ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 19, 2001
1:10 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

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."

- MOVED SSHB 120 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."

- MOVED CSHB 67(JUD) OUT OF COMMITTEE

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."

- MOVED CSHB 196(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 114
"An Act relating to abuse of inhalants."

- MOVED CSHB 114(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 120
SHORT TITLE:DISCLOSURE OF CRIMINAL HISTORY RECORDS
SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date	Jrn-Page		Action
02/09/01	0281	(H)	READ THE FIRST TIME - REFERRALS
02/09/01	0281	(H)	STA, JUD
03/14/01	0585	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/14/01	0585	(H)	READ THE FIRST TIME - REFERRALS
03/14/01	0585	(H)	JUD
04/04/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/04/01		(H)	Heard & Held
04/04/01		(H)	MINUTE(JUD)
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/06/01		(H)	Scheduled But Not Heard
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/18/01		(H)	Scheduled But Not Heard
04/19/01		(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
03/28/01		(H)	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
04/18/01		(H)	Heard & Held MINUTE(JUD)
04/19/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 196
SHORT TITLE:RIGHT OF ACTION FOR LEGAL SEPARATION
SPONSOR(S): REPRESENTATIVE(S)DYSON

Jrn-Date	Jrn-Page		Action
03/19/01	0649	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0649	(H)	JUD
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/06/01		(H)	Heard & Held MINUTE(JUD)
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	Scheduled But Not Heard
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/18/01		(H)	Scheduled But Not Heard
04/19/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 114
SHORT TITLE:INHALANT ABUSE
SPONSOR(S): REPRESENTATIVE(S)KAPSNER

Jrn-Date	Jrn-Page		Action
02/07/01	0263	(H)	READ THE FIRST TIME - REFERRALS
02/07/01	0263	(H)	HES, JUD, FIN
02/21/01	0392	(H)	COSPONSOR(S): STEVENS
02/27/01		(H)	HES AT 3:00 PM CAPITOL 106
02/27/01		(H)	Heard & Held
02/27/01		(H)	MINUTE(HES)
02/28/01	0473	(H)	COSPONSOR(S): MURKOWSKI
03/01/01		(H)	HES AT 3:00 PM CAPITOL 106
03/01/01		(H)	Heard & Held
03/01/01		(H)	MINUTE(HES)
03/07/01	0501	(H)	COSPONSOR(S): FATE, DYSON
03/09/01	0529	(H)	COSPONSOR(S): CISSNA, JOULE, MEYER
03/15/01		(H)	HES AT 3:00 PM CAPITOL 106
03/15/01		(H)	Moved CSHB 114(HES) Out of Committee

03/15/01		(H)	MINUTE(HES)
03/16/01	0622	(H)	HES RPT CS(HES) NT 5DP
03/16/01	0622	(H)	DP: COGHILL, WILSON, CISSNA, JOULE,
03/16/01	0622	(H)	DYSON
03/16/01	0622	(H)	FN1: INDETERMINATE(HSS)
03/16/01	0622	(H)	FN2: (HSS)
03/16/01	0636	(H)	COSPONSOR(S): COGHILL
04/18/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/18/01		(H)	Scheduled But Not Heard
04/19/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

KENNETH E. BISCHOFF, Director
Central Office
Division of Administrative Services
Department of Public Safety (DPS)
PO Box 111200
Juneau, Alaska 99811-1200
POSITION STATEMENT: Presented the DPS's position of strong support for SSHB 120 and answered questions.

DIANE SCHENKER, Criminal Justice Planner
Anchorage Office
Division of Administrative Services
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507-1225
POSITION STATEMENT: Answered questions related to definition language in SSHB 120.

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 presentation of HB 67 and answered questions.

REPRESENTATIVE FRED DYSON
Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 196.

KARA MORIARTY, Staff
to Senator Gary Wilken
Alaska State Legislature
Capitol Building, Room 514
Juneau, Alaska 99801
POSITION STATEMENT: Assisted with the presentation of HB 196, and answered questions.

REPRESENTATIVE MARY KAPSNER
Alaska State Legislature
Capitol Building, Room 424
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 114.

JIM HENKELMAN, Statewide Outreach Coordinator
Inhalant Intervention Project
Yukon-Kuskokwim Health Corporation (YKHC)
2957 Yale Drive
Anchorage, Alaska 99508
POSITION STATEMENT: Assisted with the presentation of HB 114, testified in support, and answered questions.

ROBERT BUTTCANE, Legislative and Administrative Liaison
Division of Juvenile Justice
Department of Health and Social Services (DHSS)
PO Box 110635
Juneau, Alaska 99811-0635
POSITION STATEMENT: During discussion of HB 114, answered questions.

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: During discussion of HB 114, indicated that the DPS did not foresee any problems with implementing Section 4 of Version J.

DON DAPCEVICH
Division of Alcoholism and Drug Abuse (DADA)
Department of Health and Social Services (DHSS)
PO Box 110607
Juneau, Alaska 99811-0607
POSITION STATEMENT: During discussion of HB 114, answered questions related to treatment for adult inhalant abusers.

ACTION NARRATIVE

TAPE 01-66, SIDE A
Number 0001

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

HB 120 - DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 0109

CHAIR ROKEBERG announced that the first order of business would be 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."

Number 0123

REPRESENTATIVE COGHILL, speaking as the sponsor, explained that SSHB 120 authorizes Alaska to join the National Crime Prevention and Privacy Compact (NCPPC), which is a compact that allows participating states and the federal government to exchange information regarding criminal history records for non-criminal purposes. He added that the exchange of this information will occur through the Interstate Identification Index (III) System. He then mentioned that he has concerns regarding privacy issues, and would therefore be endeavoring to make sure that personal information cannot be misused. He noted that these records cannot be acquired without the subject's fingerprints, which must be given voluntarily unless he/she is incarcerated at the time of the request. The NCPPC will allow information to be shared with requestors that are not typically considered "criminal groups," he added.

