimum fine of $1,000.

REPRESENTATIVE BERKOWITZ pointed out that the current statute, as he had just read it, is actually more narrowly drawn in that the crime of enabling only applies to people who own or control the vehicle. In addition, because the language in Section 18 of CSHB 4(TRA) appears to simply refer back to current statutory language, he said he did not see what Section 18 accomplished.

MS. SEITZ reiterated that Section 18 adds a [$1,000] fine and a [30-day] license revocation for a violation of the enabler statute. She also noted that a forthcoming amendment will address the concerns regarding domestic violence (DV).

Number 1123

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), clarified that AS 28.35.030(n), as referenced in Section 18, relates to felony DWI. Thus a person who violates the enabler statute is only subject to the penalties being added by Section 18 if the unlicensed driver who is allowed to drive the enabler's vehicle is unlicensed due to a felony DWI conviction.

REPRESENTATIVE JAMES asked how it could be proven that the enabler knew [the driver did not have a valid license because of a felony DWI].

MR. GUANELI replied that in many cases, it would be difficult; the people most likely to know a person has been convicted of felony DWI would be family members, household members, and close friends. He surmised that this is what has prompted the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) to come forward and ask for an exemption for victims of DV.

REPRESENTATIVE JAMES noted that there were more issues at stake than just the DV issue, and she opined that [via Section 18] they were reaching out to make some really bad law by making criminals of people who ought not be criminals in an attempt to keep [DWI offenders off the road]. She suggested they leave the current [enabler statute] as is, and then perhaps simply raise the class of violation for repeat offenses. She said she did not agree with the concept of having the additional penalties be dependent upon another person's conviction of a specific crime. She also pointed out that in many instances, family members do

not have any control over a person's behavior, and thus "knowingly allow" becomes hard to prove.

Number 1280

REPRESENTATIVE MEYER said he understood the intent behind Section 18, which is that of asking family members to help keep repeat DWI offenders off the road. He said, however, that he understood Representative James's point regarding how hard it will be to prove a person knowingly allowed an unlicensed person to drive. He also acknowledged that in many situations regarding chronic drinkers, there are DV elements involved.

REPRESENTATIVE BERKOWITZ, on the point of authorizing or knowingly permitting, asked, if the spouse said "honey, don't drive," and the person still went out and drove, what more would the spouse have to do [under this provision]? Does the spouse have to physically try to restrain the person from driving? Does he/she have to call the police? He pointed out that one component of how the crime of enabling materializes is that an unlicensed driver goes out and drives, but he asked whether, by simply saying "don't drive," the defendant who is charged with enabling has satisfied the requirement that he/she did not authorize/allow the unlicensed driver to drive. What has to be done to prevent the individual from driving, he asked.

REPRESENTATIVE JAMES pointed out that this example could also apply to a son, daughter, mother, father, neighbor, girlfriend, or boyfriend; the language in Section 18 is reaching towards a huge realm of folks.

MS. SEITZ responded that the person who owns or controls the vehicle could take the keys away, for example.

REPRESENTATIVE BERKOWITZ rebutted that taking the keys away is a physical act. He again asked whether it would suffice as a defense if the defendant said he/she told the unlicensed driver not to drive.

MS. SEITZ said that as long as the person is not in fear of physical harm, aside from taking the keys away, the person could also park the car elsewhere. She noted that even without Section 18, which refers only to allowing a felony drunk driver to drive, enabling is still a crime, albeit a misdemeanor. She added that she would not want someone with a felony DWI conviction to drive her vehicle.

REPRESENTATIVE BERKOWITZ said, "But what would you do to stop them?"

MS. SEITZ said she would say "no" and take the keys away, if she knew about it. She remarked that she had done these things before, and she likened it to being a designated driver or taking the keys away from a friend who is too drunk to drive.

Number 1460

REPRESENTATIVE BERKOWITZ asked whether, under "this" statute, she would be required to call the police.

MS. SEITZ said she could not address how attorneys would interpret "knowingly allowing", but that she, personally, would not have any problem calling the police if a drunk driver drove off in her vehicle.

REPRESENTATIVE COGHILL asked how they could hold someone accountable for control of the vehicle. He also noted that if forthcoming amendments authorized exceptions, then everyone would want an exception. He acknowledged that current statute already [creates an assumption of] responsibility, but now, via Section 18, "heavy duty" fines will be imposed on people who do not live up to that responsibility. He wondered how a court would view that for purposes of making a judgment because it has not been given any latitude; the language in Section 18 says "shall" revoke the license and "shall" impose the fine. He also noted that compared to the penalties imposed on the DWI offender, the penalties imposed on an enabler are significant. He asked how responsibility would be determined, both under current statute and under Section 18, in cases where the vehicle has more than one owner.

MS. SEITZ responded that when the vehicle has a single owner, that owner, in addition to being required to have insurance on the vehicle, has a responsibility to society to ensure that the vehicle is operated in a safe manner regardless of who is driving it. She surmised that these same responsibilities also apply to all owners of a vehicle when the vehicle has more than one owner.

REPRESENTATIVE JAMES opined that if the goal was to stop people from driving drunk and/or driving without a license, Section 18 did not necessarily accomplish this goal because the circumstances surrounding enabling are going to occur anyway, regardless of the punishment; the person who owns the vehicle is

just going to hope and pray that the unlicensed driver doesn't get caught. She suggested that a person who simply lets a person with a past felony DWI conviction drive to the store, for example, should not necessarily have the larger penalty as compared to the penalty imposed for DWI. She offered that probably everybody has had the experience of dealing with a family member or friend who has driven drunk; from her own experience with her brother-in-law, she noted that her only recourse was to get out of the way or risk personal injury.

Number 1729

CHAIR ROKEBERG remarked that the language in Section 18 came as a recommendation from the DUI Prevention Task Force. He asked Mr. Guaneli whether anyone had ever been prosecuted under an "enabling" statute. He opined that most people don't even know the enabling statute exists, and he suggested that Section 18 would ensure that people became aware that there is a law against enabling.

MR. GUANELI acknowledged that the enabling statute is not commonly used because usually when the police have arrested someone for driving without a license (DWL), they do not investigate the circumstances further; the crime of DWL is sufficient for an arrest. He said it is the rare circumstance when [law enforcement] has the knowledge that someone else let the DWL offender drive, or requested it. He noted that as a prosecutor, he would be more inclined to prosecute a person who requested that a person without a license drive, rather than prosecute the family member after the unlicensed driver simply grabbed the keys to car and took off. He said he would never expect anyone to make affirmative efforts to stop someone else from driving, with the exception of perhaps imposing a higher standard of duty on the parent of a child who does not have a valid license but who takes the keys to go driving.

REPRESENTATIVE JAMES related the story of a man who was staying in her motel; he would go barhopping via taxi because he did not want to drive while he was drinking. One night, after arriving back at the motel and after spending money on taxi fares, he decided to drive to the store because he needed cigarettes, at which time he got picked up for DWI. Although the man was serious about not driving while he was drinking, because he was intoxicated by the time he got back to the motel, he had lost his sense of judgment and simply got behind the wheel of his car to run a small errand.

REPRESENTATIVE MEYER remarked that he would support Amendment 25 because it appeared to him that the crime of enabling is already covered by current statute. He added that from his experience with families that have to deal with the problems created by alcoholism, the last thing the family needs is to have to go to court to prove how they tried to stop someone from driving without a license.

Number 1930

CHAIR ROKEBERG said he was maintaining his objection to Amendment 25; he said he felt they were simply [strengthening current] law via Section 18, and he did not want to lose it altogether via an unamended Amendment 25.

Number 1960

A roll call vote was taken. Representatives James, Coghill, Meyer, and Berkowitz voted for Amendment 25. Representative Rokeberg voted against it. Therefore, Amendment 25 passed by a vote of 4-1.

CHAIR ROKEBERG, on the topic of the enabler statute, made a motion to adopt [Amendment 39A, 22-LS0046\S.29, Ford, 3/30/01], which read:

> Page 11, line 2:
> Delete "a new subsection"
> Insert "new subsections"
>
> Page 11, following line 11:
> Insert a new subsection to read:
> "(d) The provisions of (c) of this section do not apply to a person who violates (c) of this section because another person commits an act of domestic violence. In this subsection, "domestic violence" has the meaning given in AS 18.66.990."

CHAIR ROKEBERG noted that [as written, Amendment 39A] is no longer necessary [due to the deletion of Section 18 via Amendment 25], but suggested that they change [the reference to subsection (d) to reflect subsection (c), and the two references to subsection (c) to reflect subsection (b)]. He said this change to Amendment 39A would give the ANDVSA assistance with existing law regarding the issue of DV.

REPRESENTATIVE JAMES, with regard to the language "because another person commits an act of domestic violence", asked if [Amendment 39A] was saying that there first has to have been an altercation before this exception to the enabler statute would apply. She remarked that they should give a person who is feeling threatened by DV the same defense as would be given to a person who is already a victim of DV.

MS. SEITZ, on that point, referred to [Amendment 39B], noting that it was language proposed by the ANDVSA via [the DOL], which read [original punctuation provided]:

> Add a new section to the bill:
>
> *Sec. _____ AS 28.15.281(b) is amended to read:
> (b) A person may not authorize or knowingly permit a motor vehicle owned by the person or under the control of the person to be driven in this state by a person who is not validly licensed. **This subsection does not apply to a victim of domestic violence who authorizes or permits a motor vehicle to be driven due to fear of the perpetrator of domestic violence. In this subsection, "domestic violence" has the meaning given in AS 18.66.990.**

Number 2060

CHAIR ROKEBERG withdrew Amendment 39A. Chair Rokeberg then made a motion to adopt Amendment 39B.

Number 2063

LAUREE HUGONIN, Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), explained that the ANDVSA initially had concern that victims of DV would be charged for enabling under Section 18, which has since been deleted. Upon further review of the current enabling statute - [AS 28.15.281] - under [subsection] (b) a victim of DV could still be charged; for this reason the ANDVSA recommends, via Amendment 39B, that [subsection] (b) be amended to exclude a victim of DV if he/she authorizes or permits a vehicle to be driven due to fear of the perpetrator of DV. She added that Amendment 39B also specifies DV to have the meaning given in AS 18.66.990. She agreed with Representative James that often there is not a direct act of DV; for this reason, "fear" of the perpetrator has been included in Amendment 39B

REPRESENTATIVE COGHILL, in reference to language in Amendment 39B that says "apply to a victim of domestic violence", asked if there would be difficulty in getting this exception to apply in cases where DV had not yet occurred; could simply the fear of DV be enough, he wondered, without actually having someone be a victim of DV under the DV statute, or would somebody have to prove that he/she was a victim of DV.

CHAIR ROKEBERG noted that the language in Amendment 39B would constitute a defense. He asked if the question is whether the threat of DV constitutes an act of DV under AS 18.66.990.

MR. GUANELI explained that there is a principle under Alaska law called the defense of necessity that says that any crime can be excused if the reason for committing the crime is to prevent some greater harm or greater wrong from occurring. He noted that the classic example is that of a person who breaks into a cabin in the wilderness, and while this is normally considered the crime of burglary, if the reason for doing so was to keep from freezing to death at night, then the person is excused. He added that the offense of enabling is also subject to the defense of necessity; however, the defense of necessity has to be proven by the defendant. He used the example of a very sick person who requests that a person known to be without a valid license drive him/her to the doctor/hospital; in this instance, it can be shown that the person committing the crime of enabling had sufficient reason because he/she was trying to prevent a greater harm from occurring.

MR. GUANELI explained that Amendment 39B recognizes a very narrow class of persons who have been victims of DV, and due to fear of further violence, they are not required to come in and actually prove it; it is enough that there is that history of DV. But, to stop all the exceptions from swallowing the rule, if a person has never been the victim of DV and uses the excuse of being afraid of DV, then that person should have the obligation of coming forward and testifying to that effect to the jury.

MS. HUGONIN noted that Amendment 39B puts the exemption at the level of the investigation when the law enforcement officer is looking into the crime; this is where the ANDVSA would like to see it, rather than at the level of the trial. Law enforcement officers are becoming better trained at recognizing the principal physical aggressor in DV cases, she said, and for this reason, any concerns regarding charging a victim of DV should be alleviated.

Number 2319

CHAIR ROKEBERG asked if there were any objections to Amendment 39B. There being no objections, Amendment 39B was adopted.

Number 2370

CHAIR ROKEBERG made a motion to adopt [Amendment 16A, 22-LS0046\S.8, Ford, 3/21/01]. [Amendment 16A is provided at the end of the final section of minutes for this date for HB 4.] He went on to say that a substantial portion of [Amendment 16A] is mirroring effects - when provisions of CSHB 4(TRA) altered AS 28.35.030 with regard to vehicle forfeiture, another statute, AS 28.35.032, should have also been altered. He added that AS 28.35.032 relates to refusal to take a chemical test - a breathalyzer - for blood alcohol concentration (BAC) level.

REPRESENTATIVE BERKOWITZ noted that previously there had been superceding amendments.

CHAIR ROKEBERG confirmed that there were some sections of [Amendment 16A] that had already been addressed, and he mentioned that there were other sections that might need alteration.

TAPE 01-49, SIDE B
Number 2456

MIKE FORD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said that [Amendment 16A] does several things. The primary changes are in the areas of impoundment of motor vehicles and forfeiture of motor vehicles, and other changes are intended to conform to changes made via adoption of CSHB 4(TRA).

CHAIR ROKEBERG remarked that [Amendment 16A] would make changes allowing the state's vehicle forfeiture procedure to mirror much of what occurs in the municipalities of Anchorage and Fairbanks regarding vehicle forfeiture via a civil administrative proceeding; these changes lower the fiscal note by about $300,000.

MR. FORD said that the first portions of [Amendment 16A] would add a new section to CSHB 4(TRA) that deals with what happens when a person is before the court - after arrest - for DWI. The court would be allowed to impose some additional conditions of

release, primarily relating to a vehicle that has been impounded. This is aimed at ensuring that the vehicle returns to the jurisdiction of the court so that it can be forfeited if that proves necessary. He confirmed that this would be accomplished by establishing a return bond.

MR. FORD referred to page 4, lines 3-6 [of Amendment 16A], and said this was a fix that would allow the permanent revocation of driver's license to take effect; it eliminates a conflict in CSHB 4(TRA). He added, however, that he believed this portion was already addressed via the adoption of a previous amendment. He then referred to the next section on page 4 of [Amendment 16A] and said these areas affect what happens to a person after he/she is arrested and convicted of DWI, and involve removing provisions that allow the court to forfeit a vehicle and replacing them with provisions that say the court shall impound and shall forfeit a vehicle if the conviction is for a second or subsequent offense. He confirmed that for a first offense the vehicle "shall" be impounded and "may" be forfeited. To recap, for all offenses there are 30-day impoundment provisions; for first-time offenses, forfeiture is discretionary. He added that there are also provisions that protect the rights of co-owners, which can include the use of a limited license and/or limited registration, and the rights of owners of vehicles whose vehicles were used in the DWI offense. He noted that there are also provisions for use of return bonds included in this section of [Amendment 16A].

Number 2245

MR. FORD noted that the portion of [Amendment 16A] on page 5, lines 22-28, had already been addressed by adopting Amendment 12. He added that some of the provisions in [Amendment 16A] are included because all of the other amendments stand alone: there are some duplicate provisions regarding felony DWI provisions, which take up a number of the pages in [Amendment 16A]; there are also duplicate provisions regarding what the court would do in case of felony DWI. He noted that the refusal provisions are brought into compliance per the instructions he was given to treat refusal and DWI in the same manner. Thus if a person is convicted of refusal as opposed to DWI, the person suffers the same consequences. He explained that it is not possible to simply say in statute that the penalties for refusal are the same as those for DWI because the two are separate provisions in statute. They are separate offenses and not identical; hence, per the drafting manual, when one provision is changed, the language has to be made consistent in each separate provision.

MR. FORD referred to page 11 - starting on line 29 of [Amendment 16A] - and said this provision requires the court to order surrender of the registration plates. Thus, not only does a person lose his/her license and registration, but the "plates" for the vehicle are also taken away.

CHAIR ROKEBERG noted that another amendment addresses impounding the plates. He asked whether there would be any inconsistencies between the two amendments, of if it would be possible to simply conform the two amendments later.

MR. FORD said he had assumed that the committee would give him permission to make conforming changes, and he noted that although he has not had an opportunity to compare the two amendments, he did not think there would be any conflicts.

REPRESENTATIVE JAMES asked what happens when the registration is revoked on a vehicle that has a lien holder.

MR. FORD responded that no one's property rights are being taken away; the lien holder will still have an interest in the vehicle. He mentioned that there are provisions that would protect lien holders, even in cases of vehicle forfeiture.

CHAIR ROKEBERG added that the lien holder has different forms of recourse depending on what the crime and accompanying penalties are.

Number 1950

CHAIR ROKEBERG made a motion to amend [Amendment 16A] on page 9, line 10, such that "$2,000" would be changed to "$10,000". There being no objection, the amendment to [Amendment 16A] was adopted.

MR. FORD referred to Section 53 on page 12 of [Amendment 16A], and said this was the impoundment provision. He explained that a motor vehicle, aircraft, or watercraft can be impounded and held for up to two days - unless the court orders a continuation of the impoundment - if the impoundment is incident to a valid arrest. He added that if the person is convicted of either DWI or refusal, the court has to order impoundment for a period of at least 30 days.

CHAIR ROKEBERG asked whether someone convicted of, or arrested for, impairment - wherein the BAC level is less than .08 - could

also have his/her vehicle impounded. He said his concern is that there is a provision in this portion of [Amendment 16A] that requires that impoundment costs be waived or refunded if the person is not convicted under [AS 28.35.030].

MR. FORD assured the committee that DWI includes driving with a BAC level above .01 and/or under the influence of controlled substances, and therefore a violation of the impairment statute would still be considered a violation of [AS 28.35.030]. He next pointed out that other sections of [Amendment 16A] attempt to provide for what happens when a person's vehicle is impounded - such as how a person can reclaim a vehicle, what happens to vehicles that are not reclaimed, and proper handling of vehicles that are impounded.

