

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 12, 2003

3:25 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Tom Anderson, Vice Chair

COMMITTEE CALENDAR

CS FOR SENATE JOINT RESOLUTION NO. 5(STA)
Urging the President of the United States and the Congress to act to ensure that federal agencies do not retain records relating to lawful purchase or ownership of firearms gathered through the Brady Handgun Bill instant check system.

- MOVED CSSJR 5(STA) OUT OF COMMITTEE

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

Marianne Koch Stillner - Juneau

- CONFIRMATION ADVANCED

CS FOR SENATE BILL NO. 98(TRA)
"An Act relating to civil liability for boat owners and to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

- MOVED HCS CSSB 98(JUD) OUT OF COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(FIN)
"An Act relating to medical care and crimes relating to medical care, including medical care and crimes relating to the medical

assistance program, catastrophic illness assistance, and medical assistance for chronic and acute medical conditions."

- HEARD AND HELD

HOUSE BILL NO. 303

"An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines."

- MOVED HB 303 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 64(JUD)

"An Act relating to a requirement that certain consumer reporting agencies provide individuals with certain information without charge."

- SCHEDULED BUT NOT HEARD

HOUSE JOINT RESOLUTION NO. 4

Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session.

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 160(HES)

"An Act relating to civil liability for use or attempted use of an automated external defibrillator; and providing for an effective date."

- BILL HEARING POSTPONED TO 5/13/03

HOUSE JOINT RESOLUTION NO. 9

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

- BILL HEARING POSTPONED TO 5/14/03

PREVIOUS ACTION

BILL: SJR 5

SHORT TITLE: DESTROY BRADY BILL RECORDS

SPONSOR(S): SENATOR(S) WAGONER

Jrn-Date	Jrn-Page		Action
01/12/03		(S)	PERMANENTLY FILED 8/25/03
01/21/03	0014	(S)	READ THE FIRST TIME -

			REFERRALS
01/21/03	0014	(S)	STA, JUD
02/11/03		(S)	STA AT 3:30 PM BELTZ 211
02/11/03		(S)	Moved CSSJR 5(STA) Out of Committee
02/11/03		(S)	MINUTE(STA)
02/12/03	0170	(S)	STA RPT CS 4DP 1NR SAME TITLE
02/12/03	0170	(S)	DP: TAYLOR, COWDERY, DYSON, GUESS;
02/12/03	0170	(S)	NR: HOFFMAN
02/12/03	0170	(S)	FN1: ZERO(LEG)
03/12/03		(S)	JUD AT 1:30 PM BELTZ 211
03/12/03		(S)	Moved CSSJR 5(STA) Out of Committee
			MINUTE(JUD)
03/13/03	0490	(S)	JUD RPT CS(STA) 5DP
03/13/03	0490	(S)	DP: SEEKINS, ELLIS, FRENCH, OGAN, THERRIAULT
03/13/03	0490	(S)	OGAN, THERRIAULT
03/13/03	0491	(S)	FN1: ZERO(LEG)
03/31/03	0646	(S)	RULES TO CALENDAR 3/31/2003
03/31/03	0646	(S)	READ THE SECOND TIME
03/31/03	0646	(S)	STA CS ADOPTED UNAN CONSENT
03/31/03	0646	(S)	COSPONSOR(S): TAYLOR, OGAN, COWDERY,
03/31/03	0646	(S)	WILKEN, GREEN, STEVENS G, DAVIS,
03/31/03	0646	(S)	STEVENS B, SEEKINS, BUNDE
03/31/03	0646	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/31/03	0647	(S)	READ THE THIRD TIME CSSJR 5(STA)
03/31/03	0647	(S)	PASSED Y17 N- E3
03/31/03	0648	(S)	TRANSMITTED TO (H)
03/31/03	0648	(S)	VERSION: CSSJR 5(STA)
04/02/03	0728	(H)	READ THE FIRST TIME - REFERRALS
04/02/03	0728	(H)	STA, JUD
04/02/03	0751	(H)	CROSS SPONSOR(S): CROFT
04/10/03		(H)	STA AT 9:00 AM CAPITOL 102
04/10/03		(H)	Moved Out of Committee MINUTE(STA)
04/11/03	0932	(H)	STA RPT 2DP 3NR
04/11/03	0932	(H)	DP: SEATON, LYNN; NR: GRUENBERG,
04/11/03	0932	(H)	HOLM, WEYHRAUCH
04/11/03	0932	(H)	FN1: ZERO(LEG)
05/07/03		(H)	JUD AT 1:00 PM CAPITOL 120

05/07/03 (H) <Bill Hearing Postponed to Sat. 5/10>
 05/10/03 (H) JUD AT 9:00 AM CAPITOL 120
 05/10/03 (H) -- Meeting Canceled --
 05/12/03 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 98

SHORT TITLE: LIABILITY: PLANE AND BOAT PASSENGERS

SPONSOR(S): SENATOR(S) BUNDE

Jrn-Date	Jrn-Page		Action
03/04/03	0333	(S)	READ THE FIRST TIME - REFERRALS
03/04/03	0334	(S)	TRA, JUD
03/28/03	0616	(S)	COSPONSOR(S): WILKEN, SEEKINS,
03/28/03	0616	(S)	COWDERY, OGAN
04/08/03		(S)	TRA AT 1:30 PM BUTROVICH 205
04/08/03		(S)	Moved CSSB 98(TRA) Out of Committee MINUTE(TRA)
04/09/03	0762	(S)	TRA RPT CS 3DP 2NR NEW TITLE
04/09/03	0763	(S)	DP: COWDERY, OLSON, WAGONER;
04/09/03	0763	(S)	NR: LINCOLN, THERRIAULT
04/09/03	0763	(S)	FN1: ZERO(LAW)
04/23/03		(S)	JUD AT 1:00 PM BELTZ 211
04/23/03		(S)	Heard & Held
04/23/03		(S)	MINUTE(JUD)
04/25/03		(S)	JUD AT 1:00 PM BELTZ 211
04/25/03		(S)	Moved CSSB 98(TRA) Out of Committee MINUTE(JUD)
04/25/03	0965	(S)	JUD RPT CS(TRA) 2DP 1NR
04/25/03	0965	(S)	DP: SEEKINS, OGAN; NR: FRENCH
04/25/03	0965	(S)	FN1: ZERO(LAW)
04/30/03	1050	(S)	RULES TO CALENDAR 4/30/2003
04/30/03	1050	(S)	READ THE SECOND TIME
04/30/03	1050	(S)	TRA CS ADOPTED UNAN CONSENT
04/30/03	1050	(S)	ADVANCED TO THIRD READING 5/1 CALENDAR
05/01/03	1081	(S)	READ THE THIRD TIME CSSB 98(TRA)
05/01/03	1081	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
05/01/03	1081	(S)	AM NO 1 OFFERED AND WITHDRAWN
05/01/03	1082	(S)	AUTOMATICALLY IN THIRD READING

