ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 23, 2004
1:34 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 334
"An Act relating to unlawful exploitation of a minor."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

HOUSE BILL NO. 513
"An Act relating to the enforcement of support orders through suspension of drivers' licenses; changing the name of the child support enforcement agency to the child support services agency; amending Rules 90.3 and 90.5, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 513 OUT OF COMMITTEE

HOUSE BILL NO. 514
"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 378

"An Act relating to the Alaska Food, Drug, and Cosmetic Act, including sales, advertising, certain devices, food donors, and food banks; making certain violations of organic food provisions and of the Alaska Food, Drug, and Cosmetic Act unfair methods of competition and unfair or deceptive acts or practices under certain of the state's unfair trade practices and consumer protection laws; and providing for an effective date."

- MOVED HB 378 OUT OF COMMITTEE

HOUSE BILL NO. 367
"An Act relating to the licensing and regulation of sex-oriented businesses and sex-oriented business entertainers; relating to protection of the safety and health of and to education of young persons who perform in adult entertainment establishments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 334
SHORT TITLE: UNLAWFUL EXPLOITATION OF MINOR
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	JUD
01/30/04	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/04	(H)	<Bill Hearing Postponed>
02/20/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/20/04	(H)	Scheduled But Not Heard
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 513
SHORT TITLE: CSED NAME CHANGE/DRIVER'S LIC.SUSPENSION
SPONSOR(S): REPRESENTATIVE(S) KOTT

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	JUD
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 514
SHORT TITLE: CHILD SUPPORT ENFORCEMENT/CRIMES
SPONSOR(S): REPRESENTATIVE(S) KOTT

02/16/04	(H)	READ THE FIRST TIME - REFERRALS

02/16/04	(H)	JUD
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 378
SHORT TITLE: FOOD, DRUGS, COSMETICS, CERTAIN DEVICES
SPONSOR(S): FINANCE

01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	HES, JUD
02/05/04	(H)	HES AT 3:00 PM CAPITOL 106
02/05/04	(H)	Moved Out of Committee
02/05/04	(H)	MINUTE(HES)
02/09/04	(H)	HES RPT 2DP 1DNP 2NR
02/09/04	(H)	DP: SEATON, WILSON; DNP: WOLF;
02/09/04	(H)	NR: GATTO, COGHILL
02/09/04	(H)	FIN REFERRAL ADDED AFTER JUD
02/23/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 334.

PATTY WARE, Director
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 334, expressed the division's opposition to an expansion of the automatic waiver provision in AS 47.12 and suggested an amendment.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Expressed the PDA's concerns with HB 334; expressed the PDA's concerns with HB 514.

REPRESENTATIVE PETE KOTT
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 513.

JOHN MAIN, Staff
to Representative Pete Kott

Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 513 on behalf of the sponsor, Representative Kott; presented HB 514 on behalf of the sponsor, Representative Kott.

JOHN MALLONEE, Acting Director
Child Support Enforcement Division (CSED)
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 513; responded to questions during discussion of HB 514.

DIANE WENDLANDT, Chief Assistant Attorney General
Statewide Section Supervisor
Collections and Support Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 514 and answered questions from the members.

CATHY SCHINDLER, Assistant Attorney General
Child Support Enforcement
Special Prosecutions Unit
Office of Special Prosecutions & Appeals
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 514 and answered questions from the members.

STEVEN B. PORTER, Deputy Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: Testified on HB 514 and answered questions from the members.

WILLIAM TANDESKE, Commissioner
Department of Public Safety (DPS)
Juneau, Alaska
POSITION STATEMENT: Relayed concerns about HB 514, Section 9.

GERALDINE McINTOSH, Staff
to Representative William K. Williams
House Finance Committee
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Presented HB 378 on behalf of the sponsor, the House Finance Committee.

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 378 and responded to questions.

ELISE HSIEH, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
POSITION STATEMENT: Responded to questions during discussion of HB 378.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 378 and responded to questions.

ACTION NARRATIVE

TAPE 04-21, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:34 p.m. Representatives McGuire Holm, Ogg, Samuels, and Gruenberg were present at the call to order. Representatives Anderson and Gara arrived as the meeting was in progress.

HB 334 - UNLAWFUL EXPLOITATION OF MINOR

Number 0072

CHAIR McGUIRE announced that the first order of business would be, HOUSE BILL NO. 334, "An Act relating to unlawful exploitation of a minor."

Number 0110

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, explained that HB 334 simply changes the crime of unlawful exploitation of a minor from a class B felony to a class A felony, adding that he feels it is his duty to convince the House Judiciary Standing Committee that this is a necessary change. For the purpose of disclosure, he relayed that he is the father of two daughters and has served on the board of directors of Standing Together Against Rape (STAR) for three years.

REPRESENTATIVE MEYER went on to say that he believes that explicit sexual material involving children is a very serious crime, and has multiple effects on a child as he/she grows up on into his/her adulthood. It can affect a child psychologically, sociologically, and behaviorally. Another problem with the production of child pornography is that even if the child is able to mature and forget his/her past, there's still a videotape and/or pictures out there, of this act, for as long as that videotape and/or pictures exist. The production of child pornography also puts the child in some very, very dangerous situations, exposing him/her to sexually transmitted diseases, rape, assault, and torture.

REPRESENTATIVE MEYER noted that there have been several cases in Anchorage involving the production of child pornography, and opined that it is more common than people want to believe. One of the reasons for this, he offered, is that such crimes often involve other crimes as well, and so the focus is directed towards those other crimes. He said he believes that the crime of exploitation of a minor needs to be raised to a class A felony because those sentenced for a class B felony can get by with a one- to four-year sentence. He pointed out that the Department of Corrections has provided the committee with statistical handouts regarding this particular crime; one offender of this crime is serving two years. With "good behavior," he remarked, that offender will be out of jail in less than one year.

Number 0362

REPRESENTATIVE MEYER offered his understanding that the difference between the crime of sexual abuse of a minor and that of exploitation of a minor is that in cases of sexual abuse of a minor, the perpetrator forces himself/herself onto the minor - in essence, rape - and in cases of exploitation of a minor, the perpetrator is asking a child or children to perform sexual acts for the purpose of videotaping those acts or taking pictures of

those acts. What he is proposing, he relayed, is a [sentencing] scheme wherein the crime of sexual abuse of a minor [in the first degree] would remain an unclassified felony, the crime of exploitation of a minor would become a class A felony, the crime of distribution of child pornography would remain a class B felony, and the crime of possession of child pornography would remain a class C felony.

REPRESENTATIVE MEYER said he believes that the actual production of child pornography is worse than the selling of it. Although both are very bad, if it is not first produced, then there is nothing to sell. He noted that under federal law, the production of child pornography carries with it a minimum sentence of [ten] years, and that under HB 334, the sentence would be five years. Why not just rely on the federal law? The reason is because federal law applies only in instances wherein an interstate crime has occurred. In conclusion, he turned members' attention to the accompanying fiscal notes.

REPRESENTATIVE SAMUELS noted that the crime of manslaughter is currently a class A felony, the same as what is being proposed for the production of child pornography. He asked whether the crime of exploitation of a minor involves anything other than the production of child pornography.

REPRESENTATIVE MEYER offered his belief that that's basically all it involves. If, during the course of producing the child pornography, the adult was sexually assaulting the child, then the offender would face that charge as well.

CHAIR McGUIRE asked whether, for example, if a 14-year old and a 16-year old are in a consensual relationship and one of them takes a picture of the other, that would be considered unlawful exploitation of a minor.

REPRESENTATIVE MEYER offered his belief that it would not be, so long as it was a consensual relationship. He added that the minor has to be enticed in some way to perform these activities for it to be considered unlawful exploitation of a minor.

Number 0812

PATTY WARE, Director, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that although the DJJ strongly supports accountability with respect to offenders, it is opposed to the expansion of the automatic

waiver provision, which would be one of the impacts of HB 334. She elaborated:

> It would result in expansion of the "auto-waiver" provision currently contained in the delinquency statutes, in [AS] 47.12.030, such that if a juvenile is 16 or older, and this were to be class A felony, he or she would be waived into the adult system. We've prepared a brief summary sheet for the committee ... [and], as you can see, we don't get very many of these types of cases within the department. For the 10-year period from [fiscal year 1994] FY 94 through current to date FY 04, we had 15 juveniles charged with unlawful exploitation of a minor in that ten-year period, representing eight separate incidents.
>
> As you can see, ... those cases that were referred with other charges ultimately resulted in an adjudication 100 percent of the time. I should note that in some of those instances, the adjudication was done at a later time for a charge that was subsequently referred. Were this bill to have been law, then in that 10-year period, 7 out of the total 15 juveniles referred to the [DJJ], or 47 percent of the total referrals, would have been waived to the adult system because they were 16 years or older at the time of the alleged offense.
>
> Again, the [DHSS] strongly supports accountability for all of those folks who commit offenses, but we believe strongly [that] we can address the issue of offender accountability more appropriately in the juvenile justice system [JJS] rather than having these juveniles waived to the adult setting. I'd be happy to answer any questions.

CHAIR McGUIRE asked Ms. Ware for suggestions on how to achieve the sponsor's goal regarding adults without expanding the automatic waiver provision in AS 47.12.

MS. WARE said that one option would be to propose an amendment such that this particular charge is exempted from AS 47.12.030; this would ensure that the current automatic waiver provision would not be expanded.

REPRESENTATIVE OGG turned attention back to Chair McGuire's example and asked Ms. Ware to comment.

Number 0999

MS. WARE said that according to her understanding, the behavior in that type of example would fall under the purview of the bill. Part of the difficulty within the DJJ is that such behavior is what is most often seen; in other words, the juveniles are very close in age and, although the behavior is illegal and inappropriate, it is consensual, and so the DJJ has a difficult time proving the case because the identified victim won't testify. In response to a question, she repeated her suggested amendment, adding that such an amendment would make the crime of exploitation of a minor a class A felony for adults without expanding the automatic waiver provision in AS 47.12.030.

CHAIR McGUIRE mentioned that committee staff would be working on such an amendment, and noted that the committee has recently been looking at the issue of benefits versus responsibilities for young adults.