REPRESENTATIVE MEYER agreed that vehicle forfeiture for second-time offenses is a policy call. He offered that the vehicle forfeiture program should pay for itself through sale of the vehicles.

CHAIR ROKEBERG clarified that prior testimony indicated many forfeited vehicles are kept for use by law enforcement, although he surmised that there would be a positive impact on the fiscal note. He mentioned that there are concerns regarding property rights of co-owners and lien holders. In defense of mirroring the vehicle forfeiture proceeding with that of the Anchorage and Fairbanks municipalities, he said that the regime in [Amendment 16A] has been proven to work; in this way, vehicle forfeiture will occur as a result of a civil action instead of a criminal action, which should significantly lower the fiscal note, by over $300,000.

Number 1650

REPRESENTATIVE JAMES mentioned that she thought the proceeds of vehicle forfeiture should be appropriated by the legislature before being distributed; anytime something of value is taken in, it should be reflected in the budget process.

CHAIR ROKEBERG suggested that by adopting [Amendment 16A], a fiscal note could be developed that would reflect cost savings. He mentioned an administrative fee of $160 and return bonds from $500 to $2,000, both of which will help the vehicle forfeiture program be self-financed as it was designed to be. He added that many organizations across the state, including Mothers Against Drunk Driving (MADD), strongly support forfeiture provisions.

REPRESENTATIVE JAMES remarked again that there is still a need to account for proceeds from vehicle forfeiture; she did not want law enforcement to retain [or sell] vehicles without indicating the [expenses or savings] to the agency.

CHAIR ROKEBERG mentioned that in response to previous discussion, there are also provisions that will make it easier and less expensive for law enforcement agencies in the rural areas to dispose of forfeited vehicles.

REPRESENTATIVE BERKOWITZ commented that a number of years ago, Cordova had a big problem regarding disposition of forfeited vehicles. On the point of mandatory vehicle forfeiture, he said he has concerns; as a general policy consideration, he said vehicle forfeiture ought to be discretionary.

CHAIR ROKEBERG commented that a forthcoming amendment would make impoundment for a second offense discretionary.

Number 1506

REPRESENTATIVE BERKOWITZ drew attention to page 1, line 9, of [Amendment 16A], and said that this language was mandating vehicle forfeiture for an FTA - failure to appear. He said he could think of many reasons why the state might not want to forfeit a vehicle, and although the language is very clean, discretion is being taken away with regard to vehicle forfeiture.

CHAIR ROKEBERG responded that he did not think that was the case, particularly if discretion for impoundment on the second offense is placed back in [CSHB 4(TRA)]

MR. FORD acknowledged that this is a major question for the committee: exactly how much leeway does the committee want to give the court? As it stands now, the court has the option of forfeiting or not forfeiting. [Amendment 16A] restricts that discretion considerably and says, "You will forfeit on a second or subsequent offense. And you will impound on a first offense."

REPRESENTATIVE BERKOWITZ pointed out that although on some level discretion lies with the court, it also lies with the prosecutor, who can say, "We don't want to forfeit this vehicle; thanks, but no thanks."

CHAIR ROKEBERG reminded the committee that this is the fashion in which vehicle forfeiture has been handled in Anchorage for some time, without any difficulties; it is a proven system.

REPRESENTATIVE BERKOWITZ argued that in the context of a case, it gives the state a lot of leverage to be able to say it is going to forfeit a person's vehicle if that person does not "deal." And although the therapeutic court has an "override," it is a pilot program that is not available to everybody. From the prosecutor's perspective, he added, the more "tools" there are in the "tool bag," the better it is for rapid disposition of cases, and vehicle forfeiture provides a huge handle.

CHAIR ROKEBERG said that although he did not disagree with Representative Berkowitz's points, he was striving for consistency with regard to how vehicle forfeiture is done in Anchorage and Fairbanks at the municipal level.

REPRESENTATIVE MEYER concurred that vehicle forfeiture is a powerful tool. On the point of forfeiting "clunkers," he commented that it balances out when the municipality forfeits a Mercedes.

CHAIR ROKEBERG remarked that according to his research coupled with what he has heard at prior meetings, including what he has been hearing from prosecutors, vehicle forfeiture gets the attention of DWI offenders.

Number 1350

REPRESENTATIVE BERKOWITZ countered that for him, this is one of the "rubs" with how government operates:

> What we tend to do in the legislature is impose requirements on the folks in the field. We say "this is what you shall do," and when we do that, we withdraw their ability to exercise discretion. And at some point, we need to trust the people who are actually executing the laws to employ their own discretion to come up with the best result. And when we say, "You will forfeit a vehicle," what we're telling the folks in the field is: "We're not giving you any discretion."

CHAIR ROKEBERG responded by saying there is a feeling among the prosecutors with whom he has talked that the statutory minimum [penalty] established by the legislature becomes the default-

basis for the decision by the court. Thus if courts are given 100 percent discretion, they will not be forfeiting vehicles.

REPRESENTATIVE JAMES commented that she thinks there are a lot of instances in existing law where there is a presumption of sentence, and many sentences have been applied that ought not to have been applied.

REPRESENTATIVE BERKOWITZ, on the point of mandating vehicle forfeiture for FTA, asked if any constitutional problems might arise for imposing penalties that are disproportionate to the offense, such as forfeiting both the vehicle and the return bond.

MR. FORD acknowledged that the state cannot acquire property through civil forfeiture when it is owned by an innocent third party, and that the courts have criticized the practice of impoundment for punitive reasons rather than public safety reasons.

REPRESENTATIVE BERKOWITZ pointed out that [Section 4 of Amendment 16A] mandates not only forfeiture of the return bond, but also forfeiture of the vehicle as a punitive measure.

MR. FORD concurred with that interpretation.

Number 1102

CHAIR ROKEBERG, in response to Representative Berkowitz, noted for the record that severability is implicit by statute. He asked whether it would be feasible to modify the FTA provision.

MR. FORD noted that the FTA provision was patterned after the Municipality of Anchorage's provision, and he did not know whether there has been any litigation on this provision to date.

REPRESENTATIVE MEYER remarked that the municipal ordinance has been in effect since 1995, and he surmised that litigation would have occurred by now, if ever.

MR. FORD, in response to questions, said that the provision sets conditions of release; therefore, the decision by the court to forfeit the interest in the vehicle can be appealed.

REPRESENTATIVE BERKOWITZ noted that under the provisions outlined in [Amendment 16A], the forfeiture of the vehicle for FTA is part of a civil proceeding, yet FTA itself can be

considered a criminal offense; since one of the effects of making vehicle forfeiture a civil proceeding is to remove the public defender from the process, he asked how someone would move to get his/her vehicle back in a situation in which the civil proceeding is tied to a criminal proceeding.

MR. FORD offered that the person is still entitled to notice and hearing before the vehicle is actually forfeited. He acknowledged, however, that the language in Amendment 16A does not appear to give the person any leeway.

REPRESENTATIVE JAMES made a motion to recess the hearing on [HB 4] in order to take up HB 177. [The hearing on HB 4 was recessed until later in the meeting, with Amendment 16A, as amended once, still pending.]

CHAIR ROKEBERG called for a recess at 12:40 p.m. He called the meeting back to order at 1:20 p.m.

HB 177 - CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS

Number 0859

CHAIR ROKEBERG announced the next order of business, HOUSE BILL NO. 177, "An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date." [CSHB 177(STA) was before the committee.]

[Because of their length, the amendments to CSHB 177(STA) that were discussed during the meeting are found at the end of the minutes for HB 177.]

Number 0826

REPRESENTATIVE BERKOWITZ said he had two amendments to offer, which were being copied and distributed to members.

CHAIR ROKEBERG noted that the committee had taken testimony in the public hearing of HB 177 [held on 3/30/01].

Number 0802

REPRESENTATIVE BERKOWITZ explained that Amendment 2 [which was discussed first] would make campaign finance laws apply to issues and initiatives, in addition to candidates. He added right upfront that that would be unconstitutional, but he pointed out that the fact that things have been unconstitutional has not barred the legislature from trying to set policy in other directions. He said that the reason it would be unconstitutional was because the [U.S.] Supreme Court said that there is nothing to be corrupted within an issue or initiative, unlike with a candidate who receives large sums of money from an individual and thereby becomes unduly swayed. Representative Berkowitz added that he thinks the reality of politics is such that issues and individuals associated with issues can be tainted by large sums of money coming to those issues. He posited that current law was unconstitutional, and one way to get the [U.S.] Supreme Court to revisit and reassess issues in light of new political realities is to "push the envelope" a little bit. He added that he thought the envelope should be pushed by saying rules that apply to individuals should also apply to issues.

Number 0669

REPRESENTATIVE JAMES responded that she tended to agree in some ways with Representative Berkowitz on this issue, but she disagreed with the premise that the reason for having campaign finance reform and monetary limits was because a legislator's vote could be bought. She said that she believed the only issue addressed by campaign finance rules was the public's right to know. She said she agreed that with regard to issues and initiatives, the money that is spent getting the message out to the people is persuasive. And the more money spent on the message, the more persuasive it can be. Further, [the message] is not always a full picture of the issue.

REPRESENTATIVE JAMES added that having said this, she tends to agree that wherever there is money involved in affecting policy in the state, either by law or by choice, the public has a right to know whose money is involved. She said that was the goal of HB 177. She added that she thinks now is not the time to do what Amendment 2 proposes because there is not sufficient time for discussion of this complicated issue. She noted that she would be willing to address that particular issue at some point because she believes that policy-making initiatives and issues

are being bought and paid for without public awareness of the source of the funds.

REPRESENTATIVE BERKOWITZ noted that in Alaska, a lot of time was spent worrying about the effect of "outside money," particularly on wildlife initiatives. He said that rather than limit who can bring forth certain types of initiatives, his antidote would be to ban outside money. With regard to outside money, an individual's campaign is limited to $3,000; he said he thought that something similar could be done with regard to initiatives.

Number 0490

REPRESENTATIVE JAMES said she disagreed that that approach would be unconstitutional, so long as it was scheduled correctly.

REPRESENTATIVE BERKOWITZ commented that he was not speaking against his own amendment but was instead saying that [the legislature] could still have a lot of discussion on the subject encompassed by it. He said he was using the opportunity presented by having campaign finance legislation before the committee to have some of this discussion. He added that he might offer an amendment during the House floor session that would specifically address outside money for initiatives and issues.

Number 0440

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 2, [22-LS0406\S.1, Kurtz, 3/30/01]. [Amendment 2 is provided at the end of the minutes on HB 177.]

Number 0438

CHAIR ROKEBERG objected. He said that per the advice of committee counsel, he would find it troubling to vote for something that would be unconstitutional at this juncture. In addition, he said he thought the sponsor of HB 177 would be reluctant to accept Amendment 2 because it would broaden the scope, and it was not the sponsor's intent to speak to this issue. He added, however, that while he agreed with both Representative James and Representative Berkowitz that this was an issue worthy of discussion, the lateness of the hour precluded further discussion.

Number 0365

A roll call vote was taken. Representative Berkowitz voted for Amendment 2. Representatives James, Coghill, Meyer, and Rokeberg voted against it. Therefore, Amendment 2 failed by a vote of 1-4.

Number 0361

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, [22-LS0406\S.2, Kurtz, 3/31/01] [Amendment 1 is provided at the end of the minutes on HB 177.]

Number 0359

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ explained that Amendment 1 would increase the penalties for violators of campaign finance laws.

CHAIR ROKEBERG disagreed with Amendment 1 based on the peculiar complexities of the [campaign finance] laws, which he said he thinks are in large part a barrier to candidate recruitment. [The campaign finance laws] are so easy to run afoul of because they are entirely too complex. In addition, he said he did not think the new electronic format was user-friendly whatsoever. The potential for making errors and not being in compliance with the law was overwhelming at this juncture. He added that if the whole context of the reporting requirements could be simplified, then he might be more willing to look at an increase in fines, and even increasing [violations] up to a felony level. But given the current flux of campaign finance laws, he said he thought it was inappropriate [to increase fines at this time]. He added, as an example, that current disclosure provisions subject a person to penalties if he or she, through an oversight, neglects to disclose financial losses from securities held in a personal portfolio.

REPRESENTATIVE JAMES agreed that reporting requirements do pose a deterrent to running for office. Many first-time candidates violate campaign finance laws in ignorance; she added, though, that ignorance is no excuse because a candidate is required to read the entire campaign finance law. She said she did not have any pat answers on how to make the [disclosure provisions] less cumbersome and easier for people to understand, or, also, how to encourage other people to run for the legislature. She added that she would like to "open the door" in order to find people to serve [in the legislature].

Number 0110

REPRESENTATIVE MEYER added that due to the current stiff penalties, he had contacted the Alaska Public Offices Commission (APOC) frequently during the course of his campaign, and that [Amendment 1] would make the situation worse because a person could potentially be a felon. He said he agreed that most people wouldn't even attempt to run for office [because of the complexity of current campaign finance laws], and if penalties are increased, then those who do run for office would be conferring with the APOC before every move.

CHAIR ROKEBERG asked if Amendment 1 was an "incumbent-protection" amendment.

REPRESENTATIVE BERKOWITZ responded that he did not think Amendment 1 put candidates at risk. He said what he had in mind were "operatives who know how to circumvent the system, and do so with little risk of any penalty."

CHAIR ROKEBERG countered that by "casting the net" in the way that Amendment 1 was drafted, he took it to mean that everyone would be "underneath that umbrella." He asked Representative Berkowitz if this was correct.

REPRESENTATIVE BERKOWITZ responded that yes, everyone would be under that umbrella, and he noted that he, too, called the APOC all the time to ask questions.

TAPE 01-50, SIDE A
Number 0001

CHAIR ROKEBERG commented that [new candidates] would not have the education and experience of reading the campaign finance laws year after year as [incumbents] have, and thus it would be a problem [for new candidates].

REPRESENTATIVE BERKOWITZ countered that as he said before, there are people out there who know how to go around the rules.

CHAIR ROKEBERG said he was maintaining his objection to Amendment 1, and asked if Representative Berkowitz would withdraw Amendment 1.

REPRESENTATIVE BERKOWITZ said he was maintaining his offer of Amendment 1.

Number 0045

A roll call vote was taken. Representative Berkowitz voted for Amendment 1. Representatives Coghill, Meyer, James, and Rokeberg voted against it. Therefore, Amendment 1 failed by a vote of 1-4.

Number 0066

REPRESENTATIVE JAMES moved to report CSHB 177(STA) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 177(STA) was reported from the House Judiciary Standing Committee.

AMENDMENTS

The following amendments to CSHB 177(STA) were discussed during the hearing.

Amendment 2 [22-LS0406\S.1, Kurtz, 3/30/01] (discussed first; not adopted)

Page 1, line 2, following "**statutes;**":
Insert "**applying certain campaign finance restrictions to ballot propositions and questions;**"

Page 2, following line 5:
Insert a new bill section to read:
"*** Sec. 3.** AS 15.13.040(d) is amended to read:
(d) Every individual, person, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of
(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group
(A) as soon as the total contributions and expenditures to that candidate or group reaches $500 in a year; and
(B) for all subsequent contributions and expenditures to that candidate or group in a year whenever the total contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches $500;
(2) [UNLESS EXEMPTED FROM REPORTING BY (h) OF THIS SECTION,] any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or, for the publication,

distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question."

Renumber the following bill section accordingly.

Page 2, following line 30:

Insert new bill sections to read:

"*** Sec. 5.** AS 15.56.014(a) is amended to read:

(a) A person commits the crime of campaign misconduct in the second degree if the person

(1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) [EXCEPT AS PROVIDED BY AS 15.13.090(b),] knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement, or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group, or individual paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair;

(3) knowingly writes or prints and circulates, or has written, printed and circulated, a letter, circular, bill, placard, poster, or advertisement in a newspaper, on radio or television

(A) containing false factual information relating to a candidate for an election;

(B) that the person knows to be false; and

(C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would construe as damaging to the candidate's reputation for honesty, integrity, or the candidate's qualifications to serve if elected to office.

*** Sec. 6.** AS 15.13.010(d), 15.13.040(h), 15.13.065(c), 15.13.084(1), 15.13.090(b), and 15.13.140 are repealed."

Amendment 1 [22-LS0406\S.2, Kurtz, 3/31/01] (discussed last; not adopted)

Page 1, line 1, following "**Act**":
Insert "**increasing the civil penalties and amending the criminal penalties for violation of Alaska's campaign finance statutes;**"

Page 2, following line 5:
Insert a new bill section to read:
"*** Sec. 3.** AS 15.13.390(a) is amended to read:
(a) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040(d) - (f), 15.13.060(b) - (d), 15.13.080(c), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than **$100** [$50] a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than **$1000** [$500] a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who violates a provision of this chapter, except a provision requiring registration or filing of a report within a time required as otherwise specified in this section, is subject to a civil penalty of not more than **$100** [$50] a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter."

Renumber the following bill section accordingly.

Page 2, following line 30:
Insert new bill sections to read:
"*** Sec. 5.** AS 15.56.012(c) is amended to read:
(c) Campaign misconduct in the first degree is a **class C felony** [CLASS A MISDEMEANOR].

*** Sec. 6.** AS 15.56.014(c) is amended to read:

(c) Campaign misconduct in the second degree is a **class A** [CLASS B] misdemeanor.

*** Sec. 7.** AS 15.56.016(b) is amended to read:

(b) Campaign misconduct in the third degree is a **class B misdemeanor** [VIOLATION]."

[End of proposed amendments to CSHB 177(STA); CSHB 177(STA) was reported out of committee.]

HB 179 - OFFENSES RELATING TO UNDERAGE DRINKING

[Contains brief references to SB 105 and HB 4 regarding loss and allocation of an offender's permanent fund dividend (PFD) for certain offenses.]

Number 0129

CHAIR ROKEBERG announced the next order of business, HOUSE BILL NO. 179, "An Act relating to underage drinking and drug offenses; and providing for an effective date." He noted that he would reopen public testimony.

[Because of its length, Amendment 1, which was discussed and adopted during the meeting, is found at the end of the minutes for HB 179. Shorter amendments are included in the main text.]

CHAIR ROKEBERG called an at-ease at 1:39 p.m. He called the meeting back to order at 1:42 p.m.

