

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 27, 2004

1:20 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Pete Kott

**COMMITTEE CALENDAR**

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."

- MOVED CSHB 367(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 342

"An Act relating to driving while intoxicated; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 424

"An Act relating to review of regulations under the Administrative Procedure Act by the Legislative Affairs Agency; and providing for an effective date."

- HEARD AND HELD

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."

- MOVED CSHB 514(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 385

"An Act relating to awarding child custody; and providing for an effective date."

- BILL HEARING POSTPONED

CONFIRMATION HEARINGS

Violent Crimes Compensation Board

David B. Ingraham, MD - Anchorage

- HEARING POSTPONED TO 3/3/04

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks, Alaska

- HEARING POSTPONED

CENTRAL COUNCIL, TLINGIT & HAIDA INDIAN TRIBES OF ALASKA (CCTHITA) - "BENEFITS AND CONTRIBUTIONS OF FEDERALLY RECOGNIZED INDIAN TRIBES TO ALASKA"

- HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 367

SHORT TITLE: LICENSING SEX-ORIENTED BUSINESSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, GARA

01/12/04	(H)	PREFILE RELEASED 1/9/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	L&C, JUD, FIN
01/30/04	(H)	L&C AT 3:15 PM CAPITOL 17
01/30/04	(H)	Heard & Held

01/30/04 (H) MINUTE(L&C)  
 02/02/04 (H) L&C AT 3:15 PM CAPITOL 17  
 02/02/04 (H) Moved CSHB 367(L&C) Out of Committee  
 02/02/04 (H) MINUTE(L&C)  
 02/05/04 (H) L&C RPT CS(L&C) NT 2DP 3NR 2AM  
 02/05/04 (H) DP: DAHLSTROM, ANDERSON; NR: CRAWFORD,  
 02/05/04 (H) LYNN, GATTO; AM: ROKEBERG, GUTTENBERG  
 02/09/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/09/04 (H) <Bill Hearing Postponed to 2/16/04>  
 02/16/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/16/04 (H) Heard & Held  
 02/16/04 (H) MINUTE(JUD)  
 02/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/23/04 (H) Scheduled But Not Heard  
 02/25/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/25/04 (H) Heard & Held  
 02/25/04 (H) MINUTE(JUD)  
 02/27/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 342

SHORT TITLE: INCREASE DRIVING UNDER INFLUENCE PENALTY  
 SPONSOR(S): REPRESENTATIVE(S) GATTO

01/12/04 (H) PREFILE RELEASED 1/2/04  
 01/12/04 (H) READ THE FIRST TIME - REFERRALS  
 01/12/04 (H) JUD  
 02/02/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/02/04 (H) Heard & Held  
 02/02/04 (H) MINUTE(JUD)  
 02/04/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/04/04 (H) -- Meeting Canceled --  
 02/09/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/09/04 (H) <Bill Hearing Postponed>  
 02/20/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/20/04 (H) Heard & Held  
 02/20/04 (H) MINUTE(JUD)  
 02/27/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 424

SHORT TITLE: REGULATION REVIEW  
 SPONSOR(S): REPRESENTATIVE(S) HOLM

02/02/04 (H) READ THE FIRST TIME - REFERRALS  
 02/02/04 (H) ARR, JUD  
 02/02/04 (H) ARR REFERRAL REMOVED  
 02/25/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/25/04 (H) Scheduled But Not Heard

02/27/04 (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  
02/23/04 (H) Heard & Held  
02/23/04 (H) MINUTE(JUD)  
02/27/04 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE CARL GATTO  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of HB 342.

CODY RICE, Staff  
to Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska 99801  
POSITION STATEMENT: Assisted with the presentation of HB 342,  
Version H.

DUANE BANNOCK, Director  
Division of Motor Vehicles (DMV)  
Department of Administration (DOA)  
Anchorage, Alaska  
POSITION STATEMENT: Responded to questions during discussion of  
HB 342.

VANESSA TONDINI, Staff  
to Representative Lesil McGuire  
House Judiciary Standing Committee  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Provided a comment during discussion of the  
proposed amendments to HB 342.

BARBARA COTTING, Staff  
to Representative Jim Holm  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 424 on behalf of the sponsor, Representative Holm.

DAVID STANCLIFF, Staff  
to Senator Gene Therriault  
Joint Committee on Administrative Regulation Review  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As staff for the Joint Committee on Administrative Regulation Review, discussed the need for legislation such as HB 424.

JOHN MAIN, Staff  
to Representative Pete Kott  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented changes to HB 514 on behalf of Representative Pete Kott, sponsor.

SUE STANCLIFF  
House Majority Office  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Explained aspects of HB 514 on behalf of Representative Pete Kott, sponsor.

#### **ACTION NARRATIVE**

#### **TAPE 04-27, SIDE A**

Number 0001

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at 1:20 p.m. Representatives McGuire, Anderson, Ogg, Samuels, and Gara were present at the call to order. Representatives Holm (via teleconference) and Gruenberg arrived as the meeting was in progress.

#### **HB 367 - LICENSING SEX-ORIENTED BUSINESSES**

Number 0088

CHAIR MCGUIRE announced that the first order of business would be 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." [Before the committee was CSHB 367(L&C).]

Number 0280

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 367, Version 23-LS1394\W, Craver, 2/25/04, as a work draft. There being no objection, Version W was before the committee.

Number 0280

CHAIR McGUIRE moved to adopt Amendment 1, which read [original punctuation provided]:

Page 10, Line 10: INSERT - Sec.08.90.350. Municipal regulation. A municipality may adopt and enforce an ordinance that places prohibitions or restrictions on adult-oriented entertainment that are additional to or stricter than those required under this chapter.

REPRESENTATIVE SAMUELS objected. He proposed that Amendment 1 be amended to include boroughs as well as municipalities.

REPRESENTATIVE GARA offered that Amendment 1 could be changed by adding "a local government's municipality or other local government's subdivision." And asked if that would cover everything.

REPRESENTATIVE SAMUELS recollected that the previous year the legal definitions were explained to him and he thought that the proposed amendment to Amendment 1 would be correct, but he wasn't sure.

CHAIR McGUIRE suggested that the committee stick with the original amendment, stating that she thought the other Representatives were correct but she didn't want to broaden the terms when the definition wasn't certain. She said that she would seek an answer to the question and provide it before the bill [is heard in] the House Finance Committee.

REPRESENTATIVE SAMUELS said he would agree to that, as long as the issue was addressed. He shared that the only circumstance that he could think this issue would effect was the Fairbanks Northstar Borough and he wanted to make sure that they had the same authority as every other municipality.

Number 0380

REPRESENTATIVE SAMUELS removed his objection with the understanding that the issue would be addressed before HB 367 [is heard in the next] committee.

CHAIR McGUIRE asked if there were any further objections to adopting Amendment 1. Hearing none, Amendment 1 was adopted.

Number 0418

REPRESENTATIVE GARA moved to adopt Amendment 2, [which would replace the text of Version W, as amended, with the proposed CS for HB 367, Version 23-LS1394\V, Craver, 2/23/04]. He explained that the only substantive difference was that this version would allow patrons to go to establishments that didn't serve alcohol when they were 18 years old and older.

REPRESENTATIVE SAMUELS objected.

CHAIR McGUIRE stated that she has an issue with the bifurcated age, wherein patrons can be 18 and dancers have to be 21, that Representative Gara is proposing. She said she'd received enough compelling evidence from former and current strippers, police officers, and a neuropsychologist to lead her to believe that the dangers that are present in these types of establishments exist to both patron and stripper. So although the greater harm is probably to the stripper, she is even more concerned about both patrons and strippers now that she has heard testimony relating to drugs, alcohol, and the intoxicated people that come into these clubs. She stated that she felt that the age requirement of 21 should be consistent for everyone. She expressed that she didn't want people under the age of 21 gambling, drinking, or going to these clubs. She cited the Barnes v. Glen Theatre, Inc. court case, which ruled that dancers and patrons in strip clubs are not protected by the First Amendment.

Chair McGuire concluded by thanking Representative Gara for his help in developing HB 367, and emphasized that the main purpose of the bill is to protect young people from the types of ills that have been exposed during the formation of HB 367.

REPRESENTATIVE ANDERSON said he agrees with Chair McGuire's statements. He explained that during the House Labor and Commerce Standing Committee hearings on HB 367, the arguments for designating the minimum age at 21 to attend these clubs were

most compelling. He stated that the Covenant House, the neuropsychologist, the Parent Teacher Association (PTA), and the police officers shared a lot of information that guided the development of the 21-year-old minimum age requirement.

REPRESENTATIVE ANDERSON shared his hope that this bill sets the standard for the country when dealing with issues such as this. He acknowledged that the bill may not be consistent with the rest of the country, but it illustrates Alaska's different perspective. He recognized the argument that HB 367 may not hold up to a legal challenge, but he hoped that the courts would see the intent of the bill and uphold the 21-year-old minimum. He shared that he was trying to curb the use of drugs and alcohol as well as young people's exposure to violence and other crimes.

REPRESENTATIVE ANDERSON shared his respect for the owners of these establishments. He clarified that [the legislature] is not being punitive, but rather is looking at this issue from a public policy prospective. He said that he feels that [the legislature] is making the right decision. Representative Anderson referred to a conversation that he'd had with the Executive Director of the Anchorage Cabaret Hotel Restaurant & Retailers Association (CHARR) where it was relayed to him that the board is still debating the issue and hasn't formed an official opinion.

Number 0919

REPRESENTATIVE GARA commented that he appreciated the disagreement. He stated that despite this particular philosophical difference, he felt that the rest of the bill was very strong. He explained that HB 367 started out a lot broader and has been tightened up throughout the committee process. He shared that he didn't like the idea of 18 and 19 year olds going to strip clubs, but he also didn't like telling them that they could not go. He said he felt that it was a situation where he should bite his lip; he may disagree with the parents that would allow their children go to places like this at that age, but he doesn't feel that it is his place to tell them what to do. He also shared his concern that by increasing the patronage age to 21, some of these establishments may lose a significant amount of business. He said that he would rather see the patronage age remain 18 years old and regulate the area of greatest evil, which is the abuse that some of these young women who strip undertake. He concluded by saying that he would support HB 367 with or without the adoption of Amendment 2.

