

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 13, 2002

1:12 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 375

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED HB 375 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 6(FIN)

"An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park."

- HEARD AND HELD

HOUSE BILL NO. 381

"An Act relating to the crime of failure to stop at the direction of a peace officer; and providing for an effective date."

- MOVED HB 381 OUT OF COMMITTEE

HOUSE BILL NO. 384

"An Act relating to submission of civil litigation information; and amending Rules 41(a) and 58, Alaska Rules of Civil Procedure, Rule 511(c) and (e), Alaska Rules of Appellate Procedure, and Rule 503(d), Alaska Rules of Evidence."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 375

SHORT TITLE:REVISOR'S BILL

SPONSOR(S): RLS BY REQUEST OF LEGISLATIVE COUNCIL

Jrn-Date	Jrn-Page		Action
02/01/02	2121	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2121	(H)	JUD
02/11/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/11/02		(H)	<Bill Postponed>
02/13/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 6

SHORT TITLE:MOBILE HOME PARK EVICTION NOTICE

SPONSOR(S): SENATOR(S) ELLIS

Jrn-Date	Jrn-Page		Action
01/08/01	0013	(S)	PREFILE RELEASED - 12/29/00
01/08/01	0013	(S)	READ THE FIRST TIME - REFERRALS
01/08/01	0013	(S)	L&C, FIN
03/01/01		(S)	L&C AT 1:30 PM BELTZ 211
03/01/01		(S)	Heard & Held
03/01/01		(S)	MINUTE(L&C)
03/08/01		(S)	L&C AT 1:30 PM BELTZ 211
03/08/01		(S)	Moved CS(L&C) Out of Committee
03/08/01		(S)	MINUTE(L&C)
03/09/01	0594	(S)	L&C RPT CS 4DP 1NR SAME TITLE
03/09/01	0595	(S)	DP: PHILLIPS, DAVIS, AUSTERMAN, LEMAN;
03/09/01	0595	(S)	NR: TORGERSON
03/09/01	0595	(S)	FN1: ZERO(LAW)
03/19/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/19/01		(S)	Heard & Held
03/19/01		(S)	MINUTE(FIN)
03/22/01	0768	(S)	FIN RPT CS 4DP 1DNP 2NR SAME TITLE
03/22/01	0768	(S)	DP: DONLEY, HOFFMAN, OLSON, LEMAN;
03/22/01	0768	(S)	NR: KELLY, WILKEN; DNP: GREEN
03/22/01	0768	(S)	FN1: ZERO(LAW)
03/22/01		(S)	FIN AT 9:00 AM SENATE FINANCE

			532
03/22/01		(S)	MINUTE(FIN)
03/28/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/28/01		(S)	MINUTE(RLS)
03/29/01	0858	(S)	RULES TO CALENDAR 3/29/01
03/29/01	0862	(S)	READ THE SECOND TIME
03/29/01	0862	(S)	FIN CS ADOPTED UNAN CONSENT
03/29/01	0862	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/29/01	0862	(S)	READ THE THIRD TIME CSSB 6(FIN)
03/29/01	0863	(S)	PASSED Y12 N7 A1
03/29/01	0867	(S)	TRANSMITTED TO (H)
03/29/01	0867	(S)	VERSION: CSSB 6(FIN)
03/30/01	0782	(H)	READ THE FIRST TIME - REFERRALS
03/30/01	0782	(H)	JUD
03/30/01	0782	(H)	REFERRED TO JUDICIARY
03/30/01	0794	(H)	CROSS SPONSOR(S): GUESS, CROFT
04/02/01	0816	(H)	CROSS SPONSOR(S): MURKOWSKI
02/13/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 381

SHORT TITLE:FAILURE TO STOP FOR PEACE OFFICER
SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/04/02	2144	(H)	READ THE FIRST TIME - REFERRALS
02/04/02	2144	(H)	JUD
02/13/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE JOE GREEN
Alaska State Legislature
Capitol Building, Room 403
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 375 as chair of the
Legislative Council, sponsor.

PAM FINLEY, Revisor of Statutes
Legislative Counsel
Legal and Research Services Division
Legislative Affairs Agency (LAA)

Terry Millar Legislative Office Building, Room 329
Juneau, Alaska 99801

POSITION STATEMENT: Assisted with the presentation of HB 375
and responded to questions.

SENATOR JOHNNY ELLIS
Alaska State Legislature
Capitol Building, Room 9
Juneau, Alaska 99801

POSITION STATEMENT: Sponsor of SB 6.

TYSON FICK, Staff
to Senator Johnny Ellis
Alaska State Legislature
Capitol Building, Room 9
Juneau, Alaska 99801

POSITION STATEMENT: Assisted with the presentation of SB 6.

BEN MARSH, Manager
Alaska Manufactured Housing Association (AMHA)
2550 Denali, Suite 1310
Anchorage, Alaska 99503

POSITION STATEMENT: During discussion of SB 6 provided
comments.

ANGELA LISTON, Catholic Archdiocese of Anchorage
225 Cordova Street
Anchorage, Alaska 99501

POSITION STATEMENT: During discussion of SB 6 provided
comments.

JEWEL JONES, Director
Department of Health and Human Services (DHHS)
Municipality of Anchorage
PO Box 196650
Anchorage, Alaska 99519

POSITION STATEMENT: During discussion of SB 6 provided
comments.

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

POSITION STATEMENT: Presented HB 381 on behalf of the House
Judiciary Standing Committee.

DEL SMITH, Deputy Commissioner
Office of the Commissioner
Department of Public Safety (DPS)
PO Box 111200
Juneau, Alaska 99811-1200

POSITION STATEMENT: Assisted with the presentation of HB 381 and responded to questions.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: During discussion of HB 381, explained a proposed amendment from the DOL and responded to questions.

ACTION NARRATIVE

TAPE 02-17, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Rokeberg, Ogan, Coghill, Meyer, and Berkowitz were present at the call to order. Representative James arrived as the meeting was in progress.

HB 375 - REVISOR'S BILL

Number 0088

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 375, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

Number 0099

REPRESENTATIVE JOE GREEN, Alaska State Legislature, speaking as the chair of the Legislative Council, sponsor of HB 375, mentioned that the committee may wish to address two or three points in the bill, one of which pertains to an amendment made during a House floor session last year.

