

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 18, 2001

1:32 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 179

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

- MOVED CSHB 179(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 125

"An Act relating to unlawful and indecent viewing and photography and to civil damages and penalties for that viewing and photography."

- MOVED CSHB 125(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68

"An Act relating to civil liability for transporting an intoxicated person or for driving an intoxicated person's motor vehicle; and providing for an effective date."

- MOVED CSSSHB 68(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 67

"An Act requiring proof of motor vehicle insurance in order to register a motor vehicle; and relating to motor vehicle liability insurance for taxicabs."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 120

"An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 196

"An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 114

"An Act relating to abuse of inhalants."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

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
03/26/01		(H)	MINUTE(JUD)
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
03/30/01		(H)	MINUTE(JUD)
03/31/01		(H)	JUD AT 11:00 AM CAPITOL 120
03/31/01		(H)	Heard & Held MINUTE(JUD)
04/10/01		(H)	JUD AT 5:00 PM CAPITOL 120
04/10/01		(H)	Heard & Held MINUTE(JUD)
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 125

SHORT TITLE:UNLAWFUL VIEWING

SPONSOR(S) : REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
02/12/01	0297	(H)	READ THE FIRST TIME - REFERRALS
02/12/01	0297	(H)	JUD, FIN
02/26/01	0444	(H)	COSPONSOR(S): DYSON
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/06/01		(H)	Heard & Held MINUTE(JUD)
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 68

SHORT TITLE:NO CIVIL LIAB FOR TAXI TRANSPORTING DRUNK

SPONSOR(S) : REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/17/01	0111	(H)	READ THE FIRST TIME - REFERRALS
01/17/01	0111	(H)	TRA, JUD
03/19/01	0647	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/19/01	0647	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0647	(H)	TRA, JUD
03/29/01		(H)	TRA AT 1:00 PM CAPITOL 17
03/29/01		(H)	Moved CSSSHB 68(TRA) Out of Committee MINUTE(TRA)
03/30/01	0784	(H)	TRA RPT CS(TRA) 5DP 1NR
03/30/01	0784	(H)	DP: KAPSNER, KOOKESH, WILSON, SCALZI,
03/30/01	0784	(H)	OGAN; NR: MASEK
03/30/01	0784	(H)	FN1: ZERO(LAW)
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	<Bill Postponed>
04/10/01		(H)	JUD AT 5:00 PM CAPITOL 120
04/10/01		(H)	Scheduled But Not Heard
04/11/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/11/01		(H)	Scheduled But Not Heard
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 67

SHORT TITLE:MOTOR VEHICLE REGISTRATION/INSURANCE

SPONSOR(S) : REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/17/01	0111	(H)	READ THE FIRST TIME -

REFERRALS			
01/17/01	0111	(H)	L&C, JUD
03/26/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/26/01		(H)	Bill Postponed
03/28/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/28/01		(H)	Moved CSHB 67(L&C) Out of Committee MINUTE(L&C)
03/30/01	0783	(H)	L&C RPT CS(L&C) NT 5DP 2NR
03/30/01	0784	(H)	DP: KOTT, CRAWFORD, HAYES, MEYER,
03/30/01	0784	(H)	ROKEBERG; NR: HALCRO, MURKOWSKI
03/30/01	0784	(H)	FN1: ZERO(H.L&C)
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	<Bill Postponed>
04/10/01		(H)	JUD AT 5:00 PM CAPITOL 120
04/10/01		(H)	Scheduled But Not Heard
04/11/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/11/01		(H)	Scheduled But Not Heard
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MARTI GREESON, Director
 Mothers Against Drunk Driving (MADD), Anchorage
 3600 Arctic Boulevard, Box 3
 Anchorage, Alaska 99503

POSITION STATEMENT: Testified on HB 179; expressed support for intervention regarding kids who are drinking, including immediate and effective consequences that include education, screening, monitoring, and mentoring.

SHARON LEON, Executive Director
 Anchorage Youth Court
 PO Box 102735
 Anchorage, Alaska

POSITION STATEMENT: Testified on HB 179; emphasized the need for earlier screening and for flexibility in the statutes so youth courts can hear alcohol-related cases.

JOAN DIAMOND
 5700 Rabbit Creek
 Anchorage, Alaska 99516

POSITION STATEMENT: Testified on HB 179 as coordinator of group of concerned people; expressed need for the first violation to

result in screening and for flexibility for a magistrate in sentencing options, including referrals.

HEATHER M. NOBREGA, Staff
to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: As committee aide for the House Judiciary Standing Committee, explained proposed amendments to HB 179, Version L; and explained the changes encompassed by the committee substitute to HB 125.

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: Commented on Amendment 11 to HB 179, Version L.

DOUG WOOLIVER, Administrative Attorney
Office of the Administrative Director
Alaska Court System
820 West 4th Avenue
Anchorage, Alaska 99501-2005

POSITION STATEMENT: Commented on Amendment 11 to HB 179, Version L.

DENISE HENDERSON, Staff
to Representative Pete Kott
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801

POSITION STATEMENT: On behalf of the sponsor, Representative Kott, answered questions regarding HB 125.

JERRY LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182

POSITION STATEMENT: Speaking as the drafter, answered questions regarding HB 125.

RYNNIEVA MOSS, Staff
to Representative John Coghill
Alaska State Legislature
Capitol Building, Room 102
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions related to proposed
Amendment 1 to Version C of HB 125.

JANET SEITZ, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: On behalf of the sponsor, Representative
Rokeberg, assisted with the presentations of SSHB 68 and HB 67
and answered questions on both bills.

KACE McDOWELL, Executive Director
Alaska Cabaret Hotel Restaurant & Retailers Association
1111 East 80th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Provided comments on Version O of SSHB 68
and answered questions.

ACTION NARRATIVE

TAPE 01-64, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing
Committee meeting to order at 1:32 p.m. Members present at the
call to order were Representatives Rokeberg, Ogan (via
teleconference), Coghill, and Meyer. Representatives James,
Berkowitz, and Kookesh joined the meeting as it was in progress.

HB 179 - OFFENSES RELATING TO UNDERAGE DRINKING

[Contains discussion of HB 4 relating to Amendment 5 to HB 179.]

Number 0073

CHAIR ROKEBERG announced the first order of business, HOUSE BILL
NO. 179, "An Act relating to underage drinking and drug
offenses; and providing for an effective date."

[Adopted as a proposed committee substitute (CS) on April 10 was
Version L, 22-LS0564\L, Ford, 4/4/01, which was amended at the

same meeting by Amendments 1-3 (Amendment 4 having been withdrawn).]

CHAIR ROKEBERG noted that a couple of amendments mentioned at a previous hearing were needed to clean up the "attorney general's last major amendment, and with his consent" [Amendment 1 to HB 179, adopted 3/31/01, which is incorporated into Version L]. He then continued taking public testimony, first calling upon Marti Greeson and asking that she be brief because he had her written testimony.