CHAIR ROKEBERG asked Mr. Guaneli to explain Amendment 1. [Amendment 1 is provided with original punctuation at the end of the minutes on HB 179.]

Number 0196

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), advised members that the administration originally had proposed an underage-drinking bill; although [HB 179] adopted many of the administration's proposals, it didn't adopt some significant parts. Therefore, Amendment 1 goes back to the administration's proposal.

MR. GUANELI referred to a chart [in packets], noting that originally proposed was a graduated system in which a first-time offender would be subject to certain penalties, a second-time

offender would be subject to more, and so on. One goal, at least for the first offense, was to try to eliminate costs by eliminating the right to a jury trial or to a public defender. Toward that end, proposed in the first column of the chart under first offense, is simply a fine [$600], all suspended, so that the amount at stake doesn't trigger a jury trial; no jail time is available, so that it isn't technically classified as a "crime"; and no license revocation or community work service (CWS) is available, which the courts have held would trigger a right to a jury trial and a right to counsel, which drive up costs for first-time offenders.

MR. GUANELI suggested that most [of these offenders] merely need education on the effects of alcohol, with the hope that the person will never re-offend. Therefore, all the functions relating to a criminal case, including a jury trial and attorneys, may not be necessary.

Number 0375

MR. GUANELI referred to the bottom section of the chart. He emphasized the importance of referral to the Juvenile Alcohol Safety Action Program (JASAP), whether for first-time offenders, second-time offenders, or third offenders. He expressed the belief is that all of the other options - including fines, jail, revocation of licenses, or CWS - won't be nearly as effective as having those options plus some form of screening as well as education or treatment.

MR. GUANELI, still referring to the chart, addressed the second offense, for which more is at stake in terms of money [$1,000, with up to half suspended]. He pointed out that although jail still isn't available, license revocation is, but only if the person doesn't complete the treatment or the mandated 48 hours of CWS.

Number 0464

MR. GUANELI pointed out that someone with a third offense probably exhibits signs of alcohol dependence. As with drunk driving, for each time a person is caught, the person likely commits the offense numerous times. He said for third-time offenders under age 18, it is felt by juvenile justice officials that sending the person to the juvenile justice system is valuable; it could be formally going to juvenile court or going through the so-called informal adjustment process, in which a probation officer enters into a probationary agreement [with the

offender]. This would allow more supervision and more program opportunities.

MR. GUANELI addressed [third-time offenders] ages 18 and older, noting that the options are more limited. Therefore, it will be left up to a district court judge, who will have the full range of penalties, including a fine [up to $1,000, all of which can be suspended, according to the chart]; jail time, if appropriate [up to 90 days, all of which can be suspended, according to the chart]; six months' license revocation upon conviction, and six more months' revocation if treatment isn't completed; as well as 96 hours of CWS.

MR. GUANELI said, in a nutshell, the proposal is for a graduated set of penalties, with the JASAP referral, screening, and treatment, which the offender must pay for, at each stage. He emphasized that the committee must decide to what extent the JASAP will be used, which will involve cost. He restated the importance of the treatment alternative in order to have a successful program.

MR. GUANELI offered to discuss the issue of wiping the slate clean. He asked that any questions about treatment, including both programmatic and budgetary aspects, be addressed to the officials from the Department of Health and Social Services (DHSS).

Number 0684

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, testified via teleconference. In answer to a question by Chair Rokeberg, she specified that there were 4,737 violations by people under the age of 21 in the calendar year 2000. In response to a question by Representative James, she said those were for minor consuming and possessing, but not for drug use, fraudulent use of a driver's license, "zero tolerance," or DWI (driving while intoxicated).

Number 0734

REPRESENTATIVE BERKOWITZ requested confirmation whether someone who was underage and [charged with] DWI would also be charged with minor consuming.

MR. GUANELI answered, "In all likelihood, we would charge both, but the most common disposition in those cases is there's a plea

to the drunk-driving charge and a dismissal of the minor-consuming charge."

CHAIR ROKEBERG suggested that is because there is a revocation anyway for the [DWI].

MR. GUANELI said right now there is a $300 maximum fine for minor consuming; for drunk driving, however, it goes up to $5,000, potentially, and there is jail time.

Number 0807

MR. GUANELI, in response to Chair Rokeberg's mention of wiping the slate clean, said hundreds or perhaps thousands of persons under the age of 21 have prior convictions for minor consuming under current law. Because of the way the law is structured, and because of the way that the supreme court has implemented the law, those persons were convicted without the right to a jury trial or counsel. In Alaska law, he reported, a couple of cases - one from the supreme court and one from the court of appeals - say that if there is a conviction when a person didn't have the right to a jury trial or to counsel, that conviction cannot be used as a basis for enhancing a future penalty; therefore, it cannot be used as the person's first offense under a third-time-offender-type situation.

CHAIR ROKEBERG asked Mr. Guaneli to provide a memorandum to the committee later, with a case citation.

MR. GUANELI agreed to do so. He continued, pointing out that if a new system is created for the first, second, and third offenses, none of those past convictions can be relied upon. That is why he uses the phrase "wipe the slate clean": all offenders will have to treated as first-time offenders under the new system. He emphasized that having alcohol screening and treatment will be even more important, because starting now, a lot of so-called first-time offenders will actually be second- or third-time offenders.

Number 0944

REPRESENTATIVE JAMES said a huge number of adults convicted of DWI don't re-offend. She inquired about statistics on whether underage DWI offenders offend again.

MR. GUANELI suggested it would be good to get statistics from the DMV on the number of second-time minor-consuming offenses

that occur each year [Ms. Marshburn provided statistics later]. He recalled, from looking at statistics, that every year there are roughly 5,000 total offenders, with about 1,000 being second-time offenders and much fewer being third-time offenders. In response to a suggestion by Representative James that it is probably about the same rate, he agreed that the connection could be made.

Number 1029

REPRESENTATIVE BERKOWITZ asked what the objective is with HB 179.

CHAIR ROKEBERG stated:

> We're trying to dissuade juveniles from consuming alcohol. I take it as a matter of public policy. And it's up to this committee to figure out what the best way to do that is. Historically, we had the "Use it, Lose It" provisions for revocation that simplified matters and decreased the cost.

CHAIR ROKEBERG told members he hoped they had all had a chance to read the executive summary of C & S Management Associates, which addresses some of the problems in the state. [Provided in packets was page 83, "VI. Substance Abuse Treatment Resources for Minors."] He said the question is how to make a transition from the current unconstitutional Niedermeyer methodology of "Use it, Lose It" to a new statute without losing credibility with the youth of the state. He suggested the need, however, to make a strong enough statement that it gets the attention of the youth of the state.

Number 1130

REPRESENTATIVE BERKOWITZ said "Use it, Lose It" can't be used with a driver's license, but perhaps could be used with the [permanent fund] dividend (PFD).

CHAIR ROKEBERG said he didn't see why not, if it is criminalized. He noted that pending legislation - SB 105 - would have a similar impact.

Number 1170

MS. MARSHBURN spoke up to offer statistics. She said for the year 2000, there were 2,700 first-time offenders, 900 second-time offenders, and 1,000 "third and up."

REPRESENTATIVE JAMES commented that she doesn't believe these young people are thinking as seriously about it upon the first offense, in comparison to adults.

REPRESENTATIVE BERKOWITZ suggested the implication that "Use it, Lose It" wasn't having a serious impact, either.

Number 1220

CHAIR ROKEBERG referred to his mention at an earlier hearing of a 130 percent increase since implementation of "Use it, Lose It." He suggested testimony would be mixed about how effective it is. He noted that at a prior meeting, Mr. Melton [from the Fairbanks Alcohol Safety Action Program (FASAP)] had testified that he believed it was effective, as far as it went; however, [Mr. Melton] is limited in the tools he uses.

MR. GUANELI responded that until three months ago, it was believed that there was a system in which a person's driver's license could be taken away, and a $300 fine was the only thing available. However, now that the driver's license aspect has been lost, all that minors face is a $300 fine for minor consuming. If the combination of [revocation of a] license and a $300 fine wasn't particularly effective, he cautioned, the fine alone certainly wouldn't be very effective, which is what would exist if nothing were done. On another subject, he said the cost of giving a jury trial to all of these offenders would be very high; he mentioned the fiscal note from the Public Defender Agency (PDA).

CHAIR ROKEBERG estimated that the costs would be about the same if either trials were required under the "Use it, Lose It" scenario or this new program were to be instituted.

MR. GUANELI agreed, saying either everyone could be provided an attorney and then the licenses would be revoked, or the cost for the public defender alone would roughly equal the estimate from the DHSS for the JASAP. He emphasized the desire to craft a scheme whereby the costs for attorneys - including prosecutors and public defenders - would be put instead into treatment, to the extent possible; he acknowledged that the HB 179 doesn't do that completely because it still provides attorneys for a second and third offense.

Number 1316

REPRESENTATIVE COGHILL asked whether the intent is to facilitate a way to get into the JASAP, for which there is only one pilot program in Alaska at this point, or to facilitate a penalty through the court system. He said it looks as if [Amendment 1] is trying to facilitate a JASAP - which will have to be facilitated somewhere in the system, through the DHSS, he surmised - that incorporates a learning process and a penalty.

Number 1377

CHAIR ROKEBERG informed members that Ms. Nobrega had just handed him "an example of the differential." He said for HB 179, the [fiscal] note from the PDA is roughly $380,000. However, a fiscal note had been requested for the current status, if jury trials were to be enforced; he said the PDA's fiscal note for that alone is $1.3 million.

Number 1414

REPRESENTATIVE JAMES asked where the parents fit in, and what the juvenile status of the offender is.

CHAIR ROKEBERG pointed out that Mr. Guaneli distinguishes between offenders under the age of 18 and those 18 and older. He said the committee needs to deal with that, because there are people between the age of majority and 21 years old, which is the statutory age for drinking in Alaska. As for the parents, he said an amendment will be offered that adopts Court Rule 11, which says the parents are responsible for the fines and fees. He suggested that parents would be looked to for fines and fees for treatment, through a court order and/or by statute, if the committee approves.

Number 1462

REPRESENTATIVE COGHILL mentioned a parent of a 17-year-old having to go to court; he suggested that authority could come into question. He said that many times there are family struggles, in a variety of circumstances, that could exist.

REPRESENTATIVE BERKOWITZ noted that one standard condition of adult probation or release is a "no driving" provision. Under a JASAP, which is essentially a juvenile probation, he asked what

authority could there be for the probation officer or department to impose the "no driving" condition.

ROBERT BUTTCANE, Legislative and Administrative Liaison, Division of Juvenile Justice, Department of Health and Social Services (DHSS), answered that what Representative Berkowitz had mentioned is provided for in the proposal in [Amendment 1]. Third-time offenders would be subject to all of the provisions and conditions of the delinquency chapter, [AS] 47.12; under that, the department has some broad authorities to solicit the participation of the parent and, in some cases, to have the court order the participation of the parent.

MR. BUTTCANE continued, explaining that sanctions might include suspension of a driver's license; he said that can be negotiated as part of the delinquency disposition order - a formal order of the court - or through an informal diversion upon a voluntary agreement with the parent and the minor.

MR. BUTTCANE said the scheme proposed is that for those juveniles diverted through a community diversion action, in order for [the division] to be able to enter into an agreement with them for an informal diversion, they would have to agree that the minor would surrender his or her right to drive for a period of six months, just as if he or she were adjudicated delinquent through the formal delinquency process in court.

Number 1602

REPRESENTATIVE BERKOWITZ asked whether that condition of "no driving" through a JASAP could be part of a first offense, without running afoul of the Niedermeyer decision.

MR. GUANELI articulated the difference between a JASAP and juvenile probation. He said a JASAP, as he understands it, is a screening mechanism for determining one's need for alcohol treatment and then is a referral mechanism to certain treatment providers; the JASAP program may also, in some cases, provide some of that treatment. He said he doesn't know that it is set up to monitor other types of activities, however, as a probation officer would be; it is not designed to be a "substitute probation officer." It is only when there is a third-time offender who has to go to juvenile court and get a juvenile probation officer that this more formal agreement - that the person will lose his or her license, or that the person simply won't drive - will come into play.

MR. GUANELI pointed out that it couldn't be done on a first offense because the possible loss of license triggers a right to a jury trial and right to counsel; that is what the [state] has been trying to avoid for the first offense in order to keep the costs down. In response to Representative Berkowitz's question regarding whether that is true even in a probationary context, Mr. Guaneli said he believes that if loss of a valuable license is a possible sanction, that triggers the right to a jury trial; he specified that he thinks the courts would hold that, although they may not have specifically addressed the question of whether the loss of license came about as a part of probation.

REPRESENTATIVE BERKOWITZ said if it isn't as part of a probationary period, there are less-rigorous protections attached; the probation would tend to be focused on the individual who had come under "probation supervision." He asked whether that doesn't address some of the Niedermeyer concerns.

Number 1710

MR. GUANELI emphasized the desire to not be in the same situation as two years ago, when the supreme court struck down a scheme that had provisions that might have worked, but that weren't guaranteed to do so. He stated his preference for taking a cautious approach. He said something needs to be done; the whole statutory scheme that the state had been operating under for five or six years has been thrown out the window, and it is uncomfortable for everyone in the justice system. He restated his concern about triggering a right to a jury trial for first-time offenders.

REPRESENTATIVE BERKOWITZ expressed concern that this is constitutionally "suspect" because the third offense is contingent upon a first and a second offense, which are done, under this scenario, without recourse to a jury trial or a public defender.

MR. GUANELI offered that a right to a jury trial and right to counsel are still triggered for a second offense because the CWS is mandated and because license revocation is possible.

REPRESENTATIVE JAMES asked why they are waiting until the third offense to refer people to the juvenile justice system (JJS); she suggested the referral to the JJS should come on the second offense, and then perhaps there would not be a third offense.

Number 1829

LOREN JONES, CMH/API Replacement Project Director, Division of Mental Health & Developmental Disabilities, Department of Health & Social Services (DHSS), on the distinctions between the JASAP and probation officers, said that within the adult Alcohol Safety Action Program (ASAP), misdemeanant adults are monitored for compliance with conditions of probations set by the court, but ASAP does not have any powers to set additional conditions of probation. He said he envisions the JASAP working in much the same fashion: juveniles would be monitored for compliance with conditions of probations set by the court, but neither [HB 179] nor any other portion of statute would give JASAP the right to set conditions of probation beyond what is set by the judge at sentencing. [The JASAP] would merely be providing the link between the treatment/education system and the court.

REPRESENTATIVE BERKOWITZ offered that although the Niedermeyer decision might have struck down a portion of a statute, some of those same penalties are still available to the court if they are causally related to the crime; if a juvenile comes in front of judge for a minor consuming case and there is some link to driving, a judge could still say it's minor consuming and that one of the conditions of probation for which the fine is being suspended is that the juvenile not drive.

MR. GUANELI concurred that if there was a link to driving, such a condition could probably be set. However, in the fairly typical situations when there is a beer party and a juvenile gets arrested but has not been driving, that link does not exist. He surmised that the vast majority of cases will not involve that link to driving, and for those cases that do, he said the judge has broader authority.

REPRESENTATIVE BERKOWITZ suggested that on an individual basis, the prosecutor could make the argument that the juvenile drove to the party. After looking at the statistics, he said he questioned whether the "Use It, Lose It" law was that effective; he reasserted the suggestion of seeking another mechanism to deter juveniles from drinking such as possibly taking away the offender's PFD, which would also offset the fiscal note.

Number 2023

CHAIR ROKEBERG, after commenting that the committee would discuss the issue of the PFD further at a later time, said that one of the problems surrounding the PFD is allocation of the funds for treatment and education.

REPRESENTATIVE BERKOWITZ noted that with juveniles, there is a greater likelihood that the PFD would be available for this purpose because most juveniles will not have a backlog of other debts owed. Using an estimate of 1,500 juvenile offenders at approximately $2,000 per offender, he arrived at a rough total of $3 million, which could be used to offset the cost of the JASAP as portrayed by the fiscal note for HB 179.

CHAIR ROKEBERG said that looked like a good response for a third offense but not for a first offense, which is a misdemeanor.

REPRESENTATIVE BERKOWITZ asked whether a trial and a defense attorney would be required to take a PFD.

MR. BUTTCANE said that what Representative Berkowitz is proposing makes sense to an adult offender, but to a 14-year-old, "they totally don't get it." The PFD is invisible money. Most 14- and 15-year-olds don't actually get the PFD; their parents take that money and put it somewhere. The kids might get $100, but the rest of it is in the college fund or being used for other purposes. The 14-year-old is not thinking in terms of cause and effect so as to be able to make a choice in his/her behavior whether to have a beer that day and then possibly lose the PFD next October. The cognitive developmental processes of adolescents are such that they just don't think that way; therefore, imposing the loss of a PFD as a sanction will be lost on them. The driver's license is tangible by comparison, and while the statistics show that "Use it, Lose It" had a minimal impact, it did have an impact, particularly when it was first implemented - there was a decrease in the number of incidents of minor consuming.

Number 2142

MR. BUTTCANE, on the point of the $300 fine, noted that it is "almost nothing." In fact, when looking at what the court typically imposed in terms of fines, it was somewhere in the neighborhood of less than $100 for a first offense, and for third and subsequent offenses, the fines were averaging around $180; these fines did not provide "a hook." The hook that engaged kids was the loss of their driver's license; the requirement that they get involved in alcohol information and education, through some kind of screening process, in order to get their licenses back from DMV, was a piece of that hook. He noted that "we" still think that adolescent use of alcohol is a rite of passage, and "we" have to instill in this social

consciousness the knowledge that there is now a "zero" tolerance for underage drinking.

MR. BUTTCANE offered that the fine scheme in HB 179 is part of that, wherein "we" are elevating the seriousness with which adolescent use of alcohol is viewed. The $1,000 fine for a second offense is not "chump change," and if parents are required to participate in the process, then they are influenced into thinking that maybe underage drinking isn't a rite of passage that they want their children to go through. He noted that the graduated sanctions incorporated by HB 179 depend on a lot of little pieces; they depend on some accountability at the first drink, which is where JASAP comes in - where it is not a full-fledged probation sanction, but is an accountability-monitoring situation that will make sure the offenders are getting the information they need. A lot of these kids don't understand how the body metabolizes alcohol, but in an alcohol information school (AIS) they begin to learn; most offenders don't come back for a second offense. For the few that do come back a second time, the sanctions are increased - the offenders have to do more CWS and pay an incredibly large fine, all of which goes toward sending the message that "we" do not tolerate underage drinking in this state.