05/01/03	1082	(S)	MOTIONS TO ABSTAIN FROM VOTING
05/01/03	1082	(S)	CHAIR DENIED MOTIONS
05/01/03	1082	(S)	RULING OF CHAIR CHALLENGED
05/01/03	1083	(S)	RULING OF CHAIR UPHELD Y16 N3 E1
05/01/03	1083	(S)	PASSED Y14 N5 E1
05/01/03	1083	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/01/03	1083	(S)	TAYLOR NOTICE OF RECONSIDERATION
05/02/03	1111	(S)	RECON TAKEN UP - IN THIRD READING
05/02/03	1112	(S)	PASSED ON RECONSIDERATION Y14 N5 E1
05/02/03	1112	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/02/03	1113	(S)	TRANSMITTED TO (H)
05/02/03	1113	(S)	VERSION: CSSB 98(TRA)
05/05/03	1305	(H)	READ THE FIRST TIME - REFERRALS
05/05/03	1305	(H)	JUD
05/05/03	1333	(H)	CROSS SPONSOR(S): MCGUIRE
05/09/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/09/03		(H)	Scheduled But Not Heard
05/12/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 41

SHORT TITLE: MEDICAID COSTS AND CRIMES

SPONSOR(S): SENATOR(S) GREEN

Jrn-Date	Jrn-Page		Action
01/29/03	0074	(S)	READ THE FIRST TIME - REFERRALS
01/29/03	0074	(S)	HES, JUD, FIN
02/10/03	0152	(S)	COSPONSOR(S): TAYLOR, DYSON, STEVENS B,
02/10/03	0152	(S)	OGAN, COWDERY, SEEKINS, WAGONER
02/26/03	0273	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/26/03	0273	(S)	HES, JUD, FIN
02/26/03		(S)	HES AT 1:30 PM BUTROVICH 205
02/26/03		(S)	Heard & Held
02/26/03		(S)	MINUTE(HES)
03/03/03	0323	(S)	COSPONSOR(S): WILKEN
03/12/03		(S)	HES AT 1:30 PM BUTROVICH 205

03/12/03		(S)	Moved CSSSSB 41(HES) Out of Committee
03/12/03		(S)	MINUTE(HES)
03/13/03	0489	(S)	HES RPT CS 3DP 1NR SAME TITLE
03/13/03	0489	(S)	DP: DYSON, GREEN, WILKEN; NR: DAVIS
03/18/03	0533	(S)	FN1: (HSS)
04/11/03		(S)	JUD AT 1:30 PM BELTZ 211
04/11/03		(S)	<Bill Hearing Postponed to 4/14/03>
04/14/03		(S)	JUD AT 1:00 PM BELTZ 211
04/14/03		(S)	Moved CSSB 41(JUD) Out of Committee
			MINUTE(JUD)
04/15/03	0857	(S)	JUD RPT CS 5DP NEW TITLE
04/15/03	0857	(S)	DP: SEEKINS, ELLIS, FRENCH,
04/15/03	0857	(S)	OGAN, THERRIAULT
04/15/03	0857	(S)	FN1: (HSS)
04/15/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/15/03		(S)	Moved CSSB 41(FIN) Out of Committee
			MINUTE(FIN)
04/16/03	0871	(S)	FIN RPT CS 4DP 2NR NEW TITLE
04/16/03	0871	(S)	DP: GREEN, WILKEN, TAYLOR, STEVENS B;
04/16/03	0871	(S)	NR: HOFFMAN, OLSON
04/16/03	0871	(S)	FN1: (HSS)
04/22/03	0919	(S)	RULES TO CALENDAR 4/22/2003
04/22/03	0919	(S)	READ THE SECOND TIME
04/22/03	0920	(S)	FIN CS ADOPTED UNAN CONSENT
04/22/03	0920	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/22/03	0920	(S)	READ THE THIRD TIME CSSSSB 41(FIN)
04/22/03	0920	(S)	PASSED Y20 N-
04/22/03	0923	(S)	TRANSMITTED TO (H)
04/22/03	0923	(S)	VERSION: CSSSSB 41(FIN)
04/23/03	1064	(H)	READ THE FIRST TIME - REFERRALS
04/23/03	1064	(H)	JUD, FIN
05/07/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/07/03		(H)	<Bill Hearing Postponed to Sat. 5/10>
05/10/03		(H)	JUD AT 9:00 AM CAPITOL 120
05/10/03		(H)	-- Meeting Canceled --
05/12/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 303

SHORT TITLE:USE CRIMINAL FINES FOR YOUTH COURTS

SPONSOR(S): REPRESENTATIVE(S)OGG

Jrn-Date	Jrn-Page		Action
05/07/03	1415	(H)	READ THE FIRST TIME - REFERRALS
05/07/03	1415	(H)	JUD, FIN
05/08/03	1480	(H)	COSPONSOR(S): GARA, MASEK
05/12/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR TOM WAGONER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SJR 5.

Marianne Koch Stillner, Appointee
Select Committee on Legislative Ethics
Juneau, Alaska
POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

SENATOR CON BUNDE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 98.

KAREN McCARTHY, Staff
to Senator Con Bunde
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 98 by
responding to questions.

SENATOR LYDA GREEN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SSSB 41.

DONALD R. KITCHEN, Assistant Attorney General
Medicaid Provider Fraud
Office of Special Prosecutions & Appeals
Criminal Division, Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SSSB 41.

STEPHEN BRANCHFLOWER, Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SSSB 41 and noted that he'd sent in written testimony.

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

POSITION STATEMENT: Responded to a question during discussion of SSSB 41.

CLIFF STONE, Staff
to Representative Dan Ogg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 303 on behalf of Representative Ogg, sponsor.

LISA ALBERT-KONECKY, Program Coordinator
Mat-Su Youth Court (MSYC)
Wasilla, Alaska

POSITION STATEMENT: During discussion of HB 303, provided some of the Mat-Su Youth Court's statistics and asked that the committee support the bill.

VIRGINIA ESPENSHADE, Director
Kenai Peninsula Youth Court
Homer, Alaska

POSITION STATEMENT: During discussion of HB 303, provided information on youth courts and said she appreciates the committee's support of the bill.

WESTON EILER, Chair
Alaska Youth Court Sustainability Coalition
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 303, provided information on youth courts and thanked the committee for its support of the bill.

DOUG WOOLIVER, Administrative Attorney

Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 303, relayed that the ACS supports HB 303 and the concept of youth courts, and responded to questions.

ACTION NARRATIVE

TAPE 03-60, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 3:25 p.m. Representatives McGuire, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call to order.

SJR 5 - DESTROY BRADY BILL RECORDS

Number 0032

CHAIR MCGUIRE announced that the first order of business would be CS FOR SENATE JOINT RESOLUTION NO. 5(STA), Urging the President of the United States and the Congress to act to ensure that federal agencies do not retain records relating to lawful purchase or ownership of firearms gathered through the Brady Handgun Bill instant check system.

Number 0084

SENATOR TOM WAGONER, Alaska State Legislature, sponsor, said that the United States Congress passed the Brady Handgun Violence Prevention Act ("Brady Handgun Bill") in 1993 to "promote gun safety and reduce gun violence." To do this, he relayed, the Act established a "national instant criminal background check system" (NICBCS) to keep firearms out of the hands of criminals; at that time, it was clear that the NICBCS was not to be used by the government as a way to monitor legitimate firearm ownership by law-abiding citizens. If an individual is approved for purchasing a firearm, 18 U.S.C. 922(t)(2)(C) states: "destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer."