REPRESENTATIVE COGHILL explained that the Federal Bureau of Investigation (FBI) does not always have all of a subject's criminal history records that would be available at the state level; hence, by acquiring the information directly from a participating state, the requestor has a better chance of obtaining a subject's entire criminal history record, rather

than simply relying on what is available from the FBI's databank. He noted that [eight] states have already adopted the NCPPC, and that many more are [considering legislation similar to SSHB 120]. He mentioned that Alaska has a lot of people moving in and out of state, and he reminded the committee that the state requires that criminal background checks be performed on people who work with vulnerable adults and children. Currently, this sort of information is only available from the FBI, and if it did not have all the pertinent information about a person who moved to Alaska from a participating state, any criminal background check done on that person would be incomplete. With the adoption of the NCPPC, the information could be requested directly from that other state; not only would time be saved, but the other state's information might be more detailed.

REPRESENTATIVE COGHILL noted that by adopting the NCPPC, Alaska would be submitting to the provisions established by the NCPPC; it is his understanding, however, that none of these provisions would change or "trump" Alaska's laws but would, instead, merely work within the framework of current statute. He explained that adoption of SSHB 120 would amend Alaska's "criminal dissemination laws," and would allow "non-public safety entities" to receive criminal history information.

Number 0535

KENNETH E. BISCHOFF, Director, Central Office, Division of Administrative Services, Department of Public Safety (DPS), noted that the DPS strongly supports SSHB 120. He said that the House had passed similar legislation last year but it did not make it completely through the Senate. He explained that what SSHB 120 does for civil purposes is what law enforcement has had available to it for investigative and criminal purposes for approximately 35 years. Under a national compact, SSHB 120 would allow entities, which are expressly authorized or required by the legislature, to make use of the compact, through the DPS, to produce a substantially better, more complete, accurate, and timely criminal history report. He noted that the DPS currently does over 20,000 fingerprint-based criminal history checks annually for such items and entities as foster parent licenses, teacher certifications, school bus driver licenses, child care facilities, security guards, assisted living homes, nursing homes, insurance agencies, collections agencies, and the Alaska Bar Association.

MR. BISCHOFF explained that the DPS, by statute, is the central repository for criminal history record information from which these entities receive this information. He said the process works thus: fingerprints are presented to the DPS with a fee, and then [the DPS] processes a "state-level check" and a "national check." He said that SSHB 120 recognizes a national initiative to automate criminal history checks and make them more streamlined and more complete; nationally, he added, there are approximately 60 million criminal records, but about 40 percent of those records exist only at the state level (the FBI has access to the remaining 60 percent). In order to get at all of the information, he explained, "we" need to be able to participate as an NCPPC member, so that as more and more states become members of the NCPPC, "we" will have access to all participating states' information. He noted that SSHB 120 does nothing to change any of the authorizations or requirements the legislature has passed. What SSHB 120 essentially does, he said, is allow the DPS to use the "national information highway," and will make [the DPS's] work more efficient and more complete in terms of serving the regulatory agencies and others that the legislature has authorized to use criminal history information.

REPRESENTATIVE OGAN asked whether SSHB 120 in any way grants authority to the NCPPC to enact bylaws that would have the force of law in participating states.

MR. BISCHOFF said no.

Number 0796

REPRESENTATIVE OGAN then asked whether financial institutions and other private institutions that normally do not get this kind of information would have the ability to do so under SSHB 120. He expressed concern that financial institutions would be allowed to request criminal history checks simply to process loans.

MR. BISCHOFF responded that currently, financial institutions are not authorized to conduct criminal history checks on loan applicants; he reiterated that SSHB 120 does not provide for any additional authorizations.

REPRESENTATIVE COGHILL added that a previous version of HB 120 did contain a provision relating to financial institutions, which was removed from SSHB 120.

REPRESENTATIVE OGAN mentioned that in the [Matanuska-Susitna area] two different teachers have had sexual relations with students. He asked whether current authorizations could be expanded to include school districts if they weren't already capable of requesting criminal background checks from the DPS.

MR. BISCHOFF replied that school districts are already "major clients"; they request criminal background checks, some more often than others. He noted that the Department of Education and Early Development (EED) is required by statute and regulation to perform a fingerprint-based criminal history check upon a person when he/she is first certified as a teacher. He added that once a teacher is employed by a school district, policies regarding criminal history checks differ among school districts.

CHAIR ROKEBERG noted that restrictions pertaining to the title of SSHB 120 would not allow for either expansions or deletions to the list of entities that have authorization to request criminal history checks; SSHB 120 merely allows for the adoption of the NCPPC.

REPRESENTATIVE COGHILL asked for further explanation regarding language on page 2, lines 19-27, which alters AS 12.62.160(b)(8) and (9), specifically that which relates to, "**is nonconviction information or correctional treatment information**".

Number 1109

DIANE SCHENKER, Criminal Justice Planner, Anchorage Office, Division of Administrative Services, Department of Public Safety (DPS), testified via teleconference. She explained that this change in language will prevent nonconviction information - when a person is arrested but not convicted - and correctional treatment information - which, aside from logistical facility information, may include medical and/or psychiatric treatment - from being included in the criminal history report that is released to any person. She added, however, that there are clauses in the current law that allow specialized authority for different kinds of reports.

CHAIR ROKEBERG asked why language is being removed regarding compromising the privacy of a minor or vulnerable adult.

MS SCHENKER offered that because the statute explicitly restricts the release of any information other than what is specifically listed, there is no likelihood that any information

regarding victims would be released; thus the language regarding minors and vulnerable adults is superfluous.

REPRESENTATIVE BERKOWITZ asked whether the information [being released] would include a person's social security number, address, and/or date of birth (DOB).

MS. SCHENKER replied that this information could be included in a standard criminal history report [because] there is a category called identification information, and the DOB is used along with the name to identify a person. She added that aliases as well [could be released].

MR. BISCHOFF, in response to questions, said that the NCPPC is a national compact, and it took three states' ratifying the compact to make it effective.

MS. SCHENKER added that as of this year, nine states have adopted the NCPPC.

MR. BISCHOFF, in response to questions regarding the current procedure for sharing information, explained that [the DPS] processes any requests for information by doing a state-level check and then searching the FBI's files, which have a high percentage of the nation's criminal records but not all of them. He added that the search of the FBI's files is done via a dedicated law enforcement network, which is sponsored by the FBI.

Number 1386

REPRESENTATIVE COGHILL asked for further explanation regarding language on page 2, line 29, which, to his understanding, is "lowering the bar" for information relating to a serious offense.