MR. BUTTCANE explained that a third-time offender is probably a kid that is "dependent" or alcoholic. Thus a whole different approach needs to be taken such as mandatory treatment, higher levels of accountability and supervision, and engaging the family. The reason the delinquency system is put into play on the third offense is that now these are not simply kids who are making stupid choices; these are kids who are exhibiting levels of dysfunction that need intrusive intervention via the delinquency system. He surmised that under the scheme encompassed in HB 179, if an 18-year-old is hit with a $1,000 fine for a second offense, that person is going to be thinking that he/she can't afford this [behavior].

Number 2294

REPRESENTATIVE JAMES asked if there are statistics showing how many second-time offenders do not become third-time offenders. She opined that if a juvenile has committed a second offense, then he/she will probably go on to commit a third offense.

MR. BUTTCANE noted that those statistics are available, and that according to his recollection, approximately 70 percent of juveniles with court convictions for minor consuming of alcohol

do not have a second offense. He also noted that these statistics are different from the DMV statistics, which are tied to loss of licenses and which involve cases that may or may not have been in court.

MR. JONES added that the DHSS fiscal notes include a replication of the DMV statistics to which Mr. Buttcane alluded. He noted, however, that these charts do not include data for calendar year 1999, but do include data for calendar years 1995 (the start of the "Use It, Lose It" law), 1996, 1997, 1998, and 2000. He detailed that for 2000 there were approximately 2,200 first-time offenders, close to 940 second-time offenders, and 1,048 third-time offenders. With regard to the third-time offenders, he confirmed that their previous offenses could have occurred in a prior year, but the chart is simply showing that these offenders lost their license for a third time due to a third offense that occurred in 2000.

MR. GUANELI added that there is a long "look-back" provision for these types of offenses; a person could have gotten his/her first offense at the age of 14 and then the subsequent offenses could have occurred years later.

Number 2416

REPRESENTATIVE JAMES, after looking at the aforementioned chart and acknowledging that there is probably not any way to determine if these were the same offenders, said it appears that juveniles who commit a second offense go on to commit a third offense. And with this in mind, she again suggested that the referral to the JJS come at the second offense, rather than waiting until the third.

MR. BUTTCANE explained that [the DHSS] has been able to take the data for court convictions of minor consuming alcohol and separate out individual youth without duplicating the count. In the total time period from 1995 to 2000, there were 11,000 individuals who were 18 or older on January 1, 2001. Of those, 7,800 had one minor consuming alcohol offense within that five-year period. Within that five-year period, 1,744 of the 7,800 had a second offense, and 1,427 had a third offense. These figures illustrate that there is just a little bit of a reduction between second-time and third-time offenders; the rate of recidivism is quite high within this group of 18- through 20-year-olds.

REPRESENTATIVE JAMES stated that Mr. Buttcane was making her point.

MR. BUTTCANE brought up the point that the statistics show a different picture for those offenders under 18 years old. In this same five-year period, 1,749 kids were 17 or under as of January 1, 2001.

TAPE 01-50, SIDE B
Number 2499

MR. BUTTCANE continued by saying that amongst this 17-and-under age group within this five-year period, there were 1,388 first-time offenders; of these offenders, only 200 committed a second offense, and only 145 committed a third offense. He noted that when looking at this delinquency population, 145 is a significant decrease from 1,388.

REPRESENTATIVE JAMES countered that the older a person gets, the more exposure there is to alcohol, and thus the greater the likelihood of getting caught.

MR. BUTTCANE argued, however, that what is missing here is the requirement to start addressing an alcohol dependency, which is what the whole scheme in HB 179 does: it increases treatment capacity for underage drinking, not just for 17-year-olds, but also for the 19- and 20-year-olds, so that, hopefully, the kids start getting treatment earlier, which is the role that JASAP plays.

REPRESENTATIVE JAMES noted that her concern is not with regard to the JASAP; it is, instead, with waiting until the third offense to get serious.

MR. BUTTCANE remarked that there is no need to resort to the most expensive processes any sooner than is really necessary, given the circumstances. If second-time offenders are sent through the JJS, the need for more juvenile probation officers and associated costs increases, as opposed to a JASAP person who will still be able to sort some of the kids out without resorting to the "sledge hammer" to solve their problems. This is why the JJS is being reserved for the third offense; these kids really are demonstrating dependency issues - they need serious intervention - and the JJS can help with the associated problems such as dysfunctional families and educational issues.

Number 2410

REPRESENTATIVE JAMES, with regard to the younger offenders, remarked that she was not convinced it is so much a dependency problem rather than a behavior problem.

CHAIR ROKEBERG agreed with Representative James, and said his belief that the majority of offenders do not have a dependency problem is the primary reason he is reluctant to have first- and second-time offenders receive treatment. He did, however, acknowledge that there are some offenders who do have dependency problems, and it is, therefore, important to identify those kids and intervene with treatment.

MR. BUTTCANE cautioned against losing sight of the fact that out of [1,388] kids, 145 of them continue to drink in a manner far different from the drinking behavior of an ordinary kid.

MR. JONES, on the point of whether the JASAP screening would "pick up" on that type of offender, said that a requirement of screening is to look at an offender's history - to interview the offender and his/her parents - and, therefore, that type of determination could be made. He reminded the committee that the JASAP would not involve treatment, and that most first-time offenders would not go to treatment; they would simply attend AIS, which in most instances will be sufficient. Only a few first-time offenders would need further review.

CHAIR ROKEBERG remarked that while that may be the case, he did not think it was money well spent in terms of "what we would pick up there." He agreed that there should be an education component for first-time offenders, but he said he is concerned about spending the money on formal screening and evaluation for the first offense.

Number 2272

ERNIE TURNER, Director, Division of Alcoholism & Drug Abuse, Department of Health & Social Services (DHSS), said that he really liked the concept of graduated sanctions. The "Use It, Lose It" law applied to adolescents in the urban areas of the state, but most of the kids in rural Alaska could not have cared less whether they lost their licenses. He did note, however, that when some of the youth moved from the rural areas to Fairbanks to attend college, they participated in the Fairbanks Alcohol Safety Action Program (FASAP) minor consuming/possession pilot program in order to get their licenses back.

MR. TURNER relayed that the number of adolescents who get caught is far fewer than the number who are actually using [alcohol and/or other substances]. Surveys show that there up to 55 percent of adolescents between the ages of 12 and 15 are using alcohol and/or other substances. So, while the discussion today centers around the adolescents who are caught, it is not the true number, he added. National statistics show that there are 1.1 million adolescents between the ages of 12 and 15 who have been assessed as being dependent on alcohol and/or other substances. He said he is excited about HB 179 because the sooner "we get to them, the easier it is to treat them." He noted that there are statistics that show if a person can be delayed or prevented from drinking until the age of 21, as compared with someone starting at the age of 14, there is a 75 percent greater chance that this person won't become dependent on alcohol.

CHAIR ROKEBERG said that he agreed with Mr. Turner's remarks, but he reiterated his concerns about the effectiveness and costs of instituting a JASAP for first-time offenders. He again said that he was in favor of mandating alcohol education for first-time offenders, however.

MR. TURNER reminded the committee that the cost of the alcohol information school (AIS) will be paid for by the client (or client's family), so the only additional cost will be that which is generated by clients who are referred to the JASAP.

CHAIR ROKEBERG remarked that the fiscal note for the pilot JASAP proposed in HB 179 is $1.5 million.

Number 2079

REPRESENTATIVE MEYER remarked that even if some of the lower fines don't have any impact on the kids, any funds received via those fines could go towards offsetting the fiscal note and could help fund the various programs being discussed. He mentioned that he disagreed in some ways with Chair Rokeberg with regard to [the effectiveness of] treatment and education [for first-time offenders]. He relayed that during his adolescence in Nebraska, the penalties for a first offense were a joke, and the only thing anybody learned was to be more careful the next time so as not to get caught. He opined that had the eight-hour AIS been a requirement back when he was growing up, it would have deterred some people from continuing to drink. As it was, the only thing that had any deterrent effect was for an offender to have his/her name listed in the

paper, which has since been ruled unconstitutional. He suggested that some sort of fine should be required for a first offense.

CHAIR ROKEBERG clarified that he did support education and fines for first-time offenders, but he again reiterated that he had concerns about having the JASAP and mandated treatment for first offenses, and even for second offenses, for that matter.

REPRESENTATIVE JAMES said that what she found to be missing in this issue is parental involvement. She said that she did not feel that "we" as a government or "we" as a society are totally responsible for these kids. There will never be enough money, programs, or people working in this field to solve these youth-related alcohol/substance-abuse problems. She stressed that the parents must become involved in this issue, and that the onus should be placed on them to "make this happen."

CHAIR ROKEBERG commented that taking an offender's PFD would certainly get the parents involved. He noted that there was a forthcoming amendment that would take into consideration the financial resources of the defendant's parents when determining eligibility for court-appointed counsel.

REPRESENTATIVE COGHILL added that language in Amendment 1 [as well as in HB 179] mandates parental involvement with regard to an informal adjustment.

Number 1931

REPRESENTATIVE JAMES emphasized that she was not opposed to taking a person's PFD to pay an established debt, but she was not in favor of taking a person's PFD simply as a punitive measure.

MR. TURNER noted that a large portion of clients between the ages of 18 and 21 use the PFD to pay for their outpatient treatment; they assign their PFD directly to the agency.

CHAIR ROKEBERG, with regard to the costs incurred by the offender, remarked that if there is a JASAP instituted, there is a JASAP fee; there is a fee for the AIS; there is a fee for treatment; and then there are also fines. And on the issue of confiscating the PFD, he noted there is still the question of whether this money would go directly towards reimbursing these programs or would go directly into the general fund (GF).

REPRESENTATIVE BERKOWITZ said since one of the goals with HB 179 is to create a didactic affect, if the legislature sends the message, "If you drink, inappropriately, you lose your dividend," that's a pretty profound statement. He surmised that the courts will sort out the financial aspect so that fines will be adjusted to offset costs, and the like. He suggested that the message from the legislature should be clear: "We view the dividend as semi-sacred, but we think the problems of drinking are so profound in this state that we're willing to take dividends as a deterrent against drinking."

REPRESENTATIVE JAMES asked where the money from confiscated dividends goes, adding that she is not in favor of having this money go to the GF.

MR. JONES explained that currently, when people are not eligible for a PFD due to being incarcerated as a felon [or a third-time offender] during the eligibility year, the Department of Corrections (DOC) notifies the Department of Revenue (DOR), and that money is placed in a pool; that money can then be used by the DOL and the Department of Public Safety (DPS) for specific programs. However, alcohol-and-drug-abuse-treatment programs are not included as programs for which that pool can be used.

REPRESENTATIVE JAMES commented that there should be a nexus between confiscating the PFD and paying for [treatment programs]; the PFD should not just simply be confiscated and placed into the GF.

CHAIR ROKEBERG mentioned that the process by which the pool is allocated would have to be amended in order to channel those funds specifically into treatment, and that runs the risk of constitutionality problems.

Number 1709

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections (DOC), on the topics of SB 105 and confiscation of an offender's PFD, said that SB 105 proposes to expand the pool of PFD-withholding to include misdemeanant offenders who have a prior felony conviction. According to her understanding, that money goes into a pool, which goes into the GF, and then at the end of the budgetary year, that money is allocated to "crime victims' compensation," the Council on Domestic Violence and Sexual Assault (CDVSA), and some DOC programs.

CHAIR ROKEBERG then surmised that should the pool allocation be amended via SB 105, and should either HB 179 or HB 4 include a PFD confiscation provision, the accompanying fiscal notes would then reflect incoming revenue to the GF. But he also acknowledged that the nexus would then be lost, and thus there would be no guarantee that those funds would go toward the (J)ASAP, education, and treatment fees. For this reason, he suggested that it would be better to leave decisions regarding [fines, fees, and fund sources] to the discretion of the courts. He also suggested that the legislature should simply keep these issues in mind when setting the levels of the fines.

REPRESENTATIVE BERKOWITZ said he understood the argument that money and PFDs are fungible, but there is a very different message relayed by saying "we're" taking "your" dividend. People think of fines as just money, while taking a PFD has a more profound meaning, he added, and even with youth who do not normally see their dividends, their parents will help "bring the gavel down upon the kids."

MS. BROWER, with regard to the PFD, offered that what happens in rural Alaska, as opposed to urban Alaska, is very different because a lot of families in Bush Alaska are dependent on PFDs for heat and survival; there are not a lot of jobs in the rural areas and money is not flowing heavily. Another issue she brought up is that of grandchildren being raised by elders who may not be able to control those kids. And although she acknowledged that intervention, treatment, and education can be helpful in those situations, she did not know that taking a person's dividend away would fix the problem.

REPRESENTATIVE BERKOWITZ argued that the legislature is operating under the premise that they are deterring a number of people from drinking, and that they are helping people get their lives in order. In essence, he suggested that what the legislature is saying is that if they are successful in deterring people from drinking, those people are making a down payment with one or two years' worth of dividends in order to save themselves from the costs of a lifetime of drinking; notwithstanding the differences between urban and rural Alaska, in the long run he suggested that those people will come out ahead, fiscally.

Number 1433

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via

teleconference and said that the DPS has submitted a zero fiscal note and a bill analysis in support of HB 179. He acknowledged that the "Use It, Lose It" law was effective for a time, but from an enforcement standpoint, the effects began to wear off over time and kids began to drink and have parties again. He posited that HB 179, as currently drafted with the "stair-step" penalties, is probably the best way at this point to approach the problem [of underage drinking]. He added that from an enforcement standpoint, HB 179 will not affect the DPS; the DPS hopes that some measure encompassed in HB 179 will take effect and deter underage drinking.

LIEUTENANT DUNNAGAN went on to say that he thinks the "stair-step" and the larger fines will act as deterrents, especially if, upon passage, there is information put out to the public detailing the state's new position on minor consumption. He added that he thinks these provisions will have more of an effect on parents than "Use It, Lose It" did because, he surmised, some parents viewed the loss of an adolescent's driver's license as an answer to a prayer, particularly since it was the result of the state's mandate rather than their own mandate. He also surmised that the CWS provision will act as a deterrent since "kids out there have a lot better things to do, according to them, than help out in their communities."

Number 1296

BLAIR McCUNE, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration, testified via teleconference and said that although [the PDA] has not really had an opportunity to try treatment through the [F]ASAP, previous testimony was encouraging. He agreed with Mr. Buttcane with regard to deterrence; having to spend a Saturday at an alcohol education class and having to go through assessments and screening processes is something that gets the attention of younger people and also helps prevent early-onset alcohol dependence, which is a tremendous problem. He surmised that the increase in youthful offenders is not so much because "Use It, Lose It" hasn't worked, but because the concept of community policing has become more prominent and enforcement has increased.

MR. McCUNE, on the point of [mandated] CWS requiring jury trials and public defenders, said the Booth case is cited, and accounted for, in [the PDA's] fiscal note. He also said that [the PDA] believes in the "clean slate" concept discussed by Mr. Guaneli, and, therefore, third-time offenders are not accounted

for in the fiscal note for the first period of time that HB 179 would be in effect, should it pass. To explain [the PDA's] belief in the clean slate concept, Mr. McCune stated that one clear way to collaterally attack a prior conviction, in the context of a current case, is if the prior conviction was an "uncounseled" conviction (Gideon v. Wainwright) whereby the offender did not have the right to an attorney or was not advised of that right. He added that most of the prior convictions [the PDA] deals with are criminal convictions; he does know of any current state law that says a prior violation can be used as an element to enhance a misdemeanor offense. He noted that a first offense under HB 179 would be an uncounseled case; although it is only a violation and as such does not really carry a right to counsel, it is still an element of the misdemeanor offense. This adds a level of complexity to the situation, and there might be some legal challenges to using violations as elements to enhance a misdemeanor, he suggested.

MR. McCUNE said the PDA thinks that a program such as the JASAP would be effective and would work better than putting kids through the misdemeanor-type criminal process. On the issue of parental involvement, he referred to AS 47.12.030(b) and said that this is the provision currently in HB 179 regarding the third offense. When a child under 18 commits an offense such as a traffic offense, a fish and game offense, or a Title 4 minor in possession offense - which are not covered by the [statutes regarding] juvenile offenses - the statutes say that the minor's parent, guardian, or legal custodian shall be present at all proceedings. Thus, currently, the parents are legally required to be in court with a child who is charged with minor consuming.

Number 0905

MR. McCUNE, on the topic of fines, noted that an old law - stemming from a 1972 case (City of Fairbanks v. Baker) - said that if more than a $300 fine is going to be imposed, it triggers the right to a jury trial and court-appointed counsel for those who cannot afford their own counsel. [The PDA] believes that because of inflation and so on, the courts would not object if higher types of fines - in the range of $600 to $1,000 - were imposed. [The PDA] also believes that the approach to take is to make the JASAP mandatory, to couple that with ensuring that the courts have the ability to put fines on these violations, and to keep these offenses at the violation level.

MR. McCUNE, in response to questions, said that if the provision mandating CWS for a first offense is removed from HB 179, the PDA's fiscal note would be reduced, although he was not yet sure by how much. He mentioned that he had been very conservative in calculating the PDA's current fiscal note: he had estimated that [only 30 percent] of the total number of projected first-time offenders would request the PDA's services in response to the mandated CWS.

CHAIR ROKEBERG alluded to perhaps removing CWS for a first offense in an attempt to lower the fiscal note.

MR. GUANELI, on the topic of using violations to enhance misdemeanors, said that the idea of wiping the slate clean applies to offenses that were committed before the effective date of HB 179, but, he added, there is still the problem of how to stair-step from first offense to second offense to third offense. He explained that [the DOL] has determined that there is a way to overcome this problem resulting from wiping the slate clean, and he used the example of a crime called violating a domestic violence restraining order. When a person has a domestic violence restraining order issued against him or her, that person is given the status of domestic violence offender, even if he/she is not convicted of any crime, since the restraining order was probably entered based on a preponderance-of-evidence standard or might have even been an ex parte [proceeding]. Hence, when the offender violates the terms of that order, he/she then becomes guilty of the crime of violating a domestic violence restraining order.