PAM FINLEY, Revisor of Statutes, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency (LAA), with regard to Section 2, explained that last year there was a "floor amendment" [to HB 210] that affected AS 09.10.060(c). Before the floor amendment, that statute contained a three-year statute of limitations on civil actions for certain sexual abuse claims. The floor amendment removed the statute of limitations on [felony sexual assault and felony sexual abuse of a minor] crimes. However, originally AS 09.10.060(c) also contained reference to [misdemeanor sexual abuse and misdemeanor sexual abuse of a minor] crimes; when it was repealed and reenacted by the floor amendment to HB 210, an unintended consequence was that the reference to those misdemeanor crimes - which also had three-year civil statute of limitations - was removed as well.

MS. FINLEY said:

When the floor amendment came in and referred only to felony [sexual abuse and sexual abuse of a minor] crimes, those misdemeanors fell back, as nearly as I can tell, into the two-year statute of limitations for torts in general. That was not a problem, but there was another statute, which was actually expanded - what used to be the three-year statute of limitations and which no longer works because it's no longer a three-year statute of limitations for all of those cases - and that is the one that is amended in [Section 2, AS 09.10.140(b)].

It says an action based on a claim of sexual abuse under AS 09.55.650 -- and if you go to 650, there are a lot of sexual abuse cases there. Most of them are felonies, a few of them are misdemeanors. The felonies -- that's really no longer relevant because there is no statute of limitations for felonies any more. However -- so that is why I added this: "that is not otherwise allowed under AS 09.10.060(c)", to make it clear that if any of those 650 sexual abuse crimes are felonies and covered by 060(c), this is irrelevant because there's no statute of limitations at all.

Number 0411

REPRESENTATIVE BERKOWITZ asked why that necessitated a change from three years to two years as is proposed by Section 2.

MS. FINLEY said she believed it is because the statute of limitations for those misdemeanors listed in [AS 09.55.650] is now two years due to the floor amendment. Although the floor amendment said that any [felony sexual abuse of a minor or felony sexual assault crimes] has no statute of limitations, the question remains: What is the civil statute of limitations for misdemeanor [sexual abuse of a minor or misdemeanor sexual assault] crimes?

REPRESENTATIVE BERKOWITZ noted that the intent of that floor amendment to HB 210 was to lift the statute of limitations for felony [sexual abuse of a minor or felony sexual assault] crimes, not to change the statute of limitations for misdemeanors. He added that the standing statute of limitations for misdemeanors, prior to the enactment of the floor amendment, was three years. Thus, he opined, there is no reason for it to revert to a two-year statute of limitations.

MS. FINLEY explained that since the floor amendment repealed and reenacted AS 09.10.060(c), there is no longer any reference to those misdemeanor crimes nor a statute of limitations for them.

REPRESENTATIVE BERKOWITZ asked whether the committee was free to amend HB 297.

MS. FINLEY indicated that the committee could do so as long as "we're not making policy decisions.

REPRESENTATIVE BERKOWITZ surmised, then, that the committee could amend Section 2 so that it said three years instead of two.

MS. FINLEY said that would be fine except that the problem is that Section 2 does not set a statute of limitations at three years; instead, it is an exception to the statute of limitations. She said that she would be perfectly happy to remove Section 2 from HB 375 if the legislature would rather address this issue in a comprehensive manner via other legislation. She mentioned that she would prefer the latter because AS 09.10.060(c) no longer defines sexual abuse, which also causes her concern.

CHAIR ROKEBERG mentioned that the House Judiciary Standing Committee already has a full calendar.

REPRESENTATIVE BERKOWITZ said he would be willing to report HB 375 from committee and allow Ms. Finley to fix it.

Number 0647

REPRESENTATIVE OGAN asked whether there might be a constitutional problem with amending HB 375 if [Article II, Section 13] could be interpreted to mean that revisor bills cannot address policy issues.

MS. FINLEY said yes; "I don't like to have anything that sets policy in a revisor's bill for that reason" as well as others. Legislation addressing policy ought to get a different kind of review than revisor's bills get, she added. Ms. Finley reiterated that she would be happy to remove Section 2 if the committee wants to focus on this issue in a more comprehensive way.

CHAIR ROKEBERG asked whether removing Section 2 would reinstate a three-year statute of limitations.

MS. FINLEY said that even if Section 2 were amended to read three years instead of two years, there is not a three-year statute of limitations elsewhere.

CHAIR ROKEBERG surmised that Ms. Finley's recommendation would be to remove Section 2 from HB 375 and use a separate bill to address the issue of a civil statute of limitations on these misdemeanor crimes.

REPRESENTATIVE OGAN noted that there is other sexual assault legislation that might serve as a vehicle for addressing this issue.

MS. FINLEY noted that the revisor's bill is usually passed fairly early in the session so that other bills that amend the same sections encompassed in the revisor's bill will override it.

REPRESENTATIVE GREEN mentioned that if Section 2 were removed and no other legislation were passed to address the issue, there would be no statute of limitations on these misdemeanor crimes.

CHAIR ROKEBERG surmised, then, that it would be better to leave Section 2 as is, and then if other legislation is passed that addresses this issue, it would override Section 2.

Number 0921

MS. FINLEY then referred to Section 6 and said that it corrects what originally might have been a typographical error regarding a reference to the federal food stamp program, which has since expanded beyond 7 U.S.C. 2025. She mentioned that if she were to attempt to fix that reference this year, she would try to include all of the federal statutory references pertaining to the food stamp program. Or, she added, she could simply do it next year in another revisor's bill.

REPRESENTATIVE BERKOWITZ mentioned that alternatively, the committee could simply track HB 375 as it goes through the Senate to ensure that Section 6 is altered appropriately. He noted that another option would be to amend Section 6 of HB 375 during a House floor session.

MS. FINLEY added that another possibility would be to have the House Rules Standing Committee propose a committee substitute (CS).

CHAIR ROKEBERG called an at-ease from 1:27 p.m. to 1:29 p.m.

MS. FINLEY, with regard to the food stamp issue, said that it is really up to the committee; if the committee wants to suggest that Section 6 include references up through 7 U.S.C. 2036, she could do that. Or, if the committee preferred, she said that Section 6 could remain intact until she pinpointed just which references should be included.

CHAIR ROKEBERG mentioned that the committee could make a conceptual amendment. He asked Ms. Finley what her preference would be.

MS. FINLEY said that since it is merely a citation that would be altered, a conceptual amendment ought to be sufficient.

MS. FINLEY then drew the committee's attention to Sections 12 and 13, and noted that these sections pertain to the Alaska Commission on Aging (ACoA). She explained that she had received a note from [the ACoA] asking for more time in which to study the ramifications of Sections 12 and 13. Ms. Finley said that should [the ACoA] oppose these sections, they could be removed via a House Rules Standing Committee CS.

Number 1193

MS. FINLEY then referred to Section 1 and said it simply reflects what the revisors have been doing for at least 16 years

in situations in which legislation has a specific effective date but doesn't take effect until after that date because the governor doesn't sign it, the governor signs it after the effective date, or the veto is overridden. And although her predecessor treated those situations in the manner laid out in Section 1, she opined that it really should be stated in statute since "that is what we are doing." She mentioned that a bill passed last year has engendered litigation regarding this issue, but added that Section 1 would not affect the outcome of that litigation; it would simply be placing in statute the procedure followed thus far. She relayed that that litigation revolves around a man who was arrested the day after the governor signed a bill that extended the look-back provision from five years to ten years. The defendant has asserted that since the governor signed the bill after the effective date listed in the bill, the effective date would revert to 90 days after being signed.

CHAIR ROKEBERG asked whether Section 1 is making a policy decision.

MS. FINLEY said that it is merely putting into statute the current practice; there is no actual change to how things are done. In response to further questions, she said that this practice was not instituted because of case law; it is simply an administrative fiat because "the bills come out and we have to put an effective date on them, and that's what we've done."

REPRESENTATIVE BERKOWITZ asked whether the legislature shouldn't simply wait and see what the courts determine with regard to this issue.

CHAIR ROKEBERG said, "No, this is our bailiwick."

REPRESENTATIVE BERKOWITZ pointed out that the legislature might like what the court arrives at or that the court might suggest something that inspires the legislature to act accordingly. He opined that it would be prudent to see what the courts had to say before something is placed in statute that may later turn out to be in conflict.

CHAIR ROKEBERG said he could accept that argument in certain circumstances but not with regard to the legislature's power to stipulate an effective date. He then asked Ms. Finley to confirm that Section 1 would not have any impacts on the ongoing litigation.

Number 1456

MS. FINLEY said that there would certainly be no legal impact, adding that in that particular case, she has already provided an affidavit regarding how such a situation has been handled in the past. She suggested that the court would most likely rule one of two ways; either the legislation takes affect the day after being signed, or after the 90 days has elapsed.

REPRESENTATIVE JAMES opined that the court would be most likely rule in favor of the current practice.

CHAIR ROKEBERG said that the court probably would, particularly if it is placed in statute via Section 1 of HB 375.

REPRESENTATIVE OGAN said he wanted to applaud Ms. Finley for all her work on the arduous job of revising the statutes.

MS. FINLEY, in response to a question, clarified that in the aforementioned litigation, the defendant was arrested on the effective date, which started at 12:01 a.m. the day after the legislation was signed into law. She added that the time of day a law becomes effective is specified in Section 1 of HB 375.

MS. FINLEY, returning to the issue of Section 6, asked: "Did the committee want a CS on the conceptual amendment expanding the food stamp [citation] or not?"

CHAIR ROKEBERG noted that the committee had not yet addressed that issue but would discuss it now.

REPRESENTATIVE OGAN surmised that any change to Section 6 would not be changing policy; rather, such a change would simply be conforming the statute to reflect the proper federal citations, and would be well within Ms. Finley's purview.

CHAIR ROKEBERG suggested that the committee refrain from amending Section 6 at this time, and asked that as HB 375 goes through the process, Ms. Finley report back to the committee with any recommendations for appropriate changes.

REPRESENTATIVE GREEN added that any changes could be made before HB 375 is reported from the House Rules Standing Committee.

Number 1722

REPRESENTATIVE BERKOWITZ moved to report HB 375 out of committee with individual recommendations and the accompanying zero fiscal

note. There being no objection, HB 375 was reported from the House Judiciary Standing Committee.

SB 6 - MOBILE HOME PARK EVICTION NOTICE

Number 1731

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 6(FIN), "An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park." He noted that there is a proposed committee substitute (CS) available for the committee to consider.

Number 1750

SENATOR JOHNNY ELLIS, Alaska State Legislature, sponsor, said that through the work that the House Judiciary Standing Committee has done, the proposed CS is a better product. As background, he said that [the concept of] SB 6 was brought to him by the Catholic Archdiocese of Anchorage, the United Way, and representatives of Catholic Social Services after hundreds of people from his community were made homeless in a single mobile-home-park redevelopment project. Relaying the concern of the social services agencies and the churches in Anchorage, he said:

If we didn't have better policies toward mobile home park evictions, as the economy grows and people find better use for the land and hope to redevelop it for higher and better uses - especially commercial development - [there would be] ... a significant reduction in the housing stock for low-income or affordable housing, [and] a lot of people could be homeless.

SENATOR ELLIS noted that the people who could become homeless are disabled people, "low-income people," and elderly folks, and that their becoming homeless would lead to all kinds of social ills and welfare dependency. Therefore, he said, "We as a community and as a state should try and be more proactive about this [issue]." He mentioned that SB 6 passed the Senate with bipartisan support, and that the original SB 6 was a larger, more expansive proposal that would have changed the mobile home eviction-notice requirement to 365 days - currently that requirement is 180 days - unless the developer paid up to \$5,000 of actual, documented expenses for relocation of the mobile

home. He relayed that the developers that spoke in favor of [that version of] SB 6 thought that [option] was a good way to satisfy their obligations and enable them get on with their projects even though actual relocation costs are significantly greater than \$5,000.

SENATOR ELLIS noted that when SB 6 "came over to the House," Chair Rokeberg had relayed his concerns regarding private property rights and smaller mobile home park owners across the state. After hearing those concerns, Senator Ellis said that he worked with the "church folks," the mobile home park folks, and the developers, and came up with the proposed CS.

Number 1880

REPRESENTATIVE OGAN moved to adopt the proposed committee substitute (CS) for SB 6, version 22-LS0216\W, Kurtz, 2/11/02, as a work draft. There being no objection, Version W was before the committee.