Number 1001

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 2. Representatives Samuels, Anderson, Ogg, and McGuire voted against it. Therefore, Amendment 2 failed by a vote of 2-4.

CHAIR MCGUIRE directed attention back to HB 367. She mentioned a conversation that she and Representative Gara had wherein they decided to put on the record the legal, scientific, and community information that has been presented and reviewed during the formation of HB 367. She highlighted the testimony that had made the most significant impact for her. She referred to the Anchorage Council PTA, stating that it was the PTA who contacted both her and Representative Gara and got the legislation started. She shared that the PTA was reacting to teacher observations and talking to former and current strippers who were living at Covenant House.

CHAIR MCGUIRE said that these girls informed the PTA and other various committees that they had been propositioned for prostitution and drug use. She said that the girls felt that they were worse off after the dancing experience. She referred to the teachers who said that high-school girls who were stripping, and high-school boys who were patronizing these establishments were acting as a detraction in the school. She shared that at the Anchorage caucus meeting they heard testimony from high-school kids who were stripping. She said that they made a point of having to hurry up and testify because it was their "night time". She pointed out that the time they were testifying was noon, a time when most high-school kids would be in class, and said she found it interesting that these kids were dancing through the night, sometimes until 5:00 a.m., and going to school a little over an hour later. She said that she saw a problem with that.

Number 1209

CHAIR MCGUIRE referred to the resolution provided by the Alaska State PTA and the Anchorage Council PTA at the Anchorage caucus. She pointed out that there are over 3,400 students in Anchorage alone, and some of these high-school kids are between the ages of 18 and 20. She reminded the committee that the mandatory age for starting school is 6 years old. She said that if a child falls back a year, they could easily be 18 or 19 when they are seniors in high school. Chair McGuire stated that she was 18

for half of her senior year. She pointed out that in the resolution there are references to concern over unwanted pregnancies and sexual assaults. She also mentioned that there are a disproportionate number of calls to the police from these establishments.

CHAIR McGUIRE, as a comparison between one of these businesses and Chilkoot Charlie's, a well known, lively, alcohol-serving establishment in the heart of Anchorage, she stated that there is still more police involvement at a strip club than at Chilkoot Charlie's. She asked the committee to stop and think about that fact. She emphasized that the types of calls the police get from these establishments include kidnapping, rape, assault, and drug use. Chair McGuire then questioned how these establishments compare with "Bernie's or Humpy's." She said that she used Anchorage examples because that is where she lives, and informed the committee that an Anchorage police sergeant has informed her that those establishments make zero calls relating to similar crimes.

CHAIR McGUIRE stated that strip clubs are unregulated, so there is no mechanism for people in the community to enforce verification of age. She added that until HB 367 gets, there is no law that enforces any regulations for these establishments, and so even something like failure to verify someone's age is something that there are no consequences for.

Number 1354

CHAIR McGUIRE pointed out that in the aforementioned resolution, many legal findings from various cities around the country were cited in the section under "it is known that," She referred to the "secondary harmful effect" evidence that was used to illustrate the need for this legislation. She commented that such evidence can be gathered from other communities as well. She said that since Alaska is a newer state and Anchorage and Fairbanks are relatively young towns, it strengthens their case for this legislation by focusing on older, faster growing communities and relating it to what may happen in Alaska if these clubs go unregulated. She referred again to the "it is known that," section of the resolution and used the example given that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sex-oriented businesses are located.

CHAIR McGUIRE cited studies conducted in Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas. She referred to

testimony that other illegal activities are being performed at these clubs in the parking lots or in the booths and cubicles. She noted that these activities are also being performed in Anchorage and Fairbanks. She relayed that in the resolution, it says that it is known that there is increased drug activity surrounding adult establishments. Chair McGuire also pointed out that a 9th circuit case in Kitsap County, Washington has shown that contact between dancers and patrons can transmit up to 50 communicable diseases. She emphasized that regulating time, place, and manner of sex-oriented businesses to advance substantial governmental interest is the appropriate thing for a community to do to curb the illegal activities and the harm that can come about from them.

Number 1521

CHAIR MCGUIRE moved onto the legal opinion prepared by Jeffrey Friedman on February 16, 2004. She shared that Mr. Friedman's opinion relates to the case, Mickens v. City of Kodiak, and offered that even though that case is clearly relevant to what HB 367 proposes, there are some notable differences. First, she stated, the legislature has heard far more scientific testimony about the ill effects of this type of entertainment. She pointed out that a neuropsychologist has testified, as well as have various counselors, identifying the various negative effects stemming from these establishments. She also noted that there has been a lot of personal testimony from dancers recounting their personal experiences from working in these businesses. Reading again from Mr. Friedman's legal opinion, Chair McGuire stated that unlike the situation involved in Mickens v. City of Kodiak, the legislature has heard testimony illustrating the difficulty of enforcing health and safety laws.

CHAIR MCGUIRE said that that is one of the biggest problems that this bill addresses: there is no mechanism, currently, that will help enforce the things that are happening in these establishments. She also cited that there is difficulty enforcing wage and hour laws. She stated that she'd heard a lot of testimony relating to club owners having the dancers hired under independent contractor status, something that is illegal. She explained that in such situations, the dancers have to pay a fee up front before they can dance at the establishment, and this can lead to dancers turning to prostitution or dealing drugs to make the extra money. She offered her understanding that it is Mr. Friedman's opinion that the legislature is on the right track by prohibiting dancers and patrons who are under the age of 21 from going to or working at adult oriented businesses.

She also referred to a letter from Regina Manteufel dated January 27, 2004, that cites many examples of illegal labor laws and many other illegal activities that happen in or around strip clubs.

Number 1769

CHAIR McGUIRE said that she was going to recap the testimony received by Scott Swartzwelder, Ph.D., Clinical Professor of Psychiatry and Behavioral Sciences, Duke University Medical Center, and explained that Dr. Swartzwelder's particular expertise is assessing brain development of young people until their 20s. She first gave a little background about Dr. Swartzwelder, how he had testified throughout the country on many bills that are designed to raise the alcohol and/or smoking limit to 21 years of age, and noted that many times, these types of laws are controversial as well.

CHAIR McGUIRE said that Dr. Swartzwelder's illustrated how the brain continues to develop until a person is into his/her 20s. The particular areas that are developing are the frontal lobe, an area that controls judgment and impulses. Therefore, although people make decisions throughout their lives, when a person is younger and his/her brain hasn't developed completely, he/she is more likely to make irrational decisions. She used examples such as drinking and driving, drug use, [committing crimes to procure] quick cash, and [making inappropriate] sexual advances, to illustrate Dr. Swartzwelder's points.

CHAIR McGUIRE praised the testimony given by Kara Nyquist, Director of Advocacy at Covenant House in Anchorage, who shared the things she had experienced first hand when trying to put someone's life back together after they have started out in the business of stripping.

Number 1914

REPRESENTATIVE GARA identified the things that made him feel that HB 367 needed to be enacted. He referred to information that he gathered at the Anchorage caucus where it was said that many times dancers are subjected to wage violations and are too intimidated to say anything about it. He reiterated that some of these women have to pay the establishment for stage time and do not receive a minimum wage. He also shared his concern that the dancers have to give some of their tips to bouncers, stating that if someone doesn't tip well they may not receive as adequate a level of protection as he/she should, and opined that

that is a bad way to run that type of business. He also used examples of testimony received wherein women have stated they were propositioned by pimps and drug dealers to work for them and make extra money. Representative Gara said that this isn't the type of situation he would feel comfortable having an 18-, 19-, or 20-year-old working in. He made the point that he didn't want this to be the first job opportunity that a young girl has out of high school, adding that she may never leave it.

REPRESENTATIVE GARA acknowledged that there are some businesses that are run cleanly, and stated that this is a case wherein a portion of the businesses do a poor job and it effects everyone else. He referenced a study that dealt with strip clubs in Minneapolis, Minnesota, where it is similar to Anchorage and Fairbanks and the women have to pay to work at the clubs. In that study, 100 percent of the women reported physical abuse while at work, 100 percent said that they had witnessed others getting physically abused at work, 77 percent reported being stalked, 100 percent reported that they had been propositioned for prostitution, 94 percent had their breasts grabbed during work, 60 percent had genitals exposed to them, 78 percent had witnessed customers masturbating in front of them, 56 percent were bitten by customers, 61 percent were spit upon, 39 percent suffered bodily penetration while working, and many were propositioned by pimps while at work. Representative Gara reiterated that this isn't a job that he feels young women under 21 years of age should work in.

REPRESENTATIVE GARA said that although jobs like these can be beneficial for certain young men and women, he is confident that those people will be able to find stable, good jobs somewhere else, and noted that when they turn 21 they will be able to once again work in these establishments. He said that he has heard of many cases of broken lives, where women work in places where they are pressured and subjected to abuse and assault, and that is what he concerned about. He said he supports HB 367 and urged the committee to support it as well. He concluded his testimony by commenting that initially the bill required dancers to get licensed, but because of the feedback received, that language has been removed, and now only the businesses need to be licensed.

Number 2162

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 367, Version 23-LS1394\W, Craver, 2/25/04, as amended, out of committee with individual recommendations and the accompanying

fiscal note. There being no objection, CSHB 367(JUD) was reported out of the House Judiciary Standing Committee.

HB 342 - INCREASE DRIVING UNDER INFLUENCE PENALTY

Number 2181

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 342, "An Act relating to driving while intoxicated; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 342, Version 23-LS1292\D, Luckhaupt, 2/14/04, which was adopted as a work draft on 2/20/04.]

Number 2200

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor of HB 342, indicated that his staff was available for questions as well.

Number 2232

REPRESENTATIVE SAMUELS moved to adopt the proposed CS for HB 342, Version 23-LS1292\H, Luckhaupt, 2/23/04, as the work draft.

Number 2240

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked whether Version H allows certification of ignition interlock devices to be done by the commissioner of the Department of Administration (DOA) as well as by the commissioner of the Department of Corrections (DOC).

REPRESENTATIVE OGG relayed that the language in question is located on page 2, [lines 19-20].

Number 2269

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, sponsor, confirmed that either the commissioner of the DOC or the commissioner of the DOA could certify ignition interlock devices.

REPRESENTATIVE GRUENBERG said he would not object to the adoption of Version H as long as the phrase, "or by the commissioner of administration" is not included in Version H and is instead offered for inclusion as a separate amendment.

CHAIR McGUIRE suggested instead that the committee adopt Version H as the work draft and then consider an amendment to delete the aforementioned phrase.

REPRESENTATIVE GRUENBERG said he would prefer to have the phrase deleted from Version H before it is adopted as a work draft.

REPRESENTATIVE ANDERSON offered his belief that the phrase ought to be included because the commissioner of the DOA oversees the Division of Motor Vehicles (DMV).

REPRESENTATIVE GRUENBERG relayed, however, that when the issue of ignition interlock devices was first brought forth, it took years to resolve the problem of whether it would be the Department of Public Safety or the DOA that would have purview over ignition interlock devices. He elaborated:

The Hickel Administration wanted, by executive order, to change it from [the Department of] Corrections, as in the law, to [the Department of] Public Safety. These two departments fought for years. It held up the administration of this whole ignition interlock law for years, and I had to threaten to sue. So I would ask ... the maker of the motion ... to please just not make that part of [Version H], let's talk about that as a separate amendment, and I will withdraw my objection, then, to [Version] H, but I would like that [language] ... offered as a separate amendment.

CHAIR McGUIRE indicated that she is not sure how they could procedurally go about adopting only portions of proposed CS as a work draft.

Number 2369

REPRESENTATIVE OGG called the question.

Number 2375

A roll call vote was taken. Representative Anderson, Ogg, Samuels, and McGuire voted in favor of adopting Version H as the work draft. Representative Gruenberg voted against it. Therefore, Version H was before the committee by a vote of 4-1.

**TAPE 04-27, SIDE B**

Number 2360

[The end of the roll call vote concluded on Side B.]

CHAIR McGUIRE relayed that a forthcoming amendment addressing Representative Gruenberg's concern would be labeled Amendment 1. She then asked for an explanation of Version H.

MR. RICE said that Section 1 of Version H clarifies that the period of time during which one must use an ignition interlock device cannot run concurrently with the period of time during which one's driver's license is revoked. Language on page 2, lines 21-23 clarifies that the term, "motor vehicle" does not include snow machines, boats, planes, or anything not designed for a road system. "Essentially, this only applies to automobiles," he added. These changes, along with the change pointed out by Representative Gruenberg regarding the commissioner of the DOA, are the significant changes encompassed in Version H. In response to a question, he confirmed that the language, "or sentence" is now included in Section 1 of the bill.

Number 2263

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete, "or by the commissioner of administration" from page 2, line 20. Speaking to Amendment 1, he said:

As I mentioned at our last hearing, I'm the author of the current ignition interlock law. ... The current law requires the commissioner of [the Department of Corrections] to administer the ignition interlock certification program. It turns out that this became an extremely contentious issue, and took literally years to resolve, after I was even out of the legislature, because neither the Department of Corrections nor the Department of Public Safety really wanted to do it and each wanted the other to do it. It was kind of an unusual program, and they just didn't want to do it. And the two departments fought for at least a year, if not more, about this.

And finally they left it with the commissioner of [the Department of Corrections], but literally it ... wasn't resolved until I, in private practice, had to threaten a lawsuit. And if you put this other language in, I am most concerned that this will cause

a similar problem and terrifically delay the continued implementation of this law. This is an extremely important change, and I urge you not to object to my deletion. If the administration comes before this legislature with its ducks in a row and says, for some reason, "We feel a need to change it, and everybody's agreed to it," then I will listen, but please don't put it in here; this is going to have a serious adverse effect.

REPRESENTATIVE GATTO said, "We have addressed it."

MR. RICE added,

We've been in contact with the administration and with Duane Bannock of the DMV. ... It's my understanding that the DMV ... and the administration have been working with us pretty closely on this. ... I can't speak for them, but I think that they're comfortable in dealing with us on this issue.

Number 2142

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), said that the DMV is willing and, to a limited extent, able to assist with a relatively seamless [transition], at least from a verification standpoint, so that "this" can take place. He went on to say:

In the research that I've done in the last few days regarding interlock devices, what I would expect the DMV to do is not go out and touch the car to verify that it is in there. However, in reviewing a couple of very large companies that this is what their business is, they issue a certificate that will have the model number, the serial number, of that particular unit. And so, potentially, with a distributor in Alaska, when that car or that automobile goes to that station, because that person is a certified ignition interlock device installer, they issue a certificate of compliance - or their invoice, or repair order, or whatever the word is. We at the Division of Motor vehicles then view that document, record that document as part of the requirement for issuing, now, either the limited license or the new, reinstated driver's license.

REPRESENTATIVE GRUENBERG said that both last year and this year he has been in touch with the commissioner of the Department of Corrections and his staff, and they have had extensive discussions regarding the ignition interlock program. The DOC is quite involved with that program and have been, now, for a number of years; the DOC has not mentioned to him, he remarked, anything about wanting to change the current system. "Have you totally coordinated this with them?" he asked of Mr. Bannock, adding that he would like to hear from the DOC on this issue. "Is this something that you both have agreed that your department will take over from them?" he also asked.

MR. BANNOCK replied, "No, I certainly have not, and I would not want to imply that I have spoken with anyone at [the] Department of Corrections about that."

REPRESENTATIVE GRUENBERG remarked to the committee, then, that keeping the aforementioned language in the bill constitutes a serious change, and that he would like to have full testimony on this issue from the DOC because the current wording could result in the two departments fighting with each other and could totally bollix up the program. He offered his hope that Amendment 1 would be adopted.

Number 2039

REPRESENTATIVE ANDERSON offered his belief that the DMV would be able to handle applications for ignition interlocks in a more expeditious manner and it would therefore be important to have both departments involved.

REPRESENTATIVE GRUENBERG responded:

"This is not what we're talking about. ... We're talking about the department having a program to certify which type of ignition interlock devices can be installed, and it's a certification statewide, not on a case-by-case basis. And it's a very technical kind of a thing, and it is not just the kind of thing you're talking about. And I would urge, before we take any steps like this, there should be full testimony from both departments. It's a good bill, I don't want to see it held up on this kind of [issue]. This isn't the place to do it, if we're going to make a change, we shouldn't just do it in an ad hoc manner.

REPRESENTATIVE OGG noted that there is a difference between verification, which is what Mr. Bannock was referring to, and certifying what the device is. He opined that it should not take two departments to certify what a device is.

CHAIR McGUIRE agreed with Representative Ogg that verification and certification were two separate issues.

REPRESENTATIVE SAMUELS said he is tending to agree with Representatives Ogg and Gruenberg. He remarked that the two departments might not be so inclined to work in a cooperative manner during future administrations, particularly if a new manufacturer starts producing the devices - it could then become a question of departmental political power influencing a commerce issue. He indicated agreement that certification should not be under the purview of two departments.

REPRESENTATIVE ANDERSON removed his objection.

Number 1891

CHAIR McGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

Number 1873

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 2, labeled 23-LS1292\D.1, Luckhaupt, 2/21/04, which read:

Page 1, line 1:

Delete all material and insert:

**"An Act relating to driving while under the influence and to the issuance of limited drivers' licenses; and providing for an effective date."**

Page 1, following line 2:

Insert a new bill section to read:

**\* Section 1.** AS 28.15.201(d) is amended to read:

(d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges [FOR THE FINAL 60 DAYS DURING WHICH THE LICENSE IS REVOKED] if

(1) the revocation was for a misdemeanor conviction under AS 28.35.030(a) and not for a violation of AS 28.35.032;

(2) the person has not been previously convicted or, if the person has been previously convicted, the court or the department requires the person to use an ignition interlock device as described in AS 12.55.102 during the period of the limited license; in this paragraph, "previously convicted" has the meaning given in AS 28.35.030 and also includes convictions based on laws presuming that the person was under the influence of intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the person's blood;

(3) the court or the department determines that the person's ability to earn a livelihood would be severely impaired without a limited license;

(4) the court or the department determines that a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public; and

(5) the court or the department determines that the person is enrolled in and is in compliance with, or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h)."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Number 1835

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE ANDERSON noted that because Amendment 2 was drafted to apply to Version D, it should become Conceptual Amendment 2 for the purpose of applying to Version H. He said Conceptual Amendment 2 will delete the requirement that only during the final 60 days of a license-revocation period may a misdemeanor DUI (driving under the influence) offender be granted a limited driver's license. He said that from comments he's received from constituents, he believes that the current

law hinders one's ability to work and remain employed. Therefore, Conceptual Amendment 2 would allow the granting of a limited driver's license anytime during the revocation period as long as the misdemeanor offender has no prior convictions - or, if there is a prior conviction, the court or the department will require the offender to use an ignition interlock device in conjunction with the limited driver's license - and also meets other current statutory criteria.

REPRESENTATIVE ANDERSON, in response to questions, said that it is his intent to remove the stipulation that a limited driver's license can only be granted during the final 60 days of a revocation period. The provision in Conceptual Amendment 2 pertaining to those that have prior convictions is intended to address those who apparently have a recurring problem with drinking and driving.

REPRESENTATIVE GRUENBERG asked Representative Anderson whether he wanted the stipulation regarding the use of an ignition interlock to apply only to those offenders with prior convictions, or would he be willing to extend that stipulation to possibly apply in other situations as well. For example, in cases where the limited driver's license would be used for purposes other than earning a livelihood, such as if the person were someone else's primary caregiver or had a health problem that could require a visit to the hospital. He opined that the judge and the department should have the discretion to grant a limited driver's license for compelling cases.

Number 1407

REPRESENTATIVE GRUENBERG offered a [conceptual] amendment to Conceptual Amendment 2, to insert, "or that there are other compelling circumstances that require the issuance of a limited license" into AS 28.15.201(d)(3) and (4), which are included as part of Conceptual Amendment 2. In response to a question, Representative Gruenberg said that his [conceptual] amendment to Conceptual Amendment 2 would only apply in very unusual circumstances that "require" the use of a limited license.

CHAIR MCGUIRE remarked that she did not like the word "require".

REPRESENTATIVE GRUENBERG said he wanted the entity granting the limited driver's license to know that it has to be convinced that there is "really something unusual."

REPRESENTATIVE OGG opined that use of the word, "circumstances" could open things wide up. He suggested that more time should be taken in order to draft this proposed conceptual amendment narrowly, remarking that as currently proposed, judges would have to determine exactly what is meant by "compelling circumstances." He offered his belief that that term needs to be clarified.

REPRESENTATIVE GRUENBERG said that what he means by "compelling circumstances" are those wherein a life would be in danger or wherein there are serious health problems. He opined that judges will make good decisions on this issue, noting that judges make decisions regarding "compelling circumstances" all the time.

REPRESENTATIVE ANDERSON noted that there would also still be the caveat that the offender not be a danger to the public, and offered his belief that judges would still take that into account when determining whether a circumstance was compelling enough.

Number 1132

CHAIR McGUIRE asked whether there were any objections to the [conceptual] amendment to Conceptual Amendment 2.

Number 1119

REPRESENTATIVE OGG objected. He said:

I still think the barn door is wide open, and we've only heard a couple of circumstances: life is in danger. And that might be like when? [It's just] one particular circumstance. Health in the family, or a health circumstance - I think you can narrow it. My concern is that ... we're revoking a person's license because they were drinking and driving, and it's supposed to be a punishment. And we're making an exception here for somebody who wants to go to work. that's an exception. And this is a privilege, and when you open this door up, it lessens the punishment, and I think you need to be fairly particular. [But] if you want to be very broad, then I guess that's a direction you want to go, [but] I'm not interested in becoming very broad in this area.

REPRESENTATIVE GARA offered that if they must choose between using limiting words or listing specific circumstances for when a limited license would be granted, he would be comfortable with using limiting words as long as they are limiting enough. He predicted that if they only provided an exception for those specific circumstances that Representative Gruenberg could come up with in a given amount of time, some circumstance that the committee might want included as an exception could get left out. He said he agrees with Representative Ogg, though, in that he is uncomfortable with just using the word "compelling". Representative Gara said to Representative Gruenberg, "I wonder if you could think of a limiting word that might move you closer to Representative Ogg."

REPRESENTATIVE GRUENBERG replied: "That's why I said, 'that require', not just, 'that allow'. ... The circumstances have got to be sufficiently compelling that they require it."

REPRESENTATIVE GARA asked, "It has to be something that is also not ordinary, right?"

REPRESENTATIVE GRUENBERG replied:

Well, it could be ordinary in the sense that as we age, there may [be] more and more seniors who require that their kid be able to take them to the hospital or the doctor appointment or something like that. So, it doesn't have to be extraordinary in that sense. The point is that it's compelling.

Number 0956

CHAIR MCGUIRE said that although she understands what Representative Gruenberg is trying to get at and supports the general idea, she would prefer the language to be more specific and so would oppose it at this time with the caveat that if more specific language is brought forth to the House floor, she would support making the change then.

REPRESENTATIVE GRUENBERG remarked:

I'm trying to ratchet it down, but I think we have to give the judge the ability to deal with it in an individual-fact situation. I don't think it can be crafted any more than, "compelling circumstances that require the issuance of a license", and we have to

leave it to the judicial officer. We're dealing with superior court and district court judges here.

CHAIR McGUIRE relayed that she is reminded of exemptions to the permanent fund dividend (PFD) absence requirement, and the debate on the House floor last year regarding caring for others who are ill. She said she recalled that in that situation they needed to be specific because, otherwise, if one just says, "to care for other people's health because it's compelling", there could be all kinds of people being cared for and all kinds of people qualifying for the exemption. She indicated that a concern is that what might be compelling to one person may not be compelling to another.

REPRESENTATIVE GRUENBERG remarked, "It would have to be compelling to the judge." He said he would be willing to accept alternative language.

Number 0861

REPRESENTATIVE OGG called the question.

CHAIR McGUIRE indicated that the question would be called after Representative Gara had a chance to speak.

REPRESENTATIVE GARA suggested that they might limit it by extending the additional use of the interlock device to health and safety reasons, but not just any health and safety reasons. "I think if you did, 'important health and safety reasons', that might satisfy ... everybody's concern," he added.

REPRESENTATIVE GRUENBERG said "That would be satisfactory, sure."

CHAIR McGUIRE asked Representative Gruenberg whether he would be withdrawing the current [conceptual] amendment to Conceptual Amendment 2 and offering a new one.

REPRESENTATIVE GRUENBERG replied: "No. What I want to say is, 'compelling health or safety cases'."

REPRESENTATIVE OGG said he would not be removing his objection, and again called the question.

REPRESENTATIVE GRUENBERG clarified that the language change created by the [conceptual] amendment to Conceptual Amendment 2 would involve the words, "compelling health or safety reasons".

Number 0814

A roll call vote was taken. Representatives Gruenberg, Anderson, Gara, and McGuire voted in favor of the [conceptual] amendment to Conceptual Amendment 2. Representatives Ogg and Samuels voted against it. Therefore, the [conceptual] amendment to Conceptual Amendment 2 was adopted by a vote of 4-2.

REPRESENTATIVE GRUENBERG asked whether members would like the title of the bill, which would be amended by Conceptual Amendment 2, to also say, "also relating to ignition interlock devices".

Number 0781

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, noted that the title has been changed in Version H; thus, she remarked, she is assuming that in conforming Conceptual Amendment 2, as amended, to Version H, [the proper language would be included].

CHAIR MCGUIRE commented that the committee probably should make a specific change to the title to include language regarding ignition interlock devices, so that future amendments to the bill don't involve removing the ignition interlock requirement for limited licenses.

REPRESENTATIVE GRUENBERG suggested that this second amendment to Conceptual Amendment 2 would result in the title reading in part, "influence, ignition interlock devices, and to the issuance".

REPRESENTATIVE ANDERSON said he would accept the second amendment to Conceptual Amendment 2.

Number 0691

CHAIR MCGUIRE asked whether there were any objections to the second amendment to Conceptual Amendment 2, as amended. There being none, the second amendment to Conceptual Amendment 2, as amended, was adopted.

REPRESENTATIVE GARA turned attention to the portion of Conceptual Amendment 2, as amended, that pertains to proposed AS 28.15.201(d)(2). He said he is not in favor of relaxing the

license revocation period, adding that the current proposed language change to [paragraph] (2) appears to let someone get his/her license returned earlier on a first DUI conviction without having to use an ignition interlock device. He went on to say:

I don't know why we would do that. If we're going to require that you have to use an interlock device to get your license back early for a second conviction, I think you should do it for a first conviction. And the language seems to read to me ... that if it's only your first [DUI] conviction, you can get your license back early without the use of an interlock device.

REPRESENTATIVE ANDERSON said, "I don't think it would do that."

CHAIR MCGUIRE indicated that she could understand Representative Gara's point, and suggested that they delete from Conceptual Amendment 2, as amended, the words, "the person has not been previously convicted or, if the person has been previously convicted,". Thus the language in proposed AS 28.15.201(d)(2) would start with, "the court or the department requires the person to use an interlock device". She asked whether doing such would solve the problem.

REPRESENTATIVE GARA said he did not think it would, adding that since Conceptual Amendment 2, as amended, is relying on existing statutory language, such a change to Conceptual Amendment 2 would take out some of that existing statutory language. He said he is a little uncomfortable doing that because he thinks it is there for a reason for some other purpose. He suggested that the drafter needs to work on finding a different approach.

The committee took an at-ease from 2:49 p.m. to 2:50 p.m.

Number 0536

REPRESENTATIVE ANDERSON relayed that during the at-ease, he and Representative Gara spoke with the drafter. In an effort to clarify, Representative Anderson said that currently, if one is a first time misdemeanor DUI offender, one can apply for a limited license and does not need an interlock device; however, if a DUI offender has a prior conviction, currently he/she cannot get a limited license. So, in order to achieve his goal, he relayed, the drafter has suggested altering the portion of Conceptual Amendment 2, as amended, pertaining to AS 28.15.201(d)(2) to read, "the court or the department requires

the person to use an ignition interlock device as described in AS 12.55.102 during the period of the limited license;".

REPRESENTATIVE ANDERSON explained that if such a change is made, regardless of whether someone is a first time offender or has one or more prior convictions, he/she can go through an application process with the court or the department for a limited license. Approval of that application would then be based on the applicant successfully meeting the criteria set forth in AS 28.15.201(d)(1)-(5), and which includes, among other things, the installation of an ignition interlock device. In conclusion he remarked that such a change would enhance the safety aspect [of the bill].

REPRESENTATIVE GRUENBERG remarked that it may take some time to "ramp up" the ignition interlock program, "since there's nobody who does this now." Therefore, if Conceptual Amendment 2, as amended, is changed in the aforementioned fashion, he opined, the committee will have to adopt a forthcoming amendment to Version H that reads [original punctuation provided]:

Page 5, line 30:

Delete "July 1, 2004"

Insert "January 1, 2005"

REPRESENTATIVE GRUENBERG remarked, however, that the other alternative is to "keep the 'or' in so that you know that there some places that they just can't do it or some people, frankly, may choose not to do it." But if Conceptual Amendment 2, as amended, is altered as suggested by Representative Anderson, Representative Gruenberg opined, then the committee also ought to adopt not only what he termed a delayed effective date but another forthcoming amendment to Version H that reads [original punctuation provided]:

Page 1, line 12, following "28.15.181(c).":

Insert "The court may not order or require the use of an ignition interlock device unless a provider for the device is located within 100 miles of the defendant's residence or domicile."

Number 0329

REPRESENTATIVE GRUENBERG said that the committee should adopt what he referred to as the "100 mile" amendment because there will be some places in the state, even after the delayed

effective date, that won't have access to ignition interlock installation services.

REPRESENTATIVE ANDERSON, turning back to his suggested change to Conceptual Amendment 2, as amended, said:

I think we can keep what we have; what this is saying is, if you have multiple DUIs, you have to apply and you have to have an ignition device, and ... if we don't remove it, I don't think it requires the first time DUI offender to have an ignition device.

