

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 3, 2004  
3:23 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARINGS

Commission on Judicial Conduct

Peter J. Aschenbrenner - Fairbanks

- CONFIRMATION ADVANCED

Violent Crimes Compensation Board

Gerad G. Godfrey - Valdez

- CONFIRMATION ADVANCED

Board of Governors of the Alaska Bar

Michael J. Hurley - Anchorage

- CONFIRMATION ADVANCED

CS FOR SENATE BILL NO. 255(FIN)

"An Act relating to traffic preemption devices."

- MOVED CSSB 255(FIN) OUT OF COMMITTEE

HOUSE BILL NO. 535

"An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 179(FIN)

"An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development due to a delay in receiving criminal history records; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 338(STA)

"An Act relating to actionable claims against state employees; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 316

"An Act relating to motor vehicle safety belt violations."

- SCHEDULED BUT NOT HEARD

#### **PREVIOUS COMMITTEE ACTION**

BILL: SB 255

SHORT TITLE: ILLEGAL USE TRAFFIC PREEMPTION DEVICE

SPONSOR(S): SENATOR(S) THERRIAULT

01/12/04	(S)	PREFILE RELEASED 1/9/04
01/12/04	(S)	READ THE FIRST TIME - REFERRALS
01/12/04	(S)	STA, JUD, FIN
02/12/04	(S)	STA AT 3:30 PM BELTZ 211
02/12/04	(S)	Heard & Held
02/12/04	(S)	MINUTE(STA)
03/02/04	(S)	STA AT 3:30 PM BELTZ 211
03/02/04	(S)	Heard & Held
03/02/04	(S)	MINUTE(STA)
03/04/04	(S)	STA AT 3:30 PM BELTZ 211

03/04/04 (S) Moved CSSB 255(STA) Out of Committee  
 03/04/04 (S) MINUTE(STA)  
 03/05/04 (S) STA RPT CS 3DP SAME TITLE  
 03/05/04 (S) DP: STEVENS G, COWDERY, STEDMAN  
 03/19/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 03/19/04 (S) Moved CSSB 255(STA) Out of Committee  
 03/19/04 (S) MINUTE(JUD)  
 03/19/04 (S) JUD RPT CS(STA) 3DP 1NR  
 03/19/04 (S) DP: SEEKINS, OGAN, THERRIALT;  
 03/19/04 (S) NR: FRENCH  
 04/01/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/01/04 (S) Heard & Held  
 04/01/04 (S) MINUTE(FIN)  
 04/15/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/15/04 (S) Moved CSSB 255(FIN) Out of Committee  
 04/15/04 (S) MINUTE(FIN)  
 04/15/04 (S) FIN RPT CS FORTHCOMING 3DP 2NR 2AM  
 04/15/04 (S) DP: WILKEN, DYSON, STEVENS B;  
 04/15/04 (S) NR: GREEN, HOFFMAN; AM: OLSON, BUNDE  
 04/16/04 (S) FIN CS RECEIVED SAME TITLE  
 04/20/04 (S) TRANSMITTED TO (H)  
 04/20/04 (S) VERSION: CSSB 255(FIN)  
 04/21/04 (H) READ THE FIRST TIME - REFERRALS  
 04/21/04 (H) TRA, JUD  
 04/27/04 (H) TRA AT 1:30 PM CAPITOL 17  
 04/27/04 (H) Moved Out of Committee  
 04/27/04 (H) MINUTE(TRA)  
 04/28/04 (H) TRA RPT 6DP  
 04/28/04 (H) DP: KOOKESH, MASEK, OGG, STEPOVICH,  
 04/28/04 (H) KOHRING, HOLM  
 05/03/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 535

SHORT TITLE: LIMIT STATE AID FOR MENTAL HEALTH CARE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/08/04 (H) READ THE FIRST TIME - REFERRALS  
 03/08/04 (H) HES, JUD, FIN  
 03/25/04 (H) HES AT 3:00 PM CAPITOL 106  
 03/25/04 (H) Heard & Held  
 03/25/04 (H) MINUTE(HES)  
 04/13/04 (H) HES AT 2:00 PM CAPITOL 106  
 04/13/04 (H) Scheduled But Not Heard  
 04/22/04 (H) HES AT 2:00 PM CAPITOL 106  
 04/22/04 (H) Scheduled But Not Heard  
 04/27/04 (H) HES AT 3:00 PM CAPITOL 106  
 04/27/04 (H) Moved CSHB 535(HES) Out of Committee

04/27/04 (H) MINUTE(HES)  
 04/28/04 (H) HES RPT CS(HES) 1DP 2NR 1AM  
 04/28/04 (H) DP: COGHILL; NR: SEATON, WILSON;  
 04/28/04 (H) AM: CISSNA  
 05/03/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 179

