

**ALASKA STATE LEGISLATURE  
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES  
STANDING COMMITTEE**

April 6, 2004  
3:10 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Carl Gatto, Vice Chair  
Representative John Coghill  
Representative Paul Seaton  
Representative Kelly Wolf  
Representative Sharon Cissna  
Representative Mary Kapsner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 427

"An Act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

- MOVED CSHB 427(HES) OUT OF COMMITTEE

HOUSE BILL NO. 381

"An Act relating to child endangerment."

- MOVED CSHB 381(HES) OUT OF COMMITTEE

HOUSE BILL NO. 443

"An Act relating to eligibility of nurses for the teachers' and nurses' housing loan program of the Alaska Housing Finance Corporation."

- MOVED HB 443 OUT OF COMMITTEE

SENATE BILL NO. 373

"An Act relating to residency and internship permits issued by the State Medical Board; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 502

"An Act relating to dispensing opticians and dispensing optician apprentices."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 543

"An Act relating to medical assistance coverage for prescription drugs; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 427

SHORT TITLE: PROTECTION OF PERSONS AND PROPERTY

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/04/04	(H)	READ THE FIRST TIME - REFERRALS
02/04/04	(H)	HES, JUD
04/01/04	(H)	HES AT 3:00 PM CAPITOL 106
04/01/04	(H)	Heard & Held
04/01/04	(H)	MINUTE(HES)
04/06/04	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 381

SHORT TITLE: CHILD ENDANGERMENT DRIVING OFFENSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	HES, JUD
04/06/04	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 443

SHORT TITLE: TEACHERS AND NURSES HOUSING LOAN PROGRAM

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	HES, FIN
04/06/04	(H)	HES AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

JIM PARKER, Attorney  
Public Guardian Section  
Office of Public Advocacy  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 427 and answered questions from the committee.

SUSAN ARMSTRONG, Ombudsman  
Office of Long Term Care  
Older Alaskans Commission  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

EDIE ZUKAUSKAS, Attorney  
Disability Law Center of Alaska  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

SHARON WELLS, private professional guardian  
Senior Care Services  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

ROBERT PENZENIK  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

MARIEANN VASSAR, President  
Alaska State Association for Guardianship and Advocacy,  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

ELIZABETH LUCAS, State President  
AARP

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

JIM SHINE, Staff  
to Representative Tom Anderson  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented the bill on behalf of Representative Anderson, sponsor of HB 427.

JOSH FINK, Director  
Office of Public Advocacy

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427 and answered questions from the members.

BETTY WELLS, President

Alaska State Association for Guardianship Advocacy (ASAGA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427 and answered questions from the members.

PEGGY JO WHITTINGTON, Owner

Iliamna Services

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 427.

HEATH HILYARD, Staff

to Representative Lesil McGuire

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 381 on behalf of Representative McGuire, sponsor.

LINDA WILSON, Deputy Director

Public Defender Agency

Department of Administration

Anchorage, Alaska

POSITION STATEMENT: Testified on HB 381 and answered questions from the members.

REPRESENTATIVE LESIL MCGUIRE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 381, answered questions from the committee.

REPRESENTATIVE BETH KERTTULA

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As a sponsor of HB 443, presented the bill.

#### **ACTION NARRATIVE**

#### **TAPE 04-28, SIDE A**

Number 0001

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at 3:10 p.m.

Representatives Wilson, Wolf, Coghill, and Seaton were present at the call to order. Representatives Gatto, Cissna, and Kapsner joined the committee as the meeting was in progress.

HB 427-PROTECTION OF PERSONS AND PROPERTY

Number 0073

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 427, "An Act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

Number 0118

CHAIR WILSON announced that Representative Kapsner has joined the meeting.

Number 0184

JIM PARKER, Attorney, Public Guardian Section, Office of Public Advocacy, testified on HB 427 and answered questions from the committee. He told the members that Joshua Fink [Public Advocate, Office of Public Advocacy] sent a letter to the committee in response to comments that were made at the last hearing, and offered to review important points he addressed.

CHAIR WILSON agreed that would be a good place to start because the information in the letter conflicts with testimony received last week.

MR. PARKER said that the first point that Mr. Fink made is that this legislation is about regulation of professional guardians and conservators, not family members who are taking care of disabled relatives. This bill also exempts financial institutions who are already regulated sufficiently under existing Alaska law.

MR. PARKER responded to a comment made by a testifier ["B" Jarvi] from Fairbanks who said that the rate set for private guardians is \$40 per hour. This is not correct, OPA's has

regulations which set out the fees. The majority of the clients' fees are about \$40 per month, although the fees can go up as high as \$145 per month, but not \$40 per hour, he stated.

MR. PARKER commented on a second suggestion by Ms. Jarvi that OPA public guardians should be subject to this legislation. He said that this suggestion ignores the fact that OPA's public guardians are state employees and are regulated by the processes of state government which has oversight by the state advocate, who serves at the pleasure of the governor, and is subject to oversight by the legislature. Mr. Parker said that if a public guardian were to take financial advantage of a client, that client would be protected as a risk management function of the Department of Law that would indemnify the client for all law suits.

Number 0340

MR. PARKER told the committee that currently all public guardians have passed the examination and are registered with the National Guardian Foundation. He noted that four have received advanced certification. Mr. Parker admitted that criminal background checks are not done on public guardians, but when a person applies for work with state government that person must identify and explain criminal history. Mr. Parker added that OPA is considering background checks on all public guardians.

Number 0512

MR. PARKER commented that Ms. Jarvi also testified that she believes court visitors should also be included in this legislation. He said that he believes her statement reflects a lack of understanding of the role of the court visitor. A court visitor is an uninterested third-party who does investigations and provides feedback to the court on whether guardianship should be approved, arranges evaluations, interviews the petitioner, family, friends, and care providers; and then provides a written report in guardianship cases. While court visitors have access to financial records, they do not have access to the resources, he explained. He said he does not see the need for the bonding requirement that was suggested.

MR. PARKER said that his last point addresses the assertion that the OPA is in league with the court visitors to steer cases to OPA. He told the members that is not the case. The agency is required by statute to look at family, friends, or private

alternatives. If there is someone available it is important that OPA be sure that the person will do a good job and protect OPA's client's interest, he said.

MR. PARKER told the members that many organizations were involved in this process including Adult Protective Services, the Alaska Trust Company, the Alaska Court System, the Office of the Long Term Care Ombudsman, the Office of Public Advocacy, the Disability Law Center, private attorneys, court visitors, and private professional guardians such as Dave Shady, the principal at Professional Guardian Services Corporation who was invited to participate in this process. In summary he said he believes this is good legislation.