Number 0524

MR. GUANELI opined that if people who are convicted of violating provisions of HB 179 are given a certain status, they can then be considered status offenders for subsequent offenses. He envisioned it working thus: When a person commits a first offense and is then put on probation, and if a second offense is committed while on probation for the first, that person is then placed in the second-time offender category. In this way, [the DOL] believes that even if the first offense did not come with a right to a jury trial or right to counsel, as long as the offender is on probation for that offense - and has the status of probationer - then any further offense will place the offender in the higher offense category. He suggested this is a viable way to get around current Alaska case law.

MR. GUANELI recommended further that a way to instill the idea that offenders may not drink until they become 21 is to place offenders on open-court, unsupervised, informal probation until they are 21. Then, when the offender reaches the age of 21, he/she is off probation. However, if the offender drinks again before getting off probation, then he/she is committing the crime of minor consuming while on probation for a prior offense, and hence is treated as a second-time offender as previously outlined. This method, he suggested, has the advantages of allowing "stair-stepping"; it tells the minor that he/she is in this status until the age of 21; and it allows the $600 fine for a first offense to be suspended. [The DOL] recommends the $600 fine be suspended as a way to encourage the offender to pay for the JASAP or education program, and also to hold something over the offender's head until he/she reaches the age of 21; if another offense is committed before then, the $600 will have to be paid, in addition to any fines imposed for the subsequent offense.

REPRESENTATIVE BERKOWITZ opined that perhaps [the DOL] had not gone far enough with this idea. He recommended that rather than having the first offense be a violation - using the DV-order analogy - [the offender] could be subject to a court order for the first offense. In this way, any subsequent offense would be considered the first offense but it would be the offense of violating a "no drinking" (ND) order. If the analogy with the DV-order is an appropriate analogy, he continued, then an underage individual caught drinking could be brought before a judge who would issue, in essence, a ND order that would also include things like a JASAP assessment and compliance with that assessment. Failure to comply with the JASAP assessment or failure to not drink would then subject the juvenile to the criminal penalties associated with what is currently being termed the second offense. He surmised that in this way, if it is true that nearly 70 percent of first-time offenders do not re-offend after the first court contact, then the need for the first proceeding to be criminal can be eliminated, and it would still allow what is now considered the second offense, "to fit in."

Number 0155

MR. GUANELI, in response to this suggestion, said it would work with the exception of imposing a fine; thus the additional incentive of the fine, as proposed via Amendment 1, drops out. He opined that it is important to provide some form of monetary incentive to minors who are going to be told that they have to

pay for their alcohol screening and education. For example, "You either pay $100 to go to this class or you pay $600 to the judge," he said. Even 15-year-olds can understand the economics of this choice, he surmised, and thus will opt for the AIS. He expressed reluctance to lose that incentive via Representative Berkowitz's suggestion. He then reminded the committee that the current fine for a first offense is up to $300, but current practice seems to be to impose a fine of $50 or $75.

CHAIR ROKEBERG called this current practice a "hand slap," which is not catching "their" attention.

REPRESENTATIVE BERKOWITZ suggested that any additional moneys could be made up by assessing court costs.

MR. GUANELI commented that he would have to think further on that aspect of the suggestion.

TAPE 01-51, SIDE A
Number 0001

REPRESENTATIVE BERKOWITZ said he did not think [that his suggestion] would trespass on the same constitutional ground as "stair-stepping," which he sees as being extremely problematic; if there is a second offense, then the juvenile would be subject to a violation of a court order, as well as whatever happens with the second offense. And with that violation of a court order, some other penalties do attach in the same way that penalties attach for violations of a DV order.

CHAIR ROKEBERG, in summary, noted that Amendment 1 was what the administration had originally recommended as HB 179, but this was changed to reflect an increase in fines and CWS, and a lowering of some of the treatment elements. Since then, information was brought forward indicating that mandatory CWS would still trigger a requirement for a jury trial and for counsel. He added, however, that if the CWS is simply given as an option by the judge, a jury trial and counsel would not be required even if CWS is what the offender opted for. He also noted that Mr. Wooliver [of the Alaska Court System] had estimated that 1 percent of misdemeanant offenders would go to trial, and that another study had an estimate of 3.7 percent.

MR. McCUNE clarified that [the PDA] has to do more work on its cases regardless of whether the cases go to trial; [the PDA] has to meet with the defendant and discuss the case, and generally also has to meet with family members who are understandably

upset. Therefore, unlike other state agencies and the court system, [the PDA] does not make fiscal calculations based on the number of trials; instead, it bases its calculations on the number of cases.

CHAIR ROKEBERG suggested that the committee develop a committee substitute - via the adoption today of Amendment 1 and any other amendments currently available to the committee - with the intention of bringing it back before the committee for further review and possibly further amendments.

Number 0425

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1. [Amendment 1 is provided with original punctuation at the end of the minutes on HB 179.] There being no objections, Amendment 1 was adopted.

Number 0445

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 2, which "removes the screening and treatment from the first offense, but leaves the education as a mandate."

Number 0475

REPRESENTATIVE BERKOWITZ objected.

Number 0485

ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health and Social Services (DHSS), suggested that there is still a misunderstanding on this point. He pointed out that [the DHSS] has a series of three fiscal notes, with the largest one reflecting the treatment element. He assured the committee that not one penny of those treatment dollars is associated with the first-time offender; the first-time offender will receive nothing but a referral to an AIS.

CHAIR ROKEBERG warned that this is not a sufficient argument against Conceptual Amendment 2. He clarified that his intention is to provide for mandatory education while deleting the ASAP provision for first-time offenders.

REPRESENTATIVE BERKOWITZ commented that for most offenders who get caught up in the system, once is enough; they get the point. He argued that the assessment provision is critical in trying to

"put the net out to see who we're catching." He suggested that about 10 percent of offenders - even the younger juveniles - have some real [alcohol-related] problems; if those offenders can be caught early, the state will be saving costs down the road. He also suggested letting the House Finance Committee worry about "the numbers," while the House Judiciary Standing Committee focuses on creating the right policy.

CHAIR ROKEBERG commented that he thinks the AIS is essential for first-time offenders because this, coupled with the fines, is what will get the kid's attention. He expressed the concern, however, that people who go through the ASAP will be assessed as needing treatment even after "they have one Budweiser."

MR. LINDSTROM explained that for the person just described, the ASAP will only be determining whether the AIS is the most appropriate course of action, and then reporting back to court whether this step was taken by the offender.

CHAIR ROKEBERG stated, "We don't need that bureaucrat in that transaction."

MR. LINDSTROM reminded the committee that if the clean-slate concept is instituted, then, for a period of time, a significant number of people coming in as first-time offenders might really be second-, third-, fifth-, tenth-, or twelfth-time offenders; as such, through a formal screening process, they may well be assessed as needing some form of treatment. He suggested that is a significant hole in the first-time-offender scheme. He also suggested that there is still a misperception regarding the role of the JASAP.

Number 0732

REPRESENTATIVE MEYER pointed out that according to the chart detailing the administration's proposal, offenders will have to pay for screening and any education or treatment. He surmised that if this is the case, there is no additional cost.

CHAIR ROKEBERG remarked that for those who cannot afford it, the costs of screening and education/treatment will be picked up by the state.

REPRESENTATIVE MEYER suggested that if a fine is reinstated for a first offense, in the long run "it'll be a wash." He added that he did not think a $300 fine would require a jury trial.

MR. BUTTCANE, as an argument in favor of screening for first-time offenders, posed a scenario in which 1,300 adolescents are asked, "Do you black out when you drink?" While all but 145 will say "No," those 145 are more likely to respond, "Well, yes, doesn't everyone?" Hence, during screening, specific groups of kids will be found that have the disease [of alcoholism] - they drink differently and they respond differently to the chemical substance alcohol, even with the first drink. Accordingly, the appropriate assessment can be performed at an early stage so that perhaps the second offense can be avoided altogether. He opined that great savings occur "down the road" by helping these kids who have this "allergy" to alcohol, this biological/physiological difference, get into treatment at the first offense.

CHAIR ROKEBERG suggested that the fee for the JASAP should be raised to a minimum of $150.

MR. JONES noted that this increase could be done via regulation. He estimated that for those people who show up in publicly funded programs, the collection rate for the ASAP fees would probably remain at approximately 40-45 percent.

REPRESENTATIVE BERKOWITZ, with regard to the question of whether to institute a minimum fine for a first offense, said that he would like to explore other alternatives because he considers the "stair-step" to be incredibly problematic from a constitutional perspective. He again suggested instituting a system using a "no drinking" order, similar to a DV order, whereby all the penalties would attach upon violation of that order.

CHAIR ROKEBERG, on additional points to consider, asked the committee to decide whether to institute a JASAP pilot program.

REPRESENTATIVE BERKOWITZ also suggested that more research should be done with regard to the consequences of taking a person's PFD.

CHAIR ROKEBERG noted that he would consider the suggestion of taking a person's PFD at the third offense if the amount didn't exceed the class-A-misdemeanor parameters. He recommended that Representative Berkowitz's research should include a look at how to "get past the pooling effect of the GF."

REPRESENTATIVE BERKOWITZ, on the point of whether to adopt Conceptual Amendment 2, which would remove the screening and

treatment for a first offense but still mandate education, maintained his objection.

Number 1275

A roll call vote was taken. Representatives Coghill, James, and Rokeberg voted for Conceptual Amendment 2. Representatives Meyer and Berkowitz voted against it. Therefore, Conceptual Amendment 2 passed by a vote of 3-2.

Number 1287

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 3, which read [original punctuation provided]:

> Add a new subsection to AS 04.16.050 stating:
>
> When considering the financial resources of a minor for purposes of determining the eligibility for court-appointed counsel, the court shall consider the resources of both the defendant and the defendant's parents, unless the court finds good cause to treat their resources as being unavailable to the defendant.

CHAIR ROKEBERG added that this concept is already part of the district court rules. He asked whether there were objections to Conceptual Amendment 3. There being no objection, Conceptual Amendment 3 was adopted.

[HB 179 was held over.]

## AMENDMENTS

The following amendment to HB 179 was discussed and adopted during the hearing. [Shorter amendments are provided in the main text only.]

Amendment 1 (adopted) [original punctuation provided]:

> **Delete Section 1 and replace with:**
> ***Section 1.** AS 04.16.050(b) is amended to read:
> (b) A person who violates (a) of this section **and who has not been previously convicted** is guilty of **minor consuming or in possession or control** [A VIOLATION]. Upon conviction in the district court, the court **shall** [MAY] impose a fine of **$600** [NOT LESS THAN $100]. **The court shall suspend the full amount**

**of the fine, and place the person on probation under (e) of this section.**

**Delete Section 2 and replace with:**

***Sec. 2.** AS 04.16.050 is amended by adding new subsections to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person is on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall impose a fine of $1000 and at least 48 hours of community work service. The court shall suspend a portion of the fine up to $500, and place the person on probation under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person is on probation under (c) of this section or this subsection, or has been twice previously convicted, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section, and shall

(1) impose at least 96 hours of community work service;

(2) revoke the person's privilege to drive for six months, and by the end of the next business day shall notify the division of motor vehicles of the revocation; and

(3) take possession of any driver's license or permit.

(e) A person sentenced under (b), (c) or (d) of this section shall be placed on probation for one year, or until the person turns 21, whichever is later. The conditions of probation are:

(1) that the person pay for and enroll in a juvenile alcohol safety action program;

(2) that the person pay for and successfully complete any education or treatment recommended;

(3) that the person not consume inhalants, or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

(4) that the person timely complete any community work service ordered, as provided in (f) of this section; and

(5) any other condition the court considers appropriate.

(f) Community work service ordered under this section must be performed within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work service to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, within 30 days the court shall schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program under (b), (c) or (d) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. The request for review shall be made within seven days of the recommendation, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to successfully complete any education or treatment recommended. If the court finds that the person has failed to perform community work service as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended, the court shall impose the suspended fine and may impose any period of suspended incarceration. If the person was convicted of repeat minor consuming or in possession under (c) of this section, the court shall also revoke the person's privilege to drive for six months, and shall take possession of any driver's license or permit. If the person was convicted of habitual minor consuming or in possession under (d) of this section, the sentencing court or juvenile court

shall revoke the person's privilege to drive for an additional six months beyond the revocation under (d) of this section. A court revoking the privilege to drive under this subsection shall notify the division of motor vehicles.

(i) In this section,

(1) "juvenile alcohol safety action program," means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37, if a program described in AS 04.16.050(g)(1) is not available in the community in which the person resides; or

(C) a program or counseling approved by the court, if a program or treatment described in AS 04.16.050(g)(1)(A) or (B) is not available in the community where the person resides;

(2) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 28.35.030, 28.35.032, AS 28.35.280 -- 28.35.290, AS 11.71, or a law or ordinance in another jurisdiction with substantially similar elements;

(3) "privilege to drive" means a driver's license license [sic] or permit, or privilege to obtain a driver's license or permit.

**Delete Section 4 and replace with:**

* **Sec. 4.** AS 28.15 is amended by adding a new section to read:

**Sec. 28.15.176. Administrative revocation for minors who consume or possess alcohol or drugs.** (a) The department shall revoke the privilege to drive of a minor for

(1) six months, when notified of an informal adjustment under AS 47.12.060(b)(4), and shall revoke the minor's privilege to drive for an additional six months when notified of an unsuccessful adjustment under that statute;

(2)the time period specified in AS 28.15.185(b), when notified of an informal adjustment under AS 47.12.060(b)(5).

(b) The department may not issue a new license or reissue a license to a person whose privilege to drive

has been revoked under AS 04.16.050, AS 28.15.183 or AS 28.15.185 unless the person has enrolled in a juvenile alcohol safety action program and successfully completed any education or treatment recommended.

(c) A revocation under AS 04.16.050 is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under that statute based on a prior conviction, adjudication of delinquency or informal adjustment under AS 47.12.060.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, the department may not require proof of financial responsibility before restoring a person's privilege to drive under this section.

(e) In this section,

(1) "juvenile alcohol safety action program," has the meaning given in AS 04.16.050;

(2) "privilege to drive" has the meaning given in AS 04.16.050;

**Delete Section 5 and replace with:**

***Sec. 5.** AS 28.15.181 is amended by adding a new subsection to read:

(i) A court convicting a person under AS 04.16.050(c) or (d) shall revoke the person's privilege to drive as provided in AS 04.16.050. As used in this subsection, "privilege to drive" has the meaning given in AS 04.16.050.

**Add a new Section:**

***Sec. ___.** AS 28.15.183(g) is amended to read:

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked under this section unless the person **has enrolled in a juvenile alcohol safety action program, as defined in AS 04.16.050, and successfully completed any education or treatment recommended** [IS ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY COMPLETED,

(1) AN ALCOHOLISM EDUCATION OR REHABILITATION TREATMENT PROGRAM APPROVED UNDER AS 47.37, IF THE REVOCATION RESULTED FROM POSSESSION OR CONSUMPTION OF ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR

ELEMENTS, FROM] OPERATING A VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR FROM REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BREATH IN VIOLATION OF AS 28.35.285; OR

(2) A DRUG EDUCATION OR REHABILITATION TREATMENT PROGRAM, IF THE REVOCATION RESULTED FROM POSSESSION OR USE OF A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS].

**Delete Section 13 and replace with**

***Sec. 13.** AS 47.12.060(b) is amended to read:

(b) When the department or an entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

**(1) must be made with** [MAY NOT BE MADE WITHOUT] the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment**;**[.]

**(2) must give** [IN ADDITION, THE DEPARTMENT OR ENTITY SHALL GIVE] the minor's foster parents an opportunity to be heard before the informal adjustment is made**;**[.]

**(3) must include notice that** [AN] informal action to adjust a matter is not successfully completed unless, among other factors that the department or entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution**;**

**(4) for a violation of habitual minor consuming or in possession under AS 04.16.050(d), must include an agreement that the minor perform 96 hours of community work service and that the minor's privilege to drive be revoked for six months, as if the minor had been adjudicated delinquent, and that the privilege to drive be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work service as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended. The department or entity selected by it shall notify the division of motor vehicles of an informal adjustment under this**

**paragraph, and of an unsuccessful adjustment described in this paragraph;**

**(5) of an offense described in AS 28.15.185(a) must include an agreement that the minor's privilege to drive be revoked as provided in AS 28.15.185(b), as if the minor had been adjudicated delinquent. The department or entity selected by it shall notify the division of motor vehicles of an informal adjustment under this paragraph**.

**Add a new section:**

***Sec. ___.** AS 47.37.040 is amended by adding a new paragraphs to read:

(20) develop and implement or designate, in cooperation with other state or local agencies, a juvenile alcohol safety action program that provides alcohol and substance abuse screening, referral, and monitoring of persons under 21 years of age who have been referred to it by a court in connection with a charge or conviction of a violation or misdemeanor related to the use of alcohol or a controlled substance, by the division of motor vehicles in connection with a license action related to the use of alcohol or a controlled substance, or the division of juvenile justice after a delinquency adjudication that is related to the use of alcohol or a controlled substance.

[End of Amendment 1 to HB 179; HB 179 was held over.]

HB 4 - OMNIBUS DRUNK DRIVING AMENDMENTS

Number 1376

CHAIR ROKEBERG announced that the committee would resume the hearing on 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 were CSHB 4(TRA) and Amendment 16A, as amended once.]

[Because of their length, some amendments to CSHB 4(TRA) discussed or adopted during the meeting are found at the end of

this final section of minutes for this date for HB 4. Shorter amendments are included in the main text only.]

REPRESENTATIVE BERKOWITZ referring to page 6 of [Amendment 16A], asked why ten days of community work service (CWS) was only being allowed for the second offense. [Amendment 16A is provided at the end of the minutes for HB 4.]

Number 1450

MIKE FORD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said that this language in the refusal section of [Amendment 16A] is simply conforming to language in the DWI (drinking while intoxicated) provisions on page 17 of CSHB 4(TRA). He confirmed that essentially the mandatory minimum sentence for a second offense is 20 days with 10 days of CWS.