MS. SCHENKER explained that under the current law, the criminal history reports that can be given to a person in order to screen people who are going to be taking care of children or vulnerable adults are limited to serious offenses, which are defined in statute. In contrast, SSHB 120 says that the report will be able to include all convictions. She said that this change is prompted by the fact that in the process of trying to define which statutory violations are considered serious, a critical violation may be missed. She pointed out that another advantage to this change is that the list defining which information could be released would not have to be changed every time the criminal

statutes are amended. Also, this change ensures that if the offense is relevant to the situation surrounding the request for the information, then the person reviewing the report can make that determination. She confirmed, in response to questions, that SSHB 120 authorizes [the DPS] to include records containing dispositions of "not guilty by reason of insanity."

CHAIR ROKEBERG asked whether "interested person" is defined in statute.

MR. BISCHOFF said yes.

MS. SCHENKER added that the definition is located elsewhere in AS 12.62, and means someone who is screening an applicant for a paid or unpaid position where the applicant would have supervisory or disciplinary power over a minor or a dependant adult; she noted that a dependant adult is also defined in statute. She confirmed that not just anybody can claim to be an "interested party" for the purpose of obtaining the criminal history records of another person.

CHAIR ROKEBERG asked whether Section 2, the provision that stipulates the details of the NCPPC, can be altered.

MR. BISCHOFF replied that Section 2 has to remain intact and cannot be altered in any way except via congressional action.

Number 1682

REPRESENTATIVE COGHILL noted that the references to attorney general on page 9, lines 13 and 20, relate to a federal-level attorney general, who will not have the ability to overturn or rewrite Alaska statute.

MR. BISCHOFF added that nothing in Section 2 will impact anything the legislature does; the language referred to by Representative Coghill merely indicates that the U.S. Attorney General has a standard with which statutory language must comport before allowing access to the national III system.

REPRESENTATIVE BERKOWITZ pointed out that this language constitutes a classic supremacy clause, which mandates that if the federal government has passed a particular law, states must abide by it.

REPRESENTATIVE COGHILL noted that there is a provision on page 15, line 16, that details the right of appeal.

CHAIR ROKEBERG noted that the sectional analysis makes reference to the Alaska Sex Offender Registration Act in connection with the release of conviction information after unconditional discharge. He asked what an unconditional discharge is, what the timeframe is, and how that relates to the compact itself.

MR. BISCHOFF explained that previously, the thought was that at some point, the criminal justice system should know when someone has satisfied his/her sentence all the way through probation release, and that the person would then have no other duty to the criminal justice system. However, it is simply not possible to calculate anyone's unconditional discharge date; therefore, when an interested person requests information, [the DPS] will "give them everything." For this reason, [the language on page 2, lines 19-27] removes any mention of restricting the release of information tied to an unconditional discharge date. He also explained that the sex offender registry, by itself, is not considered part of the criminal history record database from which [the DPS] releases information.

Number 2013

REPRESENTATIVE MEYER moved to report SSHB 120 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SSHB 120 was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 1:41 p.m. to 1:42 p.m.

HB 67 - MOTOR VEHICLE REGISTRATION/INSURANCE

Number 2046

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) and proposed committee substitute (CS) for HB 67, version 22-LS0299\J, Ford, 4/4/01, which was pending adoption as a work draft at the adjournment of the meeting on 4/18/01.]

CHAIR ROKEBERG asked whether the committee still had to adopt Version J as a work draft.

Number 2063

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, stated her recollection that the committee had adopted Version J at the previous meeting. There being no objection to this statement, Version J was before the committee.

MS. SEITZ went on to explain, with regard to the question about taxicab insurance availability, that according to local Juneau insurance providers, the rates mandated in Version J are manageable and the coverage is available. She added that according to the Division of Insurance, there are over 19,000 "direct premiums written" for commercial auto "no-fault and liability," which is the classification that most taxicabs would fall under. She also explained that the new rates listed in Version J address the concerns of a Fairbanks taxicab operator who wrote a letter of complaint regarding the higher rates listed in a previous version of HB 67.

MS. SEITZ noted that included in the members' packets is a chart detailing the specific local ordinance requirements for taxicab insurance. She added that she had received word from Dillingham that its local government had tried to create an ordinance regarding taxicabs but had not succeeded. She then concurred that there is no state requirement that taxicabs have insurance coverage other than personal liability insurance.

REPRESENTATIVE BERKOWITZ asked, "How much will this cost? In other words, how much will the insurance companies benefit from imposing these requirements statewide?"

MS SEITZ said she did not know.

CHAIR ROKEBERG, speaking as the sponsor, remarked that "it should be zero." He then asked Ms. Seitz whether Version J would "raise any of the existing limits anywhere."

MS. SEITZ said not in the local areas, except in Bethel where they are hearing a new ordinance that would raise their limits anyway.

REPRESENTATIVE BERKOWITZ noted that according to the chart, Barrow only had a "$100,000 for people who die, and $300,000 for injuries."

CHAIR ROKEBERG opined that these amounts are consistent with Version J.

Number 2240

MS. SEITZ clarified that in Version J, the limits for the coverage are set at $100,000 for the bodily injury or death of one person in one accident (in CSHB 67(L&C) it was set at $300,000); at $300,000 for the bodily injury or death of two or more persons in one accident (in CSHB 67(L&C) it was set at $500,000); and at $50,000 for injury to or destruction of property (in CSHB 67(L&C) it was set at $100,000).

REPRESENTATIVE BERKOWITZ asked whether there are any communities, via local ordinance, that are trying to impose limits different from those proposed on a statewide basis in Version J.

CHAIR ROKEBERG offered that there are only local ordinances that set the limits higher; none are trying to set the limits lower.

MS. SEITZ clarified that some communities such as Kotzebue [and Fairbanks and Bethel] have set the limit for injury to or destruction of property at $25,000.

CHAIR ROKEBERG noted that the Municipality of Anchorage's ordinances "don't follow the state format" with regard to limits.

REPRESENTATIVE BERKOWITZ stated his concern that if most of the communities are already doing this, then, in essence, [the bill] is supplanting local control for state control, and is adding another layer of state bureaucracy.

CHAIR ROKEBERG replied no, Version J is not creating another bureaucracy.

REPRESENTATIVE BERKOWITZ, in response, pointed out that somebody at the state level has to make sure that "these folks" are complying.

MS. SEITZ explained that the Division of Motor Vehicles (DMV) has submitted a zero fiscal note based on the assumption that it would be just like a person's automobile insurance. "We have a state law that requires us to carry automobile insurance but there's no real check to it, except when you sign on your registration - you sign that you're carrying your automobile insurance," she added. She also pointed out a person who has an accident has to show proof of insurance when filling out the accident report.