Number 0571

CHAIR WILSON asked how many public guardian are employed with the state. She noted that four of the guardians had received advanced certification.

Number 0595

MR. PARKER said he believes there are fourteen.

Number 0707

SUSAN ARMSTRONG, Ombudsman, Office of Long Term Care, Older Alaskans Commission, testified in support of HB 427. She told the members that for the last one and a half years the office has participated in the task force that spearheaded this project. Ms. Armstrong said that the participants included the Alaska Court System, the Office of Public Advocacy, the Disability Law Center, and private professional guardian services among others, and achieved consensus on the foundation for this legislation. She emphasized that all private professional guardian services were invited to participate on this task force. At the center of the proposed legislation is the regulation of private professional guardians and conservators.

MS. ARMSTRONG explained that the Office of Long Term Care investigates complaints concerning the health, safety, welfare, and rights of older Alaskans. Over the years the office has worked on a number of cases regarding the action or inaction of private professional guardians and conservators, she said. While there are dedicated people serving in this capacity, there

are less principled counterparts that cast a shadow on this very necessary service.

MS. ARMSTRONG told the members that currently there are no enforcement powers over private professional guardians that the office can turn to other than the court system. By contrast when a public guardian's actions are an issue there are a number of resources to ensure it is corrected properly. Ms. Armstrong pointed out that public guardians are subject to state laws governing their actions, and state ethics laws that direct the actions of any state employee. She said that the safety measures are in place for the acts of public guardians, although it is rarely necessary. Ms. Armstrong told the members that public guardians must meet minimum qualifications and have specific education and qualifications to be hired, which is not true for a professional private guardian. In summary, she said as the older population grows it is important to refine how they are served by creating a licensure and oversight agency which regulates private professional guardians and conservators.

Number 0853

EDIE ZUKAUSKAS, Attorney, Disability Law Center of Alaska, testified in support of HB 427. She told the members that the Disability Law Center has been a party to this long overdue legislation. As the Alaskan population ages and life expectancy increases the need for more private professional guardians and conservators will also increase. Ms. Zukauskas said that she believes this bill will provide protection of the most vulnerable citizens.

MS. ZUKAUSKAS pointed to page 5, lines 16 through 20, which reads:

(3) a written waiver of confidentiality signed by the applicant allowing the department to access at any time relevant complaint information made about the applicant to adult protective services, the designated protection and advocacy agency, the long-term care ombudsman, or an entity that certifies or licenses private professional guardians or private professional conservators;

MS. ZUKAUSKAS commented that the language in the bill strives to ensure the protection of the rights of the individuals needing a guardian or a conservator. This language clarifies that this particular section is intended to say that the privacy of the

applicant is being waived and not those of the ward or other protected person. She urged the members to act upon this bill as soon as possible.

Number 0952

SHARON WELLS, private professional guardian, Senior Care Services, testified in support of HB 427. She told the members that her organization actively participated with the group that drafted the bill that is before the committee for consideration. Senior Care Services has been providing professional guardianship services since December of 1999. In the past four years it has been appointed by the Superior Court to be a guardian and/or conservator for individuals with some type of incapacity. She added that Senior Care Services does not accept any clients except those appointed by the courts.

MS. WELLS shared that her work experience reflects that her primary focus has been providing services for incapacitated elderly. She told the members that she was a social worker for 18 years at the Anchorage Pioneer's Home. As a court appointed guardian, Senior Care Services has been appointed to cases when the ward has funds to pay the fees and when the incapacitated person does not have friends or family who can serve in that role. The hourly fees that Senior Care Services' charges are based on the work that is done.

Number 1097

MS. WELLS stated that at no time since the business started has she felt she was in competition with OPA or any other private professional guardians. She stated that making decisions for another person can be very difficult and a great responsibility. Managing another person's financial matters can be complicated, she said. For these reasons Senior Care Services supports the concept of licensure of private professional guardians. The requirements are not extensive and should not discourage people from entering this profession. However, it is important to ensure that those in the profession have the skills to make appropriate medical and financial decisions for vulnerable adults. She said it is her understanding that the proposed changes will provide that a professional guardian will estimate the average monthly fees that will be charged to the estate, and if additional fees are required due to a crisis, the guardian will need to seek court approval. This oversight will provide some assurance to the court. Ms. Wells urged support of HB 427.

Number 1215

ROBERT PENZENIK testified in support of HB 427. He told the members that he is speaking on behalf of himself and his daughter. There are a small but very important group of Alaskans who need protection, he said. Mr. Penzenik explained that he has been both a provider and user of the guardianship services. His most recent experience of these services has been for his daughter who has been found to need a guardian or conservator. He shared that in order to provide a more comfortable family relationship it was decided to utilize the services of a paid professional guardian rather than a family member. He said that he could not have been more pleased with the outcome. Mr. Penzenik added that his daughter has a large and active support system in her life.

MR. PENZENIK explained that the reason he is testifying today is for the concern of those vulnerable adults who do not have that support system in place. He told the members that a number of years ago he was a conservator for some children who lost their father in a plane accident and became aware of how easy it would be for someone acting as a guardian or conservatory to inappropriately utilize funds belonging to others. He said that while his experience goes back to the 1970s, he does not believe the situation has changed very much. The situation that happened recently in Fairbanks with Community [Advocacy Project of Alaska, Inc. (CAPA) is a case in point. Mr. Penzenik noted that if HB 427 had been law prior to CAPA's bankruptcy the clients would have been protected. He pointed out that even though CAPA had already been removed from guardianship of seven cases, it was still allowed to operate.

Number 1325

MR. PENZENIK told the members that he believes there are a number of weaknesses in the present system which would be addressed by HB 427. For instance, there is no requirement of a criminal background check. The danger is obvious. Courts do not have a way of checking to see if a prospective guardian has been removed from any other case, he said. Another essential element is that there is no training or experience required to be a private professional guardian or conservator, he added. In summary, he said that there will be no cost to the taxpayers of Alaska since the licensing will be fully self-supporting.

Number 1399

MARIEANN VASSAR, President, Alaska State Association for Guardianship and Advocacy, testified in support of HB 427. She told the members that she is a court visitor and worked on the task force to develop the legislation before the members. During that process it became obvious that another method of determining the viability of a private professional guardian is necessary. She explained that there was a very lengthy legal battle which could have been avoided had there been law in place to determine viability of an agency. In "B" Jarvi's testimony that CAPA had adequate insurance to cover the losses that were incurred due to its bankruptcy, Ms. Vassar commented that her recollection of that incident is that it is not a true statement. The \$250,000 that CAPA had in no way covered the losses of its clients who were impacted. Ms. Vassar added that while the cases are not settle, she does not believe those people will ever be made whole. She recommended that the legislature support this bill.