REPRESENTATIVE GRUENBERG remarked that in a juvenile setting, under the current statutory language, the defendant would still be guilty of the crime even if he/she is younger than the alleged victim. He also noted that there could be circumstances wherein one person is one day under the age of 18 while the other person is one day over the age of 18. A class A felony would be pretty steep for those in such a situation, he opined.

REPRESENTATIVE SAMUELS pointed out, however, that there could be situations in which someone under the age of 18 is running, or is an integral part of, an operation that produces child pornography. He surmised that Ms. Ware's suggested amendment would still allow for a waiver into adult court on a case-by-case basis.

MS. WARE remarked that current statute already allows that. She added, "It doesn't have to be in the "auto waiver" provision; if we think a juvenile offense is serious enough, then we can petition the court to have the juvenile [waived into adult court]." In response to questions, she noted that the current discretionary waiver provisions, which are located in AS 47.12.100, do not specify particular offenses, and offered that her suggested amendment would maintain the status quo with regard to discretionary waivers. "When a juvenile comes before the department, ... we make a decision that is in the best

interest of the community as well as making sure that the offender is held accountable," she added.

CHAIR McGUIRE indicated a preference for relying on the current discretionary waiver provision, rather than expanding the automatic waiver provision.

MS. WARE, in response to a question, said, "The [DHSS] does not see any problem with the statute as it currently exists in terms of its impact on the juveniles ... who are alleged to have committed this crime."

Number 1468

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration (DOA), said that although at first glance HB 334 appears to be simple, upon further review of the proposed change, it is not so simple. She referred to AS 11.81.250, which, she remarked, looks at the big picture, and said:

> Our state carefully crafted a classification scheme for offenses, and that statute lays out the degree of harm and the nature of offenses and why they are in certain classifications. Of course unclassified is for the worst. Class A is for offenses where it involves conduct resulting in serious physical injury, or substantial risk of serious physical injury, to a person. ... I think that [it] would be helpful for the committee to hear what kinds of offenses are class A felonies.
>
> [The] typical ones ... [would] be manslaughter; assault in the first degree where somebody suffers serious physical injury from a dangerous instrument; attempted sexual assault in the first degree; attempted [sexual] abuse of a minor in the first degree; robbery in the first degree; arson in the first degree; [and] misconduct involving weapons in the first degree. That's just sort of an example of some of the crimes that we as a criminal justice system look to for that level of offense: serious physical injury resulting.
>
> Now, a class B felony, there's quite a few of them, and the typical class B felony is for conduct that results in less severe violence against a person than

> a class A felony but still aggravated offenses against the public administration and order or property interests. So some typical [class] B felonies would be criminal negligent homicide; assault in the second degree; sexual assault in the second degree; [sexual] abuse of a minor in the second degree; this offense as it is now, unlawful exploitation of a minor, but also some similar offenses that run with this are distribution of child pornography. That's a class B felony.

Number 1599

MS. WILSON continued:

> Endangering the welfare of a child in the first degree is a class B felony. Robbery in the second degree; burglary in the first degree; arson in the second degree; terroristic threatening in the first degree; misconduct involving weapons in the second degree; and there's probably about 15 more [class] B felony offenses. So as you see from the listing, ... when you specifically pull out one offense and put it in a higher one, you mess with the whole system. And the question is, do you really want to do that?

MS. WILSON referred to Ms. Ware's comments regarding automatic waivers, and read portions of AS 11.41.455 to illustrate the kinds of conduct it includes. She pointed out that for sentencing purposes, a class A felony is significantly more serious than a class B felony; for a class B felony, "you have a range of zero to ten years, you have presumptive four years if they're a second [time] offender." This means that generally speaking, somewhere between one and four years will be the sentence for a first offense, although if it is a serious case, aggravators can be considered in order to raise the sentence. In contrast, a class A felony carries with it a presumptive sentence of five years; "that's where you start ... and you can go up to twenty years." So a class A felony has much more serious consequences. In the case of two consenting 17-year-olds, while having sex might not be a crime, taking a picture in that situation would be, and thus making it a class A felony, which brings with it a presumptive sentence of five years, certainly seems harsh, she remarked, "and it pulls this out of this carefully crafted classification scheme.

MS. WILSON noted that distribution of child pornography is a class B felony, but taking a picture will become a class A felony under HB 334. In addition, associated with the offense of exploitation of a minor are other crimes that can already be prosecuted; for example, sexual abuse of a minor in the first degree is an unclassified felony. In addition, sexual abuse of minor in the second degree is a class B felony, and involve actions that are as serious as the actions that HB 334 would bump up to a class A felony. She offered that if the committee really wants to target the older predator or pedophile who is engaging in this type of activity with younger victims, then perhaps altering the sexual abuse of a minor statutes might be a better way to elevate the crime under more limited circumstances.

Number 1798

MS. WILSON said that the PDA's experience is that not many such cases are prosecuted, and surmised that this tends to reflect the DJJ's comments regarding younger offenders. But there are not many such cases involving older offenders either, and most of those cases involve consensual situations in which someone simply took a picture of someone else and one of them is just over 18 years old and the other is just under 18 years old. She pointed out that even if the committee were to create an exception to the automatic waiver provision, the bill is still "in the troubling world of [a class] A felony," adding that she does not think that "this is as big of a problem [such] that we need to pull this particular offense out."

MS. WILSON went on to say, "I am certainly not trying to minimize the seriousness of this offense; certainly, it is a serious offense and, ... many times, there are other offenses that are prosecuted [at] the same level or worse for behavior that sort of surrounds this." She also pointed out that there are other statutory provisions that reference AS 11.41.455: AS 11.51.100, endangering the welfare of a child in the first degree; AS 11.41.436, sexual abuse of a minor in the second degree; and AS 11.61, distribution of child pornography. These examples are all class B felonies. In conclusion, she said that all of these statutes are intertwined and crafted so that the levels of offenses fit within what was studied for a very long time as to what level an offense should be, adding that to pull "this one out" would be a mistake.

Number 1923

CHAIR McGUIRE appointed Representatives Samuels, Anderson, and Gruenberg - with Representative Samuels as the chair - to a subcommittee on HB 334. The subjects the subcommittee will address are the exclusion of the automatic waiver and how raising the crime to a class A felony will mesh with other existing statutes.

REPRESENTATIVE GRUENBERG said he would strongly support making it a serious crime to commercially and repeatedly engage in the behavior listed in AS 11.41.455, and suggested that one way of going about it would be to alter AS 11.61.125 - distribution of child pornography - such that a second offense would be a class A felony.

CHAIR McGUIRE posited that all on the committee understand the kind of conduct the sponsor is attempting to address, and said she hoped that the sponsor would work with the subcommittee to address everyone's concerns.

REPRESENTATIVE MEYER agreed, adding that it is not his intention to go after the 17-year-olds who might be taking pictures of each other while engaging in consensual sex. He remarked that he does not have a problem with Ms. Ware's suggested change, adding that he is comforted by the fact that even with such an amendment, a juvenile could be waived into adult court if the situation warranted it. He offered his belief that a victim of this crime must be enticed before even a class B felony can be charged; therefore, those engaging in consensual sex would not be affected by HB 334. He referred to handouts provided by the Department of Corrections (DOC) and said he did not think that youthful offenders are the problem.

REPRESENTATIVE MEYER opined that creating child pornography does correlate with other crimes that are class A felonies, whereas some class B felonies don't involve very serious crimes in comparison to creating child pornography. He offered his belief that in comparison to federal law, which carries a presumptive sentence of ten years, current Alaska law is way behind, adding that he feels it is appropriate to make the crime of exploitation of a minor a class A felony because the sale of child pornography, which is currently a class B felony, is not, in his opinion, as bad as the production of it.

Number 2132

REPRESENTATIVE GARA pointed out, however, that although HB 334 addresses a very serious class of crime, the term enticing can

apply to behavior that is consensual. For example, in a situation involving two 17-year-olds, one of them could say, "Come on, I'd like to take your picture," and the other could say no at first but then change his/her mind due to enticement by the person asking. Therefore, enticement can be completely consensual, he surmised. He went on to say that he is not interested in changing the current law on this issue until he is convinced that the application of the current law has been resulting in injustice.

REPRESENTATIVE MEYER noted that in his opening remarks he'd made reference to a perpetrator who is serving a two-year sentence for the crime of exploitation of a minor and who could potentially be out of jail in one year. And because the sentence for a class B felony could be as low as one year, a person being charged with the crime of exploitation of a minor might only have to serve six months or less. "In my mind, what you're doing to that minor by producing that child pornography is long-lasting and there's always going to be a video or a picture to remind that person of that [situation]; so, no, I don't think the sentencing is proper at current," he added. In response to a question, he relayed that he would provide the committee with the facts of that case.

MS. WILSON, in response to questions regarding the current sentencing scheme, said that a class B felony has a range of zero to ten years and that first offenders generally get between zero and four years. Those offenders with a prior conviction face a presumptive sentence of four years. For a class A felony, the sentencing range starts out with a presumptive sentence of five years even for first time offenders, with the maximum sentence being twenty years if, for example, there were aggravators. For a class A felony, someone with a prior felony conviction could get a presumptive sentence of ten years, and someone with two prior felony convictions could get a presumptive sentence of fifteen years for a third felony offense.

MS. WILSON added that if one were to be convicted of a class B felony for this crime under current statute, the facts of the case could warrant mitigators or aggravators, and there are approximately 30 or 31 aggravators. For example, one aggravator would involve using a dangerous instrument during the crime. So even if an offender was not facing a presumptive sentence, the courts can currently look at the facts of the case and consider aggravators for the purpose of increasing an offender's sentence. She offered that in instances where the offender uses

drugs or alcohol to incapacitate a victim, that might qualify for an additional charge of sexual abuse of a minor in the second degree or of sexual assault.

TAPE 04-21, SIDE B
Number 2393

MS. WILSON, in response to further questions, said that in such a situation, the offender could be charged with separate counts and the sentences could be consecutive. Judges currently have discretion over whether sentences run consecutively, though there are some sexual offenses that have to run consecutively.

CHAIR McGUIRE announced that HB 334 would be held over for the purpose of allowing the subcommittee to work on the issues raised.