REPRESENTATIVE BERKOWITZ asked what will happen if there is a failure to comply with Version J. He opined that it will require some form of state enforcement as opposed to local enforcement, and that there is going to be a cost to the state.

CHAIR ROKEBERG commented that he does not believe Version J warrants any kind of a fiscal note or "that type" of enforcement. He also noted that his concern is that there would be [taxicab] firms that don't have adequate insurance.

REPRESENTATIVE JAMES asked whether there are any "taxicabs out there that just call themselves a taxicab and they're not licensed in any particular community."

REPRESENTATIVE BERKOWITZ responded by saying, "Gypsy cabs."

CHAIR ROKEBERG added that he assumes that until HB 67 becomes law, these types of taxicabs don't have any rules; they are operating "against municipal ordinances." He also added that he thinks HB 67 is merely setting a floor on the insurance level, not supplanting local control.

REPRESENTATIVE MEYER noted that the taxicab industry is heavily regulated in Anchorage through the "transportation director," and all taxicabs must get permits; hence there are no gypsy cabs in Anchorage. He then asked for an explanation of the changes between CSHB 67(L&C) and Version J.

TAPE 01-66, SIDE B
Number 2481

MS. SEITZ explained that the only difference is that Version J contains lower limits for coverage.

Number 2479

REPRESENTATIVE MEYER moved to report CSHB 67, version 22-LS0299\J, Ford, 4/4/01, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 67(JUD) was reported from the House Judiciary Standing Committee.

HB 196 - RIGHT OF ACTION FOR LEGAL SEPARATION

[Discussion of HB 196 also pertains to SB 126, the companion bill.]

Number 2456

CHAIR ROKEBERG announced that the next order of business would be 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."

Number 2433

REPRESENTATIVE FRED DYSON, Alaska State Legislature, sponsor, remarked that the proposed committee substitute for HB 196 is a companion bill to SB 126.

Number 2389

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute (CS) for HB 196, version 22-LS0718\C, Lauterbach, 4/4/01, as a work draft. There being no objection, Version C was before the committee.

REPRESENTATIVE DYSON noted that about 17 other states have statutory provisions for legal separation, which is an intermediate step for couples that are having difficulties in their marriage but either don't want to get a divorce or "don't believe in divorce." Legal separation allows couples to separate their financial affairs and take care of child custody issues and property settlements, while working on reconciliation issues or other personal issues individually. He opined that everyone knows someone who "has been in a messy situation, and ... one partner or the other is acting in quite an irresponsible way and getting the relatively innocent party in lots of financial problems - running up debts, squandering the family estate and resources, and/or incurring some significant liabilities." Version C allows people to separate their affairs before a judge, and gives at least a degree of protection to both parties while "they do whatever else they're going to do with the relationship."

Number 2309

KARA MORIARTY, Staff to Senator Gary Wilken, Alaska State Legislature, explained that the concept of a legal separation came about because Senator Wilken [the sponsor of SB 126] had a constituent who was faced with an uncomfortable marriage situation and who wanted to secure the family's assets and child custody provisions without going through a divorce. She added

that Senator Wilken envisions that this legislation will provide a "time-out period or a cooling-off period" during which couples can take care of their finances, their child custody issues, and all of the other issues that are dealt with in a divorce. She noted that Senator Wilken has been working to get the legal separation process to statutorily mirror the divorce process, while still allowing the couple to retain the legal status of "married," which may be desired by the parties for financial, social, or religious reasons.

REPRESENTATIVE DYSON recounted that he'd watched his parents go through a "huge mess" that this legislation would have helped. He also mentioned that his wife is a marriage-and-family counselor who has mentioned to him that because many religious traditions discourage divorce, it would be good if there were a legal way for couples to separate their affairs.

REPRESENTATIVE JAMES noted that according to her experience, joined finances are sometimes what keeps people together if a legal separation is not available. Many times, when people liquidate, they have nothing left, but if the assets can be kept whole, there is a real financial advantage, even if the couple no longer lives together.

REPRESENTATIVE DYSON remarked that some Alaskan courts have been "doing this;" the judges have kind of worked "through it." He added that Version C simply puts the procedure in statute and clarifies some associated issues.

MS. MORIARTY explained that on December 1, 2000, the Alaska Supreme Court issued an opinion on legal separation in the case of Glasen v. Glasen. She said that this case involved a couple who had gotten a legal separation in 1991, had reconciled, and then had gotten a divorce in 1997. The husband took issue with the fact that the provisions of the legal separation were different from the provisions of the divorce; he appealed the decision all the way to the supreme court, which determined that although legal separations are not defined in statute, there is reference to legal separation in current divorce statutes. Thus the Alaska Supreme Court ruled that courts may grant legal separations, but it also ruled that future courts did not have to abide by the provisions of legal separations or recognize the existence of legal separations. She opined that this ruling justifies the creation of legislation defining legal separation in statute.

REPRESENTATIVE BERKOWITZ asked whether Version C was modeled on another state's statute.

MS. MORIARTY replied that the bill drafter, as much as possible, simply mirrored Alaska's divorce statute, and had incorporated some language similar to statutes from a couple of other states.

Number 2050

REPRESENTATIVE BERKOWITZ noted that family law issues usually [are distilled] down to property rights. He said he was trying to imagine a circumstance in which someone gets, for example, a legal separation and is accruing ongoing benefits. Normally, those ongoing benefits would be shared as part of a property settlement. The individual also could take up with somebody else at the same time. How, he asked, does the legal separation factor all that in?

REPRESENTATIVE DYSON, in response, said he assumes provision can be made for that in the case put before the judge by saying, "If there's alienation of affection because of X, Y, and Z, then this hammer falls." He agreed that most of this has to do with property, and said it particularly has to do with incurring debts. He added that everyone is familiar with the notices in the paper that say, for example, "I'm not going to be responsible for any debts except my own." Without the option of legal separation, in a common-property-law state such as Alaska, "you're on the hook," and most people know, he added, of somebody that's married to a "jerk".

REPRESENTATIVE BERKOWITZ said he is thinking in terms of pensions, for example; during the course of a separation - and forgetting about a third party - would the [recipient] continue to accrue pension benefits, he asked, or would that be something "hammered out" at the separation hearing?