Number 1450

ELIZABETH LUCAS, State President, AARP, testified in support of HB 427. For several years AARP has supported the idea of implementing guidelines and statutes for guardianships and conservatorships. Unfortunately, currently many members of AARP need these services. All of us will be better off with HB 427 as part of Alaska law. She urged the members to pass HB 427.

Number 1564

REPRESENTATIVE GATTO commented that in the sponsor statement it says the following:

Under Alaska law, the court first looks to appoint guardians nominated by the incapacitated person if the choice is a reasonably intelligent one.

REPRESENTATIVE GATTO said that in looking in the bill he does not see that protection provided for in HB 427.

MS. LUCAS suggested that someone else might be able to address that point.

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, testified on HB 427. He recommended that the question be address to Mr. Parker or Mr. Fink.

MR. PARKER asked for clarification of the questions.

Number 1636

REPRESENTATIVE COGHILL said that he believes that point would be addressed in Section 16, on page 16.

MR. PARKER agreed that this point is addressed on page 16, line 18, where the words "reasonably intelligent" were replaced with the words "informed choice." The idea here is that the person who is incapacitated should have some choice about who it is that should be making decisions for them, and the priority for respecting this choice is that the person be informed.

Number 1671

CHAIR WILSON asked approximately how many people across the state need guardians.

MR. PARKER responded that he has heard that there are about 2,500 individuals, but cannot confirm the accuracy of that number.

CHAIR WILSON commented that is the number provided in the sponsor statement.

Number 1697

REPRESENTATIVE CISSNA referred to page 2, line 13, where the term "trustworthy person" is used and asked if there is a definition [in statute].

MR. PARKER commented that Ms. Armstrong may have some input on that. He said that this statute comes from the Division of Occupational Licensing. He admitted that trustworthy is not a precise term of art or a legal term.

Number 1774

CHAIR WILSON questioned whether the word trustworthy is defined in Alaska statute.

MR. PARKER said he does not believe so.

REPRESENTATIVE CISSNA referred to the word "degree" on page 2, lines 9 and 28. She asked if an associate's degree would meet these standards or is a bachelor's degree required.

MR. PARKER replied that he believes it is referring to a bachelor's degree.

REPRESENTATIVE CISSNA commented that the term "degree" should be clarified because an associate's degree is also a degree.

REPRESENTATIVE CISSNA pointed to page 4, lines [19 through] 28, where there is discussion about temporary licenses. She asked if there is a required background check before a temporary license is issued.

Number 1874

REPRESENTATIVE CISSNA said that on page 6, line 30, subsection (6), which addresses an annual report and reads as follows:

(6) a list of all current employees of the licensee.

REPRESENTATIVE CISSNA commented that this language says that all employees of the licensee must be listed. She asked if in the case where the licensee has a separate [unrelated] business, would this bill require that employees of the other businesses also have to be listed in the annual report.

JIM SHINE, Staff to Representative Tom Anderson, Alaska State Legislature, testified on behalf of Representative Anderson, sponsor of HB 427, and answered questions from the committee. In response to Representative Cissna's question about background checks and temporary licenses, he asked the members to look at page 6, lines [11] through 14 which reads as follows:

(b) The department may not issue a license to a person under this section unless the department receives the report required by (a)(3) of this section.

MR. SHINE explained that this includes the issuance of a temporary license. He referred Representative Cissna's second question to Mr. Parker.

Number 1927

MR. PARKER said that while Teresa Bannister drafted the language, he believes the employees that would be required to be listed are those who work in the business that provides guardian and conservator services.

JOSH FINK, Director, Office of Public Advocacy, testified in support of HB 427 and answered questions from the members. He told the members that the language might be changed to read as follows:

(6) a list of all current employees operating under the licensee.

MR. PARKER clarified his belief that this language was not intended to cover other businesses.

REPRESENTATIVE CISSNA pointed out that there needs to be two changes in the language of the bill. On page 2, line 9 [and 28], the kind of degree needs to be delineated. On page 2, line 13, the term "trustworthy" does not appear to be terms of art so specific wording needs to be used, she said.

Number 2018

REPRESENTATIVE WOLF moved Amendment 1 as follows:

On page 2, line 13, and page 3, lines 1 and 14  
Delete the word "trustworthy"

REPRESENTATIVE WOLF told the members that there needs to be a definitive language.

CHAIR WILSON asked for a response from the sponsor on these points. She suggested that the bill be revised to addresses the points the committee brings forward.

Number 2088

REPRESENTATIVE WOLF said that Sec. 08.28.020 sets requirements for those individuals who could be given an individual private professional guardian license.

MR. SHINE agreed with Representative Wolf and said that he does not believe the sponsor would have any problem removing the term "trustworthy."

Number 2148

REPRESENTATIVE SEATON objected to Amendment 1 for purposes of discussion.

REPRESENTATIVE GATTO commented that he does not have a problem with the word trustworthy even though it is not defined. He said that a person, such as a judge, may get a gut feeling about a person even though that person may meet every requirement. Representative Gatto summarized that he does not believe this term either adds or detracts from the bill and would object to the amendment on that basis.

REPRESENTATIVE SEATON agreed with Representative Wolf on this issue because the term "trustworthy" allows a huge amount of flexibility. He said he believes it is important to set out objective criteria upon which people are approved. The decision should not be based upon an impression, he stated.

MR. FINK told the members that the Office of Public Advocacy has no problem with Amendment 1. He pointed out that other language is more objective. On page 2, line 16 [through 19], which reads as follows:

(6) whose criminal history record checks under AS 08.26.070 show that the individual has not been convicted of a crime within 10 years of the application that would affect the individual's ability to provide the services of a guardian competently and safely for the ward; and

MR. FINK believes that it will be necessary to determine by regulation what crimes would preclude an individual from serving. He said he believes those would be crimes of dishonesty or crimes against an individual. Mr. Fink summarized that is a more objective way to define character.

Number 2240

REPRESENTATIVE GATTO replied that he does not believe it is possible to address all the qualifications necessary to serve as a guardian or conservator. He posed a hypothetical example where a person who had applied to be a guardian had filed two bankruptcies. Even though the person may have met all the other qualifications, he/she does not have the skills to be a guardian. Wouldn't it be something that should be considered when making the decision to appoint an individual as a guardian, he asked. The applicant could argue that past bankruptcies have nothing to do with the decision to appointment as guardian.

Number 2274

REPRESENTATIVE COGHILL commented on the ability to determine if a person is trustworthy or not. He stated that he believes the qualifications for licensing should be based upon credentials.

Number 2290

REPRESENTATIVE SEATON removed his objection.