Number 0109

MARTI GREESON, Director, Mothers Against Drunk Driving (MADD), Anchorage, testified via teleconference, voicing support for actions to intervene regarding kids who are drinking. She cited Kodiak as an example, noting that three young people at a party fell off a cliff; one died, and two were flown to Anchorage for medical treatment. In addition, when three young men were involved in an alcohol-related crash, one received a broken back and the other two were injured. Furthermore, in the last month, teenagers who had been drinking were involved in a crash in which two young brothers were killed.

MS. GREESON explained that her presentations in Anchorage-area schools have focused primarily on eighth-grade health classes, where about 80 percent of students indicate they have been offered alcohol, know how to get alcohol, and have friends who drink. She doesn't ask students whether they themselves drink, she noted, because they won't tell her anyway. She said that when asked, students say they don't believe there will be serious consequences if they are caught.

MS. GREESON told members she strongly supports immediate intervention, not waiting until the third time to have the consequences. Furthermore, consequences need to be effective and should include education or screening at the very beginning. It is also critical to have monitoring and mentoring of these young people.

Number 0379

SHARON LEON, Executive Director, Anchorage Youth Court (AYC), testified via teleconference, noting that she has been AYC's executive director for 12 years. She explained that AYC doesn't handle underage drinking because state statutes don't give authority to the youth courts to do so. Thus AYC didn't keep

data for alcohol-related offenses until 1999, at which time AYC started recording whether a young person who had broken a law had a history of using alcohol. In 1999, 25 percent of the youth court's defendants recorded a history of alcohol abuse, she said, which is 111 out of 442 students; in 2000, 17.5 percent recorded a history of alcohol abuse.

MS. LEON told members that when young people have used alcohol while committing a criminal offense, AYC does have statutory authority to assign, in the sentencing, program participation or an assessment. However, right now youth courts don't have authority regarding underage drinking in general.

MS. LEON stated her understanding that part of HB 179 would be just screening at the third offense. She said there need to be real consequences early on, however, because AYC has been less successful with people who have committed more than one offense; she surmised that the same would be true relating to alcohol. She asked whether there is a way to do screening earlier, with assessment following at the second or third offense, and a follow-through consisting of whatever was determined at the assessment, so that there would be real consequences.

MS. LEON informed members that youth courts don't have the ability to hear minor criminal offenses. There needs to be some flexibility written into the statutes so that youth courts can hear alcohol-related cases.

Number 0638

CHAIR ROKEBERG responded that he believes screening, or the so-called JASAP [Juvenile Alcohol Safety Action Program], is allowed under the new version of the bill [Version L], at the discretion of the judge; he indicated that this can happen before the third offense. He also noted that adopted at the previous hearing was an amendment providing for a community diversion panel, which would allow youth courts to do that; he said there was another amendment proposed at the current hearing to clear that up. He asked Ms. Leon whether, given the maturity of AYC and length of time it has existed, AYC could handle "a first-offense-only youth offender for this violation."

MS. LEON replied that she believes so, if there is a referring authority.

CHAIR ROKEBERG specified that the court would have to refer it, and, under one scenario, would do a suspended imposition [of sentence] (SIS).

MS. LEON said that is great and expressed appreciation for it.

Number 0725

JOAN DIAMOND testified via teleconference, noting that [Version L] had just been handed to her and acknowledging that the amendments [that she would discuss] may already be built in. Ms. Diamond said she works for the "department of health for the city" and is coordinator for a group whose members are listed in the committee packet; that group has been meeting for more than two years, and members are people who see violations relating to underage drinkers, including juvenile magistrates, a district court judge, a representative of the [Division] of Motor Vehicles (DMV), representatives from the Anchorage Police Department (APD), and others.

MS. DIAMOND expressed the need for the first violation to result in screening so an early pattern of drinking is identified. She explained that screening, which is much less intrusive, is designed to see whether there is a pattern of drinking, whereas an assessment looks at someone who has already developed a drinking problem to see what level of treatment is needed.

MS. DIAMOND agreed with Ms. Leon regarding the need for a magistrate - who sees the offender in traffic court - to have flexibility in sentencing, including referral of a person to youth court or a juvenile ASAP [Alcohol Safety Action Program]. In that way, monitoring would be built in to ensure that the person has complied; she noted that accountability has been difficult to ensure, and emphasized the desire to avoid severe or punitive measures, especially for youth possibly coming into the system for the first time. With youth courts' having flexible sentencing options, different regions will be able to customize sentences. She expressed hope that these measures will reduce recidivism and keep youths from becoming DWI [driving while intoxicated] offenders [as adults].

Number 0949

CHAIR ROKEBERG asked that Ms. Diamond review amendments to be offered that day, as well as the resulting committee substitute (CS) that would be moved out that day. Noting that there would be another hearing in the House Finance Committee, he said he

would appreciate hearing from anybody who believes there should be additional changes after the bill moved from the current committee. He then closed the public hearing on HB 179.

CHAIR ROKEBERG informed members that he had asked Ms. Nobrega to review the proposed amendments with the drafter. He also noted that there was another proposed amendment that the department had talked about.

Number 1019

CHAIR ROKEBERG made a motion to adopt Amendment 5, which read [original punctuation provided]:

Page 2, Line 14

Delete: "by the end of the next business day"

Insert: "within five working days"

Page 3, Line 27, after "revocation"

Insert: "within five working days"

Number 1020

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, speaking as the committee aide for the House Judiciary Standing Committee, informed members that Amendment 5 conforms with what was done in HB 4, to require the court, within five working days, to notify the [DMV] of a revocation of a license. She concurred with Chair Rokeberg that it gives a more realistic timeframe.

Number 1056

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

[Note: Amendment 6A was in packets, but was neither offered nor discussed.]

Number 1076

CHAIR ROKEBERG made a motion to adopt Amendment 6B, 22-LS0564\L.6, Ford, 4/18/01, which read:

Page 2, line 3:

Delete "and"

Page 2, line 4, following "(2)":

Insert "revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4)"

Page 3, lines 20 - 25:

Delete all material.

Insert "suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this"

Page 5, line 4:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c), (d),"

Page 5, line 10:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c), (d),"

Page 5, lines 28 - 31:

Delete all material.

Insert "AS 04.16.050(c) or (d) shall revoke the person's driver's license or"

Page 6, line 2:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c) or (d)"

Page 9, line 16:

Delete "habitual"

Page 9, line 17:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c) or (d)"

Page 9, line 18:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c) or (d)"

Page 11, line 27:

Delete "habitual"

Page 11, line 28:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c) or (d)"

Page 11, line 30:

Delete "AS 04.16.050(d)"

Insert "AS 04.16.050(c) or (d)"

Number 1079

REPRESENTATIVE BERKOWITZ objected for discussion purposes.

MS. NOBREGA explained that Amendment 6B revokes the driver's license of a repeat offender - a person for whom this is the second time being caught consuming or possessing alcohol. The second paragraph [relating to page 3, lines 20-25 of Version L] just adds the repeat offenders to this provision.

CHAIR ROKEBERG said it "makes three months and six months under revocation."

MS. NOBREGA agreed, if the offender doesn't successfully complete all the court-ordered probation.