SHORT TITLE: CRIMINAL BACKGROUND CHECKS/TEACHERS

SPONSOR(S): SENATOR(S) THERRIAULT

04/08/03 (S) READ THE FIRST TIME - REFERRALS  
 04/08/03 (S) HES, FIN  
 04/16/03 (S) HES AT 1:30 PM BUTROVICH 205  
 04/16/03 (S) Moved CSSB 179(HES) Out of Committee  
 04/16/03 (S) MINUTE(HES)  
 05/10/03 (S) HES RPT CS 2DP 1NR NEW TITLE  
 05/10/03 (S) DP: DYSON, WILKEN; NR: DAVIS  
 05/13/03 (H) FIN AT 8:00 AM SENATE FINANCE 532  
 05/13/03 (S) <Above Item Removed from Agenda>  
 03/08/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 03/08/04 (S) Moved CSSB 179(FIN) Out of Committee  
 03/08/04 (S) MINUTE(FIN)  
 03/08/04 (S) FIN RPT CS 5DP 2NR NEW TITLE  
 03/08/04 (S) DP: GREEN, WILKEN, DYSON, BUNDE,  
 03/08/04 (S) STEVENS B; NR: HOFFMAN, OLSON  
 03/15/04 (S) TRANSMITTED TO (H)  
 03/15/04 (S) VERSION: CSSB 179(FIN)  
 03/16/04 (H) READ THE FIRST TIME - REFERRALS  
 03/16/04 (H) EDU, HES, JUD  
 03/23/04 (H) EDU AT 11:00 AM CAPITOL 124  
 03/23/04 (H) Moved Out of Committee  
 03/23/04 (H) MINUTE(EDU)  
 03/24/04 (H) EDU RPT 4DP 1NR 1AM  
 03/24/04 (H) DP: WILSON, OGG, SEATON, GATTO;  
 03/24/04 (H) NR: KAPSNER; AM: WOLF  
 04/20/04 (H) HES AT 2:00 PM CAPITOL 106  
 04/20/04 (H) Moved HCS CSSB 179(HES) Out of  
 Committee  
 04/20/04 (H) MINUTE(HES)  
 04/27/04 (H) HES AT 3:00 PM CAPITOL 106  
 04/27/04 (H) Moved CSSB 179(FIN) Out of Committee  
 04/27/04 (H) MINUTE(HES)  
 04/28/04 (H) HES RPT 2DP 3NR  
 04/28/04 (H) DP: SEATON, GATTO; NR: COGHILL, WOLF,  
 04/28/04 (H) WILSON  
 05/03/04 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

PETER J. ASCHENBRENNER, Appointee  
Commission on Judicial Conduct (CJC)  
Fairbanks, Alaska  
POSITION STATEMENT: Testified as appointee to the Commission on  
Judicial Conduct (CJC).

GERAD G. GODFREY, Appointee  
Violent Crimes Compensation Board (VCCB)  
Valdez, Alaska  
POSITION STATEMENT: Testified as appointee to the Violent  
Crimes Compensation Board.

MICHAEL J. HURLEY, Appointee  
Board of Governors of the Alaska Bar  
Anchorage, Alaska  
POSITION STATEMENT: Testified as appointee to the Board of  
Governors of the Alaska Bar.

DENNIS MICHEL, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SB 255 on behalf of the sponsor,  
Senator Therriault.

ROBERT HAMMAKER, Interim Treatment and Recovery Manager  
Division of Behavioral Health (DBH)  
Department of Health and Social Services (DHSS)  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 535 on behalf of the  
administration.

ZACH WARWICK, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SB 179 on behalf of the sponsor,  
Senator Therriault.

KEVIN SWEENEY, Special Assistant  
Office of the Commissioner  
Department of Education and Early Development (DEED)  
Juneau, Alaska  
POSITION STATEMENT: Responded to questions during discussion of  
SB 179.

CYNDY CURRAN

Teacher Education & Certification  
Teaching and Learning Support  
Department of Education and Early Development (DEED)  
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 179.

DIANE SCHENKER, Criminal Justice Planner  
Division of Statewide Services  
Department of Public Safety (DPS)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 179.

LARRY WIGET, Executive Director  
Public Affairs  
Anchorage School District (ASD)  
Anchorage, Alaska

POSITION STATEMENT: Provided testimony during discussion of SB 179.

REPRESENTATIVE CARL GATTO  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of SB 179.

#### **ACTION NARRATIVE**

#### **TAPE 04-73, SIDE A**

Number 0001

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at 3:23 p.m. Representatives McGuire, Holm, Samuels, and Gruenberg were present at the call to order. Representatives Anderson, Ogg, and Gara arrived as the meeting was in progress.

#### CONFIRMATION HEARINGS

#### Commission on Judicial Conduct

Number 0107

CHAIR McGUIRE announced that the committee would first consider the appointment of Peter J. Aschenbrenner to the Commission on Judicial Conduct.

Number 0117

PETER J. ASCHENBRENNER, Appointee, Commission on Judicial Conduct (CJC), relayed that the CJC, a constitutionally authorized panel of nine members, provides the citizens of Alaska the opportunity to make inquiries, launch investigations, and seek information about the conduct of Alaska's judicial officers. For example, there are sometimes inquiries into what judges do on their own time as well what they do with public resources. Members of the CJC sit as judges in such cases and make recommendations, which are then considered by the [Alaska] Supreme Court.

MR. ASCHENBRENNER mentