

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

February 27, 2001

1:10 p.m.

**MEMBERS PRESENT**

Representative Vic Kohring, Chair  
Representative Beverly Masek, Vice Chair  
Representative Scott Ogan  
Representative Drew Scalzi  
Representative Peggy Wilson  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 4

"An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

- MOVED CSHB 4(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 39

"An Act relating to registration of motor vehicles, to operating a motor vehicle, aircraft, or watercraft while intoxicated, and to driving with a cancelled, suspended, or revoked driver's license; relating to duties of the division of alcoholism and drug abuse regarding driving-while-intoxicated offenses; and providing for an effective date."

- MOVED CSHB 39(TRA) OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 4

SHORT TITLE: OMNIBUS DRUNK DRIVING AMENDMENTS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0024	(H)	PREFILE RELEASED 12/29/00
01/08/01	0024	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0024	(H)	TRA, JUD, FIN
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/22/01		(H)	Heard & Held MINUTE(TRA)
02/27/01		(H)	TRA AT 1:00 PM CAPITOL 17

BILL: HB 39

SHORT TITLE:VEHICLE REGISTRATION/DWI/FORFEITURE

SPONSOR(S): REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
01/10/01	0044	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0045	(H)	TRA, JUD, FIN
02/01/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/01/01		(H)	Heard & Held
02/01/01		(H)	MINUTE(TRA)
02/06/01		(H)	TRA AT 1:30 PM CAPITOL 17
02/06/01		(H)	<Bill Postponed>
02/15/01		(H)	TRA AT 1:00 PM CAPITOL 17 <Meeting Canceled>
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/22/01		(H)	Scheduled But Not Heard
02/27/01		(H)	TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

BARBARA BRINK, Director  
Public Defender Agency  
Department of Administration  
900 West Fifth Avenue Suite 200  
Anchorage, Alaska 99501

POSITION STATEMENT: Provided the Public Defender Agency's position on HB 4 and answered questions.

MARIE LAVIGNE, Executive Director  
Alaska Chapter  
National Association of Social Workers (NASW)  
4220 Resurrection Drive  
Anchorage, Alaska 99504

POSITION STATEMENT: Testified on behalf of NASW's support of issues related to drunk driving and "accessible treatment";

noted that NASW is reviewing provisions in both [HB 4 and HB 39].

CINDY CASHEN, Member  
MADD (Mothers Against Drunk Driving)  
211 Fourth Street, Suite 102  
Juneau, Alaska 99801  
POSITION STATEMENT: Spoke on behalf of MADD and herself on HB 4.

REPRESENTATIVE NORMAN ROKEBERG  
Alaska State Legislature  
Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
POSITION STATEMENT: Sponsor of HB 4.

JANET SEITZ, Staff  
to Representative Norman Rokeberg  
Alaska State Legislature  
Capitol Building, Room  
Juneau, Alaska 99801  
POSITION STATEMENT: Answered questions relating to HB 4.

CANDACE BROWER, Program Coordinator  
Office of the Commissioner-Juneau  
Department of Corrections  
431 North Franklin Street, Suite 293  
Juneau, Alaska 99801  
POSITION STATEMENT: Spoke on behalf of the Department of Corrections on HB 4 and HB 39, and answered questions.

ERNIE TURNER, Director  
Division of Alcoholism and Drug Abuse  
Department of Health and Social Services  
P.O. Box 110607  
Juneau, Alaska 99811-0607  
POSITION STATEMENT: Answered questions relating to HB 39.

DEAN GUANELI, Chief Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division  
Department of Law  
P.O. Box 110300  
Juneau, Alaska 99811-0300  
POSITION STATEMENT: Spoke on behalf of the department and answered questions relating to HB 39.

ROGER WORTMAN, Staff  
to Representative Pete Kott  
Alaska State Legislature  
Capitol Building, Room 204  
Juneau, Alaska 99801-1182

POSITION STATEMENT: Presented HB 39 on behalf of the sponsor.

MARY MARSHBURN, Director  
Division of Motor Vehicles (DMV)  
Department of Administration  
3300 Fairbanks Street  
Anchorage, Alaska 99503

POSITION STATEMENT: Answered questions relating to HB 39.

### **ACTION NARRATIVE**

TAPE 01-15, SIDE A  
Number 0001

CHAIR VIC KOHRING called the House Transportation Standing Committee meeting to order at 1:10 p.m. Members present at the call to order were Representatives Kohring, Scalzi, Wilson, and Kapsner. Representatives Ogan, Masek, and Kookesh arrived as the meeting was in progress.

CHAIR KOHRING stated that there were two bills held over from the previous meeting. He said that he appreciated being given the opportunity to go to the Senate Transportation Committee meeting in Anchorage the previous week, and that Representative Masek had chaired the [House Transportation Standing Committee] meeting in his absence.

### HB 4- OMNIBUS DRUNK DRIVING AMENDMENTS

[Contains discussion of HB 172.]

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

[Before the committee, adopted at the previous hearing, was Version P (22-LS0046\P, Ford, 2/16/01).]

Number 0134

BARBARA BRINK, Director, Public Defender Agency, Department of Administration, testified via teleconference:

We have some brief comments to offer. First of all, we wanted to say thank you to Representative Rokeberg and his staff, especially Janet Seitz, chief of staff, that gave us the opportunity to see and comment and work on drafts of this bill very early on. This cooperation has helped us gather fiscal information and be involved in the process from the beginning, which was extremely helpful.

We [Public Defender Agency] certainly do agree that driving under the influence or driving while intoxicated is a serious problem in this state. But we have a few suggestions about alternative ways to go about solving that problem. The State of Alaska was one of the first in the country to enact a felony DUI [Driving Under the Influence] statute. Traditionally, we have one of the highest incarceration rates in the country, including for driving while under the influence. But, despite all those strong jail penalties and high fines, we continue, as Section 1 of this bill recognizes, to have one of the highest rates of DUI related fatalities.

We feel that an important part of the answer might rely in effective court-ordered treatment and supervised probation for these DUI offenders. We agree with other agencies that because the recidivism is actually quite low for first-offense DWIs, about 75-80 percent of those folks never come back, we should concentrate our highly structured treatment and prevention [efforts] at those repeat offenders. We're gratified to learn that the legislature is interested in the new concept of therapeutic court, [and] DWI [Driving While Intoxicated] court, and have been cooperating with many members of the legislature in trying to plan and develop those as well.

I realize that as lawmakers you all have very great pressure on you to try and do something about this problem. I would simply urge that we not immediately go to what we have tried before, which is to increase

the amount of penalties, increase the amount of fines, and increase the amount of punishment for these offenses. I think that what we've learned is that it hasn't been very effective, and the therapeutic court model is showing success in other states, as we hope it has success here as well.

Number 0342

All that being said in the way of general remarks, I do have a couple of specific sections I would like to bring to your attention. ... The first is Section 33, page 22, [Version P]. This section adds a mandatory 6-month prison sentence to the already existing mandatory sentences and requires completion of the 30-day residential treatment program if available in that community. Again, we are skeptical of the effect that increasing the punishment will have for (indisc.). Residential treatment is also not all of the answer. There might be cheaper, better alternatives. There are a lot of outpatient programs that provide a very good treatment alternative with high success. So, we're uncertain ... the requirement of the 30-day residential program should be based on [a] statutory requirement such as (indisc.) health professional assessment.

With regard to vehicle forfeiture, and that is contained in Section 31, page 21, line 7, and Section 46, page 28, line 5, these sections, again, require the court to forfeit a vehicle on ... a felony DWI, and it requires the state to seek forfeiture in every case that's happening, even though the judge does have to order in all cases. I think property forfeiture has raised a lot of fiscal issues, especially when you have family depending upon the needs of transportation in order to ensure their basic necessities. It involves taking property rights from other people including lien holders, and people who have other property interest in that car. And it can have huge unintended consequences, including taking away a family's only means of transportation. (Indisc.) statutory scheme allowed for forfeiture. It is discretionary and we actually prefer that it remain discretionary, so that these individual cases can be considered and an individual family's needs [can] be taken into account.

There are many sections that increase the fines and the life of revocation periods. For example, Section 17 doubles the license reinstatement fee for repeat DWI offenders. I believe our concern with that section is that many people who (indisc.) of license revocation, instead of taking the appropriate steps and trying to become properly insured and get their licenses back and become validly licensed and insured drivers, just sort of (indisc.) their hands and give in. Last year there were 4,500 driving-without-a valid-license cases filed in the court. This is a huge and costly area for the state to continue to prosecute.

The Municipality of Anchorage has a really interesting and sort of revolutionary program when it comes to driving with licenses suspended. They have a diversion program that provides manpower to actually help people get through the red tape to figure out what they need to do to get their license back. Their goal is getting more licensed and insured drivers on the road, instead of just arresting and prosecuting and sending to jail those folks that don't have licenses. It's been very successful. Statistics by the municipal prosecutor indicate that many, many more people are now insured and validly driving.

For the same reason, I think a permanent or ten-year revocation for a felony DUI, which is contained [in] Section 31, [pages] 20-21, is not such a great idea. It's useful to give people a light at the end of the tunnel, and (indisc.) from driving from (indisc.) just doesn't seem to be working.

The fines are increased in Section 31, page 20, line 17. That raises the mandatory minimum fine from \$5,000 to \$10,000 for a felony DUI. Once again, I would simply urge the committee to give the discretion to the court to take into account all of the individual circumstances of that person. These people who are facing these crimes probably also have a whole [host] of other problems stemming from their addiction or abuse of alcohol. They probably owe restitution, child support, treatment costs, and food, clothing,

necessities (indisc.) of the family. The judge now has the discretion to go (indisc.) but I think it would be a mistake to require a mandatory minimum of \$10,000 for every individual.

Number 0615

On Section 18, I just have a couple of questions, and I apologize because it might be that I'm not familiar with the bill. Certainly, I understand wanting to create the crime of knowingly allowing an unlicensed DUI offender to drive. But the minimum fine, which is \$1,000, can create a real hardship, and I don't really understand requiring that person to attend an alcohol program. It doesn't necessarily follow that that person needs alcohol treatment. So while I understand the thought process behind the law, it seems like the sanctions need to be a little fine-tuned.

Finally, probably one of our largest areas of disagreement is Section 37, which is something to overturn the Sosa [v. State] case. Mr. Sosa was arrested in Bethel for DUI. It turns out that the breath-testing machine in Bethel wasn't functioning at the time. (Indisc.) under the law, he had given implied consent, by driving, to give a sample of his breath. There was no means for the state or the police to get the sample of his breath. So, they instead asked him for a sample of his blood, and Mr. Sosa declined, because he did not want to give up any of his blood. The police got a search warrant, and the supreme court of Alaska said the search warrant isn't valid because the legislature (indisc.) were by you could only get a search warrant to take a [blood test under] two circumstance: one, if they're unconscious, or two, if there's been a serious injury or fatality. None of those circumstances existed in Mr. Sosa's case. Mr. Sosa actually refused to give a sample, even though there was a valid search warrant. So, it wasn't that any evidence in his case (indisc.).

Number 0753

But they then charged him with a felony crime of tapering with evidence for refusing to submit to the search warrant. The supreme court said, "You shouldn't be required to submit to a search warrant

which was invalid to begin with, and so we're not going to convict him on the felony crime on that account." I understand that the legislature is reconsidering that policy and changing the implied consent standard (indisc.) search warrant available to the police. I also urge the legislature to rethink that policy carefully. The reason the search warrant is limited to those situations is because forcibly removing blood from a person against their will is [a] very (indisc.) process. In those cases where there appears to be serious injury or those cases where the person is charged unconscious, you don't have any danger or confrontation where the situation is deteriorating even further. I think that the current legislative structure has adequate means to punish somebody who doesn't get a breath test. Frankly, the solution to the Sosa case is to make sure that these breath machines in every place [are] in good working order so that people can give the samples that are required of them without such an intrusive (indisc.) as a search warrant and a needle in their arm.

Number 0831

The "look-back" provision is a tough call. Changing this so that more people are again being charged with felonies, spend more time in jail, and have harsher penalties, it's an expensive proposition. I think ... perhaps the legislature could find better ways to spend the money in terms of treatment and prevention. I have to tell you that really harsh sentences are already being handed down. Under the (indisc.), oftentimes people will also get probation revocation time, and aggravating factors. So, I think perhaps there is a misperception that people are not getting (indisc.) sentences at this time, and they truly are.

Number 0878

REPRESENTATIVE OGAN asked if the look-back provisions have double jeopardy problems.

MS. BRINK replied that she did not think so. She believes that the current five-year look-back provision has been challenged in the court on this issue. But findings did not constitute double jeopardy.

REPRESENTATIVE OGAN asked for assurance that the look-back provision has been challenged on the double-jeopardy issue.

MS. BRINK said yes; anytime one increases the possibility of a greater punishment or offense level based on past conduct, there will be challenges.

Number 0922

MS. BRINK further testified:

The only [other] section that caused me some concern ... is Section 30, page 20, line 8-9 [Version P]. If I understand it, that section requires that jail time would no longer be able to be served at a residential treatment center or a hospital treatment center.

I'm somewhat confused by that, because I think that there's a lot of push to try to address the alcohol addiction problem with treatment, and actually (indisc.) to go to treatment. I think that any measure that would discourage people from doing that would have a bad backlash for the people in the program, isolating people in jail. Even if you try to provide treatment in jail, once they're done serving their sentence, these people are simply relieved and a large part of treatment involves getting people ready to cope with life on the outside when it's maybe not so easy to resist....

The criminal justice assessment commission just set three years with the aid of the federal branch to studying the use of residential treatment centers and alternative incarceration and came up with exactly the opposite conclusion of Section 30. That assessment commission really thought that we should be maximizing our use of alternative sanctions, particularly with treatment. These treatment measures [are] more often cheaper than hard jail beds and have a better success rate than simply warehousing somebody.

Thank you, Mr. Chairman. I appreciate it. I've taken a lot of your time. But this is a big issue and a complicated bill and I appreciate getting the opportunity to speak.

CHAIR KOHRING suggested that Ms. Brink summarize her testimony and provide it to him so he could distribute it to the committee members, for review.

MS. BRINK replied that she would do that.

Number 1071

CHAIR KOHRING referred to Ms. Brink's concern in regard to the 30-day residential alcoholism program. He thanked her for looking at the "bottom line" to figure out how to make this work with the least amount of money possible. Several committee members have shared their concern that the fiscal impact is going to be fairly substantial, he said, which has "raised some red flags."

CHAIR KOHRING asked Ms. Brink to stay online until her fiscal note was discussed.

CHAIR KOHRING commented to Mary Marshburn, Director, Division of Motor Vehicles (DMV), that he would like her to stay online to discuss the DMV's fiscal note. He pointed out that the House Transportation Standing Committee does not have any details on the fiscal note [from the DMV]; it is only a number without associated details.

Number 1204

MARIE LAVIGNE, Alaska Chapter, National Association of Social Workers (NASW), stated that she was not present to testify on the bill, "other than to express the support of our members, our social workers across Alaska, who are very concerned about issues related to drunk driving and adequate and accessible treatment."

CHAIR KOHRING asked if she essentially supported the legislation as written.

MS. LAVIGNE replied that NASW is continuing to review the provisions in both bills [HB 4 and HB 39].

Number 1232

CINDY CASHEN, Member, MADD, said she was speaking on behalf of Mothers Against Drunk Driving, and as a victim of a drunk driving crash. She said:

I was not intending to speak on House Bill 4, but after listening to Mrs. Brink's comments, I feel the burning desire to do so. As a victim and as a person who has studied MADD's past history with looking at how they view what works with the drunk driver, I can say that yes, treatment does work with drunk driving but it's only part of the puzzle. There does need to be other components involved, and House Bill 4 does have those.

MADD endorses House Bill 4. It does have some reservations in one section, where an offender who has Blood Alcohol Content of between .08-.10 can lose the jail term if under strict probation. But that is the only concern MADD has. Otherwise, MADD endorses HB 4.

CHAIR KOHRING asked for clarification on the provision she was discussing.

MS. CASHEN replied that the provision is the diversion program, which is the only portion that MADD has concerns about. She said:

I guess I'm looking at it as not only a member of MADD, but also a victim. We realize that the look-back extension and vehicle forfeiture, ... they're going to cost money, but we are so far behind compared to not only the rest of the United States but other countries. It's embarrassing and it's frustrating and it's maddening because what constantly goes through my head is if these had been in effect, would my father still be alive? I can't help but think there's a good chance he would be. If there had been a look-back beyond five years, if there had been a vehicle forfeiture the first or second time, the person who killed my father would that of made a difference? If the treatment centers had been funded appropriately and in such a manner that the person wasn't put on a waiting list and then dropped. All of these might of made an effect. Now, I don't have the answer to these, I realize that. I'll never know. But I'm one victim, and I'm one person looking at these and I'll always have questions. There are thousands of victims in Alaska. There are thousands of members of Mothers Against Drunk Driving and we are watching this bill and we don't want to see these parts taken out. We

want something done. It's time for justice to happen.  
That's all I have to say. Thank you for your time.

Number 1453

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor of HB 4, introduced Janet Seitz, one of his staff who has been working on this bill for many months. He pointed out that Ms. Seitz served on the Municipality of Anchorage DUI Task Force along with Denise Henderson, staff to Representative Pete Kott. His office's interest in this bill comes in large part due to Ms. Seitz's participation and the fact that her family was very directly affected by an [DWI] accident which occurred last summer. He said, "All of us know somebody that's been involved in a tragedy that relates to driving and alcohol at one time in our life, without question."

Number 1507

CHAIR KOHRING suggested that the House Transportation Standing Committee review the fiscal notes.

Number 1532

REPRESENTATIVE ROKEBERG commented that due to his background with the House Finance Committee, Chair Kohring is very concerned about some of the costs. He said it was imperative that the House Transportation Standing Committee recognizes that the aggravator section of the bill has a gross cost of approximately \$29 million. This provision mandates that the court add an additional six month sentence for anybody who has been apprehended and has a .16 BAC. Right now, the [fiscal] notes total approximately \$35 million. The "mid-effect" of this is to take \$27-28 million dollars off, which would reduce the working fiscal notes to \$8.5 million. In short, there is one provision in this bill that creates the vast majority of the cost.

CHAIR KOHRING asked what fiscal note this would be.

REPRESENTATIVE ROKEBERG replied that it runs through all of the fiscal notes. He said that he asked the departments to try to break down their fiscal notes into different provisions within the bill. He stated that a quick analysis of the fiscal notes indicates that the aggravator provision is the "primary culprit."

REPRESENTATIVE ROKEBERG stated that, for example, \$24.3 million of the Department of Correction's \$29.3 million fiscal note is due to the aggravator provision. For the attorney general's office it is \$800,000; for the Alaska Court System, \$339,000; and the Public Defender's Agency, \$617,000. So, the aggravator section of the bill is a substantial driver of these costs. He said that he did not believe the legislature is willing to pay this price right now. However, as this bill moves through the process, he will be looking at trying to "finesse" the aggravator with more discretion. He will do this by taking the majority of fiscal elements out and trying to reinsert some "aggravator intention" back in. In short, he will approach this particular issue from a different angle.

Number 1688

REPRESENTATIVE SCALZI asked for more information regarding the six-month sentence, including if it is an option for the Department of Corrections.

REPRESENTATIVE ROKEBERG asked for clarification on whether he was talking about Section 33, page 22.

Number 1711

JANET SEITZ, staff to Representative Rokeberg, Alaska State Legislature, explained that the aggravator provision requires that if a person has a BAC of .16 or more, the court has to add an additional six months of imprisonment to any sentence already mandated, plus the 30-day residential treatment alcohol program.

REPRESENTATIVE SCALZI asked if the six-month sentence alone adds up to \$24 million.

Number 1735

REPRESENTATIVE ROKEBERG corrected himself by saying that the cost is actually closer to \$27 million, when all the departments "chime in on it." If the aggravator and longer-sentence provision are going to be in the bill, there will be more jury trials and activity because people will be trying to avoid that incarceration more. This will increase costs. He also mentioned that the public defenders are going to spend more money. The courts claim that this provision will require an additional district judge. He said that he is withholding any criticism for these agencies in terms of the fiscal notes, since

they are not finished. However, he said that it seems that the agencies "overreached just a little bit" [in the fiscal notes].

REPRESENTATIVE ROKEBERG went on to say that the Department of Correction's fiscal note is based on basic per-diem rates and then it consists of the element "between (indisc.) soft beds and the hard beds." He said that putting people in jail is a very expensive proposition, but it was a strong recommendation of the Municipality of Anchorage DUI Task Force. The cost is not going to be acceptable [to the legislature].

REPRESENTATIVE ROKEBERG referred to his testimony the week before, in which he indicated that this bill is in conjunction with another bill [HB 172] that would contain the wellness court element. The wellness court legislation will have costs in the \$1.5-million to \$3.5-million range. He said that when the whole package [HB 4 and HB 172] is added together, it comes to about a \$10-million package, excluding the aggravator provision. If the House Transportation Standing Committee wants to do a fiscally responsible thing, and wants to repeal that section now, that would be fine. However, he said that he would pass the message to people that are interested in that provision that the House Judiciary Standing Committee will look at reinstituting aggravators on a cost-effective basis.

Number 1845

CHAIR KOHRING asked what section he was referring to.

REPRESENTATIVE ROKEBERG said page 22, lines 20-29, Section 33, subsection (q) [of Version P].

CHAIR KOHRING remarked that if this provision were eliminated, the [high fiscal note] that Representative Rokeberg discussed would be addressed.

REPRESENTATIVE ROKEBERG commented that this particular provision is "clouding the note right now." He said that his challenge was to "dwindle this down" as the bill makes progress, and then "you'd be making extra contribution." He said he is not giving up on the aggravator component of the bill. For example, "we" are thinking of ways to deal with this provision that would have little fiscal impact, such as community service, but would have an impact on the offender (who had a high BAC).

REPRESENTATIVE ROKEBERG pointed out that there was some criticism from this "break on the lack of treatment" and concern

about "no jail time and the treatment center" (in Section 30). He referred to testimony from the last meeting in which people testified that there are offenders who are "gaming the system." To avoid jail time, these DWI offenders go to treatment centers, and receive "good time counts" due to a court decision. This provision is intended to ensure that these offenders are incarcerated for a (indisc.) period of time as well as mandating that they do their treatment.

REPRESENTATIVE ROKEBERG stated that this provision also mandates that long-term prisoners participate in alcohol and rehabilitation programs. Currently, these programs are discretionary. Many prisoners [convicted of DWI] do not avail themselves of treatment programs. Therefore, they don't have any treatment elements when they are released from the prison system. He reiterated that this bill mandates treatment for [DWI] offenders who have a history, which is a part of the large cost to the Department of Corrections.

Number 1998

CHAIR KOHRING mentioned that two amendments have been brought before the House Transportation Standing Committee, one by Representative Kapsner.

CHAIR KOHRING referred to page 19, lines 6 and 7, which states: "The cost of treatment required to be paid to the state under this subsection may not exceed \$2,000." He said this provision makes it more difficult for the state to collect what it potentially could from a DWI offender. He said he thought it would be more prudent to "raise that money or even make it open-ended." He said:

We can have the potential to recover as much in the way of compensation to the state from the perpetrator of the crime, either through "garnishment of wages" or selling assets or things of that nature. So there's that one concern.

CHAIR KOHRING specified that another area of concern is the issue of insurance. He said that insurance companies will sometimes pay for the cost of care, treatment, and putting people through programs. But it appears that the way it's worded [in the bill], there would be a restriction under which an insurance company could provide more money than what the provision here would allow. He asked Representative Rokeberg to address these concerns.

Number 2074

REPRESENTATIVE ROKEBERG referred to Chair Kohring's second question [the issue of insurance]. He said the recoupment of cost of insurance and all treatment levels from a private agency or to someone who is incarcerated in prison is possible. At all levels of the system, "we" can avail ourselves of recoupment of those costs, when they are covered with insurance. "The level of diligence is a question mark," he said. He went on to say that he is aware that the corrections system works to get those "recoupments." (A majority of offenders, especially first-time offenders, have some type of private insurance that would cover some costs. This is due to a mandate in the bill that states that the individuals pay for the costs, and if they have insurance, they will "recover" from that. However, he said:

[The] chronic individual that ends up before a court system seemingly doesn't have that private insurance ability. So, the state does have to pick up that tab.

REPRESENTATIVE ROKEBERG deferred to Ms. Seitz to answer Chair Kohring's question regarding "not to exceed \$2,000."

Number 2142

MS. SEITZ referred to Section 30 [Version P], which states that under current law, the prisoner has to pay \$1,000 of the imprisonment cost. This bill doubles the cost to \$2,000, which was matched with the treatment costs. So, the prisoner would have to pay up to \$2,000 in treatment costs and up to \$2,000 in imprisonment costs. The feeling was that the prisoners should pay something. However, a lot of these individuals, especially repeat offenders, may not be able to pay this amount, even though "we" selected a figure "we" thought was reasonable.

CHAIR KOHRING remarked that he was going to bring this issue of the funding source forward: "Should the state [pay] the 'lion's share' of this [through] the general fund?" He said that after going over the fiscal notes, this appears to be the case. Even \$10 million is a "pretty good chunk of money." He went on to say that he couldn't speak for this committee, but he said:

Within our caucus, we watch that bottom line, and if there's any way that we can front legislation extremely minimally and not tap into the permanent fund in a large way, that would be very preferential.

Number 2198

REPRESENTATIVE ROKEBERG commented that there is no indication of program receipts, fines or recoupment costs in the fiscal notes. He said that some element has been put in there, but there is no income for the substantially increased fines in the bill, and other elements of payment by the individuals. But, he thinks this is a gap because "we" are going to be generating some revenue. He said, "A lot of these people are judgment-proof but not all of them."

Number 2222

CHAIR KOHRING stated that it would serve a "twofold purpose" if that provision (in regard to the \$2,000 issue) was deleted. This would strike fear in DWI offenders that if they commit these crimes, they are going to be "subject to garnishment of wages or seizure of assets or their car being sold, ... and that would be a source of revenue." He said:

It would be an incentive issue, and it would also be the issue of raising some additional monies to help offset tapping into the permanent fund to pay for a program of this nature. I don't know if that's realistic. It's just a thought that I had been entertaining in my mind for a long time. I don't know how much money you can literally extract out of people out there.

CHAIR KOHRING went on to say that it is possible that many DWI offenders have low incomes. However, the best scenario would be for offenders to pay the cost of their own incarceration and treatment.

REPRESENTATIVE ROKEBERG remarked that this is clearly in the bill.

CHAIR KOHRING said, "But you have your limits here too that concern me."

REPRESENTATIVE ROKEBERG commented that all of these measures apply to the general fund, not the permanent fund.

Number 2275

REPRESENTATIVE SCALZI asked if it was legal to have an offender pay for his or her own incarceration.

MS. SEITZ replied that this is current law and it is being done now.

CHAIR KOHRING referred to his experience of being on the House Finance Committee where he was part of the effort to employ "our \$250 million budget cutting package." He stated:

There was a lot of sacrifice, a lot went through that process. And I'm in fact "gun shy" when it comes to looking at bills that are big-ticket items that have big fiscal notes. I just want to be very thorough in our analysis and make sure that we have a high comfort level in passing something out of committee that has a high fiscal note. In light of all the hard work that we went through in trying to achieve our spending reductions over those first few years that you and I were in the office, and [Representative] Ogan, I remember those days so vividly and they weigh heavy on my mind. So that is a concern, the fact that we pass legislation that results in substantial spending, in light of the fact that we're trying to watch the bottom line.

Number 2340

REPRESENTATIVE WILSON expressed her concern for the family of a DWI offender, if the offender had to pay for his or her own imprisonment. She wondered how the family would obtain the funds. She stated that the family of the drunk driver is also a victim due to feelings of embarrassment and heartbreak. They will also suffer financially if the offender is responsible for paying for his or her imprisonment. She referred to a provision in the bill that dealt with co-ownership of a vehicle, and mentioned this might be taken away if "that was the only way." She asked how "this is picked up and taken care [of] so that the family of the perpetrator isn't held hostage under this."

Number 2396

REPRESENTATIVE ROKEBERG replied that this is a point of consideration. However, Alaska is a victims' right state, so the first people looked at are the victims of a criminal action. That's the problem. This bill is intending to affect the habitual drunk drivers who are "killing people on the streets."

Confiscation [of vehicles] and high fines will provide some financial burden to that perpetrator's family. He said that if public policy is that people should pay for what they are doing to the rest of society, then "I can offer you nothing more than they're [families of DWI offenders] going to have to suffer by their association." This is the "entire structure" of the bill. He went on to say that he sees Representative Wilson's comments as saying "we shouldn't be doing this if we're worried about the perpetrator's family." He then wondered if the fines should be lowered. He said that this is a dilemma. It is possible that some people, due to incarceration, may lose the "breadwinner's livelihood and income stream and [wind up] lining up [on] our safety-net welfare rolls," but people are not getting the point of this.

REPRESENTATIVE WILSON remarked that this issue "was just a concern" that she had.

Number 2468

REPRESENTATIVE OGAN asked Representative Rokeberg if he had considered the "revenue generating" associated with this bill.

REPRESENTATIVE ROKEBERG replied that since our constitution requires a "single subject rule," this could not be included here. But there is discussion concerning this in a Senate bill and other legislation.

TAPE 01-15 SIDE B

[The first 40 seconds of Side B are indiscernible due to tape malfunctioning.]

Number 2471

REPRESENTATIVE OGAN commented that it's the same subject, so he doesn't think there is a ban on putting that [in the bill].

Number 2450

CHAIR KOHRING pointed out that the committee members received a fiscal note summary handout. He then referred to the line item in this fiscal note having to do with full-and part-time positions that call for hiring between 40-42 people over six years of implementing this bill. He wondered if these numbers would be reduced if the provision in Section 33 was omitted from the bill.

REPRESENTATIVE ROKEBERG said that from the Department of Law's fiscal note and his estimate, deleting the aggravator section would result in a net \$8.5 million.

CHAIR KOHRING asked what kind of impact this would have on the number of employment positions needed to implement this bill.

REPRESENTATIVE ROKEBERG said he did not know; he had not gone through the bills in detail yet.

CHAIR KOHRING mentioned most of the fiscal notes are new to the House Transportation Standing Committee. He remarked that a concern of his was keeping the number of state employees to an "absolute minimum."

Number 2366

REPRESENTATIVE SCALZI referred to the figures (\$28 million) that were cited [from the fiscal notes]. He asked if the new hires were included in this.

REPRESENTATIVE ROKEBERG said there are some, but that he did not know the exact number; the majority of that is actually corrections/prison time. He stated that this would include a district court judge and personnel in other departments.

REPRESENTATIVE SCALZI remarked that a lot of this could be attributed to the aggravator.

REPRESENTATIVE ROKEBERG said, "Not all, but most."

Number 2234

CHAIR KOHRING commented that the Department of Public Safety's fiscal note seemed a "little on the lenient side," for hiring only one additional state trooper, for having legislation of this magnitude.

REPRESENTATIVE ROKEBERG commented that there is no income from their forfeiture program either.

CHAIR KOHRING reiterated his concern of enforcement in this bill. He said:

We could pass a fancy bill with all the whistles and bells that addresses everybody's concern. But it's

one thing to have it in law. It's another thing to actually enforce that law. Do you feel that what is being suggested by the department is sufficient in terms of enforcement of this legislation?

REPRESENTATIVE ROKEBERG replied that the departments wouldn't "short shoot" themselves on the fiscal notes. He then asked Representative Kohring if he was specifically referring to troopers.

CHAIR KOHRING asked if "we" have the resources to adequately enforce this legislation.

REPRESENTATIVE ROKEBERG answered that the fiscal notes reflect what the department believes are adequate sources. However, [the legislature] hasn't analyzed them in detail. He said that the department tends to be "less than conservative" when making its estimates. But some "value engineering" on these fiscal notes needs to take place so costs can be lowered more. He went on to say, "There are certain elements of the bill that may have to be discarded or modified to accomplish that very goal, and I maintain and recognize your concerns about the cost."

CHAIR KOHRING asked if there was a representative from the Department of Corrections present.

Number 2244

CANDACE BROWER, Program Coordinator, Office of the Commissioner, Department of Corrections, said that she has been working on the fiscal note for months.

CHAIR KOHRING asked Ms. Brower's opinion on whether what's being proposed is sufficient for enforcing this legislation.

Number 2215

MS. BROWER commented that this is a complex bill and she is not finished analyzing all of the parts to formulate the most accurate fiscal representation. She reiterated Representative Rokeberg's comments that the majority of the fiscal notes would be from the aggravator provision, which is "just simple math with days of incarceration and cost." She said that she took into consideration whether or not the cost of care would propose a burden on the department in terms of additional staff. She did not include any positions [in the cost of care]. However,

it [aggravator provision] still may require more [positions], but the cost would stay the same.

MS. BROWER noted that the House Transportation Standing Committee received the fiscal notes recently. She said that if that item [aggravator provision] were taken out, the main cost of the fiscal note would be treatment, which is an important cost to the department. She went on to say:

Our department, as well as the substance abuse treatment community, recognizes that if we have any hope of deterring people or rehabilitating people, we can't just incarcerate them. We have to treat them while they are incarcerated, so that they have a better chance of not re-offending once they get out.

MS. BROWER remarked that the department's fiscal note is based on their belief that there would be 240 convicted felons in the first year. Estimates that 50 percent would require intensive outpatient treatment and 50 percent would require residential treatment are based on information received from various substance-abuse agencies, based on what they thought would be appropriate for people who have reached the felony offender level. These costs are based on what is currently provided in the facilities.

MS. BROWER informed the House Transportation Standing Committee that the Department of Corrections has been working on "trying to provide some treatment for those who will avail themselves while in incarcerated." With additional funding, "we" would replicate some of that for these targeted felons.

Number 2066

MS. BROWER pointed out the Wildwood Therapeutic Community residential program, which opened in October at the Wildwood Correctional Center, is one of the things that has been done recently. This 6-to-12 month program has 42 beds and targets chronic substance abusers. It has been very successful, and "we're very excited about the kind of results that people are experiencing with this population." She stated that this program is isolated. She said:

These people are removed from the rest of the population so that there's no mixing. There's [a] focus on treatment all the time. This is for people who are nearing the end of their sentence, so that

when they are released, they won't have to go back into the general population. They can either be released to a halfway house or the community.

MS. BROWER remarked that 42 beds are not sufficient for the 240 offenders [that the department believes will be convicted in the first year]. So, additional resources would be needed. She reiterated Ms. Brink's earlier comments that "we do appreciate that Representative Rokeberg has worked with us long and hard over this bill." She said "we" have tried to make a "good-faith effort" in terms of what this is going to cost. However, "anytime you do something of this magnitude and is this important, it's not going to be inexpensive."

MS. BROWER emphasized that this is a complex fiscal note, a "work in progress."

Number 1983

REPRESENTATIVE WILSON asked how the permanent fund dividend would apply to offenders, including those who only serve six months.

MS. BROWER explained that if someone is a felon or has a third misdemeanor, he or she does not receive a dividend for the year that person was incarcerated. The Department of Law deals with the treatment and cost of confinement in terms of collection.

REPRESENTATIVE WILSON asked for clarification on whether the Department of Corrections gets that money or if it goes into the general fund.

Ms. BROWER replied that "we" do get some [money] in terms of program receipts. She mentioned the Receipts Supported Service, which is money the department receives for cost of care. This falls under the receipt services category.

REPRESENTATIVE OGAN asked if there were any ways to incarcerate people for less money such as establishing tent camps at Point MacKenzie [Farm Program] or Palmer Correctional Center. He said, "I know we're doing that to some extent now, ... especially for misdemeanor crimes. Is there still a backlog of misdemeanor DWI waiting to get in?"

MS. BROWER said she does not believe there is a backlog. She stated that a bill passed a few years ago that required first- and second-time DWI offenders, who are the bulk of misdemeanor

offenders, to serve their time at a halfway house. She named electronic monitoring and level five (home confinement) as other creative methods that are used on occasion. She said:

Those areas are being expanded to the best of our ability. We are limited by risk factors. We still have to be very careful in terms of assessing people's risk to the community and the safety of them being in the community.

REPRESENTATIVE OGAN asked what the cost of the halfway house per day is.

MS. BROWER said \$64 is the average.

REPRESENTATIVE OGAN asked if there was currently something at Palmer Correctional Center similar to tent camps.

MS. BROWER stated that tents are used in the summertime, when the weather is more amenable to it, to assist with overcrowding.

REPRESENTATIVE OGAN asked if there was a "per-day cost of keeping somebody in one of those tents."

MS. BROWER said, "No, as far as I know it's all factored in to the cost of ... confinement."

REPRESENTATIVE OGAN remarked:

We have a pretty big area in Point MacKenzie, that's currently a farm with a correctional facility out there. And Palmer has a fair amount of space around; [there is] very little fenced in.

But I wonder if [there are] ways of possibly incorporating into the bill some cheaper way to take care of some [DWI offenders]. ... Frankly, I wouldn't care if it was in the wintertime; ... you put a heater in the tent and it will be warm. It might not be comfortable, but for me, personally, comfort isn't necessarily the reason people go to prison. I'd just like to maybe explore some ideas to try to make the food a little worse than certain airlines which is (indisc.) getting harder to do, and look for ways to reduce the cost of these folks [DWI offenders].

MS. BROWER stated that she appreciated Representative Ogan's concerns and efforts. She mentioned that "we" are in the process of "hopefully determinating" the Cleary lawsuit, which deals with conditions of confinement. So, there are some people who object to some of the conditions that might be imposed.

REPRESENTATIVE OGAN commented that [Cleary] was a settlement, and at the time, the administration "rolled over."

CHAIR KOHRING said he concurred with Representative Ogan's remarks. His only recommendation is that, "We put them all in Palmer and keep them out of Wasilla."

CHAIR KOHRING addressed Representative Kookesh's request from the last meeting. He had asked for information from the sponsor, which is in the committee packet. The information addresses the issue of forfeiture and how it is addressed in the codes for the City [and Borough] of Juneau, the City of Fairbanks Code, the Municipality of Anchorage Code, [and in other states].

Number 1655

REPRESENTATIVE SCALZI referred to page 28, Section 46 [of Version P], and asked why the change was made to delete "may" and insert "shall".

Number 1634

MS. SEITZ explained:

Under current law, it's "may," and if the state charges, they sometimes do vehicle forfeitures and sometimes don't. The municipal code ... in the Municipality of Anchorage, it's a "shall". So, if you're a second-time misdemeanor in Anchorage or in some other city that has a vehicle forfeiture statute, your car is forfeited. The municipal prosecutor brought to the attention of the DUI Task Force and others that it was kind of an interesting situation. If you are a second-time misdemeanor in Anchorage, ... you're forfeiting your car. But if you are a third-time felon, you might not.

MS. SEITZ stated that this change was a [DUI] Task Force recommendation that Representative Rokeberg agreed with. "Shall" was put into the bill to force offenders to forfeit

their cars in order to "separate the habitual offender from the vehicle that causes the problem." The word "shall" makes vehicle forfeiture mandatory for the second offense, whether the person is charged under a municipal ordinance that has a forfeiture clause or under state law.

CHAIR KOHRING called an at-ease at 2:17 p.m.

TAPE 01-16 SIDE A  
Number 0040

CHAIR KOHRING called the meeting back to order at 2:19 p.m.

Number 0044

REPRESENTATIVE MASEK asked if there was a representative from the Department of Health & Social Services. She then asked [Robert Buttane, Division of Juvenile Justice, and Ernie Turner, Division of Alcohol and Drug Abuse] if currently DWI offenders are offered less time if they go through a treatment center, and if they have an option of just serving time and not receiving treatment. She remarked that this bill requires that [treatment] be a mandatory referral and that she was curious about what the current conditions are.

[Mr. Buttane deferred to the Department of Law.]

REPRESENTATIVE MASEK referred to page 9, Section 16, line 27, of Version P, which says, "submit proof to the court or the department that the person has met the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services". She asked Mr. Turner if he was going to have "anything to do with the program or the requirements that they have to meet."

Number 0247

ERNIE TURNER, Director, Central Office, Division of Alcoholism & Drug Abuse, Department of Health & Social Services, explained that terms of probation are monitored through the ASAP program. These terms are reported back to court: whether the offender completed the terms, and if so, whether if it was through the Alcohol Information School or treatment. In response to Representative Masek's question regarding "serving time and not serving time," he stated his understanding that all people have choices, and can choose to go to prison rather than to treatment.

Mr. TURNER went on to say that treatment is an option for offenders if they choose. He reiterated Representative Rokeberg's comments that there are a lot of offenders who do look at treatment as an "easy time or a way of scamming and getting by with something." He said going to treatment for 30 days is "no magic answer," if a 30-day treatment is imposed, but the person needs 60 or 120 days a year. He said that ought to be looked at.

REPRESENTATIVE MASEK referred to page 18, Section 29, line 28 [Version P], and read: "The Department of Health and Social Services shall, by regulation, establish standards for clinically appropriate treatment required under this subsection." She asked what those standards would be under this bill.

Number 0380

MR. TURNER commented that the division was audited by the legislature a couple of years ago. He said that the division does not have "per se" standards, but has standards that were developed in 1974, which are used by reference. He explained that he read Section [29] of the bill to mean that "we" would have to establish our own clinical and program standards (which includes clinical standards). "We" have been working on this due to the legislative audit.

REPRESENTATIVE MASEK stated that she had questions for the Department of Law. She referred to earlier comments by the sponsor and testifiers, and agreed that this is a very complicated and thick bill. She said that she is overwhelmed with what has been presented today. She asked Dean Guaneli, Department of Law, the percentages of offenders who go through the two options [prison and treatment].

Number 0563

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, said he did not know. He commented that the administration's goal has been to focus on identifying the needs of offenders and figuring out the extent of their problems, to develop a treatment program to meet those needs. He said:

Some people [offenders] are going to be really just a social drinker who drank too much one night and who

really doesn't have a problem. There are others who are going to have a deep-seated and long-standing problem, and they're going to require much more in the way of treatment.

MR. GUANELI reiterated the administration's goals of clearly assessing a person's problems and setting up a mechanism in which the person is encouraged or perhaps coerced to get treatment. He said:

Exactly how that's going to occur, I think as [Department of] Health and Social Services representatives testified, still remains to be determined. I think the department has got to set up standards for programs that don't really exist now. Our goal is to provide a better treatment regimen and better treatment system than exists now.

Our goal has never been to necessarily ... increase the amount of incarceration, but simply to identify offenders ... at an early point of time, [raising the BAC to] .08 being one of the ways to do that, and identifying people who have deep-seated problems, and then encouraging them to get appropriate treatment. The way that's done usually is, the court says, for example, with a first-time drunk driving, 72 hours is the required mandatory minimum of punishment (3 days in jail). But the court will usually say "Your sentence is 30 days in jail, but I'm going to suspend 27 of those days on the condition of X, Y and Z." And X, Y, Z is that you go to some sort of alcohol treatment. So you are going to serve your three days in jail. But then you're going to be required, after that, to get assessed by the Department of Health and Social Services, figure out what the extent of your problem is, and based on that assessment, based on the recommendations of the experts, you're going to be required to go into the program that they point you towards.

And that can be something as simple as getting education in the effects of alcohol and what it does to people, if you have [a] very minimal problem, or it could be as extensive as going into an inpatient treatment program where basically you live in a treatment program 24 hours day and you undergo treatment for as long as it takes. ... Once you've

been pointed to that particular type of treatment that you need, based on your particular situation, ... the court is going to require that you complete that and successfully complete it. ... If you don't complete it, then you're subject to be put in jail for a longer period of time. That's the way it is designed to work.

Number 0780

I think how well it works depends on ... the adequacy of the funding of some of the Department of Health and Social Services programs that are designed to provide that treatment. And that's something that we need to see as this bill moves forward, whether the funding is going to be forthcoming. That's certainly the administration's goal, ... to provide that mechanism to clearly assess what the person's needs are and to point them in the right direction and to provide some funding to do all that.

Number 0828

REPRESENTATIVE MASEK referred to page 18, [lines 8-10], Section 28, Version P of the bill, and read, "every provider of treatment programs to which persons are ordered ... shall supply the judge, prosecutor, and an agency involved in the defendant's treatment...." She asked Mr. Guaneli to discuss this section.

MR. GUANELI explained that the sponsor and administration have worked on this provision. He said that it is "simply a way of guaranteeing that in order to make the best assessment of a person's need, you really have to have access to all the past information" on the person. Due to some programs' confidentiality requirements, at times information will not be released. For example, if someone has been through a 28-day inpatient day-treatment program at a private clinic in Anchorage, information may not be released to someone who treats the offender later on. In short, there is a gap in information that's available.

MR. GUANELI stated that this provision is designed to make the information available as long as federal law and regulation do not prohibit it. But he said:

To the extent that it's allowed under federal law, all of the past information is available and, again, it's

to provide the best assessment of that person's past behavior [and] past experiences in the program, so we can point that person to the best program available.

REPRESENTATIVE MASEK asked if this is "absolutely necessary to do," and if it has been a problem in the past.

Number 0955

MR. GUANELI replied that the experts say it has been a problem. Some of the treatment providers complain that they don't have a "full picture of the person's past, and so I rely on the experts to say it has been a problem."

Number 0988

CHAIR KOHRING remarked that he has discretion to hold the bill over, if he chooses to do so. If he made a recommendation, it would be to not move the bill out of committee. However, he said he wanted to hear the sentiments from the remaining committee members. He explained that part of the reason he called an at-ease was to discuss this matter with the sponsor and let him know there was some concern from him and one or two other members. However, if the consensus [of the committee] is to move the bill, "I would certainly entertain it."

CHAIR KOHRING specified his concerns. First, he said, the committee needs more information in regard to the DMV fiscal note, in particular. Second, since the fiscal notes are "relatively new" to the committee, he is not sure if members have had a chance to review them in depth. A third concern is the complexity of the bill. He stated that his next concern is modifying the fiscal notes to reflect suggested changes, such as dealing with the aggravator section that Representative Rokeberg brought to the committee's attention. He mentioned the issue of "up cost," the substantial nature of the fiscal note, and the \$33 million cost. He said he would like to see the fiscal note be "much less" than the proposed \$40 million.

Number 1068

CHAIR KOHRING suggested that the sponsor refine the bill to a committee substitute or amendments, so that the committee could revisit the bill in early March. However, he wanted to hear the remaining committee members' thoughts.

Number 1104

REPRESENTATIVE SCALZI concurred with these remarks. He stated that many changes have been brought forth, especially with the fiscal note. He noted that the sponsor's suggestion to amend the "large aggravator portion of the bill" would "help move things along." He said, "Being responsible, I'd rather do it [changes to the bill] here, I'd rather know what we're passing out." He then said, that if there were a big impetus to move the bill from committee, he could support that too, although he couldn't personally recommend it.

Number 1134

REPRESENTATIVE KOOKESH remarked that he had no problem holding this bill over, especially since there are a couple of amendments. He said he wanted Representative Kapsner to have the opportunity to present her amendment, and holding this bill over will enable her to do so.

CHAIR KOHRING asked Representative Rokeberg to address the House Transportation Standing Committee's concerns and possibly give them a compelling reason for moving the bill at this point.

Number 1154

REPRESENTATIVE ROKEBERG stated that this is a complex bill, but holding it over in committee is not going to make it any simpler. He said this bill needs work, and the proper committee for this work is the House Judiciary Standing Committee, which he chairs. Two of the House Transportation Standing Committee members, Representative Kookesh and Representative Ogan, are on that committee as well. He said he had calendared this bill for the next House Judiciary Standing Committee meeting (the next day), pending referral. His intention was to take testimony on the bill, break the bill down, and have public work sessions within the House Judiciary Standing Committee.

REPRESENTATIVE ROKEBERG pointed out that he knows that Chair Kohring has been a long-time member of the House Finance Committee. However, "this is a committee system here, and the fiscal notes are the jurisdiction of the finance committee, not the transportation committee."

REPRESENTATIVE ROKEBERG asked the House Transportation Standing Committee to adopt the "very simple" amendments that are before them, before moving the bill. He stated that the House Transportation Standing Committee meeting room is not adequate

to accommodate all the people who want to be present for the bill's hearing. He said that due to the break that is coming up, he couldn't prepare a committee substitute other than adopting the amendments that are currently before the committee. If the bill is not moved out of the House Transportation Standing Committee, the bill will be delayed for about ten days. He went on to say that this bill is the "number one priority bill of this whole entire legislature." He said:

Unless you want to establish a working subcommittee to bring all these people in here, I don't recommend that, when it properly should go through the committee process and be heard and be tuned up for its final form by the judiciary committee, where it properly belongs. That's the jurisdiction of this bill.

REPRESENTATIVE ROKEBERG explained that the bill's referral to the House Transportation Standing Committee was to deal with DMV and other transportation issues, and to enable committee members to become familiar with the legislation and make their contributions to it, without (indisc.) about it. He reiterated his request for the committee to adopt the amendments and move the bill forward, since "we are running out of time in this session."

Number 1316

REPRESENTATIVE KAPSNER made a motion to adopt Amendment 1, which read: [original punctuation provided]

Add new section to bill as follows:

\*Sec. \_\_\_\_ AS 28.40.100(a) is amended by adding a new subsection to read:

(26) "controlled substance" includes a "hazardous volatile material or substances", as defined in AS 47.37.270(1), that has been knowingly smelled or inhaled.

REPRESENTATIVE KAPSNER stated that this amendment is a friendly amendment. She said that it is very simple: it adds inhalants [as] a controlled substance in Section 26 of the statute.

REPRESENTATIVE KOOKESH commented that this change just entails adding another definition, under this particular section of law.

Number 1417

CHAIR KOHRING announced that there being no objection, Amendment 1 was adopted.

Number 1430

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

Page 2, line 9: After "facilities"

INSERT: ;

(7) habitual offenders do most of  
the harm

Number 1442

REPRESENTATIVE ROKEBERG explained that this change indicates that the "emphasis of the legislature is to get at the habitual drunk drivers ... [because] habitual offenders do most of the harm."

CHAIR KOHRING asked if there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 1468

REPRESENTATIVE SCALZI remarked that after listening to the sponsor's argument about working on this bill in a different committee, perhaps the House Judiciary Standing Committee would be a better place to make some of the changes to the bill. He said that he still concurs with Chair Kohring's thoughts on finance, and he would like to pass the bill with a more definitive fiscal note. So, if the House Transportation Standing Committee passes the bill, he would prefer it to be passed out with personal recommendations. He said that he could not support it [the fiscal part] right now, but he is in favor of working on the bill in a timely manner, and therefore, he would be in support of moving the bill out of the House Transportation Standing Committee today.

REPRESENTATIVE KAPSNER stated that the House Transportation Standing Committee has addressed many of the transportation

issues in this bill. She said that she is amenable to moving the bill out with individual recommendations.

REPRESENTATIVE KOOKESH said he had no objections to moving the bill out of committee.

CHAIR KOHRING remarked that he wanted to address the issue of cost.

Number 1526

REPRESENTATIVE ROKEBERG referred to page 22, lines 20-29. He said that deleting this section could become conceptual Amendment 3.

Number 1540

CHAIR KOHRING made a motion to adopt a conceptual amendment (Amendment 3), which deletes subsection (q), lines 20-29, Section 33, page 22 [Version P].

CHAIR KOHRING reiterated that this amendment would enable "us to break down that fiscal note substantially."

REPRESENTATIVE ROKEBERG stated that this change would decrease the fiscal note by approximately \$27 million.

CHAIR KOHRING asked him to reiterate the impact of taking this section out.

Number 1568

REPRESENTATIVE ROKEBERG stated that currently [in Version P], the aggravator provision adds a six-month minimum sentence to someone who has a [.16] BAC. This results in a \$24 million [Department of] Corrections fiscal note. However, he reiterated that he is not "giving up on the aggravator [portion], but we have to find a more cost-effective way of doing it."

CHAIR KOHRING expressed his concern that the House Transportation Standing Committee doesn't take out this provision only for the House Judiciary Standing Committee to put it back in with the full fiscal note.

REPRESENTATIVE ROKEBERG assured Chair Kohring that there would not be another \$27 million put back into the bill.

CHAIR KOHRING asked for clarification that Representative Rokeberg's estimation is that the net effect of this amendment is going to be a fiscal note that is going from "roughly \$33 million to approximately ... "

REPRESENTATIVE ROKEBERG said:

\$8.5 million. I think there's some more room in that, too ... We need to massage it, fine-tune the legislation to make some adjustments, ... keeping in mind the intent of the bill as well as the cost.

REPRESENTATIVE KOOKESH asked if there were other committee referrals beside House Judiciary Standing Committee.

REPRESENTATIVE ROKEBERG said the House Finance Committee.

Number 1647

CHAIR KOHRING declared that he had objections to this legislation. He said that he is likely to give a recommendation of "do not pass." He stated that he respects the work that is being done but he still has concerns about the bill. He said:

I don't want to necessarily slow down the process and impede what the task force and what you [Representative Rokeberg] are trying to accomplish here. I know a lot of these provisions are very important to address the issue of drunk driving, because we have a very serious problem. ... There's a lot of people that put a lot of good, hard work into this thing, and I think there are good provisions in this bill that will be beneficial.