Number 1112

REPRESENTATIVE BERKOWITZ responded that there is a recurring constitutional problem with basing a subsequent conviction on previous convictions that don't have the right to counsel attached. He asked whether there were any [legal] opinions regarding that.

CHAIR ROKEBERG first suggested that Mr. Guaneli [of the Department of Law] would be asked to address that. After being informed that Mr. Guaneli was attending another hearing, however, he asked Ms. Nobrega to address the question.

MS. NOBREGA stated:

We believe we have circumvented that problem by putting them on probation until they're 21, on each level of the offense. So on their first offense, they're on probation until they're 21, and their second offense would be when they violate their probation; and one of the [conditions] of probation is they never drink again.

Number 1192

MS. NOBREGA, in response to a comment by Chair Rokeberg, clarified that right now, under Version L, there is no revocation for any license for the second offense. This adds a three-month revocation.

REPRESENTATIVE BERKOWITZ asked whether the revocation is based upon the second offense or upon the violation of probation on the first offense.

MS. NOBREGA answered that the revocation is part of the penalty for being a repeat offender, "which is all of the above."

CHAIR ROKEBERG added that a judge would make the determination; the miscreant would have had the ability to request a jury trial and probably would have refused it, "statistically speaking."

MS. NOBREGA concurred, then added, "At the second level, since we are imposing community work service, they already have a right to a jury trial; so this wouldn't be adding any new right that they don't already have."

Number 1261

REPRESENTATIVE BERKOWITZ mentioned a person's avoiding the requirements. He said if one violates a condition of probation that has been imposed subsequent to the first offense, it generally would be a new criminal offense - the violation of probation.

MS. NOBREGA explained that as the bill reads, for a second offense, for example, a person is guilty of being a repeat offender if the person is on probation, or has been convicted previously, and is caught in violation of subsection (a), which is being caught consuming alcohol. Whether the person is on probation and then caught or had a previous conviction and then is caught, it is a "second-time repeat."

REPRESENTATIVE BERKOWITZ pointed out that some statutory construction rules will be called into play, and the construction probably will be looked at in the light most favorable to the defendant. He said he would like to know whether the court would disregard the probationary purpose and consider this to be an offense based on a prior offense.

CHAIR ROKEBERG acknowledged the validity of the question but said he would defer it; he suggested the analysis of the bill should include it, but said he didn't want to hold it up any longer. He asked that Representative Berkowitz assist in getting that clarified.

Number 1374

REPRESENTATIVE JAMES sought clarification that a person would automatically get probation until age 21, upon a first offense; she then noted that the language says it is either a violation of probation or the person's second offense. She asked whether the only way that someone would have a second offense and not be on probation, then, would be if the person's first offense occurred before this became law.

MS. NOBREGA responded that maybe she herself shouldn't have used the phrase "violation of probation." She explained:

If they're on probation and they are caught drinking, that is a second offense - and they're on probation because they had [the first one], or if they have been previously convicted, which consists of a whole bunch of other crimes, and they ... consumed alcohol; then that would be a second offense.

Number 1430

REPRESENTATIVE COGHILL asked whether that doesn't still beg the question of the removal of the driver's license being immaterial to the drinking.

MS. NOBREGA answered that she didn't believe that would be a problem here because the person would have a right to a jury trial. She said that was the whole problem with [the State v. Niedermeyer case]: there was no right to due process.

REPRESENTATIVE JAMES said that was on the previous conviction.

CHAIR ROKEBERG said this is a second offense.

MS. NOBREGA clarified that on the first offense, there is no right to a jury trial.

REPRESENTATIVE BERKOWITZ pointed out that there is no license revocation, either. For the second offense, there is a license

revocation and a jury trial; it is known to be a second offense because the person is on probation for the first [offense].

MS. NOBREGA agreed.

CHAIR ROKEBERG asked Representative Berkowitz whether his concern was that there might be a probation violation as well as a second violation.

Number 1475

REPRESENTATIVE BERKOWITZ said no, although that obviously would be the case. He clarified that he believes it is stronger just to say "probation", without having "or subsequent offense".

REPRESENTATIVE JAMES said she wanted to know what "or subsequent offense" was, if the person had a first offense before the automatic probation under this bill went into effect. She asked what kind of conditions it would require, other than being on probation. She further asked whether it is possible that a person on probation for something else [could fall under this].

MS. NOBREGA, in answer to the last question, said that is not her understanding of how the bill works.

REPRESENTATIVE JAMES asked whether for the previous conviction, then, the person would have had a jury trial or an attorney.

MS. NOBREGA answered that "previously convicted" is defined in the bill.

CHAIR ROKEBERG noted that the probation period is for one year or until the person is 21 years old.

Number 1553

MS. NOBREGA said it is whichever is longer.

CHAIR ROKEBERG asked that the committee move on.

REPRESENTATIVE JAMES replied that she wasn't really happy with the Amendment 6B.

CHAIR ROKEBERG said all [Amendment 6B] does is add revocation of a license; the issue brought up by Representative Berkowitz has to do with the bill, not the amendment.

REPRESENTATIVE BERKOWITZ paraphrased the portion of Amendment 6B that read, "If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) [of this section]." He asked what that means.

Number 1604

MS. NOBREGA answered that it is in [subsection] (h) of the bill; it refers to when a person has not successfully completed the conditions of probation or successfully completed the adjudication. She called it an "additional hammer." She noted that it includes failure to do community work service. It just adds [subsection] (c) to this section, which is the three-month revocation.

Number 1638

CHAIR ROKEBERG asked Representative Berkowitz whether he maintained his objection.

REPRESENTATIVE BERKOWITZ said no. He said he appreciated what was trying to be accomplished, but that he was a little concerned about some of the statutory construction.

CHAIR ROKEBERG responded that he shares the concern and wants to make sure [HB 179] is right, but doesn't want to hold it up. He said it is imperative that the bill pass the legislature this year.

Number 1664

CHAIR ROKEBERG announced that with the objection having been removed, Amendment 6B was adopted.

Number 1667

CHAIR ROKEBERG made a motion to adopt Amendment 7, which read [original punctuation provided]:

Page 5, Line 24
Delete: "may not"
Insert: "shall"

MS. NOBREGA explained that Amendment 7 requires the DMV to obtain proof of financial responsibility before restoring a person's privilege to drive.

REPRESENTATIVE BERKOWITZ asked why this wasn't done before [in HB 179].

MS. NOBREGA said she had thought it was changed in a previous version.

CHAIR ROKEBERG indicated the committee had gone back to the attorney general's version, which then required going through it with a fine-toothed comb.

Number 1704

CHAIR ROKEBERG, hearing no objection, announced that Amendment 7 was adopted.

Number 1713

CHAIR ROKEBERG made a motion to adopt Amendment 8, which read [original punctuation provided]:

Page 1, Line 13
Delete: "(e)"
Insert: "(b)"

Page 2, Line 7
Delete: "(e)"
Insert: "(c)"

Page 2, Line 7
Delete: "or under this subsection"

MS. NOBREGA said Amendment 8 isn't changing anything, but is clarifying a reference. She referred to page 1, line 13 [Version L], and pointed out that it says the person is on probation under (e); that actually refers to the probation section, she explained, but what is meant in this instance is that the person is on probation because of falling under (b). Therefore, this is how the second offense works. The same happens under [subsection] (d) when referring to (c). She said it is a clarification, but also deletes some words that were confusing.