CHAIR ROKEBERG added that the alternative is 30 days in jail if the offender does not want to do the CWS.

REPRESENTATIVE BERKOWITZ commented that the defendant is not usually allowed to make this choice for himself/herself.

CHAIR ROKEBERG surmised that the decision belonged to the court.

MR. FORD said he saw this as an option on the part of the person receiving the sentence; he did not see that the court could deny a person this option.

REPRESENTATIVE BERKOWITZ explained that the defendant is not normally allowed to choose whether to serve jail time or suspended time, and that the court could impose the 30 days' jail time without any CWS, if it so chooses.

CHAIR ROKEBERG noted that this language was inserted during the time when he was promoting the diversion program.

MR. FORD, acknowledging that this is a point that should be clarified, restated that his interpretation of the language is that the court is required to give the defendant the option.

REPRESENTATIVE BERKOWITZ remarked that if this is the case, then he objects to this language.

CHAIR ROKEBERG said he agreed with Representative Berkowitz: the language should reflect that this option is at the court's discretion.

REPRESENTATIVE BERKOWITZ noted again that this language reflects minimum sentences, and therefore the sentence could be increased should the court so choose.

Number 1690

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), reminded the committee that the existing statute already defines what constitutes CWS, and he suggested that any change in language pertaining to CWS should reflect that it is pursuant to this existing statute.

Number 1712

CHAIR ROKEBERG, momentarily setting aside the question of [Amendment 16A], made a motion to adopt Conceptual Amendment 16B, "to conform the language in Section 41 [of Amendment 16A, regarding AS 28.35.032, and Section 27 of CSHB 4(TRA), regarding AS 28.35.030] as needed to conform the instruction that the court be given the power to make that election." There being no objection, Conceptual Amendment 16B was adopted.

REPRESENTATIVE BERKOWITZ, returning to Amendment 16A, noted that he still had concerns about it.

Number 1739

BLAIR McCUNE, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration, testified via teleconference, and said that when the municipal attorney was speaking about the Municipality of Anchorage's forfeiture proceedings, it was with regard to "in rem" forfeitures instead of "in personam" or "criminal" forfeitures. He noted that in the Anchorage Municipal Code (AMC), there are two provisions relating to vehicle forfeiture for DWI. The in personam forfeitures are located in AMC 9.28.020, and the in rem forfeitures are located in AMC 9.28.026. He explained that it appears to him that the drafter of Amendment 16A took language from AMC 9.28.020, instead of from AMC 9.28.026, which, he roughly paraphrased, results in the vehicle being declared a public nuisance in order that the vehicle can be forfeited. He went on to suggest that by using language from AMC 9.28.020,

Amendment 16A would not decrease [the PDA's] fiscal note as anticipated.

MR. McCUNE, on the point of whether he had any specific solutions to the problems pertaining to vehicle forfeiture, responded that the current vehicle forfeiture laws do allow for some leeway, but he ventured that the specifics of this information would be better garnered from Mr. Guaneli. He suggested that perhaps civil forfeiture might be addressed in statute already. However, he said that in his view, as [Amendment 16A] is currently written, it is connected with a criminal case and will result in an in personam criminal vehicle forfeiture. He then referred to the first two sections of Amendment 16 on page 1, and noted that much to his shock, a person's liberty is dependent on whether he/she has the ability to post the return bond. He surmised that this provision will have big effects on both [the PDA] and the DOC. And while he acknowledged that this language is part of the Anchorage Municipal Code, he said he seriously doubts it is enforced. He suggested that requiring a bond on the vehicle in order for the person to be released from jail violates that person's constitutional right to bail.

MR. FORD cautioned the committee that although he had attempted to use the Anchorage system with regard to vehicle forfeiture, he was not familiar with it in practice, and it may very well be that Anchorage does not use some of its municipal provisions. He also noted that the direction the committee was taking with regard to vehicle impoundment and forfeiture was a major change from current statutory practice; therefore, he urged caution.

CHAIR ROKEBERG remarked that it would be difficult to simply suggest a conceptual amendment to alleviate some of these aforementioned concerns relating to vehicle forfeiture. He mentioned, however, that properly amending the provisions regarding vehicle forfeiture has the potential of lowering the fiscal note.

Number 2122

REPRESENTATIVE BERKOWITZ made a motion to adopt a conceptual amendment to Amendment 16A, "that we withdraw all the forfeiture provisions from [Amendment 16A]."

CHAIR ROKEBERG asked whether this amendment to Amendment 16A would affect the impoundment provisions.

MR. FORD said that forfeiture and impoundment are the two major parts to consider, and that they are two separate parts. He added that if the committee wanted to retain the current system with regard to vehicle forfeiture, then those references could be removed. He noted that under the present system, forfeiture is at the discretion of the courts, whereas impoundment is up to the police and is typically a safety issue.

CHAIR ROKEBERG offered that they would be making a policy statement, and he added that they had already made a policy statement elsewhere in the bill that is simply being reconfirmed by Amendment 16A - that vehicle forfeiture will be mandated for the third, or higher, conviction, and, via another amendment, that the courts will have the option of forfeiture or impoundment on the second offense.

MR. FORD confirmed that there was an earlier amendment that did accomplish this step regarding vehicle forfeiture.

CHAIR ROKEBERG clarified that he was referring to a forthcoming amendment relating to forfeiture of a vehicle's license plates, which he said he is calling "impoundment in place." He added that he was willing to strip Amendment 16A down to its bare essentials in the interest of moving the process along, but he did not want to miss something by doing so.

REPRESENTATIVE BERKOWITZ said, "As I understand it, what we're hanging on here are the impoundment and the forfeiture provisions that are in [Amendment 16A]."

Number 2221

CHAIR ROKEBERG rephrased the amendment to Amendment 16A: "To remove those sections that relate to the attempt that we're making for civil-case forfeiture and impoundment only. Any other provisions that relate to current state forfeiture and/or the times of forfeiture and impoundment should remain in there, if in fact they're even there."

Number 2250

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, noted that this amendment to Amendment 16A would leave all of the refusal language intact.

Number 2270

CHAIR ROKEBERG asked whether there were any objections to the amendment to Amendment 16A [as previously amended once]. There being no objection, the second amendment to Amendment 16A was adopted.

REPRESENTATIVE BERKOWITZ referred to language in Section 42 of Amendment 16A that says: "supply the **judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress**". He then asked whether this would be invading the patient's privileged information. He suggested that some of this information might be doctor-patient, or psychoanalyst-patient information. And although he acknowledged that this information is confidential and may only be used in court proceedings involving the defendant or the defendant's treatment, he pointed out that supplying this information is, essentially, widely broadcasting what can be privileged information, without any provisions protecting the individual's privacy rights.

MR. FORD pointed out that the language limits who can get the information and what the information can be used for, and that the information is confidential. He suggested that this should provide some comfort level.

REPRESENTATIVE BERKOWITZ called this a big loophole and used the following example:

> I've got some guy who the doctors say is ... an alcoholic and a kleptomaniac. ... I'm a prosecutor - I have access to this information - and I could use that in another court proceeding.

MR. GUANELI, in defense of this specific language - which was suggested by the DOL - said that there are specific rules of evidence that govern what evidence is admissible in court proceedings, and one of the primary rules pertains to the doctor-patient relationship. If prosecutors come into possession of that type of information, they simply cannot use it. He explained that this information is necessary to guide the defendant's further treatment; the treatment professionals say that they sometimes have trouble getting full access to all of the defendant's prior treatment records, and they need a statute that will allow them to gather this information.

REPRESENTATIVE BERKOWITZ related another example in which information was disseminated more widely than it should have

been: an individual was HIV (human immunodeficiency virus) positive - falsely, it turned out - and it became a problem for this individual in his community.

Number 2429

MR. GUANELI suggested striking "the defendant or" from page 8, lines 19-20, of Amendment 16A, resulting in the information's only being used in a court proceeding involving the defendant's treatment. He illustrated that a judge could hold a review hearing to determine how the defendant is doing in a treatment program, but the information could not be used in some other case or for some other purpose.

REPRESENTATIVE BERKOWITZ pointed out that people who violate this provision by disseminating information are violating state policy and probably state law.

MR. GUANELI said that to the extent that confidential information is used improperly, a criminal provision covers that.

Number 2487

REPRESENTATIVE BERKOWITZ made a motion to amend Amendment 16A by striking "the defendant or" from page 8, lines 19-20, and included a conforming amendment to page 18 [lines 18-19, of CSHB 4(TRA)].

TAPE 01-51, SIDE B
Number 2487

CHAIR ROKEBERG asked whether there were any objections to the amendment to Amendment 16A [as previously amended twice]. There being no objection, the third amendment to Amendment 16A was adopted.

Number 2477

CHAIR ROKEBERG asked whether there were any objections to Amendment 16A, as amended. There being no objection, Amendment 16A, as amended, was adopted.

Number 2451

CHAIR ROKEBERG made a motion to adopt Amendment 36 [22-LS0046\S.25, Ford, 3/28/01]. He explained that this allows for

the seizure of license plates, and that he called this the "impoundment-in-place amendment." [Amendment 36 is provided at the end of the minutes for HB 4.]

MS. SEITZ added that Amendment 36 would put in place a procedure by which law enforcement officials could, at the same time that the driver's license is seized, seize the registration plates of the vehicle and issue a temporary permit under which the vehicle may be operated. She noted that this tracks with what is done now regarding seizure of driver's licenses. It gives the person the right to an appeal, and it gives the co-owner of the vehicle the right (page 2, beginning on line 7) to reregister the vehicle under the co-owner's name. She added that seizure of the plates would run concurrent with the driver's license revocation/suspension. She explained that language on page 3, beginning on line 24, provides for impoundment of the vehicle (for a second or higher offense) by immobilizing it at the offender's residence for the same period of time that the driver's license is revoked.

REPRESENTATIVE BERKOWITZ asked what would happen when someone is arrested while driving a rental car.

MR. FORD replied that there is a provision allowing the owner to get the plates back, and that there is also a provision for review. He added that under the administrative review provisions, AS 28.15.166, an innocent party can "show up" and defend his/her rights. He also added that there is a provision for notice in existing law, and that he had dovetailed "this" provision with the license-revocation provisions.

REPRESENTATIVE BERKOWITZ, using the hypothetical example of a rental car, said that at the time of arrest, the officer is going to know that the vehicle is a rental; he then asked why the officer is being forced to go through the process of seizing the plates, which would force someone from the rental agency to go through the process of reclaiming the plates. He said, "This is the problem you get into when you do not allow discretion."

Number 2310

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, testified via teleconference and on this same point, said that the DMV did not see that there is "an easy out" for a rental or a leased vehicle. In these instances, the rental car or leasing company is not a co-owner (which would be covered under language in subsection (e), on

page 2, line 7, of Amendment 36); the company is the owner and the user is simply the registered user. She explained that there were basically three situations regarding operation of a vehicle: the vehicle is leased or rented by the driver, the driver borrows the vehicle from another person, or the vehicle is owned or co-owned by the driver. She noted that subsection (e) would not cover the owner of a borrowed vehicle either.

MS. MARSHBURN suggested that on page 2, line 7, of Amendment 36, "co-owner" be replaced with "owner" in order that the owner of a borrowed vehicle be given the same recourse that is being offered to a co-owner. She also suggested that the last sentence of subsection (e) be deleted from page 2, lines 11-13, of Amendment 36, because it is almost certain that any seized plates would not end up in the DMV's possession anytime quickly after seizure, nor would the plates necessarily be at the same location that an individual might come to reregister, and therefore the DMV would simply assign new plates to the vehicle.

MS. MARSHBURN, with regard to a question posed earlier by Representative Berkowitz, explained that it is the status of the driver's license and the type of driver's license that dictates whether a person can drive and under what conditions. The vehicle does not need to be registered in that person's name in order for him/her to drive that vehicle. If the license is revoked, the person cannot drive anything; if the license is limited, the person can only drive according to the limitations of the license. With this in mind, she said that the DMV considers this provision regarding plate confiscation as more of a paper or record exercise, rather than having any real effect on the DWI problem. She opined that the only practical effect that plate seizure is going to have is going to be on the single individual who is the sole owner of the vehicle that he/she was driving at the time of arrest, and who does not have any access whatsoever to any other vehicle, either borrowed, rented, leased, or co-owned.

REPRESENTATIVE JAMES noted that if a person is driving a vehicle without plates, it provides a visual indication that the person should be stopped by law enforcement.

MR. FORD, on the topics of borrowed cars and leased/rented cars, said that a provision should be added, perhaps in subsection (e), that will allow owners of a borrowed vehicle to get their plates returned. It also would be a good idea to come up with a trigger that involves ownership [of leased/rented cars],

although, he added, he was not sure how that would operate at the arrest portion of the process.

REPRESENTATIVE BERKOWITZ, on the goal of Amendment 36, noted that in the clearest case, if a person is caught DWI while driving his/her own vehicle, then the plates can be taken.

Number 2053

REPRESENTATIVE COGHILL, referring to page 1, line 7, of Amendment 36, suggested adding language "for which the person is the sole owner" to ensure that the plates are only taken from vehicles owned by the person suspected of DWI.

Number 2007

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference. In response to questions, he explained that vehicle registration can be, and is, checked at the time of arrest. The arresting officers not only run the record through the computer system, they also look for registration documents in the vehicle itself in order to match them up with plates and vehicle identification numbers (VINs). He did note, however, that a fairly common problem occurs when people buy a vehicle from another person but do not change the registration. When a car is sold, both the buyer and the seller are supposed to let the DMV know that the transaction took place, but that "falls through the crack" and does not get done a lot of the time. Because of this, sometimes an officer in the field might find that a vehicle is registered to somebody completely different from the person driving it, who claims to have bought the vehicle several months prior. He added that luckily, on occasion, the seller has already notified the DMV of the sale.

LIEUTENANT DUNNAGAN, on the topic of confiscating license plates for DWI, suggested the committee also consider that it is not uncommon now for people to steal license plates simply because they don't have the funds, or the documentation to provide proper proof, for licensing through the DMV. He added that misuse of license plates is a misdemeanor, and is a fairly common offense.

MR. FORD, with regard to a solution for borrowed, rented, and leased vehicles, suggested simply requiring that it be a vehicle that the person is a registered owner or co-owner of.

Number 1880

CHAIR ROKEBERG made a motion to amend Amendment 36 "to do just that [for Mr. Ford to make ownership clarifications in Amendment 36]." There being no objections, the amendment to Amendment 36 was adopted.

Number 1864

CHAIR ROKEBERG made a motion to further amend Amendment 36 on page 1 [line 11] by adding, after "issue a", the words "distinctively marked". In this way, the temporary permit that is issued for a vehicle's registration plates would be distinctively marked, and could not be confused with any other type of temporary permit. There being no objection, the second amendment to Amendment 36 was adopted.

Number 1799

CHAIR ROKEBERG asked whether there were any objections to Amendment 36, as amended. There being no objection, Amendment 36, as amended, was adopted.

Number 1773

CHAIR ROKEBERG made a motion to adopt Amendment 37 [22-LS0046\S.26, Ford, 3/28/01], which read:

Page 1, line 9, following the first occurrence of "of":
Insert
"(1)"

Page 1, line 11, following "program":
Insert "; and
(2) up to 50 percent of the minimum fines required under (b)(1) or (n)(1) of this section"

MS. SEITZ explained that Amendment 37 gives the judge the discretion of suspending up to 50 percent of the minimum fines that are set in CSHB 4(TRA). She clarified that the language in Amendment 37 amends language in Amendment 7, which was adopted on 3/26/01.

Number 1659

CHAIR ROKEBERG asked whether there were any objections to Amendment 37. There being no objection, Amendment 37 was adopted.

Number 1635

CHAIR ROKEBERG made a motion to adopt Amendment 40, which read [original punctuation provided]:

Page 20, line 21

DELETE: "240"
INSERT: "180"

Page 20, line 23:

DELETE: "480"
INSERT: "360"

Page 20, line 25:

DELETE: "two years"
INSERT: "440 days"

Conform portions of amendment 16 (if adopted) dealing with refusal to time lines above (page 10, lines 21, 23, and 25 of amendment [number] 16)

CHAIR ROKEBERG explained that Amendment 40 reduces the amount of "hard time" served, and reduces the fiscal note by $1.1 million.

REPRESENTATIVE COGHILL asked whether this change would still allow enough time for adequate treatment as discussed during previous testimony.

CHAIR ROKEBERG confirmed that it did.

REPRESENTATIVE BERKOWITZ added that it increases the current sentence by 50 percent, instead of 100 percent, which is what language presently in CSHB 4(TRA) does.

Number 1590

CHAIR ROKEBERG asked whether there were any objections to Amendment 40. There being no objection, Amendment 40 was adopted.

Number 1581

CHAIR ROKEBERG made a motion to adopt Amendment 41, which read [original punctuation provided]:

Page 16, line 11

DELETE: "500"
INSERT: "1500"

CHAIR ROKEBERG explained that Amendment 41 is a technical amendment; when the committee decided to delete the ".08 diversion program," the language regarding the $500 fine for a first offense was inadvertently retained instead of the correct amount of $1,500.

REPRESENTATIVE BERKOWITZ reminded the committee that the language regarding refusal should conform to this change as well.

CHAIR ROKEBERG noted that he would be giving Mr. Ford instructions to conform language as needed when crafting the committee substitute reflecting the adopted amendments.

Number 1520

CHAIR ROKEBERG asked whether there were any objections to Amendment 41. There being no objection, Amendment 41 was adopted.

Number 1487

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 38 [22-LS0046\S.27, Ford, 3/28/01]. [Amendment 38 is provided at the end of the minutes on HB 4.]

Number 1481

REPRESENTATIVE JAMES objected.

CHAIR ROKEBERG said that although he likes Amendment 38 and the DUI Prevention Task Force recommended the concept, he also had to object. He offered that the problem is one of creating a nexus between the permanent fund dividend (PFD) pool and the ASAP (Alcohol Safety Action Program) fees, the fines, the restitution, and the treatment fees, since currently those funds would simply go directly into the general fund (GF). He

suggested that raising the fine to $1,500 is similar to collecting a person's PFD.