HB 513 - CSED NAME CHANGE/DRIVER'S LIC.SUSPENSION

Number 2342

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 513, "An Act relating to the enforcement of support orders through suspension of drivers' licenses; changing the name of the child support enforcement agency to the child support services agency; amending Rules 90.3 and 90.5, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 2327

REPRESENTATIVE PETE KOTT, Alaska State Legislature, sponsor, referred to HB 513 as an administrative bill and said that it does two things. Within the Department of Revenue, HB 513 changes the name of "Child Support Enforcement Division" (CSED) to "Child Support Services," and it closes what he termed a loophole in the CSED's licensing program. He opined that the name change is an important change in that the new name sends a strong message to the public that the "we are here for the kids," adding that a lot of states have either undergone or are currently making such a change. He relayed that his staff, former director of the CSED, John Main, would be assisting with the presentation.

Number 2187

JOHN MAIN, Staff to Representative Pete Kott, Alaska State Legislature, sponsor, said that the name change is intended to

foster the attitudes that "we're here to serve," and that [the CSED] is an agency that does more than just enforce collection of child support; "we do paternities, we do establishments, ... [and we] work with employers." He, too, mentioned that several states are looking at making such a name change. On the issue of the aforementioned loophole, he said:

> What that amounts to is that ... we have a period of time in which we are able to ... [revoke] an individual's driver's license; however, we have to stop that process when that individual agrees to a payment plan. The problem we run into is when the person has agreed and then pays maybe one payment and then stops again, we have to start all over with the process again. [Instead] ... we would like to start from when we stopped; that way, we [revoke] the driver's license faster versus [allowing] an individual ... [to] have as many as 300 days ... before we would finally be able to pull their driver's license. And [revoking] a driver's license is one of the ways in which we're able to force people to come to [the] table to pay child support and be responsible for their children.

REPRESENTATIVE GARA said he wants to make sure that if someone is mistakenly thought to have stopped paying child support, that there is an inexpensive way for that person to challenge the revocation process. He asked what happens to someone who is paying child support but then the agency mistakenly comes to believe that he/she has stopped paying.

MR. MAIN replied that normally, the agency only takes action against someone's driver's license when he/she hasn't been paying child support at all for some time. In response to a further question, he indicated that there is an appeal process, which can include going to court if the agency's initial review of the situation produces a decision that the person disagrees with.

REPRESENTATIVE GARA said that according to his interpretation of the sponsor statement, it appears that a person would have to go to court to stop the license revocation.

Number 2032

MR. MAIN said that is correct - the person would eventually have to go through the courts to stop the revocation process.

REPRESENTATIVE GARA asked whether that would be the first step or whether there is an administrative process first.

MR. MAIN replied:

> This is the administrative process in which ... [the CSED] is in the process of [revoking] their driver's license. It takes up to 150 days in which to [revoke] their driver's license. We give them a period of time in which to respond back to us; ... we set up a payment plan. This is not a quick process; it's a very lengthy process, and it was designed to be a lengthy process.

CHAIR McGUIRE asked for a hypothetical example showing how the process currently works. She asked whether the driver's license revocation process is begun on the basis of an amount of money owed or on a length of time without a payment being made. She added:

> I think we all grasp the problem, which is that someone comes in and says, "Okay, I've been out of compliance - I agree to be on a payment plan," and then within 30 days they fail to meet that requirement again, and now the department's got to back through those steps of revoking their driver's license.

Number 1952

JOHN MALLONEE, Acting Director, Child Support Enforcement Division (CSED), Department of Revenue (DOR), said that the CSED maintains a list of obligors who are not in substantial compliance. Substantial compliance regarding a support order payment schedule means that with respect to periodic payments required under the support order or the negotiated payment schedule, there are no arrears in an amount that is four times the amount of the monthly obligation, or the person has been determined by the court to be making the best effort possible. Thus, for example, if the support obligation was $200 a month, the arrears would have to be $800.

CHAIR McGUIRE asked for a hypothetical example showing how the current license revocation process works in comparison to the process proposed via HB 513.

MR. MALLONEE said:

> Basically, what we do right now is ... we issue a ... written notice of arrearage at least 60 days before we place them on this list of people who are not in substantial compliance. During that period they have the ability to appeal ... on the statement of fact, i.e. they are not the individual who owes the support or the amount is not the amount that we say it is. ... Once we do that, then they can get a 150-day temporary license ... and only one temporary license can be given at a time.
>
> So they have that ability anytime, and this is where this amendment [to current statute] comes into effect. ... [It's where] let's suppose that they make this one payment - so now they have a payment agreement with us [and] if they come in and make a payment agreement, we take them off the list and we don't suspend their license - if they cease to make this payment, say the second or the third month, then we have to start over again: we place them on the list and they have 60 days, we start the 150-day period all over in which they can bring this current.

CHAIR McGUIRE said she sees the problem.

Number 1820

REPRESENTATIVE GARA asked if, during the 60-day window for appealing the notice, the person can get the 150-day temporary license while the appeal is pending.

MR. MALLONEE said yes, adding that the temporary license would give the person the opportunity to bring his/her child support payments back into substantial compliance.

REPRESENTATIVE GRUENBERG referred to Section 12 of HB 513, and said he'd not ever seen such language in a bill before. He suggested that the revisor of statutes and the regulations attorney would normally do what is being proposed via Section 12, which is to make conforming amendments to the statutes and administrative code. He asked that committee staff investigate whether a letter of intent to the revisor of statutes and the regulations attorney would be sufficient.

CHAIR McGUIRE posited that perhaps the language was included in the bill for clarity.

REPRESENTATIVE GRUENBERG mentioned that it would be preferable if the aforementioned individuals didn't have to wait another year before making the conforming amendments.

CHAIR McGUIRE indicated that staff would also be looking to see whether similar language was included in the legislation that would change the name of the Department of Community & Economic Development.

REPRESENTATIVE GRUENBERG, on another issue, said:

> It looks to me like these changes you're making concerning payment schedules, you're just doing some technical changing around but you're going to keep the practice of payment schedules in place, and this just makes the same change with them as with court orders, right?

MR. MAIN said, "I believe that's CSED's intent, yes."

Number 1671

REPRESENTATIVE ANDERSON asked how a person who's had his/her driver's license revoked is expected to get back and forth to work in order to earn the money to make child support payments.

MR. MAIN pointed out that driving is a privilege and that driver's license revocation is mandated by the federal government as one way of getting the attention of those who are in arrears and not honoring their responsibility to their children. The mandate does not involve requiring that people go to work; the mandate involves requiring that people support their children. How those people go about making their child support payments is up to them, and thus it is their responsibility to figure out how to get back and forth to work. That being said, throughout the nation right now there are several programs that help low-income parents meet their obligations, such as busing programs and job-training programs, he added.

REPRESENTATIVE ANDERSON said he agrees with the intent of the bill and with getting rid of "perks" for people who don't pay child support.

CHAIR McGUIRE surmised that what is being asked of a person is that he/she contact the division and, if not pay off the amount

in arrears, at least create a payment schedule. She suggested that HB 513 creates another incentive for people to come in and pay and to, if setting up a payment schedule, be careful about what they agree to so as not to default on that agreement.

MR. MAIN confirmed that the intent is to get those that are in arrears to at least come to the table and discuss payment schedules.

REPRESENTATIVE SAMUELS suggested that the people who will be affected by HB 513 are those that have simply been refusing to pay any child support, and indicated that he thinks taking away those people's driver's license is a good idea.

MR. MAIN, in response to questions, said that the people the bill is intended to affect are those that have the ability to pay but simply aren't, and that most of those people are self-employed in some fashion.

Number 1437

REPRESENTATIVE OGG asked why they are limiting license revocation to driver's licenses. Why not also things like commercial-fishing crewmember licenses, or why not also limit someone's ability to practice law, dentistry, or medicine.

MR. MAIN said that driver's licenses are not the only things being affected by the federal mandate requiring payment of child support. The bill, however, is simply addressing what is perceived to be a loophole in the process of revoking driver's licenses; the process of revoking occupational licenses does not have such a loophole. On the issue of crewmember licenses, though, the problem there is that they are sold just like hunting licenses and fishing licenses, and the Alaska Department of Fish & Game (ADF&G) does not have a database similar to what the Division of Motor Vehicles (DMV) has for driver's licenses; "you won't find out a person has a crewmember license until after the fishing season is completely over." In addition, fishing permits are different than occupational licenses, he relayed, and so the CSED has not been able to have the same effect on permit holders as it does on occupational license holders or driver's license holders.

CHAIR McGUIRE suggested to Representative Ogg that he work with the CSED and investigate the possibility of tightening up those "loopholes" as well.

REPRESENTATIVE GARA said he agrees with the policy that if one does not pay one's child support, then driver's license revocation is an appropriate penalty. He explained, however, that he is concerned that those who are making a good faith effort to pay but find themselves unable to pay, for a rational reason, will have to go through an expensive court process to stop the revocation. He asked whether someone who is given a notice of arrears would still keep his/her driver's license until the court hearing.

MR. MALLONEE replied:

> Once we ... give notice, ... they have 60 days in which to come and contest this. After we ... render a decision saying, "No, we still think you're in substantial noncompliance," [then] from that point ... we're still not going to get rid of that driver's license for 150 days. During that 150 days, they have the opportunity to appeal to a court and ask for expedited consideration. The problem that we then have is that we're on the 149th day and we make a payment agreement, and [if] they do not live up to their payment agreement, we start off the next time with the 60-day notice, doing another administrative review, and starting the entire 150 days all over for them to have the ability to ... ask for expedited consideration from the court. What we're really trying to do with [HB 513] is, if you say no, you're not going to pay after you've made this agreement, ... if we were on the 120th day, [then] we only want to give you 30 more days in which to finish that up. You either have to appeal to the court or we're going to get rid of the license.

Number 1108

REPRESENTATIVE GARA said he understands the current process and the problem. What he'd like to know, he remarked, is how things would work under the proposed solution.