CHAIR KOHRING noted that he discussed his concerns earlier. But he said, "I won't block the movement of the bill out of committee, but I will still voice my objections to the legislation in this kind of format."

Number 1699

CHAIR KOHRING asked if there were any objections to conceptual Amendment 3. There being no objection, Amendment 3 was adopted.

Number 1725

REPRESENTATIVE SCALZI made a motion to move CSHB 4 [version 22-LS0046\P, Ford, 2/16/01], as amended, from committee with individual recommendations and attached fiscal notes. There being no objection, CSHB 4(TRA) moved from the House Transportation Standing Committee.

HB 39-VEHICLE REGISTRATION/DWI/FORFEITURE

CHAIR KOHRING announced the next order of business would be HOUSE BILL NO. 39, "An Act relating to registration of motor vehicles, to operating a motor vehicle, aircraft, or watercraft while intoxicated, and to driving with a cancelled, suspended, or revoked driver's license; relating to duties of the division of alcoholism and drug abuse regarding driving-while-intoxicated offenses; and providing for an effective date."

[Before the committee, adopted at the previous hearing, was Version F, (22-LS0201\F,Ford,2/2/01).]

Number 1761

ROGER WORTMAN, Staff to Representative Pete Kott, Alaska State Legislature, came forward on behalf of the sponsor. He explained that due to peculiar insurance issues as they relate to the registration of vehicles within the Division of Motor Vehicles (DMV), the sponsor requests that HB 39 pass through the House Transportation Standing Committee and be referred to the House Labor and Commerce Standing Committee.

CHAIR KOHRING asked if the version before the committee is the same one presented to the House Transportation Standing Committee a few weeks ago. He referred to it as the [watered down] version. He also asked what the bottom-line cost of the bill is.

MR. WORTMAN stated that the House Transportation Standing Committee aide prepared a summary (dated 2/14/01) on the fiscal notes for the committee substitute. He asked if this was in the committee members' packets. He said that since he is the "caretaker" of the bill, who sees that the bill is passed through the various committees, he has not studied the fiscal notes specifically. Therefore, today he could not speak "intelligently" on the fiscal notes.

Number 1897

CHAIR KOHRING remarked that it looks like the bottom-line cost of this bill is about "half a million, about 1,000 [in] FY 02, down to 531 five years out." He said that he was not in the position to explain this either. He mentioned that it would have been helpful if the sponsor [Representative Kott] were here.

MR. WORTMAN commented that the fiscal note is not the issue here. He reiterated that there are peculiar insurance issues that need to be referred to the House Labor and Commerce Standing Committee. He mentioned that after this was resolved, the bill could be re-referred back to the House Transportation Standing Committee. At this time, this is the sponsor's intent. He reiterated that he was not prepared to discuss the breakdown of the fiscal note.

CHAIR KOHRING remarked that it gives him "a source of great discomfort" to have a fiscal note that cannot be explained. He suggested that the department representatives who prepared the fiscal notes and are impacted by this could address the notes. However, this might take time, and "we are already seven minutes before the conclusion of this meeting."

Number 1972

CANDACE BROWER, Program Coordinator, Office of the Commissioner, Department of Corrections, explained that the Department of Corrections submitted a fiscal note [on Version F] for a total of \$286.2 [thousand] a year. This amount is for supplementing current contracts for institutional substance-abuse treatment programs. The department's current contracts, for funding of treatment programs, have not been supplemented since 1993. Therefore, [the department] has lost some valuable assets, because the contracts cannot be maintained at the current level.

MS. BROWER stated that actually, this increment was in the governor's budget. She said that if the fiscal note were submitted now, it would have probably been a zero fiscal note. However, "we" have been instructed to show our costs even though it was in the governor's budget. Due to the provision in Version F that allows people to "receive treatment while incarcerated at their discretion," the department wanted to be able to maintain the current level of treatment. The \$286.12 [thousand] amount would provide that.

CHAIR KOHRING pointed out that the other fiscal note is from the DMV.

Number 2077

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, said that the current system within the State of Alaska is self-certification of insurance, which means, "Before you register a vehicle, you need to certify." This [Version F] proposes changing that system so that individuals would have to provide physical proof of insurance, by showing a policy or insurance card. This would affect the ways DMV registers vehicles. Currently, vehicles can be registered through partners, over the Internet, by telephone, by mail, and in [person at the] office. The costs envisioned in the fiscal note include the fact that the Internet and telephone transactions would most likely have to be discontinued, and in return, these transactions would come into "our "office.

MS. MARSHBURN explained that an additional level of staffing is required for these 30,000 transactions. Time for in-office transactions would increase because people will need to bring in proof [of insurance]. Dealers and I/M [emission inspection] vendors would be required to view the proof of insurance before they complete a sale or before one could get an I/M [emission] inspection done in Anchorage or Fairbanks, where the bulk of transactions are. She went on to say:

If dealers chose to discontinue their partnership with "us" because it presents them with delay or inability to complete transactions, then these transactions again revert to DMV. I think the guts of this issue, for DMV, is that offering proof of insurance really does nothing, ... in our view, ... to decrease the uninsured drivers.

MS. MARSHBURN referred to testimony that she gave last week regarding her car insurance. She reiterated that she has insurance through USAA. Her insurance card, which she keeps in the glove compartment of her car, states that she is covered through 12/31/01. However, she said her premium is only paid through the end of March. So, even though the intent of the provision is admirable, it adds additional work and "takes us back in venues, at a significant cost."

Number 2205

CHAIR KOHRING asked if the committee cared to give him any direction, and if the consensus was to hold the bill over. He

said that based on Ms. Marshburn's testimony, it appears that there are substantial costs [with this bill]. He added, "We may not be achieving our goal here. It's not really going to have the impact that it intended, and that could be a wrong analysis .... "

Number 2269

MR. WORTMAN reiterated the sponsor's request to move this bill to the House Labor and Commerce Standing Committee because that committee deals with other insurance issues. The sponsor's intent within the House Labor and Commerce Standing Committee, of which he is a member, is to discuss the possibility of dealing with insurance companies to "brunt a portion of this cost" down from the DMV.

CHAIR KOHRING replied that he would "hate to act in haste especially when we're dealing with over a half-million dollars." He recognized Representative Kott's intent and said, "It would be a good enhancement to what Representative Rokeberg did." However, he still has concerns about the expenditure. He said, "I don't want to look like a committee that's spending money like a bunch of drunken sailors. We just got through passing a bill that has a price tag of 8 million bucks on it."

MR. WORTMAN reiterated that the sponsor's intent was to "grapple this thing" in the committee [House Labor and Commerce Standing Committee] and lower the fiscal note. He believes that once this bill is "grappled" with and the insurance companies come "online," the fiscal note will be lowered, if "they would empty it and, indeed, absorb some costs of this tracking that Ms. Marshburn is talking about."

CHAIR KOHRING asked what the will of the committee was.

Number 2298

REPRESENTATIVE SCALZI said that he does not have a problem with passing this bill out with personal recommendations. At this point, he can't support either of the bills [HB 4 and HB 39]. However, the focus of the House Transportation Standing Committee is transportation issues. He said that with the "other bill," the fiscal note should probably be addressed in other committees. As long as our recommendations show that, his comfort level is satisfied with an [individual] recommendation of "do not pass."

REPRESENTATIVE KOOKESH said, "I don't think we can do anything more on this bill; I'd like to move it out."

REPRESENTATIVE MASEK stated that this bill has been scheduled a few times, and that it should go to the next committee.

Number 2344

REPRESENTATIVE MASEK made a motion to move CSHB 39 [Version 22-LS0201\F, Ford, 2/2/01], from the committee with individual recommendations and attached fiscal notes. There being no objections, CSHB 39(TRA) moved from the House Transportation Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 3:02 p.m.