REPRESENTATIVE WOLF restated Amendment 1 to be a conforming amendment as follows:

On page 2, lines 13, page 3, lines 1 and 14  
Delete "trustworthy"  
Re-number appropriately

There being no objection, Amendment 1 was adopted.

Number 2357

REPRESENTATIVE CISSNA moved Amendment 2 as follows:

On page 6, line 30, after "employees"  
Delete "of"  
Insert "operating under"

There being no objection, Amendment 2 was adopted.

**TAPE 04-28, SIDE B**

Number 2342

REPRESENTATIVE SEATON commented that on page 2, lines 9 and 28, refer to the requirement that a degree is necessary. He said he is not convinced that a bachelor's degree is necessary to be a licensed guardian. Representative Seaton told the members that if someone has an Associate of Arts degree in sociology or psychology he said he thinks that might be acceptable. He asked for the sponsor to comment.

Number 2322

MR. SHINE replied that he would like to defer to the members of the task force who worked on crafting the language.

BETTY WELLS, President, Alaska State Association for Guardianship Advocacy (ASAGA), testified in support of HB 427 and answered questions from the members. She told the member

that she was involved with the drafting of this legislation and it was never their intent to have a bachelor's degree be a requirement. An associate's degree could meet the requirements, she stated.

CHAIR WILSON asked if she is happy with the language as it is.

MS. WELLS replied that it should be clarified to say "at least an associates degree."

REPRESENTATIVE GATTO asked Ms. Wells if the terms "credential" or "certification" would be closer to the intent language of those working on this legislation.

MS. WELLS responded that she does not understand Representative Gatto's question. She pointed out that currently there is a requirement that the guardian be certified as a registered guardian by a nationally recognized organization. This language just says there needs to be some schooling, she explained.

REPRESENTATIVE SEATON moved Conceptual Amendment 3 as follows:

Page 2, line 9, after "or"  
Insert "at least an associates"  
Page 2, line 28, after "has"  
Insert "at least an associates"

There being no objection, Amendment 3 was adopted.

Number 2185

REPRESENTATIVE WOLF moved Amendment 4 as follows:

On page 3  
Delete lines 24 through 27

Number 2171

CHAIR WILSON objected for purposes of discussion.

REPRESENTATIVE WOLF told the members that he is concerned with the language that refers to limited liability companies. He pointed out that there are both for profit and nonprofit businesses providing guardianship services. Under a limited liability company the company is limited on the amount of funds for which it can be held accountable. He said he believes this is a loophole in the language.

MS. WELLS replied that the language Representative Wolf is referring to was provided by Teresa Banister, Legislative Legal and Research Services. She commented that ASAGA does not have a strong opinion about this language.

REPRESENTATIVE WOLF commented that a nonprofit organization has the ability to purchase insurance for its directors and officers. He reiterated his concern that by allowing limited liability companies licenses to care for vulnerable adults could mean there would be little or no liability.

REPRESENTATIVE SEATON commented that he believes this means that if an organization applies [to be a guardian] all the members and officers have to undergo a criminal background check. If this language is eliminated a limited liability company could apply and no background check would be required of anyone.

REPRESENTATIVE WOLF asked if the committee could be provided a legal opinion on this language.

Number 1916

MS. ZUKAUSKAS said that she is not familiar with the definition of a limited liability partnership. She said that the intent was to have every person that is making decisions in these organizations have to undergo a criminal background check.

REPRESENTATIVE WOLF maintained his concern that limited liability companies that are involved in caring for vulnerable adults could do so with little to no liability.

MR. SHINE pointed out that the next committee of referral is the House Judiciary Standing Committee.

CHAIR WILSON stated that she would like that point addressed in the House Judiciary Standing Committee.

REPRESENTATIVE WOLF withdrew Amendment 4.

Number 1906

REPRESENTATIVE COGHILL referred to pages 16 and 17 where there is a list of priorities for appointment as a guardian. He pointed to page 17, lines 1 and 2, which reads:

(e) The priorities established in (d) of this section are not binding, and the court shall select the individual

REPRESENTATIVE COGHILL stated that he would like to see language inserted that would provide more binding language. He pointed out that there have been assertions that competition exists between public and private guardians. He said he does not believe this should be used as a tool to direct more work toward a state agency. Representative Coghill emphasized that he wants to see more private guardians. These rules are significant, he said.

Number 1787

CHAIR WILSON replied that this point could be addressed in the House Judiciary Standing Committee.

REPRESENTATIVE SEATON told the members that he is also concerned with this issue. His greatest concern is for the spouse of the person requiring a guardian. He pointed out that the department could determine that the more qualified individual is the professional guardian, and that could mean that the spouse would be superseded from serving. Representative Seaton said he does not want to see a situation where the state guardian takes the place of the spouse unless there is some detrimental effect or that the spouse is incapable of serving.

Number 1731

PEGGY JO WHITTINGTON, Owner, Iliamna Services, testified in support of HB 427. She told the members that she is a licensed guardian. It is important to make guardians more accountable within the guidelines of the state, she said. Ms. Whittington explained that the passage of this bill will make bonding and insurance more easily accessible. She pointed out that the fees charged for guardian services need to be more accountable.

REPRESENTATIVE CISSNA asked if a letter will accompany the bill to the House Judiciary Standing Committee which outlines the concerns of the members.

Number 1597

MR. SHINE told the members that Douglas Wooliver, Administrative Attorney, Office of the Administrative Director, Alaska Court

System, had planned on testifying, but was called away. He read the following statement into the record:

The court strongly supports the creation of some kind of regulatory oversight of professional guardians or conservators. Such oversight will help judges make sure that the appointments they make will be in the best interests of the wards.

MR. SHINE said he believes that someone from the OPA could address the concerns about the process that Representative Seaton mentioned, in that a professional guardian could be chosen over a spouse.

REPRESENTATIVE SEATON commented that the House Judiciary Standing Committee may find that this language is fine. He said that he would be satisfied if that committee looked at the legal aspects of the "not binding" language.

REPRESENTATIVE COGHILL said that he will be asking the House Judiciary Standing Committee to ensure that the courts do not go first to the public guardian who has a conflict of interest in the guardianship being awarded to private guardians.

Number 1496

REPRESENTATIVE WOLF asked if he could be removed from voting on this bill since he serves as a guardian. He told the members that his son is 23 years old and has Down Syndrome. When reading this bill he came across language on page 16, lines 7 through 11, which brought to mind a personal nightmare that he and his wife experienced. He explained that when his son turned 18 years old, a court visitor came to their home and read his son his rights. His son collapsed on the floor because he did not understand. The court visitor explained that it was necessary to follow through with the informational session and she refused to stop. Representative Wolf told the committee it took an hour to calm his son down and convince him that he was not being taken away. The court appointed an attorney to determine that we were the appropriate people to take care of the son that God gave to us, he stated. This attorney told us that our son was worth X number of dollars, and that if we did not go after every benefit that he was entitled to in this state, the state would take him away from us. Representative Wolf stated that he would not want any parent, spouse, family, or friend to ever have to go through that. He said that when he saw this language, he was outraged. He told the members he

considered doing an amendment, but was reminded that there is an issue of abuse going on.

Number 1330

REPRESENTATIVE COGHILL objected to Representative Wolf's request to be removed from the requirement of voting.

REPRESENTATIVE GATTO referred to page 17, line 1 through 6, which reads:

(e) The priorities established in (d) of this section are not binding, and the court shall select the individual [PERSON, ASSOCIATION,] or organization [NONPROFIT CORPORATION] that is best qualified and willing to serve. The court shall also consider [GIVE CONSIDERATION TO] a nomination by a person described in (d) of this section and to a nomination in the will of a deceased parent or spouse of the incapacitated person.

REPRESENTATIVE GATTO said he believes this subsection opens up the question of who can be appointed guardian. He stated he likes the order which was listed in the bill and believes there needs to be a compelling reason why this order would not be followed.

Number 1272

CHAIR WILSON said she does not agree. She posed a hypothetical example where there is a car accident and the parents are killed. If these parents left a will directing who will care for their children should something happen to them, then she said she believes that request should be honored by the court.

Number 1196

REPRESENTATIVE SEATON moved to report CSHB 427, Version D, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 427(HES) was reported out of the House Health, Education and Social Services Standing Committee.

HB 381-CHILD ENDANGERMENT DRIVING OFFENSES

Number 1150

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 381, "An Act relating to child endangerment."

Number 1126

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, presented HB 381 on behalf of Representative McGuire, sponsor. He read a portion of a 2004 report from Mothers Against Drunk Driving (MADD) titled Every Child Deserves a Designated Driver, as follows:

Carly McDonald, five years old, was killed on January 1, 1998, by her intoxicated mother who was driving with a blood alcohol content of .22 percent, over twice the legal limit. Carly had been placed in the front seat of the car, her unused booster seat was found in the back. Carly's mother had been specifically court ordered not to consume alcohol in Carly's presence. This was not enough to save Carly's life.

MR. HILYARD went on to say that research statistics that MADD has presented both with regard to child endangerment as it pertains to driving under the influence and failure to restrain showed that of the children who died while riding in the same vehicle with a drinking driver only 29 percent were known to have been restrained. Although restraint used in this group of children is unacceptably low, restraint use has increased in recent years. The May 2000 Journal of the American Medical Association study found that only 18 percent of children who were riding with a drinking driver at the time of the crash were known to be restrained. Mr. Hilyard said that the increase in restraint use among child passenger deaths is consistent with the increase of child restraint use over time in the general population. Strong enforcement of child safety seat laws and passage of primary enforcement seatbelt laws in all states could further reduce child passenger deaths.

Number 0983

MR. HILYARD told the members that studies from the State of Alaska's Advisory Board on Alcoholism and Drug Abuse and the National Transportation Safety Board addresses two key components of HB 381. He referred to two specific provisions which will be added to Alaska's child endangerment laws on page 2, lines 8 through 12, as follows:

(4) transports a child in a motor vehicle, aircraft, or watercraft while under the influence of an intoxicant; or  
(5) transports a child in a motor vehicle without requiring the child to use the seating restraints required by law, and the child suffers physical injury or dies.

MR. HILYARD commented that it is not the sponsor's intention to cause a felonious charge for simply failing to restrain [a child], but when that failure to restrain leads to an injury or death of a child it is believed that warrants an additional charge.

MR. HILYARD pointed out that the Advisory Board on Alcoholism and Drug Abuse states that Alaska leads the nation on alcohol abuse; the rate of dependence is twice the national average; most crime in Alaska is alcohol related; and more than 80 percent of the problems that are faced with regard to children have a direct correlation to alcohol [abuse]. He said alcohol abuse results in roughly \$453 million in costs to the state and consumers annually. No small portion of that has to do with motor vehicle laws.

Number 0876

MR. HILYARD referred to a study done this year by the National Transportation Safety Board (NTSB) called Putting Children First. This report looked at a past eight-year period in terms of the importance of having proper restraints for children. The intent is two-fold, one is to strongly discourage people from driving with their child while under the influence of alcohol or some other intoxicant. The second is to strongly encourage the proper safety restraints for their children. Mr. Hilyard commented that the MADD report suggests that there is a strong correlation between the two points, in that many adults who drive under the influence of alcohol also fail to properly restrain their children.

MR. HILYARD said that the NTSB did a study in 1996 of 180 restrained children and found that 52 of the children used vehicle seatbelts when the child should have been placed in child restraint systems with booster seats. Seatbelts are improper for many children under the age of eight years old. He commented that there will be some variables suggested based on the height and weight of the child. It is essential that

children be restrained properly. If a child is improperly restrained and it results in serious injury or death, it is the sponsor's belief that should result in additional criminal charges.

MR. HILYARD told the members that there should be a representative from Mothers Against Drunk Driving on-line to testify in support of HB 381.

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified on HB 381 and answered questions from the members. She told the members that the agency supports protecting children, but pointed out that some of the language in the bill could have unintended consequences. She referred to page 2, lines 8 and 9, subsection (4), as follows:

**(4) transports a child in a motor vehicle, aircraft, or watercraft while under the influence of an intoxicant;**

MS. WILSON commented that this language makes it a felony to transport a child if the driver is under the influence of an intoxicant. She pointed out that it is not clear what an intoxicant can be. Ms. Wilson said that the sponsor statement and the examples provided in testimony referred to an individual who is above the legal limit of alcohol. There is a concern that a person could be charged with a felony for transporting a child whether or not above the legal limit, but be under the influence of some sort of an intoxicant. One other point that is of concern is that a person is facing a felony charge when there has been no resulting injury to the child.

Number 0649

MS. WILSON referred to [subsection(5), page 2, lines 10 through 12] as follows:

**(5) transports a child in a motor vehicle without requiring the child to use the seating restraints required by law, and the child suffers physical injury or dies.**

MS. WILSON pointed out that this subsection refers to the child suffering physical injury [or death] and the level of the penalty depends on the injury to the child. She said she is not

sure whether there should be some changes to the language in subsection (4) to address that as well.

MS. WILSON explained that current law provides that if a person drives while intoxicated and a person in the car is injured, the individual could be charged with reckless endangerment which is a class A misdemeanor in AS 11.41.250. There is no definition of the word "child" in this bill. Ms. Wilson questioned whether there should be a definition or a narrowing of the definition. She commented that in many other parts of Alaska statute a child is a person who is under the age of 18 years old. A companion bill talks in detail about endangering a minor under the age of 10. In subsection (5) where it talks about restraints it might be appropriate to look at clarifying language under a certain age, she added.

MS. WILSON summarized that the motives for HB 381 are good, but she is concerned about some of the breadth of the language which may pull more people in than is intended.

Number 0566

CHAIR WILSON pointed out that the age limitation is addressed on page 1, line 6, where it refers to a child under the age of 16 years of age.

MS. WILSON thanked Chair Wilson for bringing that language to her attention. She suggested that the committee may still want to look at additional clarifying language for a smaller child.

CHAIR WILSON asked Ms. Wilson what that suggested language would be.

MS. WILSON replied that in statute that refers to endangering the welfare of a child, the age of 10 years old is used. In the seatbelt statute which is found in AS 28.05.095 there are two different age levels; one group is under four years of age and another group is from age four to sixteen years of age, she added.

Number 0481

REPRESENTATIVE GATTO asked Ms. Wilson if the word "intoxicant" includes substances other than alcohol.

MS. WILSON replied that intoxicant as defined in AS 47.10.990 includes alcohol, but other controlled substances such as drugs

or hazardous volatile materials or inhalants would also be included.

REPRESENTATIVE GATTO asked if concentrated over the counter drugs used for the purpose of getting high would be included under this definition.

MS. WILSON said yes. Intoxicants are substances that temporarily diminish a person's control over mental or physical powers including alcohol. She asked if Representative Gatto is referring to cold medicine.

REPRESENTATIVE GATTO commented that some youngsters have tried Sudafed in an effort to bring out just the active ingredients, concentrated it, and used it to get high.

MS. WILSON responded that Sudafed probably would be included under the definition of intoxicants in that instance.

Number 0303

REPRESENTATIVE SEATON commented that about half the over the counter drugs are labeled with a warning not to operate a vehicle or not use while operating heavy equipment. He asked if an individual were to take Sudafed or some other over the counter drug as a cold medication and were in an accident, could the individual be charged under this legislation if it were to become law.

MS. WILSON replied yes. She said she told the members that is a worrisome point.

CHAIR WILSON told the members that the next committee of referral is the House Judiciary Standing Committee. She asked the members to look at the bill in terms of a policy issue and allow the House Judiciary Standing Committee to address the legal aspects of the bill.

MR. HILYARD asked the members to look at the handout in their packets from the National Conference of State Legislatures, Drunk Driving Child Endangerment Laws, as of December 2003. He pointed out that this comparative chart shows the number of first time offenses in other states when driving while intoxicated with a child in the vehicle. A class C felony seems somewhat high compared to other states, he said. Mr. Hilyard assured the committee that Representative McGuire, as chair of the House Judiciary Standing Committee, would be comfortable in

dropping that particular charge down to a class A misdemeanor. He emphasized that the overall concern is protecting children. Mr. Hilyard reiterated that if the committee wishes to make that amendment he does not believe the sponsor would object.

Number 0203

CHAIR WILSON shared that many times she has observed individuals out boating and felt concerned for the kids because it was clear the adults were having a pretty good time. For many people in Alaska boats are the only mode of transportation. She said she believes the legislature needs to raise the bar so people will realize that some actions by adults are not acceptable.

MR. HILYARD commented that just before coming to the meeting he printed out a list of bills currently in the legislature that deal with enhancing DUI laws. There were quite a number, he remarked.

**TAPE 04-29, SIDE A**

Number 0026

MR. HILYARD added that he has great respect for the public defender's position and assured the committee that the House Judiciary Standing Committee will amend the bill to change the penalty to a class A misdemeanor.

Number 0047

REPRESENTATIVE SEATON told the members that for the last year and a half he has been working with Alaska Safe Kids with respect to the problems of enforcement of Alaska's seatbelt laws. He explained that the police are having difficulty enforcing the law because it is hard to interpret it. Two months ago all the police departments in the state received a copy of the attorney general's opinion which was to set out exactly what the law says. Representative Seaton told the members that Alaska Safe Kids is still receiving requests for clarification from police departments. Part of the confusion is that Alaska's law refers to the National Highway Traffic Safety Administration (NHTSA) site where it refers to weight and height parameters. The police still do not know how to site individuals because they are unclear on the requirements for restraints.

REPRESENTATIVE SEATON pointed out that this bill would impose felony convictions on individuals who do not have children properly restrained when the police cannot figure out on a coordinated basis how to enforce the law. He emphasized that he is very concerned with this bill because it goes far beyond health and safety issues. He pointed out that parents will have to decipher what is required of them [when the police still cannot].

Number 0185

REPRESENTATIVE SEATON explained that determining the proper restraint is difficult because it depends not only on the design of the individual car seat, but also how it is installed in the car, and the weight and height of the child. For example, if a child is three pounds over the weight requirement for a booster seat, that is illegal, he said.

REPRESENTATIVE SEATON commented that another concern he has is that individuals are being penalized for what happens if there is an accident, and not for failure to use seat restraints. If a child is seriously hurt in an accident or dies, the parent's action was exactly the same and yet the penalty is based on what happened in the car at the time of the accident, he said. Representative Seaton summarized that he is uncomfortable with this part of the bill, and suggested that the House Judiciary Standing Committee could deal with that point.

CHAIR WILSON agreed with Representative Seaton on the seat restraint issue. It would be easy to see how a child could exceed weight or height capacity and the parent might not notice until the child does not fit.

REPRESENTATIVE SEATON went on to say that the seat may have been fine six months ago, but now is not the proper restraint. Alaska law does not specify exactly what is to be used, just that proper restraint must be used. Proper restraint requirements are changing and so are the NHTSA regulations. That is the reason the Alaska statutes are not more specific.

Number 0392

REPRESENTATIVE CISSNA asked for clarification on felony convictions and the penalties associated with it.

MR. HILYARD asked for her to restate her question.

REPRESENTATIVE CISSNA said that as she understands it if an individual is convicted of a felony, he/she will not qualify for certain jobs ever again.

MR. HILYARD said that is correct.

REPRESENTATIVE CISSNA said if convicted these individuals will not be able to vote again.

MR. HILYARD said that is correct.

REPRESENTATIVE CISSNA commented that in many of the neighborhoods in her district there are very poor people with a higher percentage of individuals who have felony convictions. Many of them do not have jobs that provide health insurance. The person who was driving that car and made that mistake will be a very different kind of parent than before the conviction, Representative Cissna stated. She asked if that is the message the legislature wants to give.