REPRESENTATIVE GRUENBERG concurred.

CHAIR McGUIRE noted that the amendment regarding the effective date would apply to the entire bill, not just to the provisions of Conceptual Amendment 2, as amended.

REPRESENTATIVE SAMUELS sought confirmation that this third amendment to Conceptual Amendment 2, as amended, would involve having proposed AS 28.15.201(d)(2) read, "the court or the department requires the person to use an ignition interlock device as described in AS 12.55.102 during the period of the limited license;"

REPRESENTATIVE ANDERSON said, "Correct."

REPRESENTATIVE GRUENBERG offered his understanding, though, that Representative Anderson does not support this third amendment to Conceptual Amendment 2.

REPRESENTATIVE ANDERSON replied, "Well, I think at this stage I would support it because then it requires that anyone with a DUI conviction, whether one or more, that applies for a temporary license has to have an ignition interlock device." He added that although that was not what he was intending to begin with, it's "great."

Number 0200

REPRESENTATIVE SAMUELS moved to adopt the third amendment to Conceptual Amendment 2, as amended.

REPRESENTATIVE GARA indicated, however, that adoption of the third amendment to Conceptual Amendment 2, as amended, will render a part of the bill senseless. He elaborated:

Representative Anderson's amendment is a good one I think. But in places where there is no interlock device available, what we're now doing is changing a process whereby today somebody with no prior convictions can get [a limited license], and changing it so that if they live in a place where there's no interlock devices available, they can't get [a limited license]. And in that sense, we're actually knocking a whole bunch of people off of the ...

CHAIR McGUIRE interjected and made mention of the forthcoming amendment that Representative Gruenberg had referred to as the "100 mile" amendment. She noted that this forthcoming amendment would apply to the entire bill, including Conceptual Amendment 2, as amended, should it be adopted.

REPRESENTATIVE GARA remarked, however, that he did not think that that forthcoming amendment fully satisfies the concern, adding that he thought the committee could create something that would do so. He opined that if Conceptual Amendment 2, as amended, is amended this third time and then adopted into the bill along with the "100 mile" amendment, it will make it so that those who live more than 100 miles from an interlock device provider can get a limited license even if they have prior convictions.

CHAIR McGUIRE disagreed.

**TAPE 04-28, SIDE A**

Number 0001

REPRESENTATIVE GARA, in an effort to clarify, said:

This is still the gap in the thing that we're doing. Currently, we don't want you to have a limited license if you have prior convictions. ... We're now changing the law and we're getting rid of this prior conviction requirement. We're now saying, even if you have prior convictions you can get a limited license, ... you can apply for it. Now we're saying, even if you have prior convictions and no interlock [device] is available in your area, you can get a limited license. ... We are making it easier to for you to get a limited license, if you have prior convictions, in those areas where an interlock device is not available.

CHAIR McGUIRE said, "That's true."

REPRESENTATIVE GARA remarked, "I don't think we want to do that; ... I don't think anybody intended to do that, and ... some work has to be put into the language of the bill if we're not going to do that."

REPRESENTATIVE ANDERSON said he was not sure what to do.

The committee took an at-ease from 3:07 p.m. to 3:10 p.m.

CHAIR McGUIRE announced that HB 342 would be held over for the purpose of allowing Representatives Anderson and Gatto to work on language that would address the issues raised, one of which being that they did not want repeat offenders getting [limited] driver's licenses without an interlock. She noted that at the bill's next hearing the committee would address other forthcoming amendments as well. [Version H of HB 342, along with a pending motion regarding a third amendment to Conceptual Amendment 2, as amended, was held over.]

#### HB 424 - REGULATION REVIEW

Number 0206

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 424, "An Act relating to review of regulations under the Administrative Procedure Act by the Legislative Affairs Agency; and providing for an effective date." [Members' packets contained a proposed committee substitute (CS) for HB 424, Version 23-LS0732\I, Cook, 2/20/04]

CHAIR McGUIRE informed the committee that a [new] CS for HB 424 is forthcoming.

Number 0262

BARBARA COTTING, Staff to Representative Jim Holm, Alaska State Legislature, sponsor, characterized HB 424 as a work in progress. However, the intention is to place the concept before the committee today for review. She relayed that the sponsor does not want the committee to consider CSHB 424, Version 23-LS0732\I, Cook, 2/20/04, because the sponsor hopes to have a new CS and fiscal note for the committee's consideration early next week.

MS. COTTING predicted that the committee would agree that common complaints from constituents are about regulations. House Bill 424 is one piece in solving the regulations puzzle, she explained, adding that the bill authorizes a formal review of regulations by Legislative Legal and Research Services. She referred to a document in committee packets entitled "Steps in the Regulation Adoption Process," and explained that this review would come after the Department of Law opens the file [step 4] but before the agency publishes and distributes public notice, additional notice information, and regulations [step 5]. Under the current statute, only the attorney general formally reviews regulations. She pointed out that the attorney general's review comes late in the process, when public comment has already been closed, and after the review, the regulations are transmitted for the lieutenant governor's office and, at this point, the regulations are rarely changed. Under HB 424, the legislative attorneys who actually draft the legislation that authorizes the regulations would formally review those regulations promulgated from the legislation that the agency drafted.

MS. COTTING relayed Representative Holm's sentiment that HB 424 should have a positive effect on Alaska's economy because the regulations will reflect a more cooperative effort between the administrative and legislative branches of government. The hope is that with this process, a more stable business environment will be created, perhaps even allowing the public to trust the government more than it does now.

Number 0503

DAVID STANCLIFF, Staff to Senator Gene Therriault, Joint Committee on Administrative Regulation Review, Alaska State Legislature, informed the committee that one of his tasks this year is to make government work better and find ways in which to work cooperatively with the administration towards that goal. He informed the committee that from the 1960s to the 1970s, the number of bills introduced peaked at about 1,700. In the early 1990s, the number of bills introduced decreased to about 900 or so with approximately 300 bills becoming law. However, the situation with regulations is quite unlike that because there are some 40,000 regulations now. He pointed out that regulations have grown on an exponential curve. He highlighted that promulgating regulations creates increases in costs throughout government. Moreover, it's problematic for policy makers to find out the costs associated with a regulation that is promulgated. If one were to take the growth of regulations to a point 20 years in the future, it would make today's fiscal

problems look tame, he predicted, and said that at some point, regulation growth has so advanced that the legislature's ability to deal with it is severely encumbered.

MR. STANCLIFF opined that the Alaska State Constitution blesses the executive branch with a great deal of power. Furthermore, the legislature has delegated law-making power to the executive branch through "rule writing." There are two types of rules: those based on legislation, and those based on policy. "The executive [branch] is free because the legislature has granted the authority to actually draft laws in the form of rules," he pointed out.

Number 0731

MR. STANCLIFF said that the legislature and the executive branch have another unique relationship in that the executive branch is very involved in the legislative process and many in the executive branch have free access to the legislative branch of government. However, the contrary isn't the case when one reviews what the legislature is able to do with regulations, Mr. Stancliff noted, adding that at one time, there was a statute that provided the legislature with the ability to annul regulations, but that statute was found to be unconstitutional. Furthermore, two ballot measures that would've allowed legislative involvement [in the regulations process] have failed to pass.

MR. STANCLIFF pointed out that throughout the country, the history of administrative law is such that two troublesome areas are having to be addressed, and one such area is being addressed via this legislation. Several states have decided that perhaps there should be more of a partnership between the executive and legislative branches when dealing with regulations. For example, the legislative legal staff in Minnesota draft the regulations with the executive branch. However, the aforementioned ability will not be provided in Alaska unless the constitution is changed. Alaska has the ability, though, as does Colorado, to peak over the shoulder of the executive branch and offer an opinion when it looks as if what the legislature intended isn't happening. When the aforementioned nonbinding review occurs, those who write the regulations realize there is a higher bar and thus they write the regulations more carefully.

MR. STANCLIFF said that although he didn't discuss the Alaska Public Offices Commission regulations that are now being reviewed at various levels within the legislature, he

characterized it as a timely issue in highlighting the need for [the executive and legislative branches] to work in a more cooperative role. Although some have suggested that legislative staff could [review the regulations], he opined instead that Legislative Legal and Research Services staff need [to review the regulations] in order to obtain a quality of review similar to what the attorney general performs. The Legislative Legal and Research Services staff are intimately familiar with the intent and nuances through every committee meeting and every vote, he posited, because these folks are constantly in contact. He added that whenever the drafters have a problem with regard to how a proposed statute might dovetail with existing law, the [legislature] often invites them to discuss it with the attorney general in order to determine how to cooperatively draft better legislation.

MR. STANCLIFF added, therefore, that the [legislature] would like to receive the same deference in order to minimize public conflict and mistakes, and ensure that the regulations which pass through the public comment period look the same when they are eventually put in place. Mr. Stancliff said that in conversations with the Department of Law, he'd discovered that somewhere around 25 percent of the regulations are sent back after going through the public process, which he interpreted to mean that the regulation that was finally adopted doesn't exactly match the regulation on which the public commented. However, he clarified that he isn't suggesting that all of those were major problems, because some are technical and grammatical corrections. Still, there are some that are troubling, which he believes will be the case with the APOC regulations. "The goal, here, is to work out of the 'Reg Review Committee,' both sides of the legislature; [the] Department of Law is working very cooperatively with us right now on this issue," he said.

Number 1081

MR. STANCLIFF turned to the issue of cost. He suggested that the cost for a poorly written regulation is millions of dollars. Unfortunately, an entity impacted by [a poorly written regulation] cannot obtain resolution until the administrative process is exhausted. He informed the committee that he is tracking cases that have been open for 20 years. Therefore, a small investment by the legislature in a cooperative regulatory review process could result in huge returns in the private sector and reductions through efficiency in the government sector. Furthermore, he expressed hope that this would be part

of a package brought forth to the public illustrating that the legislature wants government to work better.