SENATOR ELLIS relayed that Chair Rokeberg had suggested that instead of blanketing the entire state with the requirement for developers to pay compensation or give a year's notice, SB 6 could be simplified so that it proposes a 270-day notice requirement, which is less than the 365-day requirement that the Senate proposed and greater than the 180-day requirement in current statute, and that any local government that would like to set up its own relocation fund be allowed to do so through local ordinance. Senator Ellis explained that local governments could work out the details of how such a fund would be financed. Surprisingly, he noted, some of the private sector folks said that they would like the state to set up the fund with state dollars so that developers wouldn't have to pay any sort of fee or pay for any change in the assessed valuation.

SENATOR ELLIS noted that Chair Rokeberg "shot that down rather quickly, and said there will be no state fund because there is no likelihood of new state money for such a program."

CHAIR ROKEBERG remarked that that is old "Alaska-think" - that the state will be able to pay for everything.

SENATOR ELLIS explained that since there will be no state-administered fund and no state funding, Version W provides for the option of allowing local governments to set up their own funds at the local level. Hence this is not an un-funded mandate; it is just an option giving local governments the

ability to create their own fund if they decide that there should be compensation to folks moving on to other housing arrangements. He also pointed out that Version W, in addition to providing a 270-day-eviction-notice requirement, prohibits eviction of a mobile home park resident during the winter months; everybody on all sides of this issue agreed that it is hard enough to move a mobile home without having to do so in the winter.

CHAIR ROKEBERG offered that the funding for a local relocation fund could come from the revenue differential between the prior zoning and the new zoning, as well as from contributions made by the community itself. He noted, therefore, that this local funding option is mostly applicable to larger communities although smaller communities could set up such a fund as well. He mentioned that he still has concerns with changing the notice requirement from 180 days to 270 days because that would then become the standard for eviction notices.

SENATOR ELLIS said that he believed that the 270-day requirement would only apply to mobile home parks. The current 180-day requirement for all other types of evictions would remain the same. In response to questions, he reiterated that in addition to the 270-day requirement for mobile home parks, no one could be evicted from a mobile home park during the winter months, which is a prohibition not currently in law. He noted that a number of states have a 365-day requirement, as was proposed in a Senate version of SB 6, and that almost all states have statutes relating specifically to mobile home park evictions because of the special nature of mobile home parks and their redevelopment.

Number 2124

TYSON FICK, Staff to Senator Johnny Ellis, Alaska State Legislature, sponsor of SB 6, added that changing the current 180-day requirement to 270 days is a separate issue from prohibiting an eviction during the winter months. Current statute does not make any provision regarding what time of year someone can be evicted, he added.

CHAIR ROKEBERG noted that if Version W were amended back to a 180-day requirement, it would not affect the wintertime prohibition.

Number 2158

BEN MARSH, Manager, Alaska Manufactured Housing Association (AMHA), testified via teleconference and said that the AMHA feels that it represents the mobile home industry to a large extent. He said that after looking over Version W, the AMHA has some comments. He explained that he polled his members and found that there "is some heartburn over the 270-day notice" because members feel that it creates a hardship on anybody who owns this type of land and needs to have it [redeveloped]. To have a 270-day notice requirement pushes things quite far into the future and developers are less likely to proceed. He added that the AMHA [passed] a resolution that favors the current statutory 180-day notice.

MR. MARSH said that the AMHA does not have any objection to the quit date being limited to between May 1st and October 15th. "That would seem to be reasonable, and everybody can live with that," he added. He noted, however, that the AMHA doesn't see any real value in having the language that says: "a municipality may establish a mobile home relocation fund...." He opined that a municipality doesn't need permission from the state to establish such a fund, and therefore the language is superfluous, particularly since the state is no longer going to require a developer to pay \$5,000 to every tenant as was proposed in an earlier version of SB 6.

MR. MARSH urged the committee to be cautious in placing too many restrictions on people's property rights. On the issue of municipalities establishing relocation funds, he said that this concept is very important to [the AMHA], and that they sincerely hope that such can be done "although we don't have any real hope that it will happen this year [but] maybe it'll happen over a period of time if we bend our efforts in that direction." He added that the [AMHA] hopes that there will be some way for the state to participate in this problem; "it's a social problem and it shouldn't be placed entirely on the shoulders of mobile court owners."

MR. MARSH, in closing, noted that he is not aware of any new mobile home courts being created in the last 12 years, and that restrictions and regulations such as those found in SB 6 tend to discourage anybody from doing so. Mobile home courts are an important part of affordable housing in Alaska, he remarked, and there is a real shortage of mobile home spaces at the present time. "We see these mobile home courts disappearing from sight, and we don't know where people are going to put mobile homes if they all [close down due to redevelopment]," he added.

Number 2378

ANGELA LISTON, Catholic Archdiocese of Anchorage, testified via teleconference and mentioned that she was on the mobile home task force in Anchorage. She noted that she has worked with the tenants and with the [mobile home] park owners in trying to come up with some solution to this problem. "We did originally propose the relocation fund," which all the parties - the tenants, the park owners - were willing to contribute to. She said that as SB 6 stands now, [the parties] absolutely support the quit date provision prohibiting evictions during the winter months.

MS. LISTON said, with regard to changing the notice from 180 days to 270 days, that if the state is not creating a relocation fund, then the tenants absolutely need at least 270 days. And [that time frame] is needed not just to relocate but also to secure the funds that are necessary to make that relocation happen. She opined that seven months is probably the least [amount of time] that would be necessary to raise \$5,000 for relocation. She noted that she would feel a lot better about it if "we had some information from the municipalities that in fact the funds would be set up. She said that she supports the quit date provision as written, and asked that the 270-day notice provision remain in place.

REPRESENTATIVE MEYER noted that during his service on the assembly, "this was always a major issue and very controversial." He said he recalled that with the bigger developments, the city was requiring the "developers to pay to help move some of the mobile homes; ... I thought it was up to \$5,000."

MS. LISTON clarified that that was never required of the developers; they were simply encouraged to do it.

CHAIR ROKEBERG noted that this decision was reached during community council meetings. He noted, however, that not every developer "has as deep a pocket" as those that were able to help with relocation costs.

REPRESENTATIVE MEYER indicated that he agreed with Ms. Liston regarding the need for the 270-day notice provision.