Number 1743

CHAIR ROKEBERG asked whether there was any objection. There being no objection, Amendment 8 was adopted.

Number 1749

CHAIR ROKEBERG made a motion to adopt Amendment 9, which read [original punctuation provided]:

Page 2, Line 19 after "later."

Insert: The defendant may not refuse probabtion [sic].

MS. NOBREGA apologized for the typographical error, then explained that Mr. Guaneli had informed her that a defendant has the right to refuse probation. Ms. Nobrega said if that were to happen in this instance, there never would be repeat offenders under the "probation theory." Therefore, Amendment 8 makes it so that the defendant cannot refuse probation if the person is in violation of minor-consuming laws. In response to a request for clarification by Representative Berkowitz, she said Mr. Guaneli had informed her that a defendant can refuse probation and request that jail time, for example, be imposed instead.

Number 1787

CHAIR ROKEBERG, hearing no objection, announced that Amendment 9 was adopted.

Number 1790

CHAIR ROKEBERG made a motion to adopt Amendment 10, which read [original punctuation provided]:

Page 3, Line 18
Delete: "shall"
Insert: "may"

Page 3, Line 18-219 [sic]
Delete: "if the person was convicted under (c) of this section"

MS. NOBREGA explained that Amendment 10 gives the court discretion in imposing the suspended fine. It also deletes words that are confusing, without changing the meaning, because it actually refers to a person being under (c) or (d); it is for "any successful," not just under subsection (c).

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

Number 1829

CHAIR ROKEBERG referred to page 5 [Version L, Section 5, lines 13-14], the words "or drugs" in the heading "**Administrative revocation of license to drive for consumption or possession of alcohol or drugs.**" He asked Ms. Norbrega about that.

MS. NORBREGA answered that she had checked again, and there actually is a reference to drugs; therefore, that language can remain.

Number 1849

CHAIR ROKEBERG made a motion to adopt Amendment 11, which read:

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 or granted a suspended imposition of sentence under (1) of this subsection, is guilty of minor consuming or in possession or control [A VIOLATION]. Upon conviction in the district court, the court [MAY]

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a prior version of this section. Among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel which may include counselling, education, treatment, community work service and payment of fees. In this subsection, "community diversion panel" means a youth court or other group approved by the court to dispose of cases involving violations of this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (e) of this section. The court may suspend a portion of the fine imposed under this subsection that exceeds \$200 if the person is required to pay for education or

treatment required under (e) of this section [NOT LESS THAN \$100].

Number 1864

ROBERT BUTTCANE, Legislative and Administrative Liaison, Division of Juvenile Justice, Department of Health and Social Services (DHSS), came forward at the request of Chair Rokeberg. He explained that Amendment 11 gives the court an option, after a person has been convicted of minor consuming or possession of alcohol, to go to a community diversion program under a suspended imposition of sentence (SIS). The scheme here would limit that option to those who have been convicted and who never before have been referred to the court or convicted by the court for a minor-consuming-alcohol offense.

MR. BUTTCANE said Amendment 11 allows the court to determine which community diversion program it might want to send these people to, which is pretty broad; it could include a panel of elders, a youth court, or some other program that a community might develop. It is all under the recognized authority of the court, he said, which makes that decision and negotiates with whatever local entity it chooses as suitable to provide services to people who get these first convictions. It is a dual choice for the court, he noted, which can do an SIS or can proceed and impose a fine of \$200 to \$600, and then follow the rest of the sentencing options in paragraph (2) of Amendment 11.

CHAIR ROKEBERG reported that Amendment 11 had resulted from a conversation after the last meeting [April 10, 2001], when he'd asked the administration to "help out" with Amendment 3.

MS. NOBREGA said Amendment 11 would replace Amendment 3.

Number 1991

REPRESENTATIVE JAMES made a motion to rescind the committee's action [on April 10, 2001] in adopting Amendment 3. There being no objection, Amendment 3 was rescinded.

CHAIR ROKEBERG stated his understanding that the community diversion panel is described elsewhere in statute under the DHSS; he said one of his early drafts had included that. He asked Mr. Buttane why the court is specified, rather than the DHSS [in Amendment 11].

Number 2033

MR. BUTTCANE answered that the phrase "community diversion panel" isn't included in a definition in the department's statutes; what is included in statute defines a youth court. He explained:

We didn't feel that it was real appropriate to just simply use "youth court", because communities have a variety of other panels. But rather than to amend the existing language under Title 47.12, the delinquency chapter -- it would be a lot more complicated and involved than taking this route, which vests the court with the authority to negotiate with their own community as to the establishment of a community diversion panel.

It expedites the process of getting people who are interested in working with underage drinkers. It still provides some oversight, but it doesn't embroil it in a bureaucracy that, really, we would have to do a much more exhaustive adjustment to the delinquency chapter in order to define "community diversion panels" to take care of this problem. So what is proposed in this amendment is the most direct and simple fix that allows communities to step forward and address the issues of underage drinking.

Number 2070

CHAIR ROKEBERG asked whether the intention is to give the court greater flexibility.

MR. BUTTCANE affirmed that.

CHAIR ROKEBERG stated his own intention that it include, for example, an elder council.

REPRESENTATIVE BERKOWITZ noted that during the previous session, the legislature had passed "restorative justice" legislation. He said as he understands it, the attempt [with Amendment 11] is to allow adjudication by bodies that are consistent with the principles outlined in that previous legislation.

CHAIR ROKEBERG said that is correct, precisely. He indicated that relates to his intention behind offering Amendment 11.

MS. NOBREGA reported that Mr. Guaneli had suggested that the group could be approved by the court or [the DHSS], to add more flexibility.

CHAIR ROKEBERG said he didn't know whether the courts would like that, rather than having control. He asked Mr. Wooliver to comment.

Number 2136

DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System (ACS), came forward, noting that he had just seen the amendment. He said right now he doesn't know how [the court system] approves these in the first place; however, he didn't think [the court system] would object to having the department approve things and then having the court send people to programs approved by the department. He added that the court system isn't in the business of approving these ultimate locations or groups, although he said perhaps some standards could be adopted for doing that.

CHAIR ROKEBERG said he himself would like to be able to do that.

CHAIR ROKEBERG made a motion to amend Amendment 11 by adding, after "[approved] by the court", the phrase "or the Department of Health and Social Services". He said he believes the discretion of the court is embodied in the entire subsection; therefore, the court has the discretion to do it either way. If the department had already pre-approved something, then the judge could take it up.

REPRESENTATIVE BERKOWITZ objected.

CHAIR ROKEBERG asked why Representative Berkowitz was objecting, since the proposed wording is "or".

REPRESENTATIVE BERKOWITZ explained that it would say that the executive branch had the power to adjudicate cases.