CHAIR McGUIRE mentioned that as the former chair of the Joint Committee on Administrative Regulation Review, she struggled with ways in which to address the same problem Mr. Stancliff has discussed. From the hearings on the legislation that she introduced, she recalled that [a cooperative approach to regulations] raises the level in drafting. The goal is to have legislators think more thoroughly when proposing legislation because frequently [the legislature] has failed to be as clear as it can when drafting. Furthermore, because of the weight given to the executive branch, there are few mechanisms [for correction] that can be used. Moreover, the A.L.I.V.E. Voluntary case made it clear that presentment to the governor is required. Chair McGuire relayed that she likes this proposal better than a sunset approach.

Number 1297

REPRESENTATIVE GRUENBERG requested the name of the case or cases that specified that the legislature can't, via statute, change a regulation.

CHAIR McGUIRE specified that it's the A.L.I.V.E. Voluntary case.

REPRESENTATIVE GARA expressed concern with the approach that someone can be appointed from Legislative Legal and Research Services to relate the intent of legislation during the regulation drafting process. He said he knows what his intent is when working on legislation and, hopefully, the legislature has been clear enough that the courts can determine the intent with the legislation.

MS. COTTING informed the committee that the forthcoming CS allows the legislative attorney to approach the sponsor of the legislation and discuss its intent.

MR. STANCLIFF acknowledged that it could be difficult to interpret the intent of 60 people who voted for a measure for 60 different reasons. However, the Legislative Legal and Research Services staff are capable of at least sounding an alarm, at which point the leadership in the House and Senate will be notified to ask if there should be review. He specified that the Legislative Legal and Research Services staff aren't being asked to make the final absolute judgment in such situations.

Hopefully, he concluded, the forthcoming CS will meet the concerns [expressed by Representative Gara].

REPRESENTATIVE SAMUELS said he tended to agree.

CHAIR MCGUIRE indicated that HB 424 would be held over.

The committee took an at-ease from 3:25 p.m. to 4:00 p.m.

HB 514 - CHILD SUPPORT ENFORCEMENT/CRIMES

Number 1485

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." [Before the committee was the proposed committee substitute (CS) for HB 514, Version 23-LS1639\I, Mischel, 2/21/04, which was adopted as a work draft and amended on 2/23/04.]

Number 1560

REPRESENTATIVE SAMUELS moved to adopt proposed CS for HB 514, Version 23-LS1639\S, Mischel, 2/26/04, as the work draft. There being no objection, Version S was before the committee.

Number 1569

JOHN MAIN, Staff to Representative Pete Kott, Alaska State Legislature, sponsor, presented, on behalf of Representative Kott, the changes proposed in Version S. He pointed out that in Section 1, line 9, the word "knowingly" has been placed before "fails." In Section 3, starting on line 17, a whole new subsection has been added regarding the definitions of "child", "child support", and "lawful excuse".

CHAIR MCGUIRE stated that committee members have all received a letter from the attorney general's office regarding the term, "without lawful excuse."

REPRESENTATIVE GRUENBERG opined that that letter does not seem to track the definition as the committee previously discussed it.

REPRESENTATIVE GARA said he worked with Representative Kott's office to make sure that [a person] wouldn't get thrown into jail unless the failure to pay was knowingly done and was an amount that was affordable. This issue is addressed in the definition of "without lawful excuse." Representative Gara said Representative Gruenberg is also correct in that there were many things that could be considered a lawful excuse. He noted that [the bill] only addressed one definition and suggested adding the wording, "and lawful excuse includes".

MR. MAIN, continuing with his presentation, pointed out that in Section 5, line 17 says, "and unreasonably". He relayed that Section 7 is a new section which says, "in this section, 'child' and 'child support' have the meaning given in AS 11.51.120."

REPRESENTATIVE GRUENBERG asked Mr. Main to go over the sections from Version I that were eliminated in Version S.

MR. MAIN said he would also discuss the deletions. He continued to explain that Section 9, lines 24-25, is a new section that was worked on in conjunction with the Department of Revenue (DOR). In Version I, AS 47.07 was eliminated, but has been added back into Version S, he said.

Number 1784

MR. MAIN continued to explain the changes to Version S. Section 10 (f) - which, in Version I, used to be [Section 9] (f) - now says in part, "Peace officer powers granted by the agency under this subsection may be exercised for protection in the line of duty". Additionally, the phrases, "at some time" and "approved by the commissioner of public safety" have been removed from proposed AS 25.27.020(f)(1). He noted that in Section 10, proposed [subsection] (g) contains all new language that was requested by [the Department of Law (DOL)].

MR. MAIN referred to Section 1 of Version I and indicated that subsection (a)(2) was deleted and the concept embodied in it is now covered under Section 3 [of Version S].

MR. MAIN said the amendment to Version I offered by Representative Ogg pertaining to, "without lawful excuse" has been incorporated into Version S. He went on to remark that when a misdemeanor is filed, the Child Support Enforcement Division (CSED) can only charge for conduct that covers the

preceding five years. With a felony, the CSED can charge for conduct that covers the previous ten years.

Number 1929

REPRESENTATIVE GRUENBERG asked if there is a 10-year statute of limitation for [criminal non-support] and, if so, where in statute that might be located.

MR. MAIN replied he did not have that information.

REPRESENTATIVE GRUENBERG said he would like to [be provided] that information.

MR. MAIN said that child support, by its nature, spans an 18-year commitment and is a continuing offense as opposed to a one-time event such as a robbery. In Taylor v. State, [failure to pay child support] became one continuous charge if a person failed to pay over a period of time. He opined that it is appropriate for the conduct charge to reach back 10 years because criminal non-support is theft, even though the CSED does not call it that. It has always been viewed as a domestic issue, but it can be argued that a theft has occurred. He gave an example of someone stealing \$500 from a store and being charged with a felony; however, current law allows a noncustodial parent to steal thousands, and sometimes tens-of-thousands, of dollars from his or her child and it is only considered a misdemeanor.

MR. MAIN offered an example wherein the CSED filed against a noncustodial parent with one child who was 18 years old and another child who was 16 years old and emancipated, with the emancipation having occurred six years ago. At the trial, the defense argued that for the 16-year-old who was emancipated over five years ago, the charges should be dismissed. A judge dismissed the charge from the second child because the conduct occurred outside the statute of limitations of five years. Had there been a felony statute in place, the conduct would not have been dismissed because the second child would have been emancipated within the 10-year period. In that case, he continued, the CSED proceeded to trial on only one child who was currently 18 years old. The noncustodial parent, in that case, was \$55,736 in arrears. He noted that currently, if the noncustodial parent can avoid paying child support for five years past emancipation of his or her children, or five years past the children's age of majority, the noncustodial parent cannot be criminally charged no matter what the arrears or

conduct is and regardless of what the child support order contains, whether it be for support for college, or for special-needs children.

MR. MAIN explained that when it comes to probation of a felony, versus probation for a misdemeanor, the success that the CSED has had in convicted noncustodial parents making regular payments is due to the fact that there is jail time waiting in the wings if they stop paying. After conviction or plea, a court can order informal probation for a term of up to ten years and suspended jail time for a year. For a Class C felony, the amount of formal probation is ten years, and the amount of suspended jail time is five years. Misdemeanor convictions receive informal probation, whereas felony probations are formal, he explained. With felony probation, the defendant is assigned a probation officer with the Department of Corrections (DOC). The probation officer monitors compliance with the court order to stay employed, to make monthly child support payments, and follow the terms of probation ordered by the judge.

Number 2096

MR. MAIN said that the current situation with a misdemeanor conviction requires that CSED investigators and assistant district attorneys serve the function of a parole officer. They are the ones who track compliance. When a defendant stops working and paying, or drops out, the CSED and the assistant district attorney file a petition to revoke probation, which involves a separate case that requires a report by a CSED investigator, a court filing, an arraignment, and a judicial hearing. When a petition to revoke probation is adjudicated, the CSED can request that the court impose those parts of the criminal judgment that are suspended, unfulfilled, or unorderd by the court. For example, if the court orders 365 days in jail with 360 suspended, the defendant would have served five days at the time of conviction; then, at a petition to revoke probation hearing, the CSED can ask that a portion of the remaining 360 days be imposed.

MR. MAIN said that the CSED can also ask the court to enforce the criminal order that the noncustodial parents be employed. In misdemeanors, it is common for the courts to re-assign the defendant on the first petition to revoke probation. In a criminal non-support context, the court is likely to tell a defendant to get a job and start paying, and the defense attorney is going to drag out the petition to revoke probation by receiving continuances until the client is employed again.

When the case is adjudicated and the client is working and paying again, the court is hesitant to incarcerate a noncustodial parent.

Number 2176

MR. MAIN said that even if the court remands the defendant for some of the suspended jail time, it is going to be assigned in small allotments; in other words in 10-day, or 20-day allotments. Because the CSED has no other tools, it has been very successful in getting misdemeanor probation for 5 to 10 years. It's the only hook it has, at this point, and it's not a very effective one. Ideally, a misdemeanor charge would mean that a defendant is placed on probation for 3 to 5 years, and the CSED would file one, maybe two petitions to revoke probation, but no more, and after the second one, would be able to file a felony [charge]. Or, when the conduct is appropriate, the CSED would file a felony charge. Again, with a felony conviction, there is a probation officer assigned to monitor the noncustodial parent's compliance with employment, monthly payments, and other conditions. The courts view a felony petition to revoke probation very differently. For felony probation, the felony officer files a petition, and the period of suspended jail can be up to 5 years, and it is more likely that the court will impose jail time. For a felony, by the second petition to revoke probation, the argument will be much stronger that the amount of jail time will be months, instead of days. He said that this is appropriate for some of the conduct that the CSED sees.

MR. MAIN said that with a misdemeanor charge, not all defendants are treated the same. He gave an example of one person who had a monthly obligation of \$250, one child, arrears of \$5,000, and was employed seasonally. Another noncustodial parent had a monthly obligation of \$700, four children, two marriages, arrears of \$69,000, and was employed as a doctor or lawyer or whose contracting business was transferred into another name. Both of those examples had to be charged the same - with a misdemeanor.

MR. MAIN requested that Sue Stancliff address the issue of arming investigators.