TAPE 02-17, SIDE B
Number 2490

JEWEL JONES, Director, Department of Health and Human Services (DHHS), Municipality of Anchorage, testified via teleconference and said that the DHHS has certainly had a great deal of experience with homeless issues, with affordable housing issues, and specifically with "the first notice of a movement with the Alaskan Village trailer park." The DHHS was also involved in the establishment of the mobile home task force, she said, adding that she participated in many of its discussions.

MS. JONES, referring to Version W, said that it is much more palatable and workable for the municipality, and that the DHHS encourages its passage. She remarked that the DHHS, too, is concerned about notices [to quit the property] being given during a period of time in which the end of that period is in the winter. Moving a mobile home is, at best, a very difficult and expensive process, she noted. Many people living in mobile homes are there because they can't afford any other form of housing. In addition, mobile home living does afford a way for many people to achieve the American dream of having a place of their own; mobile homes certainly do hold that promise for many people, and the DHHS supports that.

MS. JONES noted, as Mr. Marsh did, that there aren't new mobile home parks being developed, and that she has been made aware of another mobile home park - Lahonda Trailer Court - in the Anchorage area "that will be going away." She mentioned, however, that in addition to the lack of suitable new locations, even if there were to be a relocation fund, many mobile homes are in such bad condition and so old that they could not be moved regardless of how much money is spent to move them; they would just fall apart. She suggested that a human impact statement could assist the municipality in determining the overall effects that some of these redevelopments have on the community.

MS. JONES indicated a preference for the language in Version W that allows but does not mandate municipalities to establish local relocation funds, although she is not sure yet where "all of those dollars" would come from. She noted that the local municipality, the DHHS, and the planning department have been working with - and will continue to work with - some of the smaller mobile home parks should they become candidates for redevelopment.

Number 2302

SENATOR ELLIS said that he appreciates all the work that Ms. Jones has done on this issue. After noting that Mr. Marsh has indicated a preference for the 180-day-notice requirement, and that Ms. Liston prefers the 270-day requirement, Senator Ellis asked Ms. Jones what her "take on that" is, in terms of how much time lower-income folks need to plan and save up money for a relocation.

MS. JONES said that the DHHS has not given a lot of thought to that issue, but she personally thinks that the longer period of time would be the most helpful, particularly for low-income people. Because the average cost of moving a mobile home ranges between \$5,000 and \$8,000, and even if money is available from a relocation fund, tenants must still raise quite a bit of money, which takes time; therefore, 270 days is a reasonable amount of time, she opined.

MR. MARSH added that 270 days is much better than the 365 days that was proposed in an earlier version of SB 6.

CHAIR ROKEBERG closed public testimony on SB 6.

REPRESENTATIVE MEYER opined that SB 6 is a good bill, and that the 270-day requirement is a good compromise that everybody can live with.

REPRESENTATIVE COGHILL agreed that SB 6 is a good bill. He added, however, that based on personal experience, he thinks "180 days is doable," particularly since language in the bill allows for either the lease or the municipality to stipulate a longer time frame. The way Version W is currently written, he noted, a tenant could have a notice period of 270 days plus a winter.

CHAIR ROKEBERG added that that would amount to over a year.

REPRESENTATIVE COGHILL opined that lowering the notice period back to 180 days would be fine. He recounted that when he had to move from a mobile home park in the early '80s, it cost him \$2,800 to move his trailer; he also had to meet a notice period of less than 100 days, which was tough, but he did it.

Number 2136

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1: on page 2, line 6, delete "270" and insert "180".

Number 2130

REPRESENTATIVE BERKOWITZ objected. He said that it seems to him that the people working on this issue have already compromised, and the result is the 270-day-notice period.

CHAIR ROKEBERG noted that the existing statute has a 180-day notice period, and that 270 days is nine months. The heart of the bill, he opined, is the restriction on giving notice during the winter months. He reiterated that the 270-day period coupled with the wintertime restriction could result in a time frame that is longer than a year.

REPRESENTATIVE BERKOWITZ pointed out that 270 days is a compromise from 365 days.

REPRESENTATIVE MEYER said that he agrees with Representative Berkowitz. According to his experience in Anchorage, he relayed, the longer the notice period, the better, "because we are talking about low-income people here, and a lot of them have been in these places for 30 years - all their lives - and now to all of sudden say, 'Okay, you've got to get up and move,' that in itself is very traumatic to them." From having watched the progression of SB 6 in the Senate, he recounted, the developers seemed to be okay with 365 days since it takes awhile to arrange for financing and contractors; therefore, 270 days is doable and is a compromise compared to 365 days.

CHAIR ROKEBERG said that from a commercial real estate standpoint, he disagrees with Representative Meyer on the issue of how long it might take to mobilize a project.

REPRESENTATIVE MEYER offered that since no developers have come forth to testify, they must not be in opposition to the 270-day-notice requirement.

CHAIR ROKEBERG surmised that the bigger developers that did testify during previous hearings of SB 6 - the "deep-pocket developers" - were just happy to be able to go forth with their projects, but most of the developers that will be affected by SB 6 are small in comparison.

Number 1914

REPRESENTATIVE JAMES indicated agreement with Chair Rokeberg, and remarked that with the shrinking of the economy, the number of investors has also decreased. She suggested that it wouldn't

be the big developers that will be taking on future redevelopment projects; it will be the smaller developers. She said that she did not think that 270 days, by itself, is too long a period of time, but when coupled with the wintertime restriction, it can become an extensive period of time. She opined that aside from going to a 365-day provision, which wouldn't be encumbered by a seasonal restriction, 180 days is the maximum that would be needed when coupled with the wintertime restriction. She said that her inclination is to go to the shorter period of time - 180 days.

CHAIR ROKEBERG said that it is conceivable that there could be a notice period of [over] 15 months.

REPRESENTATIVE MEYER said that according to his experience, developers "pretty much have this figured out, so that the 270 days would be the maximum; they would give notice so that it is the 270 days and it includes the winter months."

REPRESENTATIVE JAMES reiterated that she thinks 180 days is better so as not to discourage development.

SENATOR ELLIS pointed out that the current statutory timeframe of 180 days has not proved adequate in the situations considered by the task force. The genesis for SB 6 was that 180 days was not sufficient for folks to save up enough money to move their mobile homes and avoid going to the homeless shelter and becoming welfare cases, he added. And while not all of the residents of mobile home parks are low-income, a significant proportion of them are, and many tend to be elderly, he noted. And although there might be a better number than 270, he said, 180 days has not proved adequate.

REPRESENTATIVE COGHILL noted that the difference between the original SB 6 and Version W is that the latter includes "the municipality in that discussion," so if the municipality decides that the time frame is not long enough, it can be extended.

Number 1666

REPRESENTATIVE BERKOWITZ, after noting that he has been involved in commercial real estate transactions and is interested in the economic development of Alaska, offered that fundamentally, SB 6 is about protecting people who live in mobile home parks, and that the discussion heard thus far - that 180 days is adequate - seems to focus on the developers' side of the equation. He continued:

One of our responsibilities [is] to bring a little balance to this debate, and the balance side of what the developers require is what the mobile home residents require. Representative Coghill spoke of his own example, and Representative Coghill, just by dint of being here, has demonstrated that he has some wherewithal, and I don't think that everybody who's in a mobile home park, at least not in my experience, has the ability to get up and move easily: people on fixed income, people ... with pets who might have a difficult time. We ought to be mindful of the fact that these are tough economic times out there for a good number of our constituents, and we ought to be careful that we don't put them in a position where they don't have a place to go. So I would suggest that while you're factoring in whether 180 days or 270 days is appropriate, you think about what serves the people - the common people.

REPRESENTATIVE JAMES opined that what Representative Berkowitz said "is very real and is our concern." Nonetheless, she added, Alaska is a big state; as long as municipalities have the ability to alter the time period, as is proposed in Version W, that issue should be decided at the local level.

SENATOR ELLIS asked Chair Rokeberg to hold SB 6 in order to gather more information regarding the "interplay between the landlord-tenant law, which is a state law, and the municipalities' ability to add on to or override the state landlord-tenant law in terms of mobile home park evictions."

REPRESENTATIVE BERKOWITZ acknowledged that if the provision in SB 6 which says a municipality can extend the notice period is in conflict with existing state law, it could create problems.

CHAIR ROKEBERG acknowledged that that [provision] is ambiguous. He noted that Representative Coghill's motion to adopt Amendment 1 is still before the committee.

Number 1450

REPRESENTATIVE BERKOWITZ made a motion to lay on the table the motion to adopt Amendment 1.

REPRESENTATIVE BERKOWITZ withdrew the motion to lay on the table the motion to adopt Amendment 1.

Number 1436

REPRESENTATIVE COGHILL withdrew the motion to adopt Amendment 1.

CHAIR ROKEBERG announced that SB 6 would be held over.

HB 381 - FAILURE TO STOP FOR PEACE OFFICER

Number 1396

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 381, "An Act relating to the crime of failure to stop at the direction of a peace officer; and providing for an effective date."

Number 1364

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, presented HB 381 on behalf of the committee. She explained that HB 381 would clarify exactly when a person can be charged with first-degree failure to stop at the direction of a police officer. She noted that currently, there are two degrees of this offense. Second-degree failure to stop occurs when the driver doesn't realize that there is police officer behind him/her and so fails to stop right away but then ultimately does stop. [First]-degree failure to stop occurs when the driver fails to stop and violates a traffic law - as defined in AS 28.15.261 - or commits another crime - as defined in AS 11.81.900.

MS. NOBREGA said that the change proposed by HB 381 stipulates that the offense of first-degree failure to stop would occur when the driver fails to stop and violates AS 28.35.040, the reckless driving statute. She said that because the terms "traffic law" and "another crime" are so broad, there are a lot of people being charged with the crime of first-degree failure to stop just because they either went over the speed limit in the process of failing to stop, or committed some other minor crime such as not wearing a seat belt or [driving a] vehicle without [working] lights. She offered that the intent of this change is to clarify that first-degree failure to stop really requires something above and beyond a basic traffic law violation; it requires a violation of the reckless driving statute.

REPRESENTATIVE BERKOWITZ surmised, then, that if an officer sees someone who is driving recklessly, which, he added, is oftentimes used as a lesser included offense for driving while intoxicated (DWI), and then fails to stop right away at the direction of a police officer, then that person is subject to a charge of felony eluding.

Number 1201

MS. NOBREGA said that is correct because that person didn't stop. If that person had stopped right away, the charge would simply be misdemeanor reckless driving. She added that it becomes a felony because that person is committing two crimes: he/she is eluding and driving recklessly.

REPRESENTATIVE BERKOWITZ asked how many of these types of cases were anticipated.

CHAIR ROKEBERG noted that the committee packets contained statistical information. Referring to that information, he mentioned that in 1999, there were 75 charges; in 2000, there were 162 charges; and in 2001, there were 183 charges, not all of which have been adjudicated.

REPRESENTATIVE BERKOWITZ noted that the [58] felony convictions in 2000, with an average one-year jail sentence at a cost of \$30,000-\$40,000 each, would have had a large fiscal impact.

MS. NOBREGA, in response to questions, mentioned that HB 381 has a zero fiscal note from the Department of law.

Number 1098

DEL SMITH, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), said that he testified a couple of years ago on the bill that became the current felony eluding statute. He said that his recollection of his testimony was that the DPS would use that statute only for the most egregious circumstances, which he envisioned as occurring after a person was already committing the misdemeanor offense of eluding a police officer and then creating some public safety [hazard]. He acknowledged, however, that:

It turns out, in looking at some of the cases that have evolved since then, that [the] common sense that I counted on has not carried through in each and every case. So I certainly agree that there is a problem,

currently, with the application, as you can see from the escalating numbers ... in 2001. The convictions, I might point out, are substantially lower ... in 2001. But ... those cases can go up to 120 days out [for] trial or longer, so that's not complete. But the fact that there's 183 felony arrests for that - one every other day, basically - does concern me, and for that reason I wanted to be here to try to see what changes could be done that make some sense but still provide some public protection....

One other thing, if I could: ... there was some reference to seatbelt violations; that's not true. You have to [have] at least a moving [violation] under current law.

REPRESENTATIVE BERKOWITZ asked for a hypothetical example.

MR. SMITH recounted a situation in which a vehicle left the downtown area and the officer alleges in his police report that [when] he activated his emergency lights, the vehicle accelerated rapidly to ten miles an hour over the speed limit, made a left hand turn without a signal, ultimately stopped within a mile and a quarter, and the driver was charged with felony eluding. "I thought that was very inappropriate and [I] expressed that opinion."

REPRESENTATIVE BERKOWITZ surmised, then, that the underlying offence was a driving violation.

MR. SMITH said that in his professional opinion, he thought the maximum that individual should have received in that particular circumstance was perhaps a speeding ticket for going ten miles an hour over the speed limit, and perhaps a ticket for [failure to use] a left hand turn signal, but not even misdemeanor eluding. And while that charge has since been reduced, he noted, it was originally a felony arrest. He said that although he has not looked at every police report in the state, he is concerned that there are other similar cases.

Number 0890

REPRESENTATIVE OGAN recalled a case in Kenai in which a person driving on a state road refused to pull over for a "federal fish and wildlife protection officer." This person was charged with felony eluding because he went ten miles over the speed limit and did not stop for the federal officer.

MR. SMITH said that he recalled that case, which was ultimately dismissed, adding that he thought that that, too, was an improper application of the current statute. He mentioned that shortly after that case, the Department of Law issued its screening attorneys [a memorandum] on the proper application of that law. He reiterated that the charge of felony eluding is intended to apply in only the most egregious of circumstances.

CHAIR ROKEBERG noted that a proposed amendment suggested by the Department of Law has been distributed to members. This proposed amendment [which was discussed but not adopted] reads [original punctuation provided]:

Section 1. 28.35.182 (a) is amended to read:

(a) A person commits the offense of failure to stop at the direction of a peace officer in the first degree if the person violates (b) of this section, and, during the commission of that offense

(1) the person violates AS 28.35.040 [A TRAFFIC LAW OR COMMITS ANOTHER CRIME. IN THIS SUBSECTION,

(1) "CRIME" HAS THE MEANING GIVEN IN AS 11.81.900;

(2) "TRAFFIC LAW" HAS THE MEANING GIVEN IN AS 28.15.261];

(2) the person is subject to an arrest warrant issued by a federal, state, or local court;

(3) as a result of the person's driving
(A) an accident occurs;
(B) any person suffers serious physical injury; or

(C) any person, including a pedestrian or bicyclist, must take evasive action to prevent an accident or injury;

(4) the person is committing vehicle theft;
(5) the person is in possession of an unlawful controlled substance; or

(6) the person is on probation or parole supervision for a felony offense.

Number 0711

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), noted that she, too, was present during discussions of the legislation that became the current statute, adding that at the

time, she thought that that legislation was too broad. She opined that it is a good idea to limit its application. She noted, however, that she is concerned that limiting it to reckless driving is going a little bit too far in the opposite direction, which is why the DOL is suggesting the aforementioned amendment that would include, in addition to reckless driving, other [circumstances] that often result in dangerous driving or bringing harm to people and property.

MS. CARPENETI pointed out that in order for a person to commit first-degree eluding, he/she must first commit second-degree eluding, which is "knowingly" failing to stop rather than just not stopping. She mentioned that there have been occasions when she has driven for some time without noticing that a police officer has been signaling for her to stop. Those were not instances of eluding because "you have to know that somebody is trying to pull you over, and you have to ignore them and go on," she added.

MS. CARPENETI explained that first-degree eluding, as proposed by the suggested amendment, involves knowing that a police officer is trying to pull "you" over, and, after ignoring the police officer, going on to commit the crime of reckless driving or doing several other things that the DOL thinks would give rise to dangerous conditions - for example, if a person ignores a police officer because he/she has an "arrest warrant out"; causes somebody to suffer serious physical injury as a result of the driving; is in the process of committing vehicle theft; is in possession of an unlawful controlled substance; or is on probation or parole supervision for a felony offense. She remarked that the DOL thinks the suggested amendment is a good compromise: it is somewhere in the middle between a moving violation and driving recklessly after ignoring a police officer.

REPRESENTATIVE BERKOWITZ, referring to [paragraph] (2) of the suggested amendment, said that this language presumes that the person is aware that he/she is subject to an arrest warrant. He added that it seems to him that if the person is aware of the warrant, he/she would be subject to the terms of AS 11.56.700, which is resisting or interfering with arrest and which includes creating a substantial risk of physical injury to any person. Therefore, he said, it appears that [paragraph (2)] is duplicating an existing statute.

Number 0447

MS. CARPENETI said that she understands resisting arrest under this circumstance to be more personal and not in the context of a vehicle, though she acknowledged that Representative Berkowitz makes a good point and she will consider it further.

REPRESENTATIVE COGHILL, referring to [paragraph] (3)(C) of the suggested amendment, opined that this activity is already covered under the negligent driving statute, located in AS 28.35.

MS. CARPENETI replied that when the DOL adopted its screening policy for felony eluding, one of the directions to the screening attorneys was that felony eluding should only apply to serious cases. She pointed out that the language in both HB 381 and the suggested amendment refers only to reckless driving - AS 28.35.040 - and does not include negligent driving. Therefore, while the concept of [paragraph] (3)(C) of the suggested amendment is included in the negligent driving statute, it does not encompass all aspects of negligent driving. In response to a question, she noted that while the crime of reckless driving is a misdemeanor, the crime of negligent driving is simply a violation. She added that reckless driving is "kind of a hybrid misdemeanor"; it involves a \$1,000 fine, as is found for a class B misdemeanor, and a year of jail time, as is found for a class A misdemeanor.

REPRESENTATIVE BERKOWITZ, on the topic of [paragraph (3)(C)] of the suggested amendment, said that it seems to him that this concept is also swept up in AS 11.41.250 - reckless endangerment - which involves creating a substantial risk of serious physical injury to another person and which, he opined, is underutilized.

MS. CARPENETI acknowledged that that is an interesting argument because [reckless endangerment] requires the culpable mental state of reckless, whereas the concept of [paragraph (3)(C)] embodies negligent behavior. She added that in AS 28, negligent driving does not include a substantial risk; it merely refers to an [unjustifiable] risk that "constitutes a deviation from the standard of care that a reasonable person would observe in the situation." Therefore, it's a little bit different than the culpable mental states included in Representative Berkowitz's reference to reckless in AS 11, which involves a "substantial risk", knowing that something is a substantial risk, and then disregarding that risk, as opposed to negligent, which involves not understanding the risk.