CHAIR ROKEBERG disagreed, emphasizing that he was saying it would be approved by the department, and, therefore, the judge could take it or leave it.

REPRESENTATIVE BERKOWITZ countered that it puts the executive branch in the position of authorizing the court [to do something], which is the legislature's purview.

CHAIR ROKEBERG stated his understanding that youth courts are approved by the DHSS. As Mr. Wooliver had said, unless the courts set up an approval mechanism, there would be no way to approve them right now. By adopting [the proposed language relating to] the DHSS, they could, for example, utilize the Anchorage Youth Court if so desired, because it would have been approved by the department.

REPRESENTATIVE BERKOWITZ requested an explanation of how that mechanism relating to youth courts works.

Number 2242

MR. BUTTCANE answered that [AS] 47.12.400 right now relates to the authorities of youth courts; it outlines for youth courts some very specific jurisdictions relating to crimes. The way that section is written, it would not currently include any authority to handle cases involving minors consuming alcohol, tobacco, or a curfew. In his consultation with the Department of Law (DOL), he said what is being proposed here is that the court could refer these cases to bodies such as youth courts, or to other groups, without needing to change its delinquency authorities. This is the reason for crafting the referral scheme. He stated:

If we wanted only the Department of Health and Social Services to, quote, "authorize" these various community diversion panels, I think we will really need to go back into the delinquency chapter and either amend the youth court section or craft new language that is broader for community diversion panels. And we felt that that might not really be what we were trying to do under this legislation.

The diversion here comes post-conviction by the court, and becomes somewhat of a sentencing alternative. And there are courts around the state that have been very creative in ways of dealing effectively with underage drinkers. And this, in a sense, recognizes some of what is already going on by courts who are working with local community groups to take and address the problems of underage drinking.

Approval by the court could simply mean that the judge or the magistrate in a community just recognizes some working agreement with a local group, to say, "I would

like you to take these kids and work with them after they have been convicted of minor consuming." The same thing with tobacco: "I want you take these kids and have them go through a smoking-cessation course or an information course."

If the Department of Health and Social Services were, then, to be required to approve all of these panels, we really will need to do some more work in terms of creating some of that regulatory scheme. And we can do that, but that isn't what we had contemplated with this wording.

Number 2340

REPRESENTATIVE OGAN, speaking via teleconference, requested that a copy of the amendments be faxed to him at the [Matanuska-Susitna] Legislative Information Office (Mat-Su LIO).

CHAIR ROKEBERG said he would do it later because he was about ready to move the bill. He then confirmed that Representative Berkowitz maintained his objection.

A roll call vote was taken. Representatives James, Meyer, and Rokeberg voted for the amendment to Amendment 11. Representatives Coghill, Berkowitz, and Kookesh voted against it. Representative Ogan abstained because he hadn't seen the amendment. Therefore, the amendment to Amendment 11 failed by a vote of 3-3.

Number 2426

CHAIR ROKEBERG announced that HB 179 would be set aside. [It was taken up again following the first portion of the hearing on HB 125.]

HB 125 - UNLAWFUL VIEWING

Number 2456

CHAIR ROKEBERG announced that the committee would next take up HOUSE BILL NO. 125, "An Act relating to unlawful and indecent viewing and photography and to civil damages and penalties for that viewing and photography."

Number 2482

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute (CS) for HB 125, version 22-LS0510\C, Luckhaupt, 4/10/01, as a work draft.

Number 2488

REPRESENTATIVE BERKOWITZ objected for the purpose of clarifying the changes proposed by Version C.

CHAIR ROKEBERG called an at-ease from 2:19 p.m. to 2:20 p.m.

TAPE 01-64, SIDE B
Number 2486

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, explained that Version C adds language to Section 2, page 2, that reads:

(a) A person commits the crime of improper viewing or photography if the person knowingly and surreptitiously views or produces a picture of or knowingly employs a hidden or concealed camera, peephole, or two-way mirror to view or produce a picture of another person in the interior of a residence or domicile without the knowledge or consent of

MS. NOBREGA noted that this change attempts to more accurately reflect the purpose of HB 125, and should clarify that hallways and other areas of a home that are not specifically part of "a room" would be covered under this provision. She went on to explain that Section 2, subsection (d)(1), now stipulates that either of the following can be an affirmative defense: that notice of the viewing [or] photography was posted, or that [any viewing or use of pictures produced] is done only in the interest of crime prevention or prosecution. She also explained that the wording regarding [an affirmative defense for] journalists has been altered in subsection (d)(2) of Section 2.

Number 2394

DENISE HENDERSON, Staff to Representative Pete Kott, Alaska State Legislature, explained that the complete change to subsection (d)(2) initially proposed by Representative Coghill was not incorporated into Version C by the drafter. She added

that the sponsor has no objections to this change, now called Amendment 1, which read [original punctuation provided]:

Page 2, line 24, after the words "by a professional journalist":

Delete: "employed by a legitimate news-gathering organization for an actual or intended news story"

Insert: who is a member in good standing of the Society of Professional Journalists performing journalistic duties in accordance with the Society of Professional Journalists' principles and standards of practice.

Number 2351

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, speaking as the drafter, explained that the revisor had concerns about whether the Society of Professional Journalists referred to in Amendment 1 has any exclusions, and is thus a closed group, or is open to any professional journalists.

CHAIR ROKEBERG mentioned that the language proposed by Amendment 1 certainly narrows the definition.

MS. HENDERSON remarked that the concern raised by Mr. Buttane regarding viewing and photography conducted by personnel of medical or psychiatric care facilities could be addressed by another amendment.

MS. NOBREGA explained that such an amendment would not be necessary because HB 125 only applies to residences and domiciles.

Number 2239

CHAIR ROKEBERG asked whether there were any further objections to the adoption of Version C as a work draft. There being no objection, Version C was before the committee.

Number 2225

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1.

Number 2217

CHAIR ROKEBERG objected. He then noted that with the adoption of Version C as a work draft, proposed Amendment 1 now addresses language on page 2, lines 25-27, and added that it makes the distinction between journalists who are members of the Society of Professional Journalists as opposed to journalists who are merely employed by a legitimate news-gathering organization.

REPRESENTATIVE JAMES asked where tabloids fit in.

REPRESENTATIVE COGHILL remarked that he had wanted to address the issue of tabloid journalists via Amendment 1.

CHAIR ROKEBERG pointed out that a journalist might be a member of the Society of Professional Journalists and be employed by a tabloid, and that tabloids might be considered legitimate news-gathering organizations; thus neither the current language in Version C nor proposed Amendment 1 really addresses this issue.

REPRESENTATIVE JAMES concurred that the latter could well be true, but that the former might only perhaps be true.

REPRESENTATIVE OGAN opined that the entire Section 2 is probably unconstitutional; he said there is no harm in taking a picture of someone who is unaware that the photography is taking place. He then noted that he had a time constraint and was prepared to vote on the previous agenda item.

CHAIR ROKEBERG recessed the hearing on HB 125 for the purpose of taking up HB 179 again.