REPRESENTATIVE BERKOWITZ argued that imposing a fine of $1,500 for a DWI does not send the same message as making a person ineligible to receive a PFD.

CHAIR ROKEBERG countered that if the bill allowed the judge to suspend up to 50 percent of the fine, that money could be directed elsewhere, unlike the concept of taking a person's PFD privileges away as proposed by Amendment 38.

Number 1346

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections (DOC), commented that Amendment 38 would attach an additional fiscal note of about $45,000 to the DOC for a "stat-tech" position in order to determine PFD eligibilities. She added that placing those PFDs in the pool removes the ability of other agencies to garnish or be assigned those funds, for example, for child support or treatment costs.

Number 1300

REPRESENTATIVE BERKOWITZ withdrew Amendment 38 but noted that he would still be looking for a way to institute the concept.

Number 1290

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 42, "to statutorily raise the ASAP fee to not less than $150." There being no objection, Conceptual Amendment 42 was adopted.

CHAIR ROKEBERG, after some discussion concerning whether to report CSHB 4(TRA), as amended, out of committee, announced that the committee would hold the bill over and bring back a committee substitute. [This was followed by brief discussion regarding when to meet next for a hearing on HB 4.] Chair Rokeberg then gave Mr. Ford formal instructions from the committee to "make all the non-substantive conforming amendments and cleanup that you need to do from a drafting standpoint."

[The hearing on HB 4 was recessed to a call of the chair, tentatively set for 11 a.m., 4/3/01; 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 16A [22-LS0046\S.8, Ford, 3/21/01] (original version; adopted after being amended three times):

Page 2, following line 28:

Insert a new bill section to read:

"*** Sec. 4.** AS 12.30.020 is amended by adding new subsections to read:

(i) In addition to the conditions of release imposed under (b) of this section, the conditions of release established for a person charged with a violation of AS 28.35.030 or 28.35.032 must include at a minimum an order that the person's interest, if any, in the motor vehicle, aircraft, or watercraft alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of violating AS 28.35.030 or 28.35.032, including any release on the person's own recognizance.

(j) The judicial officer who sets the conditions of release for a person arrested for a violation of AS 28.35.030 or 28.35.032 shall, in addition to the conditions of release required under (b) of this section, set a motor vehicle, aircraft, or watercraft return bond for the motor vehicle, aircraft, or watercraft alleged in an oral statement of a police officer or criminal complaint, information, or indictment to have been used in the commission of the offense if the records of the Department of Administration, or the records of an agency with similar responsibilities in another state, show that the person arrested for the offense has any interest in the motor vehicle, aircraft, or watercraft. The purpose of setting a motor vehicle, aircraft, or watercraft return bond is to secure the presence of the motor vehicle, aircraft, or watercraft pending trial and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the person's interest in the motor vehicle, aircraft, or watercraft is sold, transferred, or

encumbered after the motor vehicle, aircraft, or watercraft has been released pending trial. A person who secures the release of a motor vehicle, aircraft, or watercraft under a motor vehicle, aircraft, or watercraft return bond must return the motor vehicle, aircraft, or watercraft to the custody of the state upon order of the court. If the motor vehicle's, aircraft's, or watercraft's release has been obtained through the posting of a motor vehicle, aircraft, or watercraft return bond and the motor vehicle, aircraft, or watercraft is not returned as required by the court's order after a judgment of conviction, the state may, in addition to obtaining the forfeited return bond funds, seize the motor vehicle, aircraft, or watercraft to implement the impoundment or forfeiture ordered by the court. If the person has not been previously convicted, the judicial officer setting the motor vehicle, aircraft, or watercraft return bond shall order that the requirement of the motor vehicle, aircraft, or watercraft return bond shall automatically expire 30 days after the motor vehicle, aircraft, or watercraft has been seized if the motor vehicle, aircraft, or watercraft has not been released under a motor vehicle, aircraft, or watercraft return bond. The motor vehicle, aircraft, or watercraft return bond set under this subsection may only be posted by a person alleged to have used the motor vehicle, aircraft, or watercraft while violating AS 28.35.030 or 28.35.032 or by a person who agrees to return the motor vehicle, aircraft, or watercraft upon order of the court upon penalty of forfeiture of the bond. A motor vehicle, aircraft, or watercraft return bond may only be posted in cash and must be set at a minimum of (1) $250 if the person has not been previously convicted;(2) $500 if the person has been previously convicted and the motor vehicle, aircraft, or watercraft is 20 years old or older; (3) $1,000 if the person has been previously convicted and the motor vehicle, aircraft, or watercraft is 15 years old or older but less than 20 years old; (4) $1,500 if the person has been previously convicted and the motor vehicle, aircraft, or watercraft is 10 years old or older but less than 15 years old; (5) $2,000 if the person has been previously convicted and the motor vehicle, aircraft, or watercraft is five years old or older but less than 10 years old; and (6) $2,500 if the person has been previously convicted and the motor

vehicle, aircraft, or watercraft is less than five years old. In this subsection, "previously convicted" has the meaning given in AS 28.35.030(o).

(k) A motor vehicle, aircraft, or watercraft return bond may be set above the minimum provided under (j) of this section if the motor vehicle, aircraft, or watercraft appears to have unusually high value for its age. A motor vehicle, aircraft, or watercraft for which a bond is required under (j) of this section may not be released pending trial until (1) the person seeking release of the motor vehicle, aircraft, or watercraft has provided proof of ownership of the motor vehicle, aircraft, or watercraft and paid or provided proof of payment of the motor vehicle, aircraft, or watercraft return bond and towing and storage fees, including the $160 administrative fee to offset the department's processing costs; or (2) the court makes a specific finding that the seizure of the motor vehicle, aircraft, or watercraft was legally unjustified and the specific finding follows a contested hearing or is established by a stipulation between the parties. If a motor vehicle, aircraft, or watercraft has not been impounded for a longer period than the motor vehicle, aircraft, or watercraft would be impounded if the person were convicted, the court may not delete the requirement of the motor vehicle, aircraft, or watercraft return bond or exonerate a posted motor vehicle, aircraft, or watercraft return bond until the motor vehicle, aircraft, or watercraft for which bond has been posted is returned to the department under a court order. In this subsection, "legally unjustified" means there was no reasonable suspicion for the stop or probable cause for the arrest.

(l) A motor vehicle, aircraft, or watercraft that is subject to a court order setting a motor vehicle, aircraft, or watercraft return bond under (j) of this section and that has not been released under that order is subject to the disposal provisions of AS 28.10.502(c) if a criminal complaint, information, or indictment is not filed by the date and time of the scheduled arraignment alleging a violation of AS 28.35.030 or 28.35.032, or if the count of the criminal complaint, information, or indictment alleging a violation of AS 28.35.030 or 28.35.032 is dismissed or is resolved by the acquittal of the person alleged to have violated AS 28.35.030 or

28.35.032. A motor vehicle, aircraft, or watercraft return bond expires on the date and time of the scheduled arraignment if a criminal complaint, information, or indictment alleging a violation of AS 28.35.030 or 28.35.032 is not filed by the date and time of the scheduled arraignment."
Renumber the following bill sections accordingly.

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

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

Insert
"(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, **shall order the motor vehicle, aircraft, or watercraft used in the commission of the offense impounded as required under AS 28.35.036,** and may order the motor vehicle**,** [OR] aircraft**, or watercraft** that was used in commission of the offense to be forfeited under **AS 28.35.037;**

**(4) the court shall order that any motor vehicle, aircraft, or watercraft return bond that has been posted under AS 12.30.020(j) to secure the release of the motor vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle, aircraft, or watercraft subject to the motor vehicle, aircraft, or watercraft return bond is not returned to the custody of the state within five days after the sentencing; the court shall order that any motor vehicle, aircraft, or watercraft return bond posted to secure the release of the motor vehicle, aircraft, or watercraft be exonerated when the motor vehicle, aircraft, or watercraft has been returned to the custody of the state; the court may also order that any proceeds of any sale, transfer, or encumbrance of the motor vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle, aircraft,**

**or watercraft has been sold, transferred, or encumbered while the motor vehicle, aircraft, or watercraft has been subject to a motor vehicle, aircraft, or watercraft return bond; a motor vehicle, aircraft, or watercraft ordered impounded under AS 28.35.036 may not be released until after the person seeking release of the motor vehicle, aircraft, or watercraft has satisfied the release provisions of AS 12.30.020(k); any order of impoundment under AS 28.35.036 or forfeiture under AS 28.35.037 is subject to the rights of lienholders and coowners who are not the person convicted under this section as those rights are adjudicated in proceedings under AS 28.35.037; if the state has brought a civil action under AS 28.35.037 seeking forfeiture as against all those with an interest in the motor vehicle, aircraft, or watercraft except the person charged with a violation of this section, that civil action shall provide the sole forum in which lienholders and coowners who claim an interest in the motor vehicle, aircraft, or watercraft but are not the person charged with a violation of this section can seek relief; in this paragraph, "interest in the motor vehicle, aircraft, or watercraft" means a right, claim, or title to the motor vehicle, aircraft, or watercraft or a legal share in the motor vehicle, aircraft, or watercraft that the oral statement of a police officer, complaint, indictment, or information alleges was used in the commission of a violation of this section** [AS 28.35.036]."

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

Page 21, lines 8 - 10:
Delete
"(5) **shall** [MAY] also order forfeiture under AS 28.35.036 of the vehicle**, watercraft,** or aircraft used in the commission of the offense, subject to remission under AS 28.35.037**; and**"

Insert

"(5) **shall** [MAY] also order **impoundment** [FORFEITURE] under AS 28.35.036 of the **motor** vehicle**,** [OR] aircraft**, or watercraft** used in the commission of the offense, **and forfeiture of the motor vehicle, aircraft, or watercraft** [SUBJECT TO REMISSION] under AS 28.35.037**; and**"

Page 25, following line 20:

Insert new bill sections to read:

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

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

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

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

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

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

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

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

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

(2) the court may not

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

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, **shall order the motor vehicle, aircraft, or watercraft used in the**

**commission of the offense impounded as required under AS 28.35.036,** and may order the motor vehicle**,** [OR] aircraft**, or watercraft** that was used in commission of the offense be forfeited under **AS 28.35.037** [AS 28.35.036]; [AND]

(4) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person**; and**

**(5) the court shall order that any motor vehicle, aircraft, or watercraft return bond that has been posted to secure the release of the motor vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle, aircraft, or watercraft subject to the motor vehicle, aircraft, or watercraft return bond is not returned to the custody of the state within five days after the sentencing; the court shall order that any motor vehicle, aircraft, or watercraft return bond posted to secure the release of the motor vehicle, aircraft, or watercraft be exonerated when the motor vehicle, aircraft, or watercraft has been returned to the custody of the state; the court may also order that any proceeds of any sale, transfer, or encumbrance of the motor vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle, aircraft, or watercraft has been sold, transferred, or encumbered while the motor vehicle, aircraft, or watercraft has been subject to a motor vehicle, aircraft, or watercraft return bond; a motor vehicle, aircraft, or watercraft ordered impounded under AS 28.35.036 may not be released until after the person seeking release of the motor vehicle, aircraft, or watercraft has satisfied the release provisions of AS 12.30.020(k); an order of impoundment under AS 28.35.036 or forfeiture under AS 28.35.037 is subject to the rights of lienholders and coowners who are not the person convicted of a violation of this section as those rights are adjudicated in proceedings under AS 28.35.037; if the state has brought a civil action under AS 28.35.037 seeking impoundment or forfeiture as against all those with an interest in the motor vehicle, aircraft, or watercraft except the person charged with a violation of this section, that civil action shall provide the sole forum in which lienholders and coowners who claim an interest in the motor vehicle, aircraft, or watercraft but are not the person charged with a violation of this section can seek relief; in this**

**paragraph, "interest in the motor vehicle, aircraft, or watercraft" has the meaning given in AS 28.35.030(b)(4)**.

*** Sec. 42.** AS 28.35.032(h) is amended to read:

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

Renumber the following bill sections accordingly.

Page 25, following line 26:

Insert new bill sections to read:

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

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

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

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

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

FACILITY, HOSPITAL,] halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction**; "appropriate place" does not mean a residential treatment facility or a hospital**.

*** Sec. 46.** AS 28.35.032(p) is amended to read:

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

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

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

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

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

(2) the court may not

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

(B) suspend imposition of sentence;

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

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

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

(6) the court may also order **impoundment** [FORFEITURE] under AS 28.35.036, of the **motor** vehicle**,** [OR] aircraft**, or watercraft** used in the commission of the offense, **or forfeiture of the motor vehicle, aircraft, or watercraft** [SUBJECT TO REMISSION] under

AS 28.35.037**; and**

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

*** Sec. 47.** AS 28.35.032 is amended by adding new subsections to read:

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

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

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

(3) the person provides proof of financial responsibility.

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

(t) If a person is convicted under this section and has been previously convicted, the court shall order the person to surrender the registration plates for any vehicle registered or co-registered in the person's name. The person shall surrender the registration plates to the department by the close of the next business day. A person other than the person convicted under this section who applies to register a motor vehicle that has registration plates that were required to be surrendered under this section but that were not surrendered as required by this subsection may not register the vehicle unless the person registering the vehicle provides proof satisfactory to the department that the person did not know that the registration plates were required to be surrendered under this subsection or the person pays twice the applicable registration fee required under AS 28.10.421."

Renumber the following bill sections accordingly.

Page 27, line 26, through page 28, line 6:

Delete all material.

Insert new bill sections to read:

"*** Sec. 53.** AS 28.35.036 is repealed and reenacted to read:

**Sec. 28.35.036. Impoundment of a motor vehicle, aircraft, or watercraft.** (a) A motor vehicle, aircraft, or watercraft may be impounded if the impoundment is incident to a valid arrest by a peace officer and there is probable cause to believe the motor vehicle, aircraft, or watercraft was operated or driven by a person while committing a violation of AS 28.35.030 or 28.35.032. A motor vehicle, aircraft, or watercraft impounded under this subsection may not be held for more than two days, unless a court orders continuation of the impoundment.

(b) If a person is convicted under AS 28.35.030 or 28.35.032, the court shall order impoundment of the motor vehicle, aircraft, or watercraft involved in the commission of the offense for a period of at least 30 days.

(c) Notwithstanding any other provisions of law, costs of impoundment incurred by the state shall be waived by the state or, if already collected, refunded by the state, if the person operating the motor vehicle, aircraft, or watercraft during the incident that resulted in impoundment is not convicted of a violation of AS 28.35.030 or 28.35.032.

(d) A motor vehicle, aircraft, or watercraft ordered impounded under this section that is not claimed at the end of the court-ordered period of impoundment may be disposed of under the provisions of this section. If the contents of the motor vehicle, aircraft, or watercraft have not been recovered before disposal, the contents may be disposed of with the motor vehicle, aircraft, or watercraft. Personal property in a motor vehicle, aircraft, or watercraft that is subject to a motor vehicle, aircraft, or watercraft return bond and that has not been released under the motor vehicle, aircraft, or watercraft return bond can be recovered only by the owner of the motor vehicle, aircraft, or watercraft and only upon payment of a fee charged for monitoring the recovery of the personal property. The fee shall be set by contract between the towing and storage contractor and the state if it is not established by the department. The fee shall be recoverable by the owner of the motor vehicle, aircraft, or watercraft if a court makes a

specific finding that the seizure of the motor vehicle, aircraft, or watercraft was legally unjustified following a contested hearing or under a stipulation between the parties.

(e) A motor vehicle, aircraft, or watercraft that is impounded and that has not been released under (g) of this section shall be held in the custody of the department or a private corporation authorized by the department to retain custody of the motor vehicle, aircraft, or watercraft, subject only to an order of a court of competent jurisdiction. If a motor vehicle, aircraft, or watercraft is impounded under this section, the department or an authorized designee may

(1) remove the motor vehicle, aircraft, or watercraft and any contents of the motor vehicle, aircraft, or watercraft to a place designated by the court; or

(2) take custody of the motor vehicle, aircraft, or watercraft and any contents of the motor vehicle, aircraft, or watercraft and remove it to an appropriate location for disposition in accordance with law.

(f) A private corporation may not make or perform a contract to tow, store, or retain custody of a motor vehicle, aircraft, or watercraft impounded under this section if any of the owners of that private corporation have been convicted of a felony or a crime involving larceny, theft, or receiving and concealing stolen property within 10 years before the date of execution of the contract or during the term of the contract. A private corporation may not make or perform a contract to tow, store, or retain custody of a motor vehicle, aircraft, or watercraft seized or impounded under this section if an employee of the private corporation has been convicted of a felony or a crime involving larceny, theft, or receiving and concealing stolen property within five years before the date of execution of the contract or during the term of the contract.

(g) Unless a motor vehicle, aircraft, or watercraft is released under an agreement under AS 28.35.037(j), the person seeking possession of a motor vehicle, aircraft, or watercraft impounded by the state must obtain an order authorizing release of the motor vehicle, aircraft, or watercraft. A release may not be granted unless the applicant can satisfy the release provisions established under

AS 12.30.020(k).

(h) An impoundment may be resolved under AS 28.35.037(j).

*** Sec. 54.** AS 28.35.037 is repealed and reenacted to read:

**Sec. 28.35.037. Forfeiture of a motor vehicle, aircraft, or watercraft.** (a) After a person is convicted of an offense under AS 28.35.030 or 28.35.032, the court may order that the person's interest in the motor vehicle, aircraft, or watercraft involved in the commission of the offense be forfeited to the state if the person has any interest in the motor vehicle, aircraft, or watercraft.

(b) If forfeiture is ordered under (a) of this section, the court shall schedule a hearing on the matter and shall notify the state and the convicted person of the time and place set for the hearing.

(c) In addition to forfeiture in conjunction with a criminal proceeding under (b) of this section, the department shall seek forfeiture of a motor vehicle, aircraft, or watercraft in a civil action or in an administrative action if the person who operates or drives the motor vehicle, aircraft, or watercraft involved in a violation of AS 28.35.030 or 28.35.032 has been previously convicted. After commencement of an administrative forfeiture action, the department shall provide notice as described under (e) and (f) of this section and shall schedule a hearing on the matter. The prevailing party in an administrative forfeiture action shall be awarded the same costs and attorney fees that would be awarded under the Alaska Rules of Civil Procedure. Upon request of the department or a claimant, a civil or administrative action seeking forfeiture of a motor vehicle, aircraft, or watercraft shall be delayed until conclusion of any pending criminal charges arising out of the incident giving rise to the forfeiture proceedings.