Number 0571

MR. HILYARD responded that Representative Cissna made a good point and that is the reason he told the committee the sponsor would not object to amending the bill under subsection (4) which refers to transporting a child while under the influence of an intoxicant to a reduction in penalty to a class A misdemeanor. There is a big difference between the penalties associated with a class C felony and a class A misdemeanor, he commented.

MR. HILYARD said that he believes that the sponsor would want the language in subsection (5) which relates to failure to restrain as it relates directly to physical injury or death. He pointed out that there is a graduated level of penalty, class B felony if the child dies, and class C felony if serious injury. He offered that Representative McGuire may consider in House Judiciary Standing Committee lessening the penalties to a class A misdemeanor and class B felony. Mr. Hilyard emphasized that he could not commit to that change without consulting with the sponsor.

REPRESENTATIVE CISSNA asked if sentencing requirements would allow for alcohol rehabilitation as a substitute [for prison time]. She pointed out that an individual who have lost a child, may have other kids at home. This option might be better for the rest of the family if the parent can stay sober.

Number 0918

MR. HILYARD asked for clarification that Representative Cissna is asking if judges have sentencing guidelines which allow them the option of offering alcohol treatment instead of jail time.

REPRESENTATIVE CISSNA replied that she wonders if the felony charge could be reduced [to a misdemeanor] if the individual goes through a mandated substance abuse treatment program and that it is shown to be working.

MR. HILYARD responded that what he believes Representative Cissna is asking is if after-the-fact a felony charge could be reduced if the individual meets specific requirements. He told the members that it is his understanding that is not the way the judicial system works. He commented that the district attorney could opt to plea a case and reduce the charge from a felony to a misdemeanor. He suggested that the public defender could better speak to this question.

REPRESENTATIVE SEATON posed a hypothetical question where a parent has a couple of drinks, and then takes his/her family on a ferry from one point to another. In that instance would this individual be guilty of committing a felony since he/she has transported a child in a watercraft. He noted that the language does not specifically say the individual would have to be operating the watercraft.

MR. HILYARD emphasized that the point where the parent would actually be guilty of committing a felony is while operating a motor vehicle the parent transports the child from home to the ferry. He offered that in Representative Seaton's hypothetical question if the parent were to have a couple of drinks, then walk his/her child to the ferry and accompany the children on the ferry, he would say the individual was probably not guilty of committing a felony. He believes the individual must be in control of the motor vehicle, aircraft, or watercraft. He emphasized that is his opinion and does not speak to that with absolute certainty. Mr. Hilyard said he would have to look at Alaska statutes. He suggested that maybe an amendment specifying that the individual must be "operating" the motor vehicle, aircraft, or watercraft. Mr. Hilyard commented that the law needs to be reasonable and often there are unintended consequences to well-intentioned laws. He offered to bring an amendment forward in House Judiciary Standing Committee.

Number 0980

REPRESENTATIVE GATTO suggested that the words "transports in a motor vehicle" or "allows the child to be transported in a motor vehicle operated by a person known to be intoxicated" be inserted, so that the bases are covered. He also pointed out that in subsection (4) there is reference to motor vehicle, aircraft, or watercraft, while in subsection (5) there is only reference to motor vehicles. He commented that he understands that it is the sponsor's goal to provide for child safety, so he asked that as the bill moves on the language be changed to address some of the points raised by Representative Seaton and himself.

MR. HILYARD clarified that Representative Gatto would like the scope of responsibility to expand from not only operating a motor vehicle, aircraft, or watercraft, but allowing transport of a child by someone known to be intoxicated.

REPRESENTATIVE GATTO responded that is correct.

MR. HILYARD asked Representative Gatto if he has a preference on the sentencing requirements.

REPRESENTATIVE GATTO replied he would leave that to the [House Judiciary Standing Committee].

Number 1074

REPRESENTATIVE WOLF moved to adopt Conceptual Amendment 1, as follows:

Page 2, line 8, after "(4) "

Delete: "transports a child in a motor vehicle, aircraft, or watercraft"

Insert: "operates the motor vehicle, aircraft, or watercraft that transports a child"

Page 2, line 10, after (5)

Delete: "transports a child in a motor vehicle"

Insert: " operates the motor vehicle, aircraft, or watercraft that transports a child"

Number 1140

REPRESENTATIVE GATTO objected. He said he would like to see the scope expanded to include "allows to be transported". He offered a conceptual amendment to Conceptual Amendment 1, which

would include language that covers "allowing a child to be transported knowing the operator is under the influence of an intoxicant."

Number 1178

REPRESENTATIVE SEATON objected to the conceptual amendment to Conceptual Amendment 1. He said he objects to the terms "under the influence of intoxicant." He told the members he believes the term "intoxicant" is so broad and there is no definition which clarifies the meaning in this case. Representative Seaton said he is very concerned about the breadth of that term.

CHAIR WILSON asked Representative Seaton if he is objecting to the amendment to [Conceptual Amendment 1].

REPRESENTATIVE SEATON pointed out that the wording does not provide for a standard such as DUI. It does not say that the person is intoxicated, just that the individual had something. It could be cough medicine, he added.

CHAIR WILSON reminded Representative Seaton of earlier testimony that intoxicant is already defined in Alaska statutes.

REPRESENTATIVE SEATON replied that the definition was very broad.

Number 1269

MR. HILYARD read the statute as follows:

Intoxicant means a substance that temporarily diminishes a person's control of mental or physical powers, including alcohol, controlled substances under AS 11.71 and hazardous volatile material or a substance used by inhaling its vapors.

MR. HILYARD suggested a potential amendment on Section 4, Page 2, line 23 and 24, where language could be inserted to say "In this section under the influence means as properly reference previously in statute."

Number 1301

CHAIR WILSON stated that she does not believe Representative Seaton is really objecting to the amendment to Conceptual

Amendment 1. She assured Representative Seaton that the committee will address his concerns.

Number 1311

REPRESENTATIVE GATTO restated his suggested amendment that language be inserted that would address a parent allowing a child to be transported.

REPRESENTATIVE SEATON commented that the word "knowingly" was included in the amendment to the amendment.

CHAIR WILSON asked if there are any objections to the amendment to Conceptual Amendment 1.

Number 1375

REPRESENTATIVE COGHILL object. He told the members that he needs to see more definitive language before he could support the amendment to the amendment.

A roll call vote was taken. Representatives Gatto and Wilson voted in favor of the amendment to Conceptual Amendment 1. Representatives Wolf, Coghill, and Seaton voted against it. Therefore, the amendment to Conceptual Amendment 1 failed by a vote of 2-3.