HB 179 - OFFENSES RELATING TO UNDERAGE DRINKING

Number 2158

CHAIR ROKEBERG reconvened the hearing on HOUSE BILL NO. 179, "An Act relating to underage drinking and drug offenses; and providing for an effective date."

REPRESENTATIVE JAMES made a motion to rescind the committee's action that day in failing to adopt [the amendment to] Amendment 11.

Number 2160

REPRESENTATIVE BERKOWITZ objected.

A roll call vote was taken. Representatives Ogan, Coghill, Meyer, James, and Rokeberg voted to rescind the committee's action in failing to adopt the amendment to Amendment 11. Representatives Berkowitz and Kookesh voted against it. Therefore, the committee's action in failing to adopt the amendment to Amendment 1 was rescinded by a vote of 5-2.

Number 1948

CHAIR ROKEBERG made a motion to adopt the same amendment to Amendment 11, to add "or Department of Health and Social Services" after the phrase "approved by the court".

REPRESENTATIVE COGHILL objected, saying it broadens the scope way beyond the youth court issue.

CHAIR ROKEBERG countered that the youth court is approved by the Department of Health and Social Services (DHSS).

REPRESENTATIVE JAMES said the first question is whether a community diversion panel is wanted; if so, where would the approval come from? She noted that the youth court is approved by the DHSS. "Unless there is already one out there, that's already been approved by the court," she added.

CHAIR ROKEBERG remarked that it takes youth courts "out of the swing of things" unless the court approves them, particularly if the court doesn't have an approval mechanism. In response to further questions by Representative Coghill, he said it is in statute that the [DHSS] approves or disapproves the youth courts. He explained that the amendment to Amendment 11 is for a suspended imposition [of sentence] (SIS); a judge who so desires can send the person to a community diversion panel, including a youth court or something else. He emphasized that it is only on the first offense and doesn't involve revocation of a person's license, for example.

REPRESENTATIVE JAMES said it is only the definition of "community diversion panel".

REPRESENTATIVE COGHILL withdrew his objection.

Number 1948

CHAIR ROKEBERG asked whether there were any further objections to the amendment to Amendment 11. There being no objection, the amendment to Amendment 11 was adopted.

CHAIR ROKEBERG asked whether there was any objection to Amendment 11, as amended. There being no objection, Amendment 11, as amended, was adopted.

Number 1920

REPRESENTATIVE JAMES moved to report CSHB 179, version 22-LS0564\L, Ford, 4/4/01, as amended, from committee with individual recommendations and the attached fiscal notes. There being no objection, CSHB 179(JUD) was reported from the House Judiciary Standing Committee.

HB 125 - UNLAWFUL VIEWING

Number 1911

CHAIR ROKEBERG reconvened the hearing on HOUSE BILL NO. 125, "An Act relating to unlawful and indecent viewing and photography and to civil damages and penalties for that viewing and photography." [Before the committee was Version C, adopted as a work draft earlier in this same meeting, and proposed Amendment 1, the text of which has been included previously.]

REPRESENTATIVE COGHILL, in defense of Amendment 1, offered the following statement from the organization itself: "The Society of Professional Journalists is the nation's largest broad-based journalism organization dedicated to [the] free practice of journalism and stimulating high standards of ethical behavior."

Number 1827

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, on the point of who could be included in the Society of Professional Journalists, said that the only possibility for exclusion might be if the [Society of Professional Journalists] were to decide that a journalist doesn't qualify under its standards; she added that there is not even a membership fee to join this organization, simply an application process and a review by its board.

REPRESENTATIVE KOOKESH asked how many Alaskans employed in the field of journalism belonged to the [Society of Professional Journalists].

MS. MOSS replied that quite a few did, and she added that an Alaskan, a professor at the University of Alaska Fairbanks (UAF), is a member of the board.

REPRESENTATIVE COGHILL added that according to his information, every reporter of all the major newspapers, and all those reporting from Juneau, belonged to the [Society of Professional Journalists]. He suggested that under Amendment 1, the ethical standards of the [Society of Professional Journalists] will apply to the viewing and photographing conduct addressed in Section 2.

REPRESENTATIVE JAMES indicated she is reluctant to include journalistic conduct of any type as an affirmative defense.

REPRESENTATIVE BERKOWITZ said he objects to Amendment 1 and the whole of [paragraph] 2, which he opined amounts to the equivalent of government censorship of the press. He continued:

Essentially, we're saying that it is only a defense, (A) if you're a member of this organization; [but] there might be many legitimate journalists who aren't. We're secondly saying that [they have] to be employed by a legitimate news-gathering organization; that would seem to fly in the face of organizations that perhaps might not be considered legitimate by some but are legitimate by others. ... We'd have problems with freelance journalists; we'd have problems with, say, high school journalists or college journalists. ... If we're going to make a journalistic exception, why don't we just say, "There's a journalistic exception," rather than trying to define who qualifies as a legitimate journalist and who doesn't.

Number 1579

A roll call vote was taken. Representatives Coghill, Meyer, and James voted for Amendment 1. Representatives Berkowitz, Kookesh, and Rokeberg voted against it. Therefore, Amendment 1 failed by a vote of 3-3.

Number 1562

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 2, which would strike [subsection (d), paragraph (2)] from page 2, lines 25-27, and would remove any provisions for journalists of any kind to have an affirmative defense.

REPRESENTATIVE BERKOWITZ surmised that Conceptual Amendment 2 would have a chilling effect on free speech. He pointed out that Section 2 of Version C simply addresses knowingly and surreptitiously viewing and/or photographing; if Conceptual Amendment 2 is adopted, it would be illegal, for example, to take pictures of 15-year-olds inside a sweatshop, as part of a news story.

CHAIR ROKEBERG remarked that according to the sponsor's staff, the primary thrust of HB 125 is to prohibit the taking and producing of photographs for transmittal on the Internet.

REPRESENTATIVE BERKOWITZ opined that language in Version C does not specifically say that.

CHAIR ROKEBERG countered that language in Section 1 does address transmittal to another person.

REPRESENTATIVE BERKOWITZ pointed out that language in Section 1 pertains to AS 09.68.150 and addresses civil liability, whereas the language in Section 2, which would be altered by adoption of Conceptual Amendment 2, pertains to AS 11.61.121, which criminalizes the activity therein. Hence, "we're just saying if you take a picture of a kid, in any circumstance, it's illegal," he added, and he noted that there are legitimate reasons why someone might wish to document particular circumstances regarding children.

CHAIR ROKEBERG affirmed that Representative Berkowitz is correct: there is a distinction between Section 1 and Section 2 of Version C.

REPRESENTATIVE BERKOWITZ noted additionally that Section 2 even precludes members of the legislature from photographing or viewing photographs of children under the age of 13 for legislative purposes such as changes to statutes related to child abuse.

Number 1384

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, speaking as the drafter, countered that [Version C] does not exactly do that. He then explained that the criminal statute is narrower than the civil remedy section, and, further, that the criminal statute would make it illegal to employ a

hidden or concealed camera, and to use that hidden or concealed camera, peephole, or two-way mirror to surreptitiously view a person without his/her consent. It doesn't have to be a child; it can be an adult, but consent has to be given. He added that if the viewing or photography involves a subject that is under the age of [16], then the parents [or guardians] have to consent to the activity. He also explained that the viewing or photographing has to occur [while the subject is] in the interior of a residence.