SENATOR WAGONER said that the administration interpreted this language such that it allows agencies to retain these records for 180 days for audit purposes only. He opined that this interpretation is in violation of both the spirit and letter of the original Brady Handgun Bill. He asked members to join him in sending a message to the nation's capitol.

Number 0225

REPRESENTATIVE SAMUELS moved to report CSSJR 5(STA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSJR 5(STA) was reported from the House Judiciary Standing Committee.

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

Number 0262

CHAIR McGUIRE announced that the committee would next consider the appointment of Marianne Koch Stillner to the Select Committee on Legislative Ethics. She asked Ms. Stillner why she wished to serve on the Select Committee on Legislative Ethics.

Number 0280

MARIANNE KOCH STILLNER, Appointee, Select Committee on Legislative Ethics, said she feels like she has a responsibility as a citizen to donate her energy and abilities to a broader purpose. She relayed that when Justice Walter Carpeneti asked her to consider serving on the Select Committee on Legislative Ethics, she became intrigued by that possibility, and that after discussing the matter further with Chief Justice Dana Fabe and Joyce Anderson, Ethics Committee Administrator, she became excited about the prospect of becoming involved. She said that she enjoys thinking in grey areas and the challenges of solving puzzles. She added that she believes she can make an objective contribution.

REPRESENTATIVE GARA pointed out that one of the most important and hardest duties of those serving on the Select Committee on Legislative Ethics is that of objectively considering sanctions against a legislator whom they like. He asked Ms. Stillner what she could do to assure him that she would be willing to find against a legislator she likes if the facts bear out that that legislator did something in violation of the ethics statutes.

MS. STILLNER first relayed that she does not know any legislators, and then that she has been in other, similar situations at work wherein she has had to confront individuals whom she likes about certain issues. She said that she tries to be as objective and as emotionally neutral as possible in those situations.

REPRESENTATIVE GRUENBERG, after referring to some of the items in Ms. Stillner's resume, surmised that she would be well suited to serve on the Select Committee on Legislative Ethics.

MS. STILLNER said that she is looking forward to the experience.

CHAIR MCGUIRE thanked Ms. Stillner for her willingness to serve on the Select Committee on Legislative Ethics.

Number 0500

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Marianne Koch Stillner as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

SB 98 - LIABILITY: PLANE AND BOAT PASSENGERS

Number 0542

CHAIR MCGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 98(TRA), "An Act relating to civil liability for boat owners and to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

Number 0570

SENATOR CON BUNDE, Alaska State Legislator, sponsor, said:

Alaska has a lot of wonderful and unique [opportunities], scenic wonders that, if we are able to share them, certainly [are magnified] ... for those that are doing the sharing. And those that haven't had a chance to see them, really, I think, have some of their experiences diminished. There are opportunities when someone says, "Gee, ... [it's] a beautiful day; I'd love to go for a boat ride with

you." Or you might say, "It's really a pretty experience to see 'X, Y, or Z'; jump in - I'll take you for a ride in the airplane." Or, it has been mentioned to me, you're in one place and someone says, "Hey, I really need to get back to town; could I catch a ride with you?"

And as a good neighbor, you would say yes to ... those prior situations; ... so I call this a "good neighbor" bill. It's an opportunity to share, a chance to access Alaska out-of-doors with neighbors, acquaintances, strangers. It's an opportunity [to] provide useful service to our friends and neighbors without putting all our financial resources in jeopardy. Thousands of Alaskans own planes and boats, and share the enjoyment of these with friends and neighbors. [Senate Bill 98] is designed to clarify that people who accept an invitation to a boat or plane trip, or ask for an invitation to a boat or plane trip, also accept some of the inherent risks that [are] involved in accessing our out-of-doors.

SENATOR BUNDE went on to say:

[Senate Bill 98] provides that if a passenger is injured due to the inherent risk of a noncommercial - please let me stress noncommercial - boating or flying trip, he or she may not sue the owner or operator past the limits of their liability insurance. And if the owner and/or operator has no insurance and ... notifies the ... potential passenger prior to them boarding the boat or aircraft, in that case, the passenger doesn't have a cause of action at all - may not sue. For example, you're out for the day in your boat, you hit a rogue wave, something that you could not have foreseen, your friend falls, breaks an arm.

Number 0759

Current law allows that friend to sue you and, as you have a boat or an aircraft, you're assumed to have deep pockets and may be a target for suits more than in other situations. If that rogue wave is a result of an inherent risk, not your negligence, not your gross negligence, not your carelessness, not your intentional misconduct, then this bill would protect you and your family's assets. Alaska's statutes

recognize that those who participate in some activities must take responsibility for those inherent risks. Already existing in state law are limitations ... regarding inherent risk [related] to private runway maintenance, zoos, unimproved land, and the ski safety Act that passed not too long ago.

[Senate Bill 98] does not absolve owners from their responsibility to maintain and operate their equipment in a safe and prudent manner. It does not protect those who engage or operate their boat or plane in reckless or ... grossly negligent manners, or who engage in intentional misconduct. [Senate Bill 98] only applies to private owners, not to boats or aircraft that are used commercially. This bill is endorsed by the Alaska Airmen's Association, the Alaska [Boating] Association, the Personal Watercraft Club of Alaska [PWCA], the Knik Canoers and Kayakers, and there's a host of individuals who own boats and aircraft that are, I believe, also in your packet [as stating support].

SENATOR BUNDE concluded:

Number 0855

They support this bill because they're deeply concerned about rising costs of insurance and the challenge of ... a society that seems to be, in some cases, unwilling to accept their personal responsibility and look at an accident as a potential for a substantial financial windfall. They support this because of, currently, our inabilities to protect their homes, their retirement, and other significant assets of their family. Therefore, I respectfully submit to you SB 98 for your consideration, and would be available for questions.

REPRESENTATIVE GRUENBERG referred to Section 3 and Section 5 of SB 98 and to the sectional analysis regarding those sections, and said that he is a little bit confused about the interplay of those items. He asked what Section 3 does and what Section 5 relates to.

SENATOR BUNDE indicated that because language in Section 3 contains similar language to what is contained in Sec. 9, Chapter 28, SLA 2000, Section 5 makes reference to it.

REPRESENTATIVE GRUENBERG asked what the practical implication of that is.

SENATOR BUNDE said that it is simply "bill drafters' language," and that the current Alaska boating safety law has a sunset provision. Section 5 recognizes, but does not repeal, the sunset provision contained in that law.

REPRESENTATIVE GRUENBERG surmised, then, that Section 5 is simply conforming language.

SENATOR BUNDE agreed.

REPRESENTATIVE GARA asked for more information.

Number 1092

KAREN McCARTHY, Staff to Senator Con Bunde, Alaska State Legislature, said:

As I understand the convoluted way they had to go about the Alaska boating safety Act, first they had to put all of the statute in place, and then they had to put it in place again in order to sunset it. And the way they did it was that at the end of that bill, they referred to various sections of that bill that would be sunsetted. And so that's why [language in] Section 1 and Section 3 [of SB 98] are identical, but the sunset reference in Section 5 only refers to Section 3. I'm not sure that that's any clearer than when we started.

REPRESENTATIVE GARA said that he is a little uncomfortable with what Legislative Legal and Research Services "is doing on this one."

MS. McCARTHY responded:

I had the same conversation with the bill drafter, and ... because the Alaska boating safety Act had a liability section in it, the bill drafter felt it was appropriate to reference that in this bill. And because of the way that bill was written, we had to do it this way. It's uncomfortable and it's kludgy, but that's the way it had to be done.

REPRESENTATIVE GARA replied:

If there is somebody who has an action under the former version of the Act, the Act that's in place right now, this changes their rights. Even if we're not intending it to, it does. ... If somebody sued ... - let's look at page 2, line 27, ... under this former version of the statute, which is [Sec. 9, Chapter 28, SLA 2000 - if] somebody has an action under that law, we're now changing the law retroactively.

CHAIR McGUIRE pointed out, however, that SB 98 has an applicability provision, which says, "This Act Applies to causes of action that accrue on or after the effective date of the applicable section of the Act." She surmised that this is a critical part of SB 98.

REPRESENTATIVE GRUENBERG suggested that the language on page 2, line 28, of SB 98, which reads, "Sec. 9. AS 05.25.040 is repealed and reenacted to read:" is not the normal way a simple addition to statute is drafted.

MS. McCARTHY pointed out, however, that language on page 2, line 27, does say, "*** Sec. 3.** Section 9, ch. 28, SLA 2000 is amended to read:". She indicated that the language on line 27 is simply how that portion of Sec. 9, Chapter 28, SLA 2000, reads.

REPRESENTATIVE GARA suggested that the committee consider amending SB 98 so as to clarify that the bill only applies to causes of action that arise in the future.

SENATOR BUNDE said he has no objections to such a change.

CHAIR McGUIRE said such a change seems reasonable.

Number 1344

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, to add "only" to page 3, line 12, after "applies". There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GARA, noting that he takes people on his raft all the time, declared a potential conflict of interest. He referred to Senator Bunde's example of an unforeseen wave causing the death or injury of a passenger, and said that he disagreed that the owner and/or operator could be sued under current law. If it is really an unforeseen circumstance, there

could not be a lawsuit because there is no liability in such circumstances. Of SB 98 overall, he remarked:

We're taking away rights to people with valid claims by saying we're just trying to stop the frivolous ones, but I wish we could sort of tailor our bills to just apply to the frivolous ones rather than to the valid ones too. So here, we're taking away the right for somebody to sue for negligence, just in case somebody filed a frivolous suit. That's just a comment. I will probably ... vote in favor of this bill if I make sure I understand it correctly. So let me go through ... [the] three understandings I have, and just tell me if I'm correct about this. ... We're only ... changing the liability rules for noncommercial users. Right?

SENATOR BUNDE said that is correct.

REPRESENTATIVE GARA then said:

Even if you are a noncommercial boat or aircraft owner and you take somebody out and you do have liability insurance, you're still liable up to the limits of the liability insurance. Is that correct?

SENATOR BUNDE said that is correct, adding that he himself carries liability insurance because there are accidents that could occur involving someone other than a passenger or property. He suggested that it is prohibitively expensive to carry maximum, or sufficient, liability coverage; at least for aircraft, it would have to be \$1 million per seat. Surely the issue of the waiver will come up, he surmised, noting that there have been a number discussions on this issue in the past. He noted that someone else's rights cannot be suborned; thus, although someone could sign a waiver beforehand, the waiver does not bind surviving family members.

REPRESENTATIVE GARA then referred to page 2, lines 21-26. He said: "[Subparagraph] (B) says [that] if you're a recreational user and you fail to get a waiver, then you don't enjoy the liability limitation."

SENATOR BUNDE confirmed this.

REPRESENTATIVE GARA said he thinks that the distinction between commercial and noncommercial users is a good one and is glad

that SB 98 is limited to noncommercial operators, and that it is wise to allow someone to recover up to the limit of an operator's liability insurance. He said he did not have any big objections to the bill anymore.

Number 1636

REPRESENTATIVE SAMUELS moved to report CSSB 98(TRA), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS CSSB 98(JUD) was reported from the House Judiciary Standing Committee.

SB 41 - MEDICAID COSTS AND CRIMES

Number 1640

CHAIR MCGUIRE announced that the next order of business would be CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(FIN), "An Act relating to medical care and crimes relating to medical care, including medical care and crimes relating to the medical assistance program, catastrophic illness assistance, and medical assistance for chronic and acute medical conditions."

Number 1667

SENATOR LYDA GREEN, Alaska State Legislature, sponsor, indicated that after the sponsor statement for SSSB 41 was prepared, a "Medicaid audit" was conducted by the Division of Legislative Audit. She relayed that one of the audit's recommendations was that the director of the Division of Medical Assistance (DMA) should provide for a full-time, ongoing service provider audit function. Another of the audit's recommendations was that the legislature should consider adopting specific criminal statutes related to Medicaid fraud in order to enhance the effectiveness of the Medicaid Fraud Control Unit (MFCU). She said that these two points of that audit are encompassed in SSSB 41, and that SSSB 41 has been included in the governor's "crime package legislation."

SENATOR GREEN said that the cost of the Medicaid program in Alaska has increased an average of 20 percent per year since 1999, growing the program from \$396 million in 1999, to \$936 million in 2004 - a total increase of \$540 million over five years. Were this increase due only to an increase in clients that qualify for Medicaid and/or an increase in federal requirements, it would be [acceptable]. However, according to

research, there is a 7-percent waste factor in Alaska's Medicaid program. Additionally, she relayed, there are nationwide estimates of 5 to 20 percent fraud in both Medicaid and Medicare. With regard to Alaska's Medicaid program, she said, even a 5, 6, or 7 percent fraud rate can translate into 10 to 20 percent of nearly a \$1 billion budget.

SENATOR GREEN suggested that that money would be better spent on the people who actually need medical assistance. She made mention of a letter dated May 12, 2003, from Steve Branchflower, current director of the Office of Victims' Rights (OVR) and former director of the Alaska Medicaid Fraud Control Unit. She relayed that on page [2] of that letter, Mr. Branchflower wrote [original punctuation provided]:

Alaska is the only state that has no specific health care criminal theft statutes on the books. As a result, prosecutors must use non-specific criminal statutes to prosecute healthcare professionals who operate in a highly technical field and are able to mount expensive and well-financed (and often successful) defenses. Consequently, the record shows that there have been very few prosecutions-far less than one would expect-given the hundreds of million of dollars which flow through Alaska's Medicaid program each year to less than 10,000 participating Medicaid providers.

Number 1863

SENATOR GREEN recommended that members read the entire letter, adding that it contains a lot of great information that points out the need for some major reforms. Included in SSSB 41 is a requirement that the Department of Health and Social Services (DHSS) hire an outside auditor who will begin doing a regular audit process on billings and claims that come into the Medicaid program. There are also requirements that the DHSS follow up on those claims that are not prosecuted in court, and that the "entire system be much more aggressive and in tune with the purpose of the program, [which] is to provide the most medical assistance possible to the people who need it," she added.