Number 2275

SUE STANCLIFF, House Majority Office, Alaska State Legislature, explained, on behalf of the sponsor, Representative Pete Kott,

that Section 10 gives CSED investigators the power of police officers when enforcing child support laws. She went on to say:

The Department of Public Safety has commissioned CSED investigators for 20 years. The commissions were granted because [the] CSED had access to National Crime Information Centers (NCIC). Their database from the FBI was to locate noncustodial parents and assist law enforcement agencies in parental kidnapping cases. The FBI recognized [the] CSED as a law enforcement agency when it granted access to the NCIC database. The State of Alaska, under previous statute, recognized [the] CSED as a criminal justice agency and allowed the agency access to Alaska Public Safety Information Network, which we all know as the APSIN.

Currently, CSED investigators hold a limited special "Peace Officer Alaska State Trooper Without Weapon Commission" to perform [the CSED's] criminal investigation duties. These commissions grant them the ability to do search warrants, testify at grand jury, and issue criminal non-support citations. [The] CSED has interior protection for its employees due to the dangers experienced there, past and present. The customer service center in Anchorage has bulletproof glass now and Kevlar walls. I believe we probably all recall recent articles in the paper that brought that about. [The] CSED investigators were issued bulletproof vests because of an incident that occurred in 1995 where individuals brandished firearms.

MS. STANCLIFF said that in the past, CSED investigators have requested assistance from the state troopers, and that Mr. Main, former director of [the] CSED, would be able to give the example because he'd had "first-hand experience."

**TAPE 04-28, SIDE B**

Number 2393

MR. MAIN explained that the situation was one in which an individual had advised [division personnel] as well as FBI personnel that he carried a firearm. Therefore, the Alaska State Troopers were called for assistance. The dispatcher simply turned around and called that investigator's division office and forwarded the request for assistance back to the CSED. Mr. Main specified that the CSED has requested assistance from the Department of Public Safety (DPS), the Alaska State

Troopers, as well as the Anchorage Police Department (APD) on more than one occasion, and in those instances, the aforementioned entities have called the CSED directly to request that the division assist its own people, or have given the CSED its own phone number, thereby referring the CSED to itself.

REPRESENTATIVE SAMUELS offered his recollection that the commissioner of the Department of Public Safety, William Tandeske, had expressed concerns about whether the training CSED investigators receive includes "shoot, no shoot" scenarios. Representative Samuels directed attention to page 5, line 5, of Version S and asked if that language includes all the deadly force training or only refers to technical accuracy with a firearm.

MS. STANCLIFF pointed out that [in order for an investigator to carry a firearm the investigator must] complete a peace officer training academy program as well as meet annual firearm certification requirements. Ms. Stancliff mentioned that although she knew the firearm certification requirements are quite rigorous, she didn't know what they were exactly. She characterized the peace officer training academy program as a firm foundation. She highlighted that one must meet the annual firearm certification requirements, emphasizing that it is an annual certification. Ms. Stancliff said she assumes that the annual firearm certification requirements would include when to shoot and when not to shoot.

REPRESENTATIVE SAMUELS clarified that he was asking if the annual firearm certification requirements included the judgment portion, which is the most important portion of the training.

CHAIR MCGUIRE interjected that she believes regulations will have to be drafted regarding the requirements.

Number 2226

REPRESENTATIVE GRUENBERG expressed concern about dangerous situations in which the CSED requested assistance and the division wasn't given immediate assistance by law enforcement. There should be no reason for that to occur, he opined. Just because the CSED wasn't given the help it needed, Representative Gruenberg said he didn't believe that it follows that the CSED should be armed. He said he believes the solution is for the CSED to obtain the help and assistance necessary from law enforcement, and suggested perhaps including an intent section or attaching a letter of intent specifying that [law

enforcement] should provide the CSED with all necessary assistance as quickly as possible. There is no reason, he stressed, that CSED staff should endanger themselves on a nonsupport matter.

CHAIR McGUIRE announced that she supports "it." She pointed out that the Alcohol Beverage Control Board investigators carry firearms and yet those who are entering hostile situations in which they are asking to take away significant assets from enraged parents don't carry firearms. Chair McGuire indicated agreement with Representative Samuels that the training should include shooting judgment. She specified that everyone at the CSED doesn't need to carry a firearm and what's being discussed here is allowing the investigators to carry a firearm. She requested that Mr. Main walk through some of the scenarios, and noted that 33 states have made failure to pay child support beyond certain years or levels, a felony. She asked if other states authorize investigators in divisions equivalent to the CSED to carry a firearm.

MR. MAIN answered that California's district attorney investigators who perform family support for criminal purposes are considered post-certified or police-standard certified and carry firearms. Louisiana gives its child support enforcement investigators the authority to carry a firearm. Oregon has a law, although it doesn't arm its child support investigators.

Number 2034

MR. MAIN, in response to a question, explained that the investigators currently working at the CSED have many years of experience in law enforcement, including investigations. The investigators of the CSED do surveillance, following an individual to work in order to show that that individual has the ability to pay. Sometimes CSED investigators interview individuals at the Department of Revenue office building or in the field. Some of these individuals have [been charged with or been convicted of] violent crimes. Furthermore, [CSED investigators] are called upon to respond when the CSED has a threat at the CSED office, and this has occurred more than once at the Anchorage facility.

MR. MAIN recalled that approximately a year ago, the CSED received a threat from an individual who said he was coming to the office. When that individual entered the building, the current director of the CSED called the investigators, not the Anchorage Police Department or the Alaska State Troopers. All

past directors of the CSED have responded in such a manner and expected the investigators to protect the CSED. However, he noted that he didn't respond in that manner because the investigators aren't armed.

REPRESENTATIVE GRUENBERG asked if providing protection for the agency is part of the job description.

MR. MAIN specified that the CSED's investigator position description specifies that instigators are to respond to any emergency situation, including threats.

REPRESENTATIVE GRUENBERG said that changes his thinking and thus he said [CSED investigators] need the ability to protect the agency. On a different issue, he suggested Mr. Main should follow-up with regard to what the legislature can do to make sure that [CSED investigators] have the protection necessary in the field.

Number 1861

REPRESENTATIVE OGG posed a situation in which an investigator gathers all the information he/she needs and confronts the individual. In such a situation, who performs the arrest of the individual, he asked.

MR. MAIN answered that arrests would be left for the Anchorage Police Department or the Alaska State Troopers to perform. It's not in the job description of CSED investigators to arrest individuals. For misdemeanors, individuals are given a summons or a citation instructing them to come to court. Sometimes the U.S. Marshals have had to arrest individuals in cases involving federal [jurisdiction].

REPRESENTATIVE OGG remarked that when the individuals have committed felonies, these individuals are different characters under the law. He pointed out that [law enforcement] can use extreme force and sometimes deadly force when apprehending a felon who is escaping. [Under this legislation, those who have failed to pay child support] will now fall into [the felony category]. Representative Ogg posed a situation under this proposed statute in which [an individual who has failed to pay child support] is determined to be a felon and that individual takes off. He questioned what an armed investigator would do.

MR. MAIN answered that the investigator would allow the individual to flee. He explained that the reason the

legislation specifies that [peace officers powers granted by the agency may be exercised] is for protection in the line of duty. "There is no reason ... for them to shoot anyone unless it's for the protection of themselves or others," he specified. Mr. Main emphasized that the investigators currently with the agency have been trained extensively throughout the years and these investigators, even if armed, know that they have no reason to shoot a fleeing felon.

CHAIR McGUIRE highlighted that peace officer powers come with all the obligations those powers carry. She said she assumes that there would also be a policy crafted with regard to granting peace officer powers.

Number 1689

CHAIR McGUIRE recalled that last year this committee heard Representative Croft's legislation that allows anyone in the state to carry a concealed weapon so long as the individual isn't a felon. Chair McGuire remarked that it's the committee's obligation to remember that legislation as well as keep policies commiserate. For example, it seem ironic if the [policy] is that any man or woman over the age of 18 who isn't a convicted felon can carry a weapon, while a person who, as part of his or her job description, is required to be the source of protection for a department cannot.

REPRESENTATIVE GRUENBERG characterized Chair McGuire's comments as very persuasive. He asked if the CSED office in Anchorage employs any security measures, such as the screening that is done at the court building.

MR. MAIN relayed that the CSED office in Anchorage is being reviewed extensively with regard to providing security for the entire building [the Atwood building]. This review is occurring [partly] because the governor's office and the lieutenant governor's office are located in that building as well. One of the options that has been reviewed is something similar to [the screening] that occurs at court buildings.

REPRESENTATIVE GARA turned attention to page 5 [line 4] and asked if the investigators have to complete and pass a peace officer training academy program.

MR. MAIN confirmed that the intent is for the investigators to successfully complete a peace officer training academy program.

REPRESENTATIVE OGG drew attention to page 4, Section 10, and the language specifying that peace officer powers may be used for protection in the line of duty. Representative Ogg said that the language is permissive, although it isn't limiting. Therefore, when [an investigator] has the full range of police officer powers, it would seem that [the investigators] would have the ability and in fact have a duty to arrest a fleeing felon.

CHAIR MCGUIRE asked if there was any objection to altering the language [on page 5, line 1] to read as follows: "exercised for protection only in the line of duty."

MR. MAIN said he saw no problem with such a change.

Number 1422

REPRESENTATIVE OGG clarified that he didn't want to limit the powers but merely wanted to be clear on the intent.

MR. MAIN noted that even the Anchorage Police Department won't go after fleeing felons. In fact, there are policies in place that specify when a chase is discontinued.

REPRESENTATIVE OGG expressed the need to be clear with regard to whether the legislation only speaks to limiting CSED investigators to protection only in the line of duty or whether the broader power desired.

MR. MAIN clarified that the goal is to protect these [CSED investigators], but not give them the broad power that would [require] them to make arrests.

REPRESENTATIVE GRUENBERG pointed out that this also includes protection of the office. He explained that he now supports arming [CSED investigators] because, although [investigators] can wait for the police to arrive when [in the field], [a CSED investigator] can't wait for the police when an enraged obligor arrives at the CSED office.

CHAIR MCGUIRE remarked that she believes that [the language] is clear enough, especially because if "we try to micromanage it too much, we run into problems."

Number 1282

REPRESENTATIVE GARA moved that the committee adopt Amendment 1, a handwritten amendment, which read [original punctuation provided]:

Insert at p.2 line 25  
after "efforts"

"and also includes any lawful excuse that is otherwise provided by law."