MR. LUCKHAUPT offered that the affirmative defense provision for news-gathering organizations is intended to allow the use of hidden cameras - as are used in "60 Minutes" and similar television programs - for some purposes. He said he'd attempted to narrow this affirmative defense provision similar to New York's statute, which seemed, to him, to apply to legitimate news-gathering organizations. He noted that the burden of this provision falls on the person who chooses to view or photograph, without consent, another person [who is in the interior of a residence or domicile]. On the issue of whether the legislature has the right to engage in this activity, he opined that it did not have the authority; he did, however, acknowledge that law enforcement could obtain authority for such activity via a search warrant. He added that the scope of Version C has been narrowed per comments from the last hearing, and now includes "domicile", which allows for hotel rooms and the like. He noted that HB 125 no longer applies to places of business.

REPRESENTATIVE BERKOWITZ asked Mr. Luckhaupt to discuss some of the First Amendment implications of [Version C].

Number 1162

MR. LUCKHAUPT said that there will always be First Amendment implications. He added that he can't say that the First Amendment allows a reporter "to go into your home, place a hidden camera in your home, and videotape you or your family."

REPRESENTATIVE BERKOWITZ pointed out that there are a number of torts available when someone has taken peoples' images without their consent; he said that there are four, according to his recollection.

MR. LUCKHAUPT confirmed that this was correct, and he said that [the torts] are encompassed within the general term of invasion of privacy. He added that there is also intentional infliction of emotional harm whenever a person captures someone's likeness

and parades it all over. He explained that in the general concept of invasion of privacy, there is a general remedy; Section 1 of Version C is designed to provide a separate means of recovery for persons whose images have been captured.

REPRESENTATIVE BERKOWITZ referred to a privacy protection bill that he had introduced. He recounted how opposition had arisen from community patrols who oftentimes used cameras to take pictures of people; because they are not official law enforcement, the pictures taken would be illegal under the provisions encompassed in Version C.

MR. LUCKHAUPT affirmed that a person, even as part of a community patrol, would have no right to take pictures of someone in the interior of a residence or domicile, which can include hotel rooms. He acknowledged, however, that a subject out on the street is "fair game for everybody" with regard to being photographed or viewed.

REPRESENTATIVE BERKOWITZ explained that his previous comments are related to the fact that part of his district encompasses Spenard, which has a lot of prostitution activity. He recounted how a lot of community patrols spend quite a bit of time documenting who the "Johns" are and taking pictures of them; some of those pictures taken are of people within a residence or domicile and are clearly done without the knowledge and consent of the "John" or the prostitute. He added that merely taking the pictures has a deterrent affect on prostitution. He reiterated that the activity of these community patrols would be precluded by passage of HB 125.

CHAIR ROKEBERG said he is not so sure that Mr. Luckhaupt's analysis is correct.

Number 0939

REPRESENTATIVE JAMES stressed that she did not want to give journalists the option of an affirmative defense to surreptitiously view or photograph children between the ages of 13 and 16, because she said she considered such a defense an affront to the right of privacy.

REPRESENTATIVE KOOKESH asked Mr. Luckhaupt to voice his opinion on Conceptual Amendment 2, which would remove the affirmative defense provision for journalists.

MR. LUCKHAUPT opined that a court would still infer some First Amendment rights for legitimate journalists engaging in legitimate activities in pursuit of a news story. He further opined that simply taking this provision out of Version C would not prevent a journalist from ever raising the issue of First Amendment rights as an affirmative defense.

REPRESENTATIVE KOOKESH suggested that merely by having the removal of this provision on record it might be construed by prosecutors that journalists would no longer have any affirmative defense.

MR. LUCKHAUPT countered that a journalist's rights under the First Amendment to the U.S. Constitution would "trump" any state law that is placed on the books. Therefore, if the First Amendment is read in such a way as to allow someone to videotape someone else in the manner prohibited by Version C, then the First Amendment right could still be raised as an affirmative defense.

Number 0530

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

Number 0526

REPRESENTATIVE JAMES moved to report CSHB 125, version 22-LS0510\C, Luckhaupt, 4/10/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 0518

REPRESENTATIVE BERKOWITZ objected and said he still has a number of questions about HB 125. He asked why Version C is limited to residences and domiciles, and why such places as offices, stores, and hospitals are not included.

MR. LUCKHAUPT reported that Version C was drafted in this manner at the direction of the committee from the meeting held on 4/6/01.

CHAIR ROKEBERG concurred that "we tightened the scope because there [were] concerns about business surveillance and what they were allowed ... to do under common law as far as looking at

employees." Currently, Version C does not speak one way or another to the issue of a business's surveillance of its employees, he added.

REPRESENTATIVE BERKOWITZ, after noting that Version C is limited to visual [reproductions], asked whether any thought has been given to expanding Version C to include audio [representations]. He opined that with the technology available, there is as great a danger of "audio peeping" as there is of "visual peeping."

REPRESENTATIVE JAMES remarked that the activity that is being objected to - via HB 125 - is the viewing or photography, without their consent, of persons who are nude or clothed only in underwear. She opined that this activity does not lend itself to an audio format.

REPRESENTATIVE BERKOWITZ offered that someone's privacy could still be invaded via audio methods.

CHAIR ROKEBERG cautioned that the issue of audio activity is outside the scope of HB 125.

REPRESENTATIVE BERKOWITZ argued that if there is a concern about prurient viewing, then there ought to also be some concern about prurient listening; if "we're" worried about invading the privacy of a couple's bedroom just by looking in through the window, "we" ought to worry about listening in through the window.

CHAIR ROKEBERG suggested that Representative Berkowitz introduce a bill that covers that subject, because HB 125 does not cover it.

REPRESENTATIVE BERKOWITZ remarked upon the tendency of his bills to not move [out of committee].

Number 0210

A roll call vote was taken. Representatives James, Coghill, Meyer, and Rokeberg voted to report CSHB 125, version 22-LS0510\C, Luckhaupt, 4/10/01, as amended, out of committee. Representative Berkowitz voted against it. Therefore, CSHB 125(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE BERKOWITZ served notice of reconsideration on his vote on reporting CSHB 125, version 22-LS0510\C, Luckhaupt, 4/10/01, as amended, out of committee.

CHAIR ROKEBERG, after much heated discussion, ruled that notice of reconsideration is not appropriate at the committee level; thus CSHB 125(JUD) was reported from the House Judiciary Standing Committee.

HB 68 - NO CIVIL LIAB FOR TAXI TRANSPORTING DRUNK

TAPE 01-65, SIDE A
Number 0001

CHAIR ROKEBERG announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68, "An Act relating to civil liability for transporting an intoxicated person or for driving an intoxicated person's motor vehicle; and providing for an effective date." [Before the committee was CSSHB 68(TRA); the bill was sponsored by Representative Rokeberg.]