MR. MALLONEE said he envisions that what would occur under HB 513 is that when the person failed to make a payment as agreed upon in the payment agreement, the CSED would send out a notice informing that person that he/she is not living up to the agreement. In the aforementioned example, that person would then have 30 days in which to request, in writing, a review, and the CSED would, in writing, inform the person of the its

findings. So the person would again have the ability to contest a claim of noncompliance. In response to a further question, he said that the person's driver's license is valid up until the 150th day, and that this is the case both currently and under HB 513; the only change the bill proposes to the current process is to eliminate having to start counting the 150-day period from the beginning.

MR. MAIN, in response to questions, confirmed his earlier comments regarding crewmember, fishing, and hunting licenses, and added that the question of whether it would be possible to start revoking those types of licenses would be best answered by the ADF&G. He also mentioned that revocation of private pilot licenses is something that is not being done now because of current Federal Aviation Administration (FAA) restrictions.

REPRESENTATIVE GRUENBERG suggested the possibility of the legislature urging Congress, via a resolution, to pass a law instructing the FAA to remove those restrictions.

MR. MAIN noted that in addition to those four types of licenses, there are also various federal certificates and licenses that the state has no control over, and when the issue of revoking those certificates and licenses was raised with the Office of Child Support Enforcement (OCSE), U.S. Department of Health and Human Services (DHHS), the response was that it would not be cost effective to pass a mandate requiring revocation of those licenses and certificates.

REPRESENTATIVE GRUENBERG remarked, "For whom?" The children who are not being supported or some government agency?

Number 0776

REPRESENTATIVE HOLM asked whether confiscating the vehicles of those whose driver's licenses have been revoked could be another option, since, he opined, without a driver's license, those people don't need a vehicle.

MR. MALLONEE, on the issue of crewmember licenses, pilot licenses, and other federal licenses and certificates, concurred with Mr. Main that at this time, nothing can be done. He mentioned that being able to revoke business licenses and crewmember licenses might be useful as long any such revocation program garnered results in terms of more child support payments being made.

REPRESENTATIVE SAMUELS suggested that the Division of Occupational Licensing would be able to provide a list of those licenses that are now subject to revocation.

CHAIR McGUIRE after ascertaining that no one else wished to testify and that representatives from the Department of Revenue, the Department of Law, and the Division of Motor Vehicles were available to answer questions, closed public testimony on HB 513.

Number 0528

REPRESENTATIVE SAMUELS moved to report HB 513 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 513 was reported from the House Judiciary Standing Committee.

HB 514 - CHILD SUPPORT ENFORCEMENT/CRIMES

Number 0501

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 514, "An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

Number 0478

JOHN MAIN, Staff to Representative Pete Kott, Alaska State Legislature, sponsor, presented HB 514 on behalf of the sponsor, Representative Kott. He said that HB 514 has seven major components to it. One element of the bill makes criminal nonsupport a felony; 33 states already do the same, as does the federal government. In order to be charged with a class C felony for criminal nonsupport under HB 514, someone would have to be over $10,000 in arrears or not have made a payment for more than 24 months, and it must be shown that that person does have the ability to pay. Currently, there are over 14,000 such cases. This is not to say that all such persons should be charged with a felony, he added, noting that the Child Support Enforcement Division (CSED) only wants to go after the most egregious cases such as those wherein the individual has had the ability to pay for some time and has simply chosen not to pay.

MR. MAIN indicated that HB 514 establishes the crime of aiding the nonpayment of child support in the first degree if one assists the aforementioned class of people, and makes it a class C felony. The current crime of aiding the nonpayment of child support would become a crime in the second degree and would still be class A misdemeanor. Mr. Main opined that the current law regarding aiding the nonpayment of child support, which was created by former representative Terry Martin, has had an effect on people who [know] they are assisting somebody in escaping child support payments.

MR. MAIN relayed that HB 514 gives the courts statutory authority to require obligors to make payments on approved payment plans, to seek work unless incapacitated, and to complete and submit applications for a permanent fund dividend (PFD). He explained that one judicial jurisdiction determined, after being asked by the [CSED] to require such things, that it did not need to comply. In response to a question, he indicated that this change is in Section 7. He went on to say that Section 8 of the bill gives the courts the authority to issue administrative orders, court orders, requiring people to make payments according to a payment plan unless incapacitated or [otherwise] unable to work.

Number 0137

MR. MAIN explained that Section 9 of HB 514 has two components. One component, subsection (f), allows CSED investigators to be armed while performing their duty. Subsection (g) allows the CSED to "settle" state debt without the assistance of the Department of Law (DOL). Currently, the DOL performs this service for the CSED, and the reason for the change is because there is "so much debt out there"; on a national level, there is $90 billion worth of debt, with Alaska being responsible for $600 million of that - $300 million owed to custodial parents and $300 million owed to the state and federal government. He relayed that throughout the nation, states are struggling with ways to contain and reduce this debt, so there are a variety of programs being proposed, and one such program is "the compromising of arrears." Under such a program, if a person is not currently paying child support and owes in excess of $50,000 - or even $100,000 in some cases - he/she would be given the opportunity to come back into society and fulfill his/her child support obligations while having part of the debt reduced.

TAPE 04-22, SIDE A
Number 0001

MR. MAIN added that such would help such persons to reintegrate with their families and start to repay their debt. He cited several studies that indicate that if this process is implemented, it works. These programs have accomplished as much as a 25 percent success rate, Mr. Main added.

REPRESENTATIVE GRUENBERG asked if the $600 million figure is a national figure.

MR. MAIN responded that $600 million is for the state of Alaska.

CHAIR McGUIRE commented that that is a staggering figure. She asked Mr. Main what other states are doing about this problem.

MR. MAIN highlighted that Maryland, Colorado, and California [have made changes to child support enforcement laws]. He added that every state is looking at how to contain child support arrearages and reduce them. Mr. Main said that the federal government will be imposing some kind of requirement with respect to the debt unless the states start reducing it. The federal government even went as far as saying that if the states do not collect the debt when compromising the arrears, then it will not be necessary to pay the federal portion either.

REPRESENTATIVE GRUENBERG asked if the state gets 50 percent of what is owed, for example, does the whole 50 percent go to the federal government, or is it divided pro rata.

MR. MAIN replied that the state gives the federal government its portion of what is collected. He pointed to Section 10 and told members that presently there is a statute that prohibits the Division of Child Support Enforcement from establishing child support for victims of rape and incest. This section would change the statute so that victims may ask for paternity to be established and allow the agency to require that child support be paid; however, the section ensures that the victim is not victimized again, he added. He emphasized that the agency cannot ask for child support without the consent of the victim.

MR. MAIN told members that the last portion of HB 514 would adopt the federal changes to the modification regulation. He explained that the CSED believed all along that it was doing the modifications correctly based on what the federal government had advised. However, this year the federal government advised the CSED that the state misinterpreted the regulation, and directed

the division to do it differently. Mr. Main added that the [language in Section 12] complies with the federal code.

REPRESENTATIVE OGG asked if HB 514 addresses the issue of proving whether someone has the ability to pay.

MR. MAIN responded that the courts actually determined through case law that [the ability to pay] had to be proven and therefore it is not necessary to put that in statute.

REPRESENTATIVE OGG turned attention to page 2, line 5, and suggested that "lawful excuse" should be inserted after the word "failed". He added that this change would track with language on [page 1, line 12] and would provide clarity.

MR. MAIN replied that he sees no problem with such a change.

Number 0476

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 514, Version 23-LS1639\I, Mischel, 2/14/04, as the work draft. There being no objection, Version I, was before the committee.

Number 0509

REPRESENTATIVE OGG moved to adopt Amendment 1 as follows:

> On page 2, line 5
> After the word "failed"
> Insert the words "without lawful excuse"

The committee took an at-ease from 3:20 p.m. to 3:21 p.m.

Number 551

REPRESENTATIVE OGG renewed his motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GARA cautioned that the committee needs to be clear about the reasons for putting someone in jail. Sections 2 and 3 deal with someone who fails to pay support without lawful excuse, he said. He asked where the lawful excuses are listed.

MR. MAIN replied that he believes that lawful excuses are based on court rulings. He said he does not believe it is in statute.

CHAIR McGUIRE asked Diane Wendlandt of the Department of Law if the list of lawful excuses is based on statutory law or case law.

Number 0647

DIANE WENDLANDT, Chief Assistant Attorney General, Statewide Section Supervisor, Collections and Support Section, Civil Division (Anchorage), Department of Law (DOL), referred the question posed by Chair McGuire to Cathy Schindler, the prosecutor who handles cases such as this.

Number 0667

CATHY SCHINDLER, Assistant Attorney General, Child Support Enforcement, Special Prosecutions Unit, Office of Special Prosecutions & Appeals, Department of Law (DOL), said that case law addresses what is a lawful or unlawful excuse for non-payment. The courts talk about whether a person has voluntarily put himself or herself in a situation of non-employment or under-employment. If a court finds that a person has voluntarily entered either state, then that is found to be without a lawful excuse, she said, adding that there is discretion on the part of the court regarding anything that is outside of that situation.

REPRESENTATIVE GARA asked what standard the courts would apply in determining what is voluntarily under-employed.

MS. SCHINDLER replied that in criminal cases, that would be left up to the jury.

REPRESENTATIVE GRUENBERG said that under-employed means that an individual has the ability to obtain higher paying employment that is available and the individual willing chooses not to accept [that employment].

MS. SCHINDLER replied that is correct.

REPRESENTATIVE GARA posed a hypothetical example of a person who is a doctor, but is fed up with that employment, and becomes a teacher. If that person applies to lower their child support payments [based on lower pay] and the order is denied, would that be an example of an individual who is voluntarily under-employed.

MS. SCHINDLER said that whenever there is a modification request outside of the realm of the criminal court, that would be handled in civil court. She relayed, however, that she is not qualified to answer that question fully.

Number 0847

REPRESENTATIVE GRUENBERG commented that he believes [that in the aforementioned example], the information would come up in a criminal case if the defense were that the person could not [provide child support at the level originally set] because the defendant was voluntarily under-employed. He said it would be the central issue and the judge would have to give legal instruction to the jury regarding what is a lawful excuse for "inability" [to pay child support]. It would definitely be part of a criminal case if it becomes a crime in this manner, he stated. He asked for Ms. Schindler to comment on this point.

MS. SCHINDLER responded that the court findings on the civil modification would be something the prosecution may choose to use as a supporting document in a criminal matter. She told the members that Ms. Wendlandt can comment on the determination of the modification.

MS. SCHINDLER, in response to questions, said that if there has been a stipulation where a modification has been requested due to unemployment or under-employment, then there will be judgment in superior court where there will be findings. Those findings will set forth the factual basis on which the modification is granted or not granted, she explained. An administrative hearing could also result in findings. Ms. Schindler said that those findings will be part of the evidence potentially presented by either side. The jury would be given instruction that is fashioned around the controlling case law. She added that the jury would make a determination on the findings, like it does on any piece of evidence. The jury would make a determination based on the veracity of the witness and the evidence presented within the context of the jury instruction on unemployment or under-employment, and whether or not the elements of the statute have been met.

MS. WENDLANDT, on the issue of voluntary under-employment, said that there have been a number of cases in the Alaska Supreme Court on that issue in the civil context of what must be proven to show voluntary under-employment. There is a two-part test in that situation, she said. The first part is the question of voluntary conduct; for example, was it something the parent

chose to do. The second part is the question of reasonableness. In the hypothetical example posed by Representative Gara, the question really comes down to: Was this a reasonable decision given that the person has an obligation to the child? Sometimes a person's decision to take a lower paying job is reasonable, and other times it is not, she said. Ms. Wendlandt explained that the courts have, through a whole series of cases, addressed the issue of what is and is not reasonable. She indicated that [such a determination] would be very factual.

Number 1123

REPRESENTATIVE GARA told members that he would be much more comfortable with HB 514 if the standards were delineated within criminal law to say under what circumstances a person would and would not go to jail. He said he is not in agreement with the practice of borrowing the "administrative law rules" on when payment is owed and then translating those into a felony. He said he is not sure if this works or not, and asked if the members would want to come up with the elements of the crime. For instance, he said, maybe the language could say, in order to charge someone with a felony, this is what the crime constitutes. He said that in order for him to be comfortable with this language, the scenario would have to be something like a person owes a child support arrearage, and intentionally chooses not to pay it, even though the person can pay it. He reiterated that he does not know the administrative standards that are being "borrowed" for the purpose of becoming criminal standards.

CHAIR McGUIRE commented that she does not know how all the factual evidence could be incorporated into a standard. She suggested Representative Gara work with Mr. Main on this subject between now and the bill's next hearing. She said her understanding is that in order for this to be considered a felony, $10,000 or more must be owed, and that there would have to be more than 24 months of non-payments.

MR. MAIN concurred.

CHAIR McGUIRE went on to say that many facts could come into a case. For instance, someone could say that there is more than $10,000 owed, but that the person has been employed as a teacher because the individual did not enjoy being a doctor any more because it was stressful, and at that point plead the case. She said she does not believe that [kind of situation] is what the division deals with in most cases. Chair McGuire said she would

like a representative from the CSED to speak to this. She commented that she believes that most of these cases are people that say, "I'm not going to pay, and do whatever you want to me."

CHAIR McGUIRE noted that back in 1986 to 1989, there were only 15 nonsupport cases prosecuted. It was clear that there was a problem, but then from 1990 to 2000, there have been no cases prosecuted. She said that there is a lack of personnel and part of it is that the Department of Law has a lot to consider when deciding where to place their efforts. Misdemeanors have not risen to the level of [high] priority. The federal government recognized the problem in 1998 by raising the crime to the felony level. She remarked that it must have gotten people's attention because there were then over 4,600 cases reviewed, over 580 arrests, over 450 convictions and civil adjudications, and courts were ordered to pay over $18 million to kids that were owed child support. In summary, she said that she supports the bill the way it is, but would be willing to look at putting specific elements in it.

Number 1312

REPRESENTATIVE GARA said that he does not disagree with Chair McGuire, but urged the members to be very careful when entering the area of criminal law. He added that when a net is cast too wide, those that should be in jail, are put in jail, but those for whom there was no intention of throwing in jail [could be jailed as well]. He suggested that two standards be added to the language that says the failure [to pay child support] is intentional and unreasonable. He commented that juries are always asked those two questions.

CHAIR McGUIRE posited that one option might be to add in the elements of intentional and reasonable, and asked whether the sponsor would be amenable to such a change to the bill.

REPRESENTATIVE GRUENBERG pointed out that the way the bill is drafted now, it is an affirmative defense. If the law is changed to make it an element of the crime, then the burden is placed on the prosecution, he said. Representative Gruenberg emphasized his belief that this law should remain as an affirmative defense.

The committee took an at-ease from 3:35 p.m. to 3:50 p.m.

CHAIR McGUIRE announced that it is her intention to take public testimony and then hold the bill over to allow members to explore possible amendments.

Number 1492

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration (DOA), explained that she does not have the CS or the sponsor statement in front of her, but she saw the original bill and she submitted an indeterminate fiscal note. She relayed that the PDA is concerned that there are possibly 14,000 cases wherein a person could be prosecuted for felony criminal nonsupport. These 14,000 cases meet the standards of having more than $10,000 in arrearages or not having payments made in over 24 months. She said that is a lot of cases that will be raised to a felony. Ms. Wilson said that the question of what a "lawful excuse" is would be considered in the context of the criminal case. She said she does not have any idea how many of those cases would become PDA cases, but since the PDA represents indigents, her guess is that a fair amount of those 14,000 cases will qualify for a public defender. In conclusion, she said she believes that this bill will have a fiscal impact on the PDA.

CHAIR McGUIRE told Ms. Wilson that she would be faxed a copy of Version I so that she has an opportunity to review the bill before its next hearing. Chair McGuire agreed with Ms. Wilson that according to the sponsor statement there are 14,946 [child support cases] having either arrearages greater than $10,000 or having no payments made in over 24 months. The sponsor statement explains, however, that not all of these cases would qualify for nonsupport charges. She surmised that one point that will be clarified is that there are other factors that come into consideration beyond the amount that is owed and length of time [since a payment was received]. She said that she would like to see a comparison of the factors that the federal government takes into [account], adding that she believes the standard is similar [in HB 514]. She referred to the intentional and reasonable factors considered in civil law, as an example.

CHAIR McGUIRE commented that most of the information is in case law which Legislative Legal and Research Services can provide to the committee. In conclusion, she told Ms. Wilson that she appreciates whatever suggestions the PDA has time to contribute, and relayed that the committee also welcomes any suggestions from Ms. Wendlandt.

REPRESENTATIVE GRUENBERG asked Ms. Wendlandt to provide the committee with a written statement on the lawful excuse issue.

Number 1769

STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), told members that he will walk through the bill section by section and provide the department's position on each. He relayed that the department appreciates the changes to Section 1 in Version I, where the rebuttable presumption language was deleted. He asked, however, whether, under Section 1, a person over the age of 18 could be covered, adding that the DOL has drafted some language to clarify that point and has provided it to the sponsor.

MR. PORTER said Sections 2 and 3 relate to criminal nonsupport. The sponsor statement is very clear on this in that "there are 14,946 cases having arrearages greater than $10,000 or no payments for 24 months or more." He explained that this means that there are approximately that many people who are technically felons. It is the DOR's intent, from an implementation standpoint, he remarked, to only look at those cases that are the most egregious cases, adding that if it were the department's intent to prosecute all 14,000 [cases], there would be several different groups [at this hearing]. He emphasized that it is the department's intent to only look at those very specific cases where it is important for the department to make a statement and to identify those people who should be prosecuted. Mr. Porter said there will probably be between one-half dozen to a dozen cases pursued per year.

CHAIR McGUIRE asked Mr. Porter to elaborate on the factors that would be considered in making the decision [to prosecute].

MR. PORTER replied that he would like to work with the CSED on that question and get back to the committee later.

CHAIR McGUIRE commented that Mr. Porter has heard the concerns of the committee and the wish to amend the language to specify the factors which will be considered.

Number 1889

The committee took an at-ease from 4:02 p.m. to 4:03 p.m.

REPRESENTATIVE GRUENBERG referred to page 2, lines 15 through 17, which says:

> In addition to the provisions of (c) and (d) of this section, criminal nonsupport is punishable by loss or restriction of a recreational license as provided in AS 12.55.139.

REPRESENTATIVE GRUENBERG noted that AS 12.55.139 says:

> **Penalties for criminal nonsupport.** In addition to other penalties imposed for the offense of criminal nonsupport under 11.51.120, the court may suspend, restrict, or revoke for a period not to exceed six months, a recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

REPRESENTATIVE GRUENBERG pointed out that if this bill makes these acts a felony, then why shouldn't the department have the authority to suspend a fishing license for more than six months.

MR. PORTER responded that such is a policy question and the department would be willing to consider a change in that regard.

REPRESENTATIVE GRUENBERG commented that he might offer an amendment to change that [language].

MR. PORTER noted that Sections 4, 5, and 6 relate directly to the aiding and abetting statutes. Because there is less information available with respect to what other states are doing on this issue, the department does not have a position on those sections, he stated.

CHAIR McGUIRE asked if aiding and abetting is currently a misdemeanor.

MR. PORTER indicated that it is.

CHAIR McGUIRE said that according to her understanding, if a person knows of another person's obligation [to pay] child support and agrees, for example, to pay the person in cash so that the income is not traceable, [that would be aiding and abetting].

MR. PORTER replied that it also includes intentionally withholding information about the residence or employment of an individual.

Number 2036

JOHN MALLONEE, Acting Director, Child Support Enforcement Division (CSED), Department of Revenue (DOR), said the original statute for aiding and abetting was defined as assisting in the avoidance of paying child support. This statute would apply to any business or person who helps an individual to not pay child support. He said he believes there have been three cases prosecuted on that charge.

REPRESENTATIVE GRUENBERG turned attention to subsection (e) on page 2, lines 15 through 17, and suggested that perhaps the committee would want to consider taking away [driver's] licenses too if these people are engaged in criminal activity. He also said he believes the committee should look at adding a similar provision to Sections 4 and 5, noting that other types of licenses could be addressed as well, such as business licenses.