SENATOR GREEN went on to say:

While we were doing the earlier writing of the bill, we found that the language actually pertained to providers; we'd unknowingly left out the recipients.

And the recipient group was meeting here in Juneau, and they went to the department and they said, "We think recipients ought to be included; we know people who are abusing the system, and we want them included." And although that dollar cost is far less, the integrity of the program, as far as they were concerned, was jeopardized And so we have [added] the language to include recipients as well

And ..., based on the amount of harm done by the illegal claim, the incorrect process, there's a penalty that's invoked ... If you look on to page 4, ... line 23, ... it talks about the class B felony, if [the claim] pertains to anything over \$25,000, and it goes on through the different steps and it replicates ... similar penalties for other actions that are comparable. ... One of the things that also came of this is ... language that says the legislature requires the department to do the annual audit, and it is at a percentage that is .75 percent of all enrolled providers with there being no less than an annual 75 audits being done regularly, which [is] fairly aggressive

Number 2001

SENATOR GREEN continued:

There are many providers on the books who are not large users of Medicaid, so the total number could be somewhat misleading, but this would keep it in [an] area where ... we would have a good cross section of all providers who would be subject to audit and ... who would be being checked. ... There's quite a bit of recovery after a successful lawsuit. You may have read about the one in Anchorage last year [and/or] the one in Fairbanks last year. And there were several hundred thousand dollars recovered from those, from [doctors] who were doing some illegal prescribing and assisting patients in ... selling drugs on the street. And they were sort of bringing the money back in and getting new prescriptions and going back and kind of had a pretty good deal going, actually.

And [this is] very harmful to our system. But the unfortunate part [is that they] were not able to

prosecute on Medicaid fraud; they had to prosecute based on the crime they were committing that was parallel or coincidental to the Medicaid fraud. And certainly Steve Branchflower in his letter lays that out very clearly and far better than I. But the ... money that would be brought in under ... successful prosecutions, ... [if SSSB 41 is approved by the legislature], will go back into funding the audits. ... The department as well ... [as] myself have been concerned with some comments that these audits take too long [and] people don't get back to the person being audited, and [so] we have fully funded an additional audit position in our operating budget this year.

Number 2073

SENATOR GREEN concluded:

The audit firm being hired is going to have an additional function from this point forward; they will not only do the initial audit and find the suspected files, they will begin the investigation as well, freeing up our Medicaid auditors to do more of the prosecutorial work. And so we're saying that we think it's appropriate for this money to be available for appropriation to fund that function, and to certainly not keep anyone being audited in a delay status or ... [have it go] on in an unprofessional manner. The department has agreed that this is a concern to them and they intend to see these go more quickly.

There are always, I assume, ... going to be people who choose to do things other than [by] the book, and we have complaints about people who will say, "This audit impacted me unfairly," but I find it very difficult that anyone could sit here and say that they think it's not appropriate for us to criminalize something that is so [incredibly expensive] for this state. And we ... - [along with] the Department of Law, the Department of Health and Social Services, and Steve Branchflower with the Office of Victims' Rights - ... worked many, many, many hours on bringing this to this condition; all have agreed that this will work for the purposes of each of the departments concerned. And with that, I welcome any questions.

CHAIR McGUIRE turned attention to a document entitled "DMA notes on ASMA SB 41 comments," and indicated that this document makes reference to letters that were sent by the Alaska State Medical Association (ASMA). She said that she has heard complaints from doctors who still treat Medicaid patients that audits invade patients' privacy. She posited that some could argue that since Medicaid patients are receiving a state-funded service, there is a compelling state interest to access these records during a fraud investigation. However, there is a concern that in some of these audits, the information that has been requested goes above and beyond that Medicaid patient's record and into his/her family members' records and into the records of other, similarly situated patients. She surmised, though, that the latter might be done to determine whether a specific treatment is the normal way to treat a patient with a like condition. Chair McGuire said she had concerns about this issue and asked Senator Green whether anyone has yet addressed the legal aspects of it, particularly in light of Alaskans' constitutionally guaranteed right of privacy.

Number 2273

SENATOR GREEN indicated that the department might be better able to address that issue. She added that issues of privacy change, both for providers and for recipients, when someone arranges to have another entity pay for services, although this doesn't mean that it would be proper to make such records available to the public. She opined that the state does have the right to validate claims and charges. And although she has never seen a Medicaid audit conducted, she said, one of the things that happens often is that in a class of provider, the auditors do look for similar irregularities, for example, pertaining to a particular [doctor], a particular clinic, or a particular [patient]. She remarked that it is understandable that once some person or entity comes under suspicion, the investigation would ramp up and, thus, the scope of information being sought would be expanded.

CHAIR McGUIRE indicated that she still has concerns about this issue. She pointed out that in some cases, at issue is the conduct of the physician, rather than that of the patient. She then noted that another issue that has been raised by the Alaska State Medical Association is that when there are questions regarding which treatment codes to use, Medicaid officials have been less than helpful. She remarked that the DMA's response to this concern, located in the aforementioned document, is very convoluted. So to hold someone criminally liable for legitimate

errors in coding is unfair, especially considering that Medicaid officials do not provide adequate responses to questions.

TAPE 03-60, SIDE B

Number 2385

CHAIR McGUIRE continued, "If we're going to raise the bar and apply criminal sanctions, I think we ought to be giving the medical community as many tools as we possibly can to make a good-faith effort to follow the rules and treat the patients appropriately."

SENATOR GREEN mentioned that she thought there are currently some changes to the coding system occurring at the federal level, adding that these changes may alleviate some of the ASMA's concerns. She noted, however, that DMA's written response to this concern includes the statement, "It is expected that providers deliver and bill for services in the same manner as they serve the general public." Therefore, she opined, they should be using the same code for both types of patients; it should not have to be a puzzle that has to be figured out.

CHAIR McGUIRE offered that even as far as serving the general public, the coding system is currently quite a quagmire. She added, "A good physician will try to assign the billing code that will offer their patient the best mode of treatment and the best possibility of coverage, all within the realm of truth." For example, a physical examination can be [coded] different ways.

REPRESENTATIVE SAMUELS asked what happens to the privacy issue when audits are performed by private entities; for example, an audit performed by an insurance company.

CHAIR McGUIRE said her concerns pertain to doctor-patient confidentiality in general.

SENATOR GREEN said that the forms which providers are having patients sign allow information to be shared with insurance companies - those entities that are being asked to pay for the service. She said she assumes that this is also the case with Medicaid; the payor has the right to know that the service has been provided and that it is the appropriate service. Once a patient has asked a third party to pay for all or part of the service, the patient is in a different category.

Number 2247

CHAIR McGUIRE said she did not disagree with that point, but added:

Where my questions on the privacy issue go to are the ancillary folks that get involved when an audit is conducted. And those are the patient's relatives that may be treated by the same practitioner - ... these are experiences that come from the medical community - or possibly even an unrelated patient ... [who] is not a Medicaid recipient that is receiving care under a similar category. So those are the folks I'm concerned about.