Number 0118

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that SSHB 68 provides [an exemption from] civil liability for driving the vehicle of an intoxicated person under certain circumstances.

Number 0156

CHAIR ROKEBERG made a motion to adopt the proposed committee substitute (CS) for SSHB 68, version 22-LS0300\O, Ford, 4/6/01, as a work draft. There being no objection, Version O was before the committee.

MS. SEITZ explained that Version O provides that a person will not be liable for injury, death, or property damage resulting from a motor vehicle accident, if the person who was driving a vehicle involved in the accident had permission to do so from the owner of the vehicle or was requested to do so by a law enforcement official, and the person was not intoxicated and was employed by a taxicab, limousine, or a holder of such a permit. She added that Version O does not preclude civil liability as a result of gross negligence, or reckless or intentional misconduct. She remarked that introduction of Version O is part of an effort to remove drunk drivers from their vehicles, yet make sure that the intoxicated person's vehicle returns to the

person's home safely. She noted that there is a concern by many people who drink that if their vehicles are left in a location near licensed premises, they might be subject to damage; Version 0 allows for a way to get the vehicle home without the intoxicated person's driving it.

Number 0232

KACE McDOWELL, Executive Director, Alaska Cabaret Hotel Restaurant & Retailers Association (CHARR), testified via teleconference. She noted that after looking over Version 0, the only concern she and various representatives of the taxicab industry have is that should the vehicle break down and the taxicab driver have to leave it someplace, they would like to ensure that the taxicab driver is not held liable for any damages that might ensue. She reminded the committee that the taxicab drivers will not be making any money for providing the service of taking both the intoxicated person and his/her vehicle home. In fact, she said, the "industry" is going to absorb the \$40 "fee" for this service.

MS. McDOWELL explained that the Anchorage Downtown Partnership and CHARR will be working together to establish a network of taxicab companies that will provide this service. There will be a specific phone number to call, and certain drivers will be assigned to pick up the intoxicated person and his/her automobile. She added that the bars will have a disclaimer notice posted regarding release from liability for the drivers. One taxicab driver will take the intoxicated person home, and the other taxicab driver will take the vehicle to the intoxicated person's home, and nowhere else. The taxicab drivers will bill "us," she said, so the "industry" will pay for this service; hence no money needs to change hands between the intoxicated person and the taxicab drivers, except any gratuities.

REPRESENTATIVE JAMES inquired whether the "industry" would be in any way liable for any accidents that might occur while providing this service; her concern is that if the "industry" is paying for it, it might be held liable for what occurs to, or because of, the taxicab drivers.

MS. SEITZ offered that subsection (b) on page 2, lines 6-8, addresses this possibility.

REPRESENTATIVE JAMES asked if a similar exemption from liability could be created for the situations wherein the vehicle is not drivable and has to be left someplace.

CHAIR ROKEBERG said he is not so certain that an exemption should, or could, be made regarding damage to the vehicle if it has to be left someplace other than the owner's home. He noted that Version O "is intended to allow for recovery of any damages, if there is an accident, against the existing insured vehicle; it's only in instances where there is no insurance that there would be no remedy for collection unless there was gross negligence or recklessness." He remarked that he had not yet considered the property damage aspect, aside from that which results from an accident. He asked if what Ms. McDowell is saying is that the taxicab drivers want some sort of immunity from "broken down" vehicles.

Number 0669

MS. McDOWELL said yes; if the vehicle has to be left on the side of the road and then towed away, the taxicab drivers did not want to be responsible for paying the tow charges.

REPRESENTATIVE BERKOWITZ surmised that it doesn't seem as if it would be a problem because the immunity offered by Version O applies once [the driver] starts driving a vehicle away from the licensed premises, and exists until [the driver] reaches the residence, which is the objective; therefore, if the residence is not reached and something happens in transit, [the driver] is still immunized from responsibility. He suggested that this particular provision could be altered to reflect that most people don't park exactly at the licensed premises, perhaps by inserting "or near [the]", after "from", on page 1, line 10, so that it would then read "from or near the licensed premises;". Representative Berkowitz also suggested that a conforming amendment be adopted that would change any reference to "intoxicated" to "under the influence".

Number 0948

REPRESENTATIVE BERKOWITZ, on that point, made a motion to adopt Conceptual Amendment 1, such that on page 1, line 1; page 2, line 1; page 2, line 5, in two places; and elsewhere as appropriate, the word "intoxicated" is changed to "under the influence". There being no objection, Conceptual Amendment 1 was adopted.

Number 0960

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 2, such that on page 1, line 10, "or near the" is inserted after "from". There being no objection, Conceptual Amendment 2 was adopted.

REPRESENTATIVE BERKOWITZ noted that nowhere in Version O are taxicab companies given any kind of an "insurance break" for providing this service; he added that this is an issue that should be considered.

Number 1037

REPRESENTATIVE JAMES moved to report CSSSHB 68, version 22-LS0300\O, Ford, 4/6/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 68(JUD) was reported from the House Judiciary Standing Committee.

HB 67 - MOTOR VEHICLE REGISTRATION/INSURANCE

Number 1063

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 67, "An Act requiring proof of motor vehicle insurance in order to register a motor vehicle; and relating to motor vehicle liability insurance for taxicabs." [Before the committee was CSHB 67(L&C).]

Number 1086

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that the proposed committee substitute (CS) for HB 68, version 22-LS0299\J, Ford, 4/4/01, merely establishes minimum requirements for taxicab insurance. She added that Version J has lower requirements than the previous version because of concerns expressed by some of the taxicab companies.

CHAIR ROKEBERG added that his research indicates that currently the state does not require insurance for taxicabs.

Number 1143

CHAIR ROKEBERG made a motion to adopt the proposed CS for HB 68, version 22-LS0299\J, Ford, 4/4/01, as a work draft.

Number 1147

REPRESENTATIVE BERKOWITZ objected for the purpose of discussing the distinctions between Version J and CSHB 67(L&C).

MS. SEITZ explained that in CSHB 67(L&C), the limit for coverage was set at \$300,000 for the bodily injury or death of one person in one accident (in Version J it is set at \$100,000); at \$500,000 for the bodily injury or death of two or more persons in one accident (in Version J it is set at \$300,000); and at \$100,000 for injury to or destruction of property (in Version J it is set at \$50,000). She again said that this change is a result of concerns expressed by the taxicab companies. She noted that in some areas of Alaska, local ordinances require insurance for taxicabs; she also noted that included in the members' packets is a chart detailing these specific local requirements.

REPRESENTATIVE BERKOWITZ requested that HB 67 be held over until the next scheduled meeting.

REPRESENTATIVE JAMES commented that if there is not insurance available specifically for taxicabs, then there should not be taxicabs [operating]. She said she was under the impression that there were laws requiring all vehicles to be insured, regardless of whether the vehicle was owned by a company or a person.

CHAIR ROKEBERG added that this lack of insurance requirements is an "obvious hole in our statutes."

[HB 67 was held over, with the adoption of Version J as a work draft pending.]

ADJOURNMENT

Number 1284

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:27 p.m.