MR. PORTER noted that Section 7 provides the courts with the statutory authority to order obligors who are eligible for permanent fund dividends to file for them. He explained that not all judicial jurisdictions believe that the CSED has the authority to ask the courts to require that, and this section would clarify that point. He noted that the department fully supports such a change.

MR. PORTER noted that Section 8 deletes language referencing three provisions of the statute: AS 47.07, AS 47.25.310, and 47.25.420. The department recommends that this reference be retained because once it is deleted, the provision may be over-inclusive, he said. He recommended that a section be added that says "for a child whose parents have applied for services from the agency under AS 25.27.100". He told members that this suggested language has been provided to the sponsor.

MR. PORTER commented that with Section 9, subsection (f), it is not the intent of the DOR to put its investigating officers at risk or put them in a position where they are required to carry weapons. If the investigating officer believes he/she is at risk, the department would recommend that he/she call a state trooper and not step into that risk environment. The department recommends deleting subsection (f) from Section 9 of the bill, he said.

MR. PORTER said that with respect to section 9(g) there is approximately $587 million in arrears owed to the state. About

one half of that would go to the state, and one-half is owed to the custodial parents, and this amount the division would not be able to forgive. This section would allow the agency the authority to negotiate and compromise the arrearages owed to the state. The department has recommended that the division develop a pilot program to do this with some oversight from the DOL. He said that it would be necessary to have substantial oversight to allow a single agency to compromise and negotiate the arrearages. He said the greater the amount of latitude, the greater the amount of oversight that should occur, either from the DOL or from the commissioner of the DOR. The department recommends some clarification on that particular provision, he said.

MR. PORTER noted that Section 10 pertains to paternity in cases of rape and incest, and said the department supports this provision.

REPRESENTATIVE HOLM asked Mr. Porter why the word "shall" is used in Section 11, page 5, and line 15.

MR. PORTER explained that the word "shall" is in current statute, adding that the only change to that provision of current law is the deletion of, "so entered", and he referred to this change as a housekeeping measure. He went on to note that Section 12 provides for the state to be in compliance with federal law, and relayed that the department supports that section.

Number 2320

WILLIAM TANDESKE, Commissioner, Department of Public Safety (DPS), shared concerns about Section 9, subsection (f), of the bill. Referring to subsections (f)(1) and (2), he deferred to the Department of Law to discuss issues relating to limited peace officer authority and deferred to the Division of Risk Management [Department of Administration] to talk about real-life consequences and liabilities pertaining to use of deadly force while "operating under the color of office of the State of Alaska."

COMMISSIONER TANDESKE noted that subsection (f)(1) says: "has completed at some time a peace officer training academy program approved by the commissioner of public safety". He said he isn't sure whether that is meant to be training certified by Alaska police standards or whether the commissioner would be "looking back 18 years ago at a sheriff's academy in Arkansas."

TAPE 04-22, SIDE B
Number 2390

COMMISSIONER TANDESKE went on to say the academy isn't a standard by which to judge anyone's ability and whether someone should be armed. He said peace officers, by and large - and certainly state troopers - are screened psychologically by use of a polygraph and extensive background [checks]. In addition, there is a field-training program for applying what has been learned.

COMMISSIONER TANDESKE read from [subsection] (f)(2), which says "has met annual firearms certification requirements that are equivalent to those required by the Department of Public Safety." He explained that he didn't know who in the Department of Revenue would be capable of doing "this." Furthermore, there's more to the use of deadly force than qualifying a certain number of times a year. For example, there are issues relating to "shooting decisions" training, commonly referred to as "shoot, don't shoot interactive training." He emphasized the importance of such decisions in determining whether someone will make the correct judgments under stress.

COMMISSIONER TANDESKE pointed out that firearms are the last option, and certainly not the only one. In the vast majority of situations in which law enforcement [personnel] get involved, he said, guns are a liability. They must be kept track of, for example; he cited an example of a Kenai police officer who was killed with his own gun. Noting that those are serious issues and that a continuum of force isn't addressed in the bill, he mentioned "presence, physical ability, cap-stun (ph), and batons" as things to think about before ever pointing a gun at someone. And who will be shot, a fleeing deadbeat dad? Agreeing with the deputy commissioner that if an individual is known to be difficult, then law enforcement [personnel] should handle it, Commissioner Tandeske added, "The key to handling these matters is the experience to handle them without using force - not to rely on the fact that I happen to have a gun."

COMMISSIONER TANDESKE noted that the Division of Motor Vehicles (DMV) gets aggravated people standing in line, for example. But should [DMV personnel] be armed? He asked where the argument [for being armed] would stop. He added that for the state and the Department of Revenue, he believes it opens another door as to what the policy will be. For example, will it relate to personally owned guns or will the state buy the guns? Who will

ensure that the guns are in proper operating condition? What kind of holsters should be used? What will the training standards, rules of engagement, and use-of-force policy be? How will it be tested and how often? Getting into the use of deadly force will result in a state department's taking on a lot of obligations, he said. It's not as simple as just having a gun.

COMMISSIONER TANDESKE closed by saying this isn't a "gun rights" issue about carrying a gun on one's own time. Rather, this relates to carrying a gun under the color of office, representing the State of Alaska. From a public policy standpoint, he suggested the question is whether or not to arm folks who haven't been recruited and trained with the intent that they act as peace officers. He added, "And if so, then probably the whole process needs to be worked around."

Number 2200

CHAIR McGUIRE indicated that HB 514 [Version I, as amended] would be held over.

HB 378 - FOOD, DRUGS, COSMETICS, CERTAIN DEVICES

Number 2199

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 378, "An Act relating to the Alaska Food, Drug, and Cosmetic Act, including sales, advertising, certain devices, food donors, and food banks; making certain violations of organic food provisions and of the Alaska Food, Drug, and Cosmetic Act unfair methods of competition and unfair or deceptive acts or practices under certain of the state's unfair trade practices and consumer protection laws; and providing for an effective date."

Number 2166

GERALDINE McINTOSH, Staff to Representative William K. Williams, House Finance Committee, Alaska State Legislature, said on behalf of the House Finance Committee, sponsor, that HB 378 was introduced at the request of the Department of Environmental Conservation (DEC). Paraphrasing a portion of the sponsor statement, she said HB 378 clarifies that a violation of the label or advertisement provisions in AS 17.20, or a violation of the representation requirement in AS 17.06 is an unfair or deceptive trade practice under Alaska's statutes. This will

allow the attorney general's office to investigate labeling violations that are not food safety or sanitation concerns.

Number 2104

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), said that HB 378 would mostly impact the division's Food Safety & Sanitation Program by making amendments to the Alaska Food, Drug, and Cosmetic Act. She predicted that the biggest concern for the committee will be "the concurrence of enforcing some aspects of this statute by our staff or the consumer-protection attorney in the [attorney general's office, Mr. Sniffen] ...." She elaborated:

> The situation has arose because we are often asked to enforce laws that we don't have the expertise to enforce. For example, if a product looks like it was made in Alaska but it was not, we're asked, often, to enforce our mislabeling statutes to make that an unfair commerce practice, when that would most likely fall under [Mr. Sniffen's] jurisdiction [rather] than ours. So we wanted to make that an option through ... revisions to these statutes.

REPRESENTATIVE HOLM asked whether "grown in Alaska" would also fall under "this."

MS. RYAN said no, but remarked, "Organic labeling has been added; at the very end of it you can see that they did include the organic labeling, ... under [Title] 45, so that [Mr. Sniffen] ... could enforce some organic labeling issues."

REPRESENTATIVE HOLM noted, however, that "grown in Alaska" would not necessarily mean organic. Also, a "grown in Alaska" label could be purchased if one has a growing operation in the state, but this doesn't guarantee that a particular product was actually grown in Alaska, for example, as might be the case with cuttings. At what point can one say that something was actually grown in Alaska. He added that "'grown organically' really is not set in federal law yet." He asked Ms. Ryan to comment on the issue of control.

MS. RYAN said that [the division] has not considered any aspects of enforcing organic labeling. "At this point, we don't go down that path; that's done by the Division of Agriculture [in the Department of Natural Resources (DNR)], so I would defer to them

to respond to that question," she added. House Bill 378 only impacts the DEC's ability to deal with food safety issues and labeling.

Number 1987

REPRESENTATIVE HOLM indicated that an area of concern to him is pesticide use, which is a food safety issue. He mentioned that there have been cases wherein people that sold produce have had fungus problems or insect problems and they have sprayed their produce without proper notification.

MS. RYAN indicated that she would discuss this issue with the Division of Agriculture, which is the division that oversees the organic labeling and "grown in Alaska" programs. The DEC does not deal with those aspects; instead, it deals with the food-safety aspects of processing food, not raw products.

REPRESENTATIVE GARA turned attention to page 2 of HB 378, and surmised that the training, testing, and certification requirements could involve a lot of certificates. He indicated that he might have an amendment to address the issue of cost. Is this not too broad, he asked, to train, test, and certify food handlers, waiters, cooks, and undercooks?

MS. RYAN replied:

> Yes, those are significant aspects of the bill. And I apologize for not drawing your attention to them, but they've been addressed in the [House Health, Education and Social Services Standing Committee], so we just felt they weren't something that this committee would be interested [in] learning about. But, yes, there will be a significant impact to our ability to get safe food by requiring individuals who handle food that we're going to eat in public to become certified. ... So it's an essential component to a food safety system that we're missing, that we've identified as needing, to make sure that we're getting safe food in the state.
>
> How we're going to implement that ... is [via the] regulation-drafting process, and we need the statutory authority to get to that point, though, and that's what this bill allows us to do. Who's going to pay for these tests, which I think you were alluding to and what your amendment is referring to, is again

something that ... we don't necessarily want to get too involved in because I don't know how we would ever maintain a database of who paid for what. But, again, I still would defer that to a regulation-drafting process as to how we will be implementing a training and certification program for food workers across the state.

Number 1792

REPRESENTATIVE SAMUELS asked Ms. Ryan to elaborate on the issues of how many people she anticipates being tested, what the fiscal note is, and whether there is statistical data showing that there is a problem that needs fixing. He also asked whether food sickness is rampant in restaurants in Alaska.