Number 0197

REPRESENTATIVE BERKOWITZ, referring to [paragraphs (4) and (5)], said that in a way, those items seem redundant and would merely provide "a way of bootstrapping" the crime of eluding into a felony.

MS. CARPENETI noted that a person who has drugs in his/her vehicle is more apt to elude and cause harm to other people

CHAIR ROKEBERG asked how the police officer, merely by following someone, would know that he/she was in possession of drugs.

MR. SMITH surmised that first the person would have to be arrested for misdemeanor eluding, then, if drugs were found during the arrest, he/she would be charged with felony eluding.

CHAIR ROKEBERG noted, however, that the person could be charged with other crimes and, thus, wouldn't need to be charged with felony eluding.

MR. SMITH pointed out that the intention is to cut down on the number of people who decide that they need to try to get away, so that there are not people careening through the streets.

I want them to pull over and say, "Fine, I've already got a warrant," or "I've got drugs in here, why don't I just go with that misdemeanor possession of marijuana as opposed to creating a felony here". Now that presumes, of course, that they pay attention to what the legislature has done in the way of passing laws, and [that] they know the law.

TAPE 02-18, SIDE A
Number 0001

MR. SMITH continued: "I guess I'm looking for ways that would persuade people that it's better to stop, take your medicine, and not create a problem."

MS. CARPENETI indicated that in creating the suggested amendment, the DOL was trying to envision circumstances where people would behave in a dangerous way after they notice that they're being pulled over, and having drugs in the car or being subject to an arrest warrant are things that would probably cause people to go ahead and drive in a way that could be harmful to other people.

REPRESENTATIVE BERKOWITZ mentioned that this is presuming a rational response in the criminal mind.

CHAIR ROKEBERG noted that the suggested amendment is basically a laundry list, and if "the committee agrees with the concept of reckless as the base standard," then, if the committee wants to, it could add other items.

REPRESENTATIVE JAMES opined that most of the people who are out there doing these dumb things don't have a clue what the penalties are; those people are merely being reactive. She suggested that the more "we try to tighten this down," the more it might create other problems. She indicated that she has an aversion to turning young people into felons early in their lives, that she did not want to entrap anybody, and that she wants to be cautious when going in "that direction."

CHAIR ROKEBERG noted that he is comfortable with the reckless standard. He mentioned, however, that although he is not entirely opposed to the additional items proposed by the suggested amendment, he does have concerns about some of them, such as [paragraph (2)], which pertains to having an arrest warrant.

REPRESENTATIVE BERKOWITZ posited that [providing for] officer safety and public safety are always at the forefront of what the legislature is trying to do. He added, however, that one of his concerns is that when [crimes] are escalated to felonies, it might, in a perverse way, encourage more flight, which creates more risk. He said:

I would feel better able to help craft a bill if I understood what the dimensions of the problem were a little bit more. What kind of behavior, exactly, are we trying to stop that we're [currently] unable to stop, and what's going on out there that requires us to make these folks felons?

Number 0310

MR. SMITH provided an example: Recently, the Alaska State Troopers received a report of a potential stolen vehicle located at the Palmer Correctional Center. When the trooper arrived, the vehicle was there and, ultimately, an 18-year-old woman who was from Anchorage jumped in the stolen vehicle and took off. When the troopers finally got her stopped after a 90-mile-an-hour chase toward Palmer, they discovered that she was subject

to an arrest warrant, she was driving a stolen vehicle, she didn't have a driver's license, and she was driving recklessly. He added that many times when a person is finally pulled over after eluding, the police officer discovers that there is a warrant out on that person, or that it is a stolen vehicle, or that the person is in possession of a controlled substance.

REPRESENTATIVE BERKOWITZ asked how would turning the crime of eluding into a felony have helped in the prosecution of that case.

MR. SMITH acknowledged that that defendant is subject to felony charges anyway under the current law.

REPRESENTATIVE BERKOWITZ pointed out that that woman is subject to "felony joy riding", a handful of misdemeanors, and the second felony for eluding, which means that if she ever does anything bad in the future, she is "presumptive third."

CHAIR ROKEBERG asked if that example qualified as "three strikes."

MR. SMITH said he did not think so in her case because she was only 18.

MS. CARPENETI clarified that none of "these crimes" is one that would be considered under "three strikes and your out," which is only considered for what is defined as most serious felonies.

REPRESENTATIVE BERKOWITZ mentioned that he would be comfortable prosecuting a reckless driving case as an assault when the defendant is truly driving recklessly. He added that if the community condemnation is out there, a prosecutor could get 12 people on a jury to agree with that charge.

MS. CARPENETI noted that in terms of presumptive sentencing, these felonies would certainly count, but not for "three strikes and your out."

Number 0516

MR. SMITH opined that it is no less a danger to be hurtling through city streets in a 4,000-pound vehicle than it is for a person to step outside of his/her downtown house and start shooting a rifle. Both behaviors endanger other people. He added that the original intention of the current statute was to

keep people from eluding to begin with; however, that's not quite worked out as planned.

REPRESENTATIVE BERKOWITZ asked why people who are wildly driving around aren't charged with a felony assault, as would be that case for someone who is wildly shooting a rifle in a downtown area. He said that it seems to him that the nub of the problem centers on a policy decision within the DOL as to how it is charging and prosecuting certain types of conduct. "The tools are in the tool box to go after people, and that's one of the reasons why we have broadly written laws, is so we can take it to a jury and see if the community agrees with that assessment," he opined. And, although there are clearly some changes that should be made to the current law, rather than giving up on the existing code and seeking an answer with some ephemeral statute, "it would be better to just use what we've got and start hammering people with it," he concluded.

MR. SMITH opined that the DOL has exercised the right kind of discretion at the screening level; unfortunately, he added, people are being arrested as felons before the DOL can intervene. He added that a solution might be to forgo elevating a charge of misdemeanor eluding to a felony until after a decision is made by the district attorney at the screening level. He noted, however, that it might not be possible to place such a policy in statute, so there is the potential that it wouldn't be applied consistently.

CHAIR ROKEBERG remarked that he is satisfied with HB 381 as is.

Number 0773

REPRESENTATIVE JAMES moved to report HB 381 out of committee [with individual recommendations and the accompanying zero fiscal note]. There being no objection, HB 381 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0801

REPRESENTATIVE BERKOWITZ made a motion to adjourn.

There being no objection, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.