CHAIR WILSON asked if there are any further objections to Conceptual Amendment 1. There being no objection, Conceptual Amendment 1 was adopted.

Number 1477

REPRESENTATIVE SEATON moved Amendment 2, as follows:

Page 2, delete lines 10 through 12

Number 1483

REPRESENTATIVE COGHILL objected for purposes of discussion.

REPRESENTATIVE SEATON commented that Representative Coghill may have missed an earlier discussion. He explained that for the last year and a half he has worked with the Alaska Safe Kids in an effort to define what the requirements are for individuals to secure their kids. The police could not agree on how to cite individuals, he explained. So about a month and a half ago the

attorney general sent out an opinion to all police departments, but comments that have come back say that there still is not enough clarity in the definition to do citations. Representative Seaton told the members that it is disturbing to consider charging parents with a felony for not having children in the proper restraints when the police cannot even figure out how to interpret the law. That is his reason for offering the amendment.

Number 1542

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor of HB 381, answered questions from the committee. She asked the members to consider a change on page 2, line 15, to lower the charge from a class C felony to a class A misdemeanor. It makes sense to give people a chance to get use to the law without making people felons, she added.

REPRESENTATIVE McGUIRE asked Representative Seaton to allow the bill to come to the House Judiciary Standing Committee and take testimony from the Alaska State Troopers, the Department of Motor Vehicles, and review the attorney general's opinion. She said she would try to narrow it down and determine what the specific requirements are. She told Representative Seaton that if the changes made do not meet with his satisfaction they could talk about [further changes].

REPRESENTATIVE SEATON asked if this [violation] isn't already a class A misdemeanor. It is already a primary offense to be transporting a child who is not properly restrained. He pointed out that the police cannot stop an individual for not wearing a seatbelt; however, if there is a child below the age of 16 in the car who is not properly restrained then the car can be stopped and the operator cited. Representative Seaton commented that he also has problems with Section 3 which refers to class B and class C felonies with the difficult standard in knowing what to enforce.

Number 1660

REPRESENTATIVE McGUIRE commented that under the current law this bill will say that this is a primary offense. She explained that Section 4 and 5 draws attention to those who would transport a child while under the influence. She explained that Mr. Hilyard had expressed that there was concern from the committee about a felony. Representative McGuire assured the committee that when the bill comes to the House Judiciary

Standing Committee the bill will be reviewed as is done whenever there is an offense involved. She pointed out that if Representative Seaton's amendment carries, it will gut the bill. The point of the bill says that when a parent takes a child in a car it is essential the child be properly restrained. This bill is intended to save lives. Children are not in a position of making that choice for themselves. They rely on adults to make those decisions for them, Representative McGuire added. Removing reference to the seating restraints removes the point of the bill, she stated.

REPRESENTATIVE SEATON said that he agrees with Representative McGuire, but pointed out that it is already a primary offense. He said he is concerned in the move to make the punishment a felony.

Number 1768

CHAIR WILSON asked what are the steps in severity in punishment.

REPRESENTATIVE MCGUIRE replied that she does not have that information with her today. She added that she came prepared to speak to the health and safety issues associated with the bill, and offered that the more appropriate committee to address the legal issues is the House Judiciary Standing Committee.

REPRESENTATIVE MCGUIRE explained that there is a class A, B, and C felony. The class C felony is the lowest felony, and the highest felony is an unclassified felony.

CHAIR WILSON responded that earlier in the meeting it was decided the House Health, Education and Social Services Standing Committee would look at the social and policy aspect of the bill. She suggested Representative Seaton withdraw his amendment and allow the House Judiciary Standing Committee to deal with this aspect of the bill. The largest problems in Alaska are alcoholism and problems associated with alcoholism, she stated.

Number 1849

REPRESENTATIVE SEATON pointed out that Section 5 does not deal with alcoholism. It deals with proper use of car restraints and raises the punishment for a crime that is already against the law. He emphasized that his concern lies with parents and police understanding what is the proper restraint for kids.

CHAIR WILSON replied that Representative Seaton makes a good point.

REPRESENTATIVE McGUIRE agreed that is a good point. She said she would hope no one would disagree with Section 4. Representative Seaton has made good points concerning the importance of defining [proper restraints], she said. Representative McGuire added that if the committee would be more comfortable in taking that out, then when it comes to House Judiciary Standing Committee she will work to fine tune this point. She said she would be comfortable with that. One thought that came to her is the idea of including some mental intent because the parents that the bill is trying to address are those that are making no effort at all. The bill really is not intended to be directed at a parent who is making a good faith effort and does not have exactly the right restraint.

Number 1958

REPRESENTATIVE WOLF said he appreciates Representative McGuire's thoughts, but believes that in the real world when a police officer pulls a car over, it will not be the mental intent he/she will be looking at. For example, he has a nine year old and a ten year old and cannot decide which restraints his kids should be in because neither one of them fits in it. He commented that his wife knows how much the kids weigh and ensures the kids are in the right seats. He told the members that his son is one pound under the legal limit. It takes a lot of stretching and pulling to get him into the restraint. Representative Wolf added that under this bill he could be guilty of a class C felony.

Number 2002

REPRESENTATIVE McGUIRE explained that it is simply not the police officer's word that results in a charge of a class C felony. A prosecutor must charge an individual. In order to be charged the individual must meet all the elements of the crime. Even if an individual is charged with a class C felony, there is still the option of a jury trial. This bill is not intended to go after people who are making good faith efforts to put their children in proper restraints, she reiterated. The people that this is intended for are those that make no effort whatsoever, she said.

REPRESENTATIVE WOLF commented that he understands what Representative McGuire is trying to do, but the result still

remains that an individual would have to hire an attorney, take time off of work to appear in court, and it ties up the court system.

Number 2077

REPRESENTATIVE COGHILL removed his objection.

There being no further objection, Amendment 2 was adopted.

Number 2086

REPRESENTATIVE COGHILL moved to report HB 381, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 381(HES) was reported out of the House Health, Education and Social Services Standing Committee.

HB 443-TEACHERS AND NURSES HOUSING LOAN PROGRAM

Number 2132

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 443, "An Act relating to eligibility of nurses for the teachers' and nurses' housing loan program of the Alaska Housing Finance Corporation." She reminded the members that the identical bill was passed out of the House Health, Education and Social Services Standing Committee last session.

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, as a sponsor of HB 443 presented the bill. She explained that the bill makes a slight change to the current law which allows for all nurses to be able to participate in the Alaska Housing Finance Corporation program. There is no cost to the state as this is a loan program.

Number 2158

REPRESENTATIVE SEATON moved to report HB 443, version A, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 443 was reported out of the House Health, Education and Social Services Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 5:25 p.m.