REPRESENTATIVE GARA said that he likes the bill and the concept, and he understands the motivation behind the bill. He said that he wanted to be sure that the cost of the extra audits is going to be justified by extra recoveries. He then broached the idea of letting the attorney general's office bring a civil case - somewhat akin to what is done under the unfair trade practices Act - such that if there is Medicaid fraud, the state would be entitled to recover the overcharge, it's investigation costs, it's [attorney] fees, and a penalty. Because there are proof problems in criminal cases that don't apply in civil cases, a conceptual amendment that provides for a very simple cost-recovery action by the attorney general's office might be a good idea, he suggested.

Number 2147

SENATOR GREEN said that in the audit process, as the [independent] audit firm checks the Medicaid records and goes through claims and billings, if something raises a red flag, those with the biggest red flags are prosecutable whereas those with smaller red flags or yellow flags go back to the department to deal with. The department then goes through an "interoffice" process of reevaluating the case, asking for more information, substantiating billings, and speaking to the parties involved. She posited that this latter process probably takes place all the time.

SENATOR GREEN predicted that doing as Representative Gara suggested wouldn't be necessary, because under what is proposed via SSSB 41, the DOL and the DHSS will be required to communicate with each other regarding potential fraud situations. She noted that those who are found to have violated the provisions of the Medicaid program are removed from that

program for a period of time. She recommended asking the departments for their view regarding Representative Gara's suggestion of providing for a civil remedy.

Number 2046

DONALD R. KITCHEN, Assistant Attorney General, Medicaid Provider Fraud, Office of Special Prosecutions & Appeals, Criminal Division, Department of Law (DOL), on that issue, said:

I think what [Representative Gara is] talking about is essentially a civil false-claims action that is permissible in the federal system. And I did not include it when we were working with Mr. Branchflower and other folks in getting this started, only because I thought it was probably a bit too ambitious for the first time around. But certainly, investigative costs, our costs, and penalties are [appropriately recovered] in the federal system when these same kinds of suits are brought. And it would, I believe, cover probably what's considered a middle ground that does not get moneys recovered, and that is where the provider gets money they're not entitled to and DMA doesn't go after them administratively when they could. So, I think a civil false-claims action, as requested, is a good idea; I don't know if we can hammer it out this late, but I would certainly be willing to try.

REPRESENTATIVE GARA said that his worry is that under the existing remedies, if all that can be recovered are court rule costs, those don't include investigative costs. Is there a statute that provides for the recovery of investigative costs?

MR. KITCHEN said that he had not thought about including the recovery of investigative costs in the version that's before the committee.

REPRESENTATIVE GARA suggested that Mr. Sniffen from the Fair Business Practice Section, Civil Division (Anchorage), Department of Law, could probably help Mr. Kitchen draft such a provision in a short period time. He asked Senator Green whether she would be interested in exploring such an addition.

SENATOR GREEN said, "I don't have any problem with it; I don't know enough about it to speak to it." She suggested asking Mr. Branchflower for his opinion on this issue.

Number 1951

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, said that there are federal regulations that every state that accepts federal funding to pay for the Medicaid program has to agree to, and that when he was the Director of the Medicaid Fraud Control Unit, that unit handled both civil and criminal matters. Most of the money that was recovered during his tenure - almost \$3 million - was recovered civilly, he explained. He opined that the federal false claim statutes are good, but added that he would prefer for the bill to go forward, "in the interest of at least loading the guns of the prosecutors ... for this year," and then revisit it at a later time.

REPRESENTATIVE GARA indicated that he would ask the attorney general's office to work on an amendment that Senator Green and other interested parties could look at before the bill goes to the House floor; if the amendment is acceptable to everyone, it could then be offered on the House floor.

CHAIR McGUIRE said that although what Representative Gara is proposing seems reasonable, she did not want to hold the bill up too long.

MR. KITCHEN indicated that he might be able to come up with appropriate language within a couple of days.

REPRESENTATIVE GARA relayed that what he is interested in is a provision that would allow for the recovery, in full, of investigation costs, attorney fees for overcharges, and penalties similar to what is provided for in the unfair trade practices Act.

SENATOR GREEN noted that SSSB 41 also has a House Finance Committee referral, and suggested that perhaps an amendment to that effect could be added in that committee.

CHAIR McGUIRE relayed that in addition to Mr. Kitchen and Mr. Branchflower, representatives from the Department of Health and Social Services were also available to answer questions.

Number 1721

REPRESENTATIVE GRUENBERG mentioned that language on page 3, lines 24-25, is similar to language on page 7, line 31, through

page 8, line [2]. He said he is concerned that there aren't statutory standards for the protection of patients' privacy, and suggested that staff should also work on such a language change. He then turned attention to language on page 4, lines 18-19, which would make it a crime to knowingly destroy a medical assistance record. He suggested that it would be unreasonable to expect providers to keep all such records indefinitely and, therefore, there ought to be a stipulation that such records could be destroyed after a certain period of time.

MR. BRANCHFLOWER, on the issue of patients' privacy, said:

Keep in mind that ... the Medicaid program reimburses [providers] before and, in most cases, in the absence of any proof by the provider that the service has actually been rendered. And so it's only after the fact, through audits, and sometimes many months and even years after the fact, that an effort is made to reconcile the billings with the medical charts. And that, of course, gets into the question of privacy.

Now, on the provider's side, ... when a doctor wishes to become involved with Medicaid, they have to fill out a form that's called a ... provider enrollment form. And essentially that form is a contract between the provider and the state, and one of the terms in this contract is that the provider has to abide by all the federal regulations; the whole Medicaid program is driven largely by federal regulations. And one of those provisions is to open the person's records, the provider's records, to auditors

On the other side of the equation, on the patient's side, all of the people, all of the recipients for Medicaid benefits, are eligible as a result of their indigency. And what happens is, when a person wants to obtain Medicaid benefits, they go down to the public assistance office and they fill out the forms, and ... the forms address not only Medicaid eligibility, but also eligibility for public assistance, food stamps, and so forth. And there is a waiver there, [a] prospective waiver, that they sign as a condition of eligibility.

Number 1527

So, between the provider enrollment agreement form and the recipient's prospective waiver, all of the concerns that you have expressed are taken care of. Essentially, they specifically agree in writing to ... waive the doctor-patient privilege. And in terms of third persons' getting swept up, sometimes what happens is that - and I would say it happens more frequently than not - when a case comes to the attention of the Medicaid Fraud [Control] Unit and there is reason to believe that there's some criminal conduct that may have transpired, ... the prosecutors will take their evidence before a judge and seek the issuance of the search warrant; [a] search warrant, of course, is only issued upon probable cause, so there has to be evidence ... sufficient for the issuance.

MR. BRANCHFLOWER continued:

And they typically go into a provider's office and they will seize the entire patient population in terms of the files, and usually this is hundreds and hundreds of files. And what happens is that the auditor that works within the Medicaid Fraud [Control] Unit will take each patient file and attempt to reconcile the billings for that provider, not only with the ... Medicaid billings but also [with regard to] the private payor, the cash payor, the insurance payors, and so forth.