CHAIR MCGUIRE objected.

REPRESENTATIVE GARA explained that [this legislation] creates a felony and a misdemeanor for those who don't pay child support. The language in the statute specifies that if one doesn't pay child support and has no lawful reason for not paying, then that individual goes to jail. Therefore, the focus is with regard to whether the individual has a lawful excuse for not paying child support. Upon review of the cases, it seems that the failure to pay has to be knowing [there is child support to pay] and failure to pay an amount that the individual can pay. The drafters placed most of the language dealing with the aforementioned in the definition of a lawful excuse, he noted.

CHAIR MCGUIRE specified that this language can be found on page 2, line 23 of Version S. She then pointed out that the annotations for AS 11.51.120 specifies the following: "The Alaska Court of Appeals interpreted 'without lawful excuse' to mean that the state is required to establish, as an element of criminal nonsupport under this section, that the accused had the financial ability to pay the support - that is, that the accused either actually had funds available for payment of support or that he could have obtained such funds through reasonable efforts."

REPRESENTATIVE GARA said that the previously referenced standard is a good standard to put in the law. However, he pointed out that now it would say that that is the only lawful excuse and thus he asked if there are other lawful excuses. To be cautious, he said he was thinking of adding language "or any other lawful excuse".

MR. MAIN specified that the major lawful excuse would be that an individual can't afford to pay the child support. He informed the committee that of the \$300 million in [child support] debt, approximately 70 percent of those obligors make less than \$10,000 a year. In further response to Representative Gara, Mr. Main informed the committee that after the investigators closely

scrutinize each case with regard to meeting the [lawful excuse] criteria, each case is further scrutinized by the district attorney assigned to the case. Mr. Main acknowledged that each child support enforcement case is surrounded by different circumstances and thus the issue becomes whether the individual has the ability to pay or not.

REPRESENTATIVE GARA asked if Mr. Main would have any difficulty with defining "lawful excuse" as specified in Amendment 1.

MR. MAIN replied that he has no problem with that, although he said he didn't know what other lawful excuses there would be.

REPRESENTATIVE GRUENBERG pointed out that technically, someone could have the ability to pay but legally have the money tied up in a bankruptcy, injunction, or sequestration.

CHAIR McGUIRE interjected, "Or a piece of property they don't want to sell."

REPRESENTATIVE GRUENBERG specified that not wanting to sell isn't enough because an individual can be ordered to sell it. Representative Gruenberg clarified that he is referring to something that legally prevents the individual from [paying].

Number 0902

REPRESENTATIVE GRUENBERG then turned to the annotation to [AS 11.51.120] and suggested that this [proposed] statute not define "lawful excuse" because the courts [have already done so]. Frankly, it would be simpler, he remarked. Furthermore, he said he didn't believe "child support" needs to be defined because it's an instance of tautology.

REPRESENTATIVE GARA disagreed and explained that "lawful excuse" does need to be defined. In Alaska, the statute doesn't list reasons why one might justifiably not pay child support. Furthermore, the supreme court hasn't provided any guidance on this. Other states have taken the approach the court of appeals did [with Taylor v. State] by inferring that the legislature meant, "unless you have no ability to pay," while others have not inferred in that requirement. Representative Gara commented that he liked the court of appeals rule and questioned why one wouldn't include it in the law. He noted that New Mexico and Tennessee follow a similar rule.

REPRESENTATIVE GRUENBERG said that he believes Amendment 1 would be helpful otherwise the [courts] might say the [definition specified in the legislation] is the only definition. However, he pointed out that the number of reported decisions in criminal cases in Alaska that reach the Alaska Supreme Court is miniscule and usually involve procedural issues of a constitutional nature. As a practical matter, a decision from the court of appeals in Alaska is the court of highest appeal. Therefore, Representative Gruenberg said he felt comfortable with the [Taylor v. State] decision.

Number 0636

CHAIR MCGUIRE expressed concern with regard to Amendment 1. She said she didn't really know what the proposed language really means. Furthermore, she said she didn't want to provide too many excuses. She turned to the memorandum from the Department of Law dated February 26, 2004, and offered the following: in the Taylor case, the defendant argued that the language "without lawful excuse" was impermissibly vague and, because of that, the defendant charged that he didn't have sufficient notice of the "precise conduct that [the] criminal nonsupport statute purported to prohibit." She relayed that the memorandum said the following: "The court found that: 'the statute, as construed, affords adequate notice of the conduct it prohibits, so that reasonable people need not guess at its meaning.'" Chair McGuire said that although she is concerned with regard to going beyond that, she did believe there is merit in including it in statute.

REPRESENTATIVE GARA withdrew Amendment 1.

Number 0493

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 2, to delete from page 2, line 22, the language: "(2) 'child support' means support for a child;".

MR. MAIN, in response, explained that the Department of Revenue felt that there was another way to address [the definition of child support] but Legislative Legal and Research Services felt that the language specified is how it should be addressed.

CHAIR MCGUIRE announced that she supported leaving in [the definition of child support].

Number 0414

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

Number 0353

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 3, which read [original punctuation provided]:

Page 4 following line 9: Insert new bill section to read:

**\*Sec.8** AS 12.55.139 is amended to read:

**Penalties for criminal nonsupport** In addition to other penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the court may suspend, restrict, or revoke, for the period during which the arrearage continues to exist [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.

Re-number bill sections and bill section references accordingly.

Number 0319

CHAIR MCGUIRE objected for discussion purposes.

REPRESENTATIVE GRUENBERG explained that Amendment 3 would increase the penalty under [AS 11.51].120. Furthermore, it would increase the period that a recreational license can be revoked. Currently, a recreational license can be suspended for six months, which really isn't effective for a misdemeanor. Amendment 3 will allow the court to "suspend, restrict, or revoke, for the period during which the arrearage continues" and thus put some teeth into this [penalty], he opined.

CHAIR MCGUIRE removed her objection. There being no other objection, Amendment 3 was adopted.

Number 0171

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 4, which read [original punctuation provided]:

Page 3 following line 10: Insert a new section to read:

"(c) In addition to the provisions of (a) and (b) of this section, aiding the nonpayment of child support in the first degree is punishable by loss or restriction of a recreational license as provided in AS 12.55.139.

Page 4 following line 9: Insert new bill sections to read:

**\*Sec. 8.** AS 11.51.122 is amended to add a new subsection to read:

(f) In addition to the provisions of (a)-(e) of this section, aiding the nonpayment of child support in the second degree is punishable by loss or restriction of a recreational license as provided in AS 12.55.139.

**\*Sec. 9** AS 12.55.139 is amended by adding a new subsection to read:

(b) In addition to other penalties imposed for the offense of aiding the nonpayment of child support in the first degree under AS 11.51.121 and for the offense of aiding the nonpayment of child support in the second degree under AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

ReNUMBER bill sections and bill section references accordingly.

Number 0168

CHAIR McGUIRE objected for purposes of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 4 references Amendment 3 and allows the loss or restriction of a recreational license.

CHAIR McGUIRE removed her objection. There being no other objection, Amendment 4 was adopted.

Number 0125

REPRESENTATIVE GRUENBERG moved that the committee adopt [Conceptual] Amendment 5, which read [original punctuation provided]:

Page 3 following line 10: Insert a new subsection to read:

"(c) In addition to the provisions of (a) and (b) of this section, aiding the nonpayment of child support in the first degree is punishable by loss or restriction of a business license as provided in AS 12.55.139.

Page 4 following line 9: Insert new bill sections to read:

**\*Sec. 8.** AS 11.51.122 is amended to add a new subsection to read:

(f) In addition to the provisions of (a)-(e) of this section, aiding the nonpayment of child support in the second degree is punishable by loss or restriction of a business license as provided in AS 12.55.139.

**\*Sec. 9.** AS 12.55.139 is amended by adding a new subsection to read:

(b) In addition to other penalties imposed for the offense of aiding the nonpayment of child support in the first degree under AS 11.51.121 and for the offense of aiding the nonpayment of child support in the second degree under AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed one year, a business license issued under AS 43.70.

Re-number bill sections and bill section references accordingly.

Number 0070

CHAIR McGUIRE objected for purposes of discussion.

REPRESENTATIVE GRUENBERG explained that [Conceptual] Amendment 5 states that for aiding and abetting [the nonpayment of child support], an individual can lose his or her business license. This would also put some teeth into [the penalties for nonpayment of child support], he opined.

**TAPE 04-29, SIDE A**

Number 0001

REPRESENTATIVE GRUENBERG, in response to Representative Samuels, said that aiding and abetting is a statutorily-defined basic crime.

REPRESENTATIVE SAMUELS surmised, "You're paying them under the table for the reason of getting away from child support payments."

CHAIR McGUIRE said, "And, there is the mental intent of 'knowingly', correct?"

REPRESENTATIVE SAMUELS replied, "Absolutely."

REPRESENTATIVE GARA said he felt it was too harsh to remove the business license, and going to jail was enough of a sanction.

REPRESENTATIVE OGG said there seemed to be "typos" in that both amendments 4 and 5 reference the same subsections.

REPRESENTATIVE GRUENBERG offered his amendment as conceptual. He said his intent is to deter criminal conduct and to enforce compliance with the child support law. Having [Conceptual Amendment 5] as a potential sanction for businesses may be far more effective than anything else, he opined. He said he wanted the court be able to suspend a business owner's license, but suspend that portion of the sentence, if the defendant is compliant.

REPRESENTATIVE SAMUELS agreed with Representative Gara because of the potential harm to the employees of a suspended business.

CHAIR McGUIRE asked if there was any further discussion. She maintained her objection [to Conceptual Amendment 5].

Number 0325

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 5. Representatives Ogg, Samuels, Gara, and McGuire voted against it. Therefore, Conceptual Amendment 5 failed by a vote of 1-4.

Number 0377

REPRESENTATIVE SAMUELS moved to report the proposed CS for HB 514, Version 23-LS1639\S, Mischel, 2/26/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 514(JUD) was reported from House Judiciary Standing Committee.

**ADJOURNMENT**

Number 0382

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:20 p.m.