REPRESENTATIVE DYSON opined that such details would be addressed in the separation agreement, for example, if they held common stock.

REPRESENTATIVE BERKOWITZ surmised, then, "It's like a divorce in everything but name only."

REPRESENTATIVE DYSON agreed.

CHAIR ROKEBERG pointed out that many benefit packages are dependent on marital status, such as health insurance. He then

asked how property divisions would be handled in situations of legal separation with a subsequent divorce.

Number 1855

MS. MORIARTY referred to page 2, lines 14-19, and explained that because the divisions of property and debt are usually the most volatile issues, this language stipulates that the court has to decide if the division of property and debt is an interim or final order. For example, if the court decides that the division is an interim order, the court can also stipulate that five years later it will reexamine the situation again. She remarked that this language provides flexibility to the courts.

REPRESENTATIVE DYSON, in response to questions, noted that an interim order is interim until it's changed; somebody (the court) has to referee the situation. [A legal separation] is supposed to be fair; both sides have access to counsel, and the judge gets to hear both sides of the case. With regard to the issues of cost to the state and ongoing legal arguments surrounding the division, he said that unless the case goes on to divorce, "it's only going to happen once," and that it will probable take less time than a divorce because it's generally a mutual agreement.

CHAIR ROKEBERG noted that Representative Dyson's testimony that it's only going to happen once contradicts Ms. Moriarty's testimony that the court has the flexibility to reexamine the situation a few years later. He said that while he appreciated the need for a distinction between an interim order and a final order, if the division of property and debts in a legal separation is an interim order, how many times would parties get to keep coming back to court?

REPRESENTATIVE JAMES, on the issue of whether there is a benefit to getting a legal separation, said that she thinks there is one, particularly if, for example, people have bought some property and don't have much equity in it, but have the use of it as long as the payments are made; if it were to be liquidated, there would be nothing, but if they can keep it for a while, in time there would be something to divide. She acknowledged that in this example, it is possible that the couple could keep the property even after a divorce, but not very easily. Generally the property has to go to one party or the other, and then there is nothing left for the other party. She noted that the same resolution could occur when a couple owns a business together; in a legal separation, if one party

can't buy the other one out due to a lack of funds, the business can remain jointly owned. Then, even if only one person stays to operate it, both parties retain an interest in the business. By contrast, in a divorce only one party can keep an interest.

Number 1670

REPRESENTATIVE DYSON recounted that he has seen situations in which one spouse has problems with drugs and/or alcohol, and the other spouse does not want a divorce but does want to secure the family's assets while still maintaining the hope that the spouse with the behavior problem will straighten out.

CHAIR ROKEBERG brought up the issue of "forum shopping" - whereby if a party is unhappy with a final decree of separation, he/she attempts to re-litigate property issues in another state. He asked whether Representative Dyson thinks this needs to be addressed.

REPRESENTATIVE DYSON replied that [Legislative Legal Services] informed him that this issue is "covered."

MS. MORIARTY, in response to the question of whether someone who is legally separated can remarry, explained that the Division of Vital Statistics has confirmed that a person who is legally separated is not allowed to remarry until he/she goes back to the court and finalizes divorce proceedings. She noted that this restriction has prompted the inclusion of Section 5, which mandates that the court shall keep track of how many legal separations are done; after three years, the state registrar may make recommendations regarding the organization of these statistics. She then went on to explain that the Division of Vital Statistics has looked at other states for comparison purposes and relayed that New Hampshire has approximately 6,000 divorces a year (Alaska has 3,500-4,000 divorces) and had 12 legal separations last year - less than 1 percent of what may have been a divorce was instead a legal separation. Hence, she opined, statutory legal separation will probably only benefit a small percentage of Alaskans. Therefore, the costs to the courts should be minimal; she added that the Alaska Court System did not raise cost as a concern.

Number 1461

REPRESENTATIVE JAMES said that according to her understanding of legal separation, it would be an option for two people who are fairly compatible but do not want to live together or get

remarried. She offered that if the situation later came to a divorce, it would not be as expensive, since by that time the controversial issues of property rights would have already been addressed.

CHAIR ROKEBERG called an at-ease from 2:18 p.m. to 2:19 p.m.

CHAIR ROKEBERG, after reviewing the Alaska Supreme Court opinion regarding the Glasen v. Glasen case, remarked, "The courts are now making law again, here - another example of it."

REPRESENTATIVE DYSON said that he agreed, and that he actively supports members of the committee who take exception to the court's doing that.

CHAIR ROKEBERG, returning to the issue of legal separation, asked whether, at one time, it was more commonly available.

REPRESENTATIVE DYSON said he does not believe it has ever been enforced in Alaska; he added that it is his understanding that "more states are moving this direction."

MS. MORIARTY noted that she did not have any nationwide historical data regarding the availability of legal separation to offer the committee. She added that according to [Legislative Legal Services] people have tried to institute legal separation in the past, but there just wasn't enough momentum to "put it on the books."

Number 1197

REPRESENTATIVE JAMES made a motion to adopt Amendment 1, which read:

Page 2, line 9:
Delete "shall"
Insert "may"

Number 1190

CHAIR ROKEBERG objected for the purpose of discussion.

MS. MORIARTY explained that there was concern that the current language in Version C would prohibit the courts from issuing a divorce instead of a legal separation; by changing "shall" to "may" the courts retain flexibility.

CHAIR ROKEBERG surmised that parties have to be in agreement if they are going to enter into a legal separation agreement.

REPRESENTATIVE DYSON remarked that it may not always be the case that the parties agree to a legal separation; one spouse may go into court seeking a legal separation, and the other spouse would then have to make the case [against going] forward with the separation. He opined that the court could order a legal separation.

CHAIR ROKEBERG sought confirmation that a legal separation could only be entered into on a voluntary basis.

MS. MORIARTY, concurring with Representative Dyson, pointed out that Section 1 of Version C says that a husband or a wife may separately or jointly file a complaint for a legal separation. She agreed it could be, just as Representative Dyson suggested, a court-ordered legal separation.

CHAIR ROKEBERG surmised, then, that he could file for legal separation instead of divorce simply so that he could maintain access to health benefits from his wife's health insurance plan, regardless of whether his wife agreed.

MS MORIARTY noted that it would then be up to his wife to argue before the courts against the legal separation [or file for divorce].

CHAIR ROKEBERG surmised that legal separation could be a powerful tool if a spouse wished to use it to manage joint assets to his/her own benefit. He mentioned that he did have some concerns on this point but did not wish to delay passage of the legislation.

Number 1018

CHAIR ROKEBERG withdrew his objection to Amendment 1, and asked whether there were any further objections. There being none, Amendment 1 was adopted.

REPRESENTATIVE COGHILL opined that anybody who is going to file for a legal separation still has the intention of protecting the relationship, and is merely seeking protection of the assets, particularly when there are children involved; legal separation could "buy time" to remedy family issues.

CHAIR ROKEBERG asked whether there is "a quick way to pull the plug on this thing if there's a reconciliation."

REPRESENTATIVE DYSON posited that the petitioner could get a court date to ask the judge to vacate the agreement.

MS. MORIARTY concurred that the petitioner would have to go back to court to do that; there are not, however, any specific provisions for vacating the legal-separation agreement in the legislation. She added that the drafter had assured her that this issue did not need to be specified in legislation; the petitioners simply go back to court for a new decision. On the issue of why the Alaska Court System submitted a zero fiscal note, she relayed that Mr. Wooliver said that simply by creating a three-digit code, it will be easy, with the current database, to track the legal separations for reporting purposes.

REPRESENTATIVE MEYER remarked that there probably wouldn't be that many legal separations filed.

Number 0776

REPRESENTATIVE MEYER moved to report HB 196, version 22-LS0718\C, Lauterbach, 4/4/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 196(JUD) was reported from the House Judiciary Standing Committee.

HB 114 - INHALANT ABUSE

Number 0752

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 114, "An Act relating to abuse of inhalants." [Before the committee was CSHB 114(HES).]

CHAIR ROKEBERG called an at-ease from 2:31 p.m. to 2:33 p.m.

Number 0696

REPRESENTATIVE MARY KAPSNER, Alaska State Legislature, sponsor, explained that HB 114 targets the problem of inhalant abuse, which has been neglected in Alaska for many years; it will provide public safety officials, medical personnel, and the courts leverage to place individuals who abuse inhalants into rehabilitation. She added that HB 114 classifies inhalant abuse as a class B misdemeanor that is punishable by a fine of $300,

which can be waived if the individual agrees to go into treatment.

REPRESENTATIVE KAPSNER noted that a treatment center in Bethel is under construction and is expected to open on August 31, 2001. She said that currently there are only two inhalant abuse treatment centers in the nation: one is in North Dakota, and the other is in Texas. The lack of treatment centers for inhalant abuse has been a source of frustration across the nation, she explained. People who suffer from inhalant abuse need to go to treatment, but most treatment facilities do not have accommodations specific to the needs of inhalant abusers. She stated that most people who suffer abuse need at least 30 days to "detox" because inhalants penetrate all of the major organs. She mentioned that 24 other states have passed laws addressing inhalant abuse, which is a very big problem in Alaska but not much bigger than elsewhere in the nation.

REPRESENTATIVE KAPSNER then announced that the original version of HB 114 classified inhalant abuse as a class B misdemeanor. She amended her explanation of the legislation to say that CSHB 114(HES) classifies the behavior as a violation. She noted that this change ensured that inhalant abusers - often very young children - wouldn't be criminalized or put through the legal system. With regard to national statistics, she reported that a survey of eighth-graders indicated that 19.6 percent of all eighth-graders have tried inhalants; she added that an Alaskan survey done in 1988 indicated that 25 percent of seventh- through twelfth-graders have tried inhalants. She noted that inhalant abuse is an international problem, and she mentioned a case wherein some Canadian kids were taken away from their families for "huffing" gas. She explained that inhalant abuse is sometimes referred to as "sniffing" or "huffing."

Number 0487

REPRESENTATIVE MEYER made a motion to adopt the proposed committee substitute (CS) for HB 114, version 22-LS0130\J, Luckhaupt, 4/16/01, as a work draft. There being no objection, Version J was before the committee.

REPRESENTATIVE OGAN asked whether Version J included nitrous oxide as an inhalant. He mentioned that he has heard that at "rave concerts," balloons full of nitrous oxide are sold, and that nitrous oxide causes stupefaction.

REPRESENTATIVE KAPSNER affirmed that Version J would include nitrous oxide, sometimes referred to as "whippets." She pointed out that language [in Section 1] reads in part:

> (a) Under circumstances not otherwise proscribed under AS 11.71, a person commits the offense of abuse of inhalants if the person smells or inhales any inhalant, other than an alcoholic beverage, with the intent of causing intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system.

REPRESENTATIVE OGAN said he wanted it on record that Version J includes nitrous oxide.

Number 0346

JIM HENKELMAN, Statewide Outreach Coordinator, Inhalant Intervention Project, Yukon-Kuskokwim Health Corporation (YKHC), said that the YKHC is in support of HB 114, and has federal funding for construction and initial treatment process for the inhalant abuse treatment center. He added, however, that [the YKHC] feels there is a real need to both bring this problem to the attention of the public and allow public safety and health officials some recourse for addressing the problem of inhalant abuse.

MR. HENKELMAN remarked that often [the YKHC] receives comments from people who say that when they have contacted law enforcement for help with an inhalant abuse problem, they are told that nothing can be done because it is not illegal to inhale substances. He predicted that passage of HB 114 will allow law enforcement to intervene. He added that [the YKHC's] biggest concern is for the youth; inhalants are substances that are abused by very young children - as young as age four. He mentioned that he has heard of instances when babies have been given inhalant-type substances to "settle them down."

MR. HENKELMAN described his surprise at learning the extent to which inhalants are a "gateway" substance to other substances. A survey done a couple of years ago at the Ernie Turner Center indicated that 70 percent of the residents in treatment had started their substance abuse by using inhalants, and 50 percent of those people said that they would go back to using inhalants if alcohol wasn't available. After one looks at the unbelievably serious damage that can be caused even the first time somebody "inhales," it is obvious that early intervention

has a better chance of preventing long-term substance abuse, especially among young children.

MR. HENKELMAN, with regard to the residential inhalant abuse treatment center, explained that the grand opening is scheduled for August 31, 2001. [The YKHC] expects to take the first group of young people into the residential treatment program at the beginning of September. He explained that [the YKHC] has, to date, been involved in statewide outreach work, including making contact with communities, assisting them as they "build their capacity to deal with the inhalant problem within their community," and training communities in the referral process if residential treatment is indicated.

REPRESENTATIVE JAMES asked, "How do you treat something like this?"

TAPE 01-67, SIDE A
Number 0001

MR. HENKELMAN, after noting that it is difficult because inhalants are very different, went on to explain that it takes four to six weeks just to get the toxins out of the fatty tissues. And, unlike with a lot of other substances, almost always, as soon as somebody starts using inhalants, there are some deficits that occur: brain damage takes place, and one of the first things to deteriorate is impulse control. So a lot of times, "you're" dealing with young people who have begun to lose their good judgment; thus a lot of behavior problems arise, which is evident in school. He added that attention-deficit issues become evident as well. Key to the treatment of inhalant abuse is a really good assessment, he explained, in order to determine exactly what the deficits are and how extensive the damage is.

REPRESENTATIVE KAPSNER added that the Division of Juvenile Justice has indicated that sometimes there is confusion as to whether some of their clients have FAS (fetal alcohol syndrome) or are inhalant abuse sufferers because these two problems have a lot of the same symptoms. She explained, however, that one of the differences is that FAS children have almost no early childhood memories, whereas inhalant abusers have childhood memories up until the point when they began abusing inhalants. Inhalants affect every major organ, she reiterated, and there are repercussions for the offspring of inhalant abusers as well because reproductive organs are affected too.

REPRESENTATIVE JAMES added that "this isn't something that just happened lately, either; this has been going on for a long time." She recalled a foster child that she took care of 38 years ago who was 15 at the time. The child's record indicated that she had been getting "Ds" and maybe an occasional "C" in school; the records also indicated that this was all that the child was capable of attaining, even though she was working very hard in school. Representative James found out by talking to this child that when she was a little girl, she and others would sniff gasoline until they passed out. This was a long time ago, Representative James remarked, and now "we're" hearing a lot about it. She surmised that similar behavior had been going on long before that as well.

REPRESENTATIVE KAPSNER pointed out that inhaling substances is extremely addictive.

REPRESENTATIVE JAMES noted that another dangerous behavior that young children engage in is to go around in circles until they get dizzy and fall down. She said that she remembered an incident when she was growing up of a neighbor child who had done this and died as a result of "water on the brain." She added that her mother put a stop to her doing this because it is so very dangerous. She warned, however, that even though it is such a dangerous behavior, kids love to do it.

REPRESENTATIVE MEYER commented that he has heard speculation that some people substitute inhalants for alcohol when the latter is not available.

Number 0397

MR. HENKELMAN confirmed this as being accurate. He added that inhalant abuse can in part be attributed to limited access of alcohol in some areas of Alaska. Inhalants are readily available: they can be found in the refrigerator, under the kitchen counter, and in the gas tank. These substances have a lot of the same effects [as alcohol], but the physical damage to the body is so much more severe. He noted that one problem officials face is that the actual cause of some of the physical problems experienced by inhalant abusers is not very well documented. For example, if somebody is sniffing glue, two or three days later the lungs begin to fill up with fluid and he/she starts having serious respiratory problems. At the hospital, the respiratory problems are treated, but no one investigates to see if the cause is inhalant abuse.

REPRESENTATIVE MEYER asked what prompts people to use inhalants.

MR. HENKELMAN explained that many of the reasons are the same ones that prompt people to try alcohol and drugs; particularly for young people, he opined, it is a method of escape, it gives a feeling of power, and it clearly is mind-altering. He said that according to people he has talked with, using inhalants can cause visual and auditory hallucinations, it can give a person the feeling of being in whole different world, and it can impart a feeling of euphoria. He added that when young children begin abusing inhalants, they get addicted when they are young, and they don't have any understanding that they are inflicting incredible damage on themselves.

REPRESENTATIVE MEYER asked whether inhalant addiction is treated the same way alcohol or drug addiction is treated.

MR. HENKELMAN explained that some of the same principles can be used, but it generally takes longer to treat inhalant addiction. In addition, a more comprehensive assessment has to be done in order to identify the deficits; then the addicted person will need help building skills to compensate for those deficits, and this type of help is not a part of "regular" substance abuse treatment, he noted.

REPRESENTATIVE JAMES asked how the treatment process works for a four-year-old who is sniffing things.

Number 0603

MR. HENKELMAN, with regard to a child that young, said that probably the best method of treatment is to limit access. One type of problem encountered by [the YKHC] is calls from people asking for someone to come "fix my child because they're sniffing"; the parents don't realize that they can control the situation by limiting the child's access to these substances, and by becoming more aware of what's going on with the child. He added that with a child that age, it is really the parents' responsibility to deal with the situation.

MR. HENKELMAN said [the YKHC] would like to see communities develop the ability to support the parents. Part of the problem is that all too often, it is the dynamics in the home that contribute to a child's getting into an inhalant abuse situation to start with. Such support would include helping the parents cope with the behavior problems associated with a child who is suffering from inhalant abuse or other substance abuse; such

support will require a combined effort on the part of the families, the mental health programs, the Division of Family and Youth Service (DFYS), community wellness counselors, and substance abuse counselors.

REPRESENTATIVE COGHILL asked how such children will be detained if the need arises, and if people other than law enforcement would have the authority to remove a child from his/her home.

REPRESENTATIVE KAPSNER offered that on page 2, line 11, there is language that relates to that.

REPRESENTATIVE COGHILL said there appears to be a contradiction between language on page 4, line 30, which says "the person remains incapacitated by alcohol for more than 48 hours after admission as a patient", and page 5, line 16, which says, "12 hours".

CHAIR ROKEBERG noted that these two sections of HB 114 merely add the word "inhalants" to the existing statute.

MR. HENKELMAN offered that the language on page 5 is referring to a detention facility [whereas language on page 6 is referring to a treatment or health facility].

Number 0920

ROBERT BUTTCANE, Legislative and Administrative Liaison, Division of Juvenile Justice, Department of Health and Social Services (DHSS), explained that "we're" talking about two phases of an involuntary and emergency commitment provision. Section 9 on page 5 relates to an emergency custody period of 12 hours. Contrastingly, Section 6 on page 4 relates to people who have presented themselves to treatment programs for treatment and detoxification, and may, upon examination and approval, stay in that status for up to 48 hours. Therefore, these are two different actions and provisions that are not inconsistent, but are, instead, two parts of a continuum.