MS. RYAN mentioned that the written comments she'd provided the committee contained a lot of background information illustrating the need for the changes being proposed via HB 378. The fiscal note is quite small, she opined, compared to the potential fee generation that will occur; the funds requested varies by year, with the first year including the initial investment in software and hardware. The two positions detailed in the fiscal note will cost approximately $200,000 per year. She said that the problem the division has identified has come about a few ways:

One: yes, there is a problem with food-borne illness in the state and in the nation. It's severely underreported; it's not something you learn about. In fact, the ratio of reporting versus non reporting is 25 to 1, so we learn about 1 case for every 25 that exist. ... I am relying on CDC [Centers for Disease Control and Prevention] for that statistic. In Alaska, last year, we had 26 outbreaks - if you want an Alaskan statistic - and of those 26, they vary across the state as to where and what and how.

I can pull ... an example [from] Representative Ogg's district .... You probably heard about Kodiak, it just happened a couple of months ago, the ... taco meat had salmonella in it and it was actually [an] antibiotic-resistant strain. So we're really lucky no one died, because we couldn't do anything to help them and over 50 people were sick; it was a potluck at a school. So, you just don't hear about a lot of the problems that occur and it's one of those safety nets that,

when it fails, you really hear about it, but you don't really know about it when it's working decently.

Number 1683

CHAIR McGUIRE asked how the certification process would work for circumstances involving potlucks.

MS. RYAN replied:

We have a temporary food service permit, which isn't part of this system, that you're already required to get if you have an event that's four days or longer; that's how we break it out. So, a potluck, a one-night deal, isn't a food-safety event, but if it goes into four days or longer ... we do require you to come in and get ... not our full-service permit, which is ... a little more extreme.

CHAIR McGUIRE surmised that the potluck situations might be the problem area because those folks don't have training and don't make their livelihood from food preparation, so they aren't aware of safe storage, refrigeration, and cooking requirements.

MS. RYAN pointed out, however, that there are significant problems in commercial food establishments. She elaborated:

We had a restaurant in Kenai that put 10 people in the hospital and made probably about 300 people sick two or three years ago; [we] closed the restaurant down. ... They're lucky no one died as well. So, it's not just a private home (indisc. - coughing) problem, and as [an] agency responsible for regulating services [provided] to the public, that's my focus. ... I want to make sure that the food that I go get at [the] store or that my neighbor ... gets at the restaurant is safe, because people have a perception [that] government's protecting them in those environments. At the potluck, at the church social, you're supposed to be "buyer beware"; you're supposed know ... or at least be confident ... that the people preparing your food for you are doing it correctly.

CHAIR McGUIRE mentioned that at one time she'd sat on a finance subcommittee on a DEC overview with Representative Williams, who'd previously suffered from a case of botulism, and the subcommittee spent most of its time discussing food safety,

inspections, and licensing issues. She asked Ms. Ryan to explain to the committee how she thinks HB 378 will address the problem better than previous attempts.

Number 1567

MS. RYAN replied:

> We did take a cut of $500,000, again, from this program; this program has been traditionally under attack quite a bit from various members, but last year we took a cut of $500,000 and eliminated 6 inspector's positions. That left me with 18 inspectors and probably 5,000 establishments. So I was left with a position of trying to come up with a way to make sure that these 5,000 establishments are doing it right. Even before then, we were only getting in our high-risk facilities once a year 60 percent of the time.
>
> That, to me, is misleading to the general public because they have the perception that we're at least in there a lot more often than we were, and that ... their shoulders were being looked over to make sure they were washing their hands and keeping their meat separate from their vegetables. So ... staff came together - all 32 of them ... if you look at the whole program including seafood processors - and came up with Active Managerial Control, which is our new model that uses the training and certification aspect in this bill, as well as civil fines, to complete the whole food-safety network picture.
>
> This takes the reliance off government inspections and puts the responsibility on the owners and the operators of establishments: the people that are serving you food 365 days a year. We aren't in there enough; they're the ones that are going to be responsible for doing it correctly, not us. So that's why ... Representative Williams is willing to sponsor this bill [via the House Finance Committee] now, because he does feel that we have listened and have come up with something that will work across the state and be equitable, and you'll be just as safe in Wrangell as you are in Nome as you are in Anchorage.

Number 1489

REPRESENTATIVE GARA said he is worried that the solution as outlined on page 2, lines 5-8, is broader than the problem. He elaborated:

> You're asking us to trust that the agency will deal with this responsibly and narrowly, but if we're giving you really, really, really broad authority, I think we should assume that you're going to do as bad a job as we're telling you you're allowed to do. And I'm wondering whether, to be consistent with your theory of ownership and managerial control, maybe we just certify and train the owners and managers, and it's up to them to train their employees, and if they don't, they know what their fines are. Maybe that's a way. What would you think about doing it that way?

MS. RYAN replied:

> Obviously, we would prefer to have the flexibility to address that issue in the regulation-drafting process. ... At this point, we're proposing to train and certify both food handlers and ... one manager per establishment. If that's what we end up with after the regulation-drafting process, ... [then] we communicate [that] with communities and constituents ...; that will be determined down the road. But I would like the flexibility, at this point, to have that option ... after we interact with our constituents.
>
> We did do one survey - that's in my [written] testimony - I think it was 321 respondents of our permit holders, and 90 percent of them said that food handler certification ... is what would be necessary for a safe food system, and then an additional 80 percent said a manager certification would be as well. ... And when we look at what other state's do and what our constituents are telling us through this survey, it makes sense that we have the option to do both - that that's necessary for a complete system.

REPRESENTATIVE GARA said he could not believe that a food handler in a McDonald's in New York or San Francisco is licensed and trained. He asked Ms. Ryan whether she has a sense of how it's done in the majority of other places.

MS. RYAN explained that most food handlers in other states are licensed and trained. She relayed that when she was sixteen and working at McDonald's in Oregon, she had to get a food-handler card from a state agency. "It's very common to have a food-handler card; most states do use that," she added.

Number 1358

REPRESENTATIVE HOLM asked who would certify the trainers and to what degree would that person be trained.

MS. RYAN indicated that the division does not yet have that aspect fleshed out, adding that the bill would grant the division the statutory authority to draft regulations. And although the division does have some ideas, those ideas haven't yet been vetted through the public process.

REPRESENTATIVE HOLM opined that it would be inappropriate for the legislature to grant the statutory authority without first having an idea of what methodology would be used by the division to carry out its goals. "I worry about creating a bureaucracy that doesn't have some constraints on it," he added.

MS. RYAN said she would be happy to share with the committee more details of what the division will be proposing in terms of methodology, though the division is not yet sure what the end result be. She elaborated:

> What we propose, in Active Managerial Control, is we would have two tiers of certification required. You'd have the food-handler ... card that the food handler would have to get. Now, that training would be free and online - and it's part of the database that we would purchase with this funding - so anybody could go in and go through the training for free. There would be no certification of trainers, necessarily, although CHARR [Cabaret Hotel Restaurant & Retailers Association], a restaurant association, has come forward and asked for the ability to be certified as trainers because they provide that service. So that's one avenue we're looking into. The manager's certification is a national accreditation program that five companies have been accredited from a national food-safety network to provide. So those are the models that we're considering, ... I'm just hesitant to say that's how it will end up ....

Number 1211

REPRESENTATIVE HOLM said that explanation helps him a lot. He then asked what the qualifications are of the division's remaining 18 inspectors.

MS. RYAN replied:

> They have pretty stringent requirements. They are called ... "environmental health officers." [That's] the actual title that they're given in state government, and they're sanitarians. Most of them are accredited through a national sanitation program, but they all have some fundamental sanitation training through a college degree.

REPRESENTATIVE HOLM asked what gives environmental health officers the ability to understand the food industry such that they would know whether someone was doing something improperly.

MS. RYAN replied:

> In the United States, for the last 100 years, we've had a food-safety system that's relied on inspectors going into processing plants and restaurants to make sure they're doing things correctly. There's standards set by CDC; there's five risks that we're always looking for, to make sure that there's not a potential for sickness. It's a very standardized field. ... We know what you can do to do things right and what you have to do to keep people from getting sick. It's not rocket science ...; it's not simple, either, but it's very standardized across the U.S., and ... internationally as well, what you look for to make sure people are handling food safely. You don't put [a vegetable] ... on the cutting board that you had ... [meat] on. You don't put raw meat in the [refrigerator] above something that it can drip onto. ... There's pretty simple guidelines that everyone is supposed to adhere to that are even in nationally accredited CDC's ...

REPRESENTATIVE HOLM interjected to say that he appreciates having that information. He mentioned that California has a system whereby restaurants are given tags that reflect the food-safety standards that they meet. He asked whether something similar could be done in Alaska.

Number 1011

MS. RYAN replied:

> The difficulty we have with that system is [that] it relies on a government inspection. If we're not in there [but] only once a year, if that, I don't know if that's an assurance that they're still [maintaining a high rating]. That [rating] is only as good as the last inspection, and if we're not in there frequently enough, it's difficult to rely on that. We used to do that ... and some communities still do .... That's a difficult thing to implement when you're not in there enough.

REPRESENTATIVE GRUENBERG asked whether the division can delegate its authority to a municipality.

MS. RYAN said yes, adding that it has done so with Anchorage.

REPRESENTATIVE GRUENBERG turned attention to the language, "individuals who handle ... food" on page 2, line 6. He asked whether this includes those who serve food.

MS. RYAN indicated that the intent is to include anyone who handles unpackaged food; thus food servers would be included. The bill's current language would allow the flexibility to make that distinction in regulation.

REPRESENTATIVE GRUENBERG turned attention to Sections 3 and 5, and asked Ms. Ryan whether she'd like to have Section 5 amended to allow the Department of Health and Social Services (DHSS) the ability to impose fines for violations of those items listed in Section 3.

MS. RYAN said she could not answer for the DHSS. She added, however, that the DHSS is familiar with the bill, has attached a zero fiscal note, and has not expressed an interest in acquiring the authority to impose civil fines. In response to a further question, she said that the DEC would not object to such an amendment.