The reason [for doing this] is that there is essentially a law that says that the provider cannot charge the State of Alaska more money than ... non-Medicaid patients. And so these are all ... circumstantial threads of fraud that can be ultimately incorporated into a charging document. So even as to third persons, even as to non-Medicaid patients, those records are only obtained after some judge passes judgment on the existence of probable cause. And so I think there is already in place a system to protect the privacy of all of the parties who are involved in this issue.

Number 1428

CHAIR McGUIRE asked Mr. Branchflower to describe exactly what purportedly guarantees the privacy of [non-Medicaid] patients.

REPRESENTATIVE GRUENBERG asked whether a search warrant has to be obtained in all cases.

MR. BRANCHFLOWER replied:

Unless there is a specific waiver from the non-Medicaid patient, yes. I don't know of any other way of obtaining a medical charge for a non-Medicaid patient ... unless the person agrees to ... them obtaining it. ... The doctor-patient privilege, with respect to non-Medicaid patients, is something that is already a matter of law in the [Alaska] Rules of Evidence. Plus there are provisions for maintaining the confidentiality of the persons who are non-Medicaid patients. And it's been my experience ... that when we file charging documents, which ... are public records, we ... preserve the identity of the patients by using their initials in very much the same way we do with sexual assault victims

And of course the facts that give rise to the charge are stated in those pleadings, but there's usually, in my experience, nothing about the statement of facts that would disclose the identity of the patients themselves. Now, it may come to pass that as the case moves through a trial, that it will be necessary to subpoena patients who are not Medicaid patients; in that case, appropriate steps can be taken to preserve that person's privacy, and that will be up to the trial judge. There are rules in place to take care of that.

REPRESENTATIVE GRUENBERG asked what privacy right the patient, whether Medicaid or non-Medicaid, has from the investigator.

Number 1278

MR. BRANCHFLOWER reiterated that the Medicaid patient has prospectively waived his/her right to privacy, adding that most of the investigator's work focuses on the conduct of the provider rather than the recipient, although there are many examples of recipient fraud. Because of the resources required to investigate Medicaid fraud cases, however, investigator's choose to "get the biggest bang for the buck" by going after the provider's records. So when recipients are being interviewed, they are asked whether services were actually rendered as billed.

REPRESENTATIVE GRUENBERG noted, however, that in looking through individual patient files, investigators have access to very private information.

MR. BRANCHFLOWER acknowledged that investigators do have access to medical records and the information that relates to the treatment that was claimed to have been provided. He argued, however, that auditors, even when just looking at information from a financial standpoint, are also bound by federal confidentiality regulations.

REPRESENTATIVE GRUENBERG said he would feel more comfortable if there was language in SSSB 41 that said due care must be taken, in the course of the investigation, to preserve the patient's privacy. He asked that staff work on such language with the sponsor. He then returned to the issue of destroying medical assistance records, and asked that a provision be included that would allow a provider to destroy such records after a certain period of time.

MR. BRANCHFLOWER offered that the answer to that issue lies with the fact that before a person can be subject to prosecution for any of the actions listed on page 4, lines 18-19, it has to be proven that the person acted with the requisite culpable mental state, which is knowingly. He acknowledged that providers do eventually destroy records as a matter of course, and opined that they would be protected from prosecution because they would not be doing it with the intent of advancing fraud of the Medicaid program. He relayed that it would be acceptable if some sort of affirmative defense or exclusion were added that would allow for the destruction of such records if done for a legitimate reason.

MR. KITCHEN noted that the "Medicaid rules" require providers to keep such records for seven years. He assured the committee that the DOL would never prosecute providers for not keeping records that the Medicaid program no longer required them to keep.

Number 0981

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), after noting that the language on page 4, lines 18-19, was taken from the statutes pertaining to the crime of tampering with public records in the second degree, suggested that the phrase

"knowing that the person lacks the authority to do so" could be added after "record" in order to address Representative Gruenberg's concern.

REPRESENTATIVE GRUENBERG expressed a willingness to offer such language as an amendment.

MR. KITCHEN suggested, alternatively, that adding the phrase "except as otherwise permitted by law" would accomplish the same thing without creating the problem of having to prove who told whom to destroy the medical assistance records.

REPRESENTATIVE GRUENBERG indicated that he preferred Mr. Kitchen's suggestion instead.

REPRESENTATIVE GARA objected, and said:

Then you'll have the situation of somebody who removes or impairs the legibility or the availability of a record: a secretary, who doesn't know the law, who does so by mistake, or does so because their boss wants them just to deal with records somehow, and all of a sudden they'll have committed a crime.

REPRESENTATIVE HOLM said no.

CHAIR MCGUIRE pointed out that knowingly is the culpable mental state.

Number 0839

REPRESENTATIVE GARA argued, however:

But ... when you crumble up a record, you're knowingly crumbling up the record. The real question is, do you know that you're breaking [the] law or do you know that you're ... intentionally trying to deprive somebody of a record? But just knowingly impairing the legibility, [well] that's just crumbling up a record without any bad intent. The question is, do you have any bad intent? And that part is actually throughout this ... page 4. We're not very careful in limiting these criminal sanctions to people who have bad intent; we're just limiting them to people who know the physical process that they're going through, of throwing out a record or destroying a record, but

they could just be trying to thin out a file for their boss And so I've got an overall concern here.

MR. BRANCHFLOWER said that perhaps the solution would be to stipulate a specific timeframe, for example, 10 years after the preparation of the document. That way, providers could simply look at the date on the document.

REPRESENTATIVE GRUENBERG suggested that staff work on this issue before the bill's next hearing.

CHAIR McGUIRE agreed to that suggestion and instructed committee staff to focus on the issues of patients' privacy and the destruction of the medical assistance records.

REPRESENTATIVE HOLM asked why the fiscal note did not reflect the potential savings.

SENATOR GREEN indicated that the fiscal notes for SSSB 41 focus on the cost to the state.

REPRESENTATIVE GARA said that he wants SSSB 41 to be limited to intentionally fraudulent conduct.

MR. BRANCHFLOWER posited that all of the issues the committee has concerns with could be resolved by working on the bill overnight.

[SSSB 41 was held over.]

HB 303 - USE CRIMINAL FINES FOR YOUTH COURTS

Number 0548

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 303, "An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines."

Number 0492

CLIFF STONE, Staff to Representative Dan Ogg, Alaska State Legislature, presented HB 303 on behalf of Representative Ogg, sponsor. He paraphrased from the sponsor statement, which in part read [original punctuation provided]:

The foremost concern facing Youth Courts in the State of Alaska is funding. These programs are dependent on the Juvenile Accountability Incentive Block Grant (JAIBG), a federal grant administered through the Division of Juvenile Justice. The current federal budget for FY04 does not include any funding for the JAIBG.

This bill would separately account for fines that have been imposed under the Sentencing and Probation statutes. The legislature may then appropriate a prescribed percentage of those fines that have been collected to the Youth Courts.

The permissive "may" and the inclusion of the final sentence of the bill had been found by the Alaska Supreme Court to not constitute unconstitutional dedicated funds because the legislature continues to be able to appropriate money as it sees fit.