CHAIR ROKEBERG remarked that this is a crime that is being considered a violation, and that many of the provisions in Version J relate primarily to minors. He asked how the issue of inhalant abuse by adults is being addressed.

MR. BUTTCANE concurred that Section 1 is creating a new crime that is a violation, as opposed to a "jailable" offense. Therefore, any person - adult or juvenile - would be subject to

sanctions if he/she were to abuse these substances. Section 3 ensures that a juvenile offender would be treated the same as an adult, but, he added, language on page 2 [lines 3-5] mandates what the court will do once a person has been convicted of this violation, which shall be to place the offender on probation and require that he/she successfully complete an inhalant abuse treatment program.

CHAIR ROKEBERG noted that inhalant abuse treatment programs are [not] readily available in Alaska.

MR. BUTTCANE mentioned that [the DHSS] has submitted fiscal notes "based on what we might project to provide treatment."

REPRESENTATIVE JAMES, with regard to conviction and sentencing, asked how four-year-olds would be treated.

MR. BUTTCANE confirmed that they would be treated the same as adults, but added that there are some practical issues that would be taken into account. If a four-year-old is found to be abusing substances, while "we may initially grab hold" of the child and start intervention, the focus will shift to what's going on within the family and the community; thus other intervention mechanisms will be implemented, he explained. He said that while it is possible that a law enforcement officer could cite a four-year-old, it's doubtful that such a case would actually be prosecuted.

REPRESENTATIVE KAPSNER noted that Version J provides that a law enforcement officer "may" take the child, rather than "shall", as was provided for in an earlier version.

Number 1206

MR. BUTTCANE noted that Section 4 on page 3 of Version J speaks to services for minors. What "we're" trying to do, he explained, is give some authority to local law enforcement agencies to make interventions, which they could do by taking a juvenile into protective custody and then returning him/her to the parent. This, then, is that fine line between being able to effectively intervene without necessarily effecting a criminal arrest, which would be inappropriate in the case of a four-year-old. "This" is looked at, really, as a medical issue more than as a criminal issue, but, he noted, there are some criminal processes that can be put into play if necessary. After intervention by local law enforcement, a process of

assessment/referral/treatment/detoxification can be triggered, he reported.

CHAIR ROKEBERG referred to language in Section 4 that said a peace officer may take into protective custody a minor who is not otherwise subject to arrest. He asked what sort of scenario is affected by this language.

MR. BUTTCANE used the example of a minor who steals a snow machine and then sniffs the gasoline until he/she becomes intoxicated by the fumes; when a law enforcement official comes upon this situation, the minor will be subject to arrest for stealing the snow machine instead of simply being placed into protective custody for being under the influence of an inhalant. Mr. Buttcane informed the committee that [Section 4] has been reviewed both by the Department of Law and Legislative Legal Services, and therefore [the DHSS] believes [Section 4] is consistent with other provisions of law.

REPRESENTATIVE KAPSNER mentioned that HB 114 has a further referral to the House Finance Committee.

Number 1438

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference and said simply that from an enforcement standpoint, Section 4 is quite easily read and understood. It pretty much guarantees that if law enforcement personnel have a serious reason to arrest somebody, they could do so rather than worrying solely about inhalant use.

CHAIR ROKEBERG called an at-ease from 3:06 p.m. to 3:07 p.m.

CHAIR ROKEBERG noted that page 2, line 5, includes language that requires the defendant to successfully complete an inhalant abuse treatment program, but he pointed out that such programs are not available everywhere in Alaska.

REPRESENTATIVE KAPSNER explained that the facility that is being built in Bethel will be a statewide facility.

CHAIR ROKEBERG inquired, then, whether everyone subject to this legislation would be flown to Bethel.

MR. HENKELMAN replied, "That's correct.

CHAIR ROKEBERG, after wishing the sponsor good luck on that point when HB 114 goes to the House Finance Committee, suggested instead that the court could be granted flexibility with regard to requiring the defendant to successfully complete an inhalant abuse treatment program; currently the language in Version J mandates it, he added.

Number 1502

MR. BUTTCANE opined:

> If we did that, the department's fiscal note probably would be zeroed out; if this were a discretionary thing, what it would do, essentially, would be limit treatment to the facility being built in Bethel, which is funded through federal programs. So if we did it as a discretionary thing, the department would not have to submit this....

CHAIR ROKEBERG posited that it has to be discretionary for the court, and he noted that he is not trying to speak to the treatment issue other than the practical matter of its availability. He said the legislature can't force the judge to mandate a treatment program that doesn't exist unless the person is flown a thousand miles.

REPRESENTATIVE JAMES suggested changing the language [on page 2, line 3,] to "may", instead of "shall".

CHAIR ROKEBERG noted that such a change would give flexibility regarding probation too. He then asked what AS 12.55.085 addresses.

MR. BUTTCANE explained that AS 12.55.085 is part of the sentencing/probation statute.

MR. HENKELMAN, in response to a question from Chair Rokeberg, stated that the facility in Bethel is for youths 10 to 17 years of age.

Number 1578

DON DAPCEVICH, Division of Alcoholism and Drug Abuse (DADA), Department of Health and Social Services (DHSS), in response to the question of how and where adults are going to be treated, explained that the adult treatment is accounted for in the fiscal note for the DHSS, to take care of some possibility to

provide some services outside of the Bethel area on an outpatient basis. He added that both youths and adults would be able to make use of such services.

CHAIR ROKEBERG pointed out that the fiscal note mentions treatment for 30 juveniles and 30 adults.

MR. BUTTCANE remarked that that portion of the fiscal note is merely asking for recognition that these people are in the system now, and are currently being treated, and that the DHSS is not simply creating a new treatment group.

REPRESENTATIVE KOOKESH stated that he is a co-sponsor of HB 114, which he feels is an important bill, and he would really appreciate the committee's favorable consideration in reporting this legislation out of committee.

Number 1714

REPRESENTATIVE JAMES made a motion to adopt Amendment 1, on page 2, line 3, to change "shall" to "may". There being no objection, Amendment 1 was adopted.

Number 1756

REPRESENTATIVE JAMES moved to report CSHB 114, version 22-LS0130\J, Luckhaupt, 4/16/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 114(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1771

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:13 p.m.