REPRESENTATIVE GRUENBERG turned attention to Section 11, and noted that certain language is being deleted from existing statute. This language, he remarked, appears to give certain due-process rights to people who are accused of violations.

MS. RYAN said that the language being deleted is duplicative because existing due-process statutes already [contain this language], and having this language in this portion of statute has caused delay in enforcement actions.

Number 0748

ELISE HSIEH, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), confirmed that there already are due-process statutes that would apply.

REPRESENTATIVE GRUENBERG turned attention to Section 14 and asked why July 1, 2004, was chosen as the effective date.

MS. RYAN relayed that having an effective date which coincides with the fiscal year would make it easier to determine when funding would be available.

REPRESENTATIVE GRUENBERG turned attention to Amendment 1, labeled 23-LS1473\A.1, Bannister, 2/20/04, which read:

> Page 5, following line 23:
> Insert a new bill section to read:
> "*** Sec. 11.** AS 17.20 is amended by adding a new section to read:
> **Sec. 17.20.355. Certification costs.** A person who has an employee who is subject in the course of the employment to the certification requirements adopted by the commissioner under AS 17.20.005(1)(D) shall pay the costs that are necessary for the employee to meet the certification requirements. The employer may not require the employee to reimburse the employer for these payments."
>
> Renumber the following bill sections accordingly.

MS. RYAN, in response to questions, said that Amendment 1 appears to address who would be required to pay for the testing required by Section 1, whereas the [bill] itself only gives the DHSS the ability to require the testing. Currently, the DHSS does not have the authority to charge fees for the training and certification proposed in Section 1 because it does not yet have the authority to require that training and certification. Additionally, because the DHSS already has the authority to charge fees for services, once the department is given the

authority to require training, it will automatically have the authority to charge fees for that service.

Number 0513

MS. RYAN, in response to further questions, said that currently, the proposed plan for food handlers is to follow the model used in the state of Washington. This would involve online training that would take approximately half an hour to go through. However, it would not be mandatory that someone complete that online training, but it would be mandatory to take the test. In other words, the training would be available and free, but not required; thus, if someone came from another state and already knew the information, he/she could simply go online and take the test, which, she estimated, could take five minutes. Upon completion of that five-minute test, for which the division is proposing charging a $10 fee, a food-handler card would be issued that would be good for three years.

MS. RYAN noted that HB 378 would not affect seafood processors, which are already under stricter requirements. With regard to the bill's effective date, she explained that the division does not anticipate having the certification requirements in effect until a year from when the regulations authorized by the bill become effective. The effective date in the bill pertains to when the division can start the regulation-drafting process and begin purchasing the needed software and hardware.

REPRESENTATIVE SAMUELS asked how the division intends to measure whether HB 378 has been effective.

MS. RYAN replied:

> That's a very difficult question and a problem we deal with constantly in public health because you cannot measure the effectiveness of your program because no one is getting sick or dying - that's what you would count. And, because of the [aforementioned under-reporting], it's impossible for us to really have a good indication of how effective we're being [in] keeping people safe. What we can measure is inspection scores, we can measure the cleanliness we find when we go into establishments, and that's the mechanism and the tools we'll be using as a performance measure, which is part of our budget process for the department and the food safety program.

Number 0212

CHAIR McGUIRE pondered whether, for incidents like the one that occurred in Kenai, it would be helpful to establish a review team to perform an investigation.

MS. RYAN said that national studies have shown that restaurants with certified workers actually have cleaner establishments than those that do not have certified workers. There has been some basic science done to show what's necessary and how to get those necessary components implemented. And although on a broader statewide scale it is hard to make an assessment regarding effectiveness, the division has always relied on the number of critical violations it finds in an establishment to make that assessment. If a program is being effective, it should find fewer critical violations, which are those that have the potential of making someone sick.

CHAIR McGUIRE noted that on a statewide scale, there is nothing currently in place to ensure that establishments are operating in a safe manner, and surmised that HB 378 will go a long way toward helping the division meet its goals. "People die from food-borne illnesses; this isn't just a matter of feeling sick for 24 hours," she added.

TAPE 04-23, SIDE A
Number 0001

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), indicated that one aspect of HB 378 impacts the DOL's Commercial/Fair Business Section regarding its ability to enforce and take action against people who are engaging in consumer deception with respect to the labeling of food products. He elaborated:

> It's an area that we had some concern about last year and, currently, the way our statutes are structured, we are unable to take action in that area because [the DEC] statutes give them the exclusive authority to do that. And the amendments to (indisc.) statute, as reflected in this bill, essentially give [the DOL] the authority to investigate and take action against folks who mislabel products. And it's not our intent to tread on the DEC's expertise when it comes to food-safety issues; we are thinking that this authority

would allow us to investigate and review only those things that have consumer deception ... impacts. So, with that, I'd be happy to answer any questions from the committee, and thank you [Chair McGuire].

MR. SNIFFEN, in response to questions, said that the DOL has submitted a zero fiscal note because it does not anticipate many such cases to come up on an annual basis and so will just absorb any extra enforcement costs, and that the DOL would have no objection to an amendment giving the DHSS the ability to impose civil fines for violation of those items under its purview that are listed in HB 378.

Number 0263

MS. RYAN noted that Ms. Hsieh, in reviewing HB 378, worked with the DHSS and so may know why the DHSS did not request that ability.

MS. HSIEH said that according to her recollection, the DHSS had no interest in such a change, particularly since the Food and Drug Administration (FDA) takes over most of that type of enforcement. She also noted, however, that the language in subsection (b) of proposed AS 17.20.315 currently says, "the department shall, by regulation, adopt a schedule of fines". Therefore, if an amendment such as Representative Gruenberg was suggesting were to pass, it would require the DHSS to promulgate regulations, and so the committee may wish to weigh in with the DHSS to see if it would really be interested in such a change.

REPRESENTATIVE GRUENBERG said that he did not want to hold the bill up, and asked Ms. Hsieh for her thoughts on how it might be best to proceed with such an amendment.

MS. HSIEH again suggested that the committee check with the DHSS about such an amendment before offering it.

REPRESENTATIVE GRUENBERG relayed that he would not be offering such an amendment at this time.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 378.

Number 0403

REPRESENTATIVE GARA made a motion to adopt Amendment 1 [text previously provided].

Number 0414

CHAIR McGUIRE objected.

REPRESENTATIVE GARA said he is still very uncomfortable with the language on page 2 that could conceivable require thousands of people in Alaska to get trained, tested, and certified, and thus be charged testing fees - perhaps expensive testing fees. He said that Amendment 1 would ensure that businesses absorb the cost of the testing fees. Additionally, he noted, if it is the businesses that are bearing the burden of the proposed requirements and fees, then they will be more likely than individual workers will be to ensure that such requirements and fees do not become unreasonable. Amendment 1 would indirectly ensure that the proposed requirements stay as narrow as possible and be fair to low-wage workers. He asked members to support Amendment 1.

MS. RYAN said she did not know how the division would ever be able to track who actually pays the testing fee.

REPRESENTATIVE GARA offered his belief that the DEC's would not have to undertake that burden; "presumably the employee would go to the employer, ask for compensation, [and] that would, in almost every case, be the end of it." Should a dispute on this issue arise, it could be settled in small claims court. He added, "I think employers would just end up paying for it, and we wouldn't have to worry about enforcement because they would just follow the law probably."

REPRESENTATIVE SAMUELS said, "I think the employer is going to pay for it anyway," and noted that if an employee obtains a food-handler card, which would be good for three years, he/she then has a marketable skill. He likened Amendment 1 to putting in statute a requirement that employers pay for uniforms. He suggested that the question of who pays for the testing is something to be worked out between employer and employee. He said that he would be opposing Amendment 1.

Number 0630

REPRESENTATIVE GRUENBERG offered what he termed a friendly conceptual amendment to Amendment 1 such that it would not require the DEC to do anything.

REPRESENTATIVE GARA said, "Sure."

Number 0645

CHAIR McGUIRE noted that no one objected to the conceptual amendment to Amendment 1. Therefore, Amendment 1 was amended.

REPRESENTATIVE GARA predicted that the DEC would have the authority to come up with whatever regulations it wants in order to implement "it." He reiterated his earlier comments regarding how he envisions Amendment 1, as amended, would work. The really good employers will absorb the cost to begin with, but those who are not good employers might need to be told to do so, he remarked, and opined that such an additional provision will be easily enforceable. In response to a question, he said his fear is that people who work for only $7 per hour and only work 10 hours a week will have to pay $10 for a card that allows them to hold that job.

MS. RYAN said she agrees with Representative Samuels's comments, adding that other states leave it to the employer and employee to figure out who pays for the testing.

REPRESENTATIVE HOLM said that he, too, agrees with Representative Samuels, adding, "This is no different than requiring a driver's license, or any other requirement for somebody to go to work." He indicated that he thinks Amendment 1, as amended, is unnecessary.

REPRESENTATIVE GRUENBERG said that although he felt that it would not be appropriate, as an employer, to be asked to pay the cost of someone's driver's license, he does feel that it would be fair to ask the employer to pay the cost of an employee's food-handler card.

CHAIR McGUIRE said she tends to agree with Representatives Samuels and Holm. If a potential employee does not want to pay the fee for testing, then he/she will not apply for those jobs, which could ultimately result in a shortage of workers which in turn could cause employers to agree to pay the cost. "I don't know that we need to legislate these types of relationships," she concluded.

MS. RYAN, in response to comments, reiterated that the training will be free, but the test will cost $10.

REPRESENTATIVE GARA said that "this" is completely unlike a driver's license; a driver's license is generally obtained for

oneself, whereas a food-handler card would be obtained largely for the employer. "That's why I think the employer should pay," he concluded.

CHAIR McGUIRE said, "We would hope that [the DEC] would continue to recognize that we're delegating a tremendous amount of power, and that we hope that you keep those costs down as low as possible and commiserate with the types of responsibilities that you need to have ... to ensure food safety."

Number 1056

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 1, as amended. Representatives Holm, Samuels, and McGuire voted against it. Therefore, Amendment 1, as amended, failed by a vote of 2-3.

Number 1064

REPRESENTATIVE SAMUELS moved to report HB 378 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 378 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1070

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:25 p.m.