MR. STONE, in conclusion, indicated that a portion of the funds for the Council on Domestic Violence and Sexual Assault (CDVSA) is acquired in a manner similar to what is being proposed by HB 303 for youth court funding.

Number 0351

LISA ALBERT-KONECKY, Program Coordinator, Mat-Su Youth Court (MSYC), said that she has worked with juvenile offenders in Alaska for over 17 years. She continued:

I'd like to state that youth courts around the state are doing an important job for Alaska. Because of limited funds for state probation-officer positions, the state cannot address juvenile [crime] in its earliest stage. Youth courts have taken a burden off the shoulders of local JPOs [juvenile probation officers], who can now concentrate on the more serious juvenile offenders. Currently, the Mat-Su Youth Court handles 25 percent of the juvenile offenders in the [Matanuska-Susitna] Mat-Su valley. Our recidivism rate has stayed under 9 percent and was 7.5 percent for last year.

Other significant statistics include: our student members have put in over 19,000 hours of service to their community in the Mat-Su Youth Court since

program inception, [and] our students average 104 hours each during their involvement in the program. The program also has taken on first-time "minor consuming" cited teens, [and] since starting this project, we have dealt with 108 of those cases, and those involved possession or consumption of alcohol. ... With an annual growth of rate of 7 percent, the Mat-Su valley needs all the resources we can possibly get to address our community needs. Please support House Bill 303. Thank you very much for your support.

CHAIR McGUIRE predicted that there would be a tremendous amount of support for HB 303 from the House Judiciary Standing Committee. She thanked Ms. Albert-Konecky and the student MSYC members for their work.

REPRESENTATIVE HOLM asked what the recidivism rate was prior to the MSYC's establishment.

MS. ALBERT-KONECKY indicated that she did not have that information.

Number 0201

REPRESENTATIVE HOLM said that it is difficult for him to approve of a program without any empirical data showing that that program serves a purpose.

MS. ALBERT-KONECKY relayed that she'd formerly worked at McLaughlin Youth Center, which had a recidivism rate of around 50 percent.

CHAIR McGUIRE remarked that one of the points of the program is the recognition that youth are going to commit crimes and, therefore, there has to be some societal mechanism for dealing with those crimes. She offered her belief that youth courts serve a portion of the community, and that judgment by a youthful offender's peers has a greater effect than judgment by adults. She said that she has seen the youth court program "do miracles," adding, "I think this program is amazing."

MR. STONE, in an effort to allay Representative Holm's concern, said that a 2002 study done by the Urban Institute's Justice Policy Center gathered information from four states - Alaska, Arizona, Maryland, and Missouri. He said that according to this study, Alaska has only a 6-percent recidivism rate, whereas the "normal system" has a 23-percent recidivism rate.

TAPE 03-61, SIDE A

Number 0001

MR. STONE mentioned that all of the youth that participate in youth court programs are advocates of these programs.

REPRESENTATIVE SAMUELS said that he agrees with the bill, and that he was involved with the Anchorage Youth Court. He offered his belief that often, before the youth court was established, nothing happened to youthful offenders because of the volume of cases in the regular system.

REPRESENTATIVE GARA said that he is big supporter of youth courts, but acknowledged that the statistics before the committee are not particularly useful. He predicted, though, that the aforementioned study probably does show that the recidivism rate does go down in a particular area when a youth court is established in that area. He said he is wondering whether expanding the role of youth courts would allow them to deal effectively with more offenders than they are currently.

REPRESENTATIVE OGG said that he'd been involved with Kodiak Teen Court, and indicated that there is a danger of a youth court not having a sufficient number of youths involved in it to meet its needs if a program expands too much. Before a youth court expands, he remarked, it has to have sufficient volunteers.

Number 0352

VIRGINIA ESPENSHADE, Director, Kenai Peninsula Youth Court (KPYC), said that HB 303 is a great bill and she appreciates the committee's support of it. She relayed that the Urban Institute's study was specific to the Anchorage Youth Court; however, many of the 15-17 youth courts in Alaska are modeled after the Anchorage Youth Court. She remarked that the Anchorage Youth Court is unique in the country in that it accepts "not guilty" pleas. She urged the committee to read the Urban Institute's study, which compares the recidivism rate of youth courts with that of the regular court system for similar offenses.

MS. ESPENSHADE predicted that if youth courts had more funding, it would directly impact the timeliness with which cases can be addressed, and would allow youth courts to become better equipped to follow up and monitor sentence compliance. She said that one of the main theories behind youth courts is a quick,

timely, appropriate, peer-based response. She surmised that all youth courts are being "taxed to the limit," particularly with the addition of "minor consuming alcohol" cases. She relayed that the Kenai Peninsula Youth Court runs two programs, one in Homer and one in Kenai, and offered that two of the great things about all youth courts is that they are community-based and that the theory behind them appears to work in any kind of community.

CHAIR MCGUIRE said she appreciates Ms. Espenshade's hard work on behalf of the KPYC and thanked her for her testimony.

Number 0491

WESTON EILER, Chair, Alaska Youth Court Sustainability Coalition, thanked the committee for hearing and supporting HB 303, and said he is a "member" of the Juneau Youth Court and has been so for the past three years. He then went on to say that youth courts also provide benefits to youth in general. There are approximately 1,000 youth court advocates around Alaska, in 17 different youth courts "from Ketchikan to Kotzebue," he added. Youth courts, in addition to being a positive alternative to the juvenile justice system, allow youth an opportunity to help their peers, get training in the "basic fundamentals of law in civil society" and in courtroom procedure, and receive mentoring by attorneys and judges. Youth courts empower youth to make a difference in their communities.

CHAIR MCGUIRE thanked Mr. Eiler for his work with youth courts.

Number 0621

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that the ACS supports HB 303 and the concept of youth courts. The ACS is a big advocate of youth courts and sees a lot of their benefits, he added, noting that Chief Justice Dana Fabe mentioned youth courts in her "State of the Judiciary" address to the legislature.

REPRESENTATIVE GARA asked whether youth courts would benefit from more funding. He said that he would like to see the ACS request more funding for that purpose.

MR. WOOLIVER explained that aside from providing youth courts with courtrooms and mentors, the ACS is not officially affiliated with youth courts. He suggested that the best ones to answer the question of whether more funding would be helpful

would be the youth courts themselves, since they knew their backlog better than he.

REPRESENTATIVE GARA asked who submits the budget request for youth courts.

REPRESENTATIVE OGG said that youth courts are funded by federal grants and various nonprofit organizations.

REPRESENTATIVE GRUENBERG asked what entity would be responsible for seeing that youth courts get the funding provided by HB 303, should it pass.

REPRESENTATIVE OGG suggested that those funds would be distributed by the "granting agencies" that currently distribute funds for youth courts.

CHAIR McGUIRE posited that that aspect of the legislation would be addressed in the House Finance Committee.

Number 0839

REPRESENTATIVE GARA moved to report HB 303 out of committee with individual recommendations and the accompanying fiscal zero note. There being no objection, HB 303 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0874

The House Judiciary Standing Committee was [recessed] at 5:15 p.m. to a call of the chair. [The meeting never was reconvened.]