(d) An administrative hearing required under (c) of this section shall be held before a hearing officer designated by the commissioner. Upon the consent of the administrative director of the state court system, the commissioner may designate a district court judge or a magistrate to serve as the hearing officer. The hearing officer has the authority to

(1) administer oaths and affirmations;

(2) examine witnesses and take testimony;

(3) receive relevant evidence;

(4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;

(5) regulate the course and conduct of the hearing;

(6) make a final ruling on the issue.

(e) Upon receiving notice from the court of the time and place set for a forfeiture hearing under (b) of this section, or upon initiating a civil action or an administrative forfeiture action under (c) of this section, the state shall provide to every person who has, according to the records of the department, an ownership or security interest in the motor vehicle, aircraft, or watercraft written notice that includes

(1) a description of the motor vehicle, aircraft, or watercraft;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle, aircraft, or watercraft may be forfeited;

(4) notice of the right to appear to protect the interest in the motor vehicle, aircraft, or watercraft.

(f) If the registered owner of the motor vehicle, aircraft, or watercraft subject to a forfeiture action cannot be determined from the records of the department, the state shall publish a notice of the forfeiture action for two consecutive weeks in a newspaper of general circulation in the judicial district in which the forfeiture action is filed. The notice must include a description of the motor vehicle, aircraft, or watercraft, the time and place of impoundment, and directions as to whom to contact for more information.

(g) A person who fails to enter an appearance in an administrative forfeiture action within 20 days after receiving written notice required under (e) of this section or 20 days after completion of the notice required under (f) of this section, whichever is later, waives the right to object to the forfeiture action. A party who requests a hearing in a civil forfeiture action shall be deemed to have received notice of the civil action as required by (f) of this section. A party who secures the release of a motor vehicle, aircraft, or watercraft pending a hearing shall accept service of notice of the civil action as

a condition of release of the motor vehicle, aircraft, or watercraft. For a regulated lienholder, the requirement of notice of claim and answer is met by filing the information required under (s) of this section and including a statement of the original amount of the loan giving rise to the lien and the current balance of that loan.

(h) At a forfeiture hearing required under (b) or (c) of this section, a person other than the defendant who claims an ownership or security interest in the motor vehicle, aircraft, or watercraft shall establish by a preponderance of the evidence that

(1) the person has an interest in the motor vehicle, aircraft, or watercraft acquired in good faith;

(2) a person other than the claimant was convicted of the offense that resulted in the forfeiture;

(3) before parting with possession of the motor vehicle, aircraft, or watercraft the person did not know or have reasonable cause to believe that it would be used in the commission of an offense; and

(4) the costs of impoundment have been paid as required under AS 28.35.036.

(i) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft in a hearing required under (b) or (c) of this section and the person who was in possession of the motor vehicle, aircraft, or watercraft during the commission of the offense was driving with a suspended license in violation of AS 28.15.291 or was the spouse, child, or sibling of a person with an ownership or security interest in the motor vehicle, aircraft, or watercraft, it is rebuttably presumed that the person holding the ownership or security interest did know or have reasonable cause to believe that the motor vehicle, aircraft, or watercraft would be used in the commission of an offense.

(j) The state may enter into an agreement with the registered owner or lienholder of a motor vehicle, aircraft, or watercraft to resolve a civil or administrative impound or forfeiture action and permit release of the motor vehicle, aircraft, or watercraft. Any agreement allowed under this subsection must include

(1) acceptance by the owner or lienholder of responsibility for meeting the requirements of

AS 12.30.020(k)(1);

(2) agreement that the owner or lienholder shall prevent the individual arrested for or charged with a violation of AS 28.35.030 or 28.35.032 from operating the motor vehicle, aircraft, or watercraft until properly licensed; and

(3) acknowledgment by the owner or lienholder that failure to fulfill an obligation under the agreement may result in forfeiture of the motor vehicle, aircraft, or watercraft at the option of the state; this paragraph does not apply to a regulated lienholder.

(k) An acquittal or a conviction of a lesser offense in a criminal proceeding for a violation of AS 28.35.030 or 28.35.032 provides a defense in a civil or administrative proceeding seeking impoundment or forfeiture of the motor vehicle, aircraft, or watercraft if that civil or administrative proceeding is based on the same conduct that forms the basis for the criminal charge.

(l) A claimant who is not charged with a violation of AS 28.35.030 or 28.35.032 may petition for setting or revision of bail release of a motor vehicle, aircraft, or watercraft before a civil or administrative action is filed. A petition allowed under this subsection shall be made to a court of competent jurisdiction.

(m) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft under this section and a person meets the burden of proof required under (h) of this section, the court or the department shall release the motor vehicle, aircraft, or watercraft to the person together with title to the motor vehicle, aircraft, or watercraft if

(1) the person is an owner or co-owner of the motor vehicle, aircraft, or watercraft;

(2) the value of the person's interest exceeds the value of the motor vehicle, aircraft, or watercraft; or

(3) the value of the interest is less than the value of the motor vehicle, aircraft, or watercraft and the person agrees to sell the motor vehicle, aircraft, or watercraft and pay the state the value of the offender's interest in the motor vehicle, aircraft, or watercraft.

(n) Upon forfeiture of a motor vehicle, aircraft, or watercraft, the court or the department

shall require the surrender of the registration and certificate of title of that motor vehicle, aircraft, or watercraft. The registration and certificate of title shall be delivered to the department.

(o) A motor vehicle, aircraft, or watercraft forfeited under this section may be disposed of by the department as provided under this subsection. Before disposing of a motor vehicle, aircraft, or watercraft forfeited under this section, the department shall make an inventory of the contents of any motor vehicle, aircraft, or watercraft seized. Property forfeited under this section includes both the motor vehicle, aircraft, or watercraft that is the subject of the forfeiture action and the contents of the motor vehicle, aircraft, or watercraft if those contents have not been recovered before the date of the disposal. A motor vehicle, aircraft, or watercraft forfeited under this section may be disposed of at the discretion of the department including

(1) sale of the property at an auction conducted by an auctioneer not employed by the impound contractor where the proceeds are used for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and attorney fees; if the sale is arranged for by the impound contractor, the department shall receive at least 30 percent of the proceeds of any sale of forfeited motor vehicles, aircraft, or watercraft following deduction for the costs charged by the auctioneer for the auction of the motor vehicles, aircraft, or watercraft regardless of whether the costs of impound and storage exceed the value of the motor vehicles, aircraft, or watercraft sold;

(2) taking custody of the property and using it in the enforcement of the municipal and state criminal codes; or

(3) destroying the property.

(p) Within 30 days after the issuance of the final determination of the department under this section, a person aggrieved by the determination may file an appeal in superior court for judicial review of the department's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a

determination unsupported by the evidence in the record.

(q) Forfeiture of a motor vehicle, aircraft, or watercraft under this section extinguishes the rights of all claimants or creditors who do not appear at the forfeiture hearing under (b) or (c) of this section.

(r) For purposes of this section, convictions both for driving while intoxicated under AS 28.35.030 and for refusal to submit to a chemical test authorized under AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are considered one conviction.

(s) A claimant who is a regulated lienholder meets the burden of proof required under (h) of this section by filing with the court a copy of the motor vehicle's, aircraft's, or watercraft's certificate of title or other security instrument reflecting the lien, together with an affidavit stating the amount of the lien and stating that the claimant is a regulated lienholder and was not in possession of the motor vehicle, aircraft, or watercraft at the time of the act that resulted in the seizure of the motor vehicle, aircraft, or watercraft. The presumption provided in (i) of this section does not apply to a regulated lienholder.

(t) Nothing in this section shall be construed to place upon a regulated lienholder a duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so may not be used as evidence against the regulated lienholder in any forfeiture proceeding or other civil action. Knowledge from other sources of the loan applicant's driving record is usable only to the extent that it is relevant under (h) of this section.

(u) Property subject to the interest of a regulated lienholder whose interest has not been forfeited may not be disposed of as provided in this section except with the consent of the regulated lienholder. A regulated lienholder's interest in a motor vehicle, aircraft, or watercraft may not be subject to forfeiture in any case where

(1) the individual who allegedly used the motor vehicle, aircraft, or watercraft in violation of AS 28.35.030 or 28.35.032 is not the person whose dealings with the lienholder gave rise to the lien; or

(2) the motor vehicle, aircraft, or

watercraft that the individual was driving, operating, or in actual physical control of at the time of the alleged violation was not the motor vehicle, aircraft, or watercraft involved in the offense giving rise to a conviction under AS 28.35.030 or 28.35.032.

(v) A claimant may petition the court for sale of a motor vehicle, aircraft, or watercraft before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the state. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(w) Property forfeited and sold at auction under this section shall be sold by an auctioneer approved before the auction by the department. Before the auction, the department must approve in advance the auctioneer's costs or the method for determining the auctioneer's costs. The impound contractor shall provide to the department a notarized copy of the auctioneer's report of the auction signed by the auctioneer. The department shall certify the proper disposal of property forfeited under this section.

(x) In a contested forfeiture proceeding concerning a motor vehicle, aircraft, or watercraft titled in the names of more than one owner on the certificate of title, if one of the owners has an interest that is forfeited, the court (1) may, subject to (m) of this section, order the forfeiture of the entire interest of all the owners in a motor vehicle, aircraft, or watercraft that is titled in the names of more than one owner in the disjunctive; (2) shall, subject to (m) of this section, order the forfeiture of the interest of any owner in a motor vehicle, aircraft, or watercraft that is titled in the names of more than one owner in the conjunctive; owners of a motor vehicle, aircraft, or watercraft titled in the names of more than one owner in the conjunctive are rebuttably presumed to own the motor vehicle, aircraft, or watercraft in equal shares. In circumstances described in this subsection, the court shall order that the motor vehicle, aircraft, or watercraft be sold at public auction and further order that the proceeds from the sale of the motor vehicle, aircraft, or watercraft be held by the department; after deduction of the reasonable costs of the auction, an amount of the proceeds of the auction for

the sale of that motor vehicle, aircraft, or watercraft that is equal to the percentage interest of the owner whose interest has not been forfeited shall be returned if the owner whose interest has not been forfeited applies to the department within 60 days of the auction; if the owner whose interest has not been forfeited does not apply within that period, those funds become the property of the state subject to the rights of any other claimant to those funds.

(y) A person who has secured the release of a motor vehicle, aircraft, or watercraft under a motor vehicle, aircraft, or watercraft return bond under AS 12.30.020(j) and who wilfully fails to return that motor vehicle, aircraft, or watercraft when ordered by a court or an administrative hearing officer, is guilty of a violation. Each day that a motor vehicle, aircraft, or watercraft is not returned constitutes a separate offense under this subsection.

(z) In this section,

(1) "legally unjustified" means there was no

(A) reasonable suspicion for the stop; or

(B) probable cause for the arrest;

(2) "previously convicted" has the meaning given in AS 28.35.030(o);

(3) "regulated lienholder" means an entity whose lien on the motor vehicle, aircraft, or watercraft is a result of lending activities that are subject to regulation by the National Credit Union Administration, the Comptroller of the Currency, federal banking regulators, the Federal Trade Commission, or the Department of Community and Economic Development.

*** Sec. 55.** AS 28.35.038 is amended to read:

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

Renumber the following bill sections accordingly.

Page 28, line 28:
Delete "Section 6"
Insert "Section 7"

Page 29, line 2:
Delete "Section 47"
Insert "Section 56"

Page 29, line 3:
Delete "Section 51"
Insert "Section 60"

Amendment 36 [22-LS0046\S.25, Ford, 3/28/01] (original version; adopted after being amended twice):

Page 4, following line 19:
Insert a new bill section to read:
"*** Sec. 7.** AS 28.10 is amended by adding a new section to read:
**Sec. 28.10.453. Seizure of registration plates resulting from chemical sobriety tests and refusals to submit to tests.** (a) If a law enforcement officer seizes a driver's license under AS 28.15.165, the officer shall also seize the registration plates for the motor vehicle the person was operating and shall deliver the registration plates to the department.
(b) The law enforcement officer who seizes registration plates under this section shall
(1) issue a temporary permit under which the vehicle may be operated that expires seven days after it is delivered to the person; and
(2) give the person written notice that, unless the person, within seven days, requests an administrative review under AS 28.15.166, the department shall suspend the registration for the motor vehicle and retain possession of the motor vehicle registration plates as provided under (d) of this section.
(c) Unless the person has obtained a stay of a departmental action under AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized under AS 28.33.031(a) or

AS 28.35.031(a) or (g), the department shall revoke the registration for the motor vehicle. The department's action takes effect seven days after delivery to the person of the notice required under (b) of this section, and after receipt of a sworn report of a law enforcement officer as described under AS 28.15.165(c).

(d) The period of revocation of a motor vehicle registration under this section shall be for the appropriate minimum period for driver's license revocations under AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing officer may grant limited motor vehicle registration privileges to a person whose motor vehicle registration was revoked under this section in accordance with the standards set out in AS 28.15.201 for granting limited driver's license privileges.

(e) The department shall allow a person who is a co-owner of a motor vehicle and who is not the person who was operating the motor vehicle when the registration plates were seized under (a) of this section to register the motor vehicle without the name of the person who was operating the vehicle when the registration plates were seized under (a) of this section. If a person registers a motor vehicle under this subsection, the department shall reissue the registration plates seized under (a) of this section."

Renumber the following bill sections accordingly.

Page 6, following line 8:

Insert new bill sections to read:

"*** Sec. 11.** AS 28.15.166(a) is amended to read:

(a) A person who has received a notice under **AS 28.10.453(b) or** AS 28.15.165(a) may make a written request for administrative review of the department's action under **AS 28.10.453(c) or** AS 28.15.165(c) or for limited **motor vehicle registration privileges under AS 28.10.453(d) or for limited** license privileges under AS 28.15.165(d). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

*** Sec. 12.** AS 28.15.166(b) is amended to read:

(b) A request for review of the department's action under **AS 28.10.453 or** AS 28.15.165 shall be made within seven days after receipt of the notice

under **AS 28.10.453 or** AS 28.15.165**,** or the right to review is waived and the action of the department under **AS 28.10.453(c) or** AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the department's action or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request. An initial request for limited license privileges may be made at any time. Subsequent requests for limited license privileges may not be made unless the applicant demonstrates a significant change in circumstances.

*** Sec. 13.** AS 28.15.166(c) is amended to read:

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license **or motor vehicle registration plates** and that the driver's license **or motor vehicle registration plates have** [HAS] been surrendered, the department shall issue a temporary driver's permit **or motor vehicle registration** that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued."

Renumber the following bill sections accordingly.

Page 18, line 8, following "AS 28.35.036":

Insert "**;**

**(4) if the person has been previously convicted, the court shall order the motor vehicle or aircraft used in the commission of the offense forfeited under AS 28.35.036 or shall order the vehicle taken to the owner's residence and immobilized for the period of time that the person's driver's license is revoked; the court shall also require the person to pay any administrative costs of keeping the**

**motor vehicle or aircraft immobilized**"

Page 29, line 2:
Delete "Section 47"
Insert "Section 51"

Page 29, line 3:
Delete "sec. 55"
Insert "sec. 54"

Amendment 38 [22-LS0046\S.27, Ford, 3/28/01] (withdrawn after being discussed):

Page 18, line 8, following "AS 28.35.036":
Insert "**;**
**(4) the person is disqualified from receiving a permanent fund dividend under AS 43.23.005(d)**"

Page 28, following line 17:
Insert new bill sections to read:
"*** Sec. 49.** AS 43.23.005(d) is amended to read:
(d) Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when
(1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;
(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a
(A) felony; [OR]
(B) misdemeanor if the individual has been convicted of two or more prior crimes as defined in AS 11.81.900**; or**
**(C) violation of AS 28.35.030**.
*** Sec. 50.** AS 43.23.028(a) is amended to read:
(a) By October 1 of each year, the commissioner shall give public notice of the value of each permanent fund dividend for that year and notice of the information required to be disclosed under (3) of this subsection. In addition, the stub attached to each individual dividend check and direct deposit advice must
(1) disclose the amount of each dividend attributable to income earned by the permanent fund

from deposits to that fund required under art. IX, sec. 15, Constitution of the State of Alaska;

(2) disclose the amount of each dividend attributable to income earned by the permanent fund from appropriations to that fund and from amounts added to that fund to offset the effects of inflation;

(3) disclose the amount by which each dividend has been reduced due to each appropriation from the dividend fund, including amounts to pay the costs of administering the dividend program and the hold harmless provisions of AS 43.23.075;

(4) include a statement that an individual is not eligible for a dividend when

(A) during the qualifying year the individual was convicted of a felony;

(B) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction of a

(i) felony; [OR]

(ii) misdemeanor if the individual has been convicted of two or more prior crimes; **or**

**(iii) violation of AS 28.35.030;**

(5) include a statement that the legislative purpose for making individuals listed under (4) of this subsection ineligible is to

(A) obtain reimbursement for some of the costs imposed on the state criminal justice system related to incarceration or probation of those individuals;

(B) provide funds for payments to crime victims and for grants for the operation of domestic violence and sexual assault programs;

(6) disclose the total amount that would have been paid during the previous fiscal year to individuals who were ineligible to receive dividends under AS 43.23.005(d) if they had been eligible;

(7) disclose the total amount appropriated for the current fiscal year under (b) of this section for each of the funds and agencies listed in (b) of this section."

Renumber the following bill sections accordingly.

Page 29, line 3:
Delete "sec. 51"
Insert "sec. 53"

[End of amendments - the hearing on HB 4 was recessed to a call of the chair, tentatively set for 11 a.m., 4/3/01; HB 4 was held over.]

**ADJOURNMENT**

Number 0982

There being no further business before the committee, the House Judiciary Standing Committee meeting was [recessed in order that HB 4 could be heard on 4/3/01] at 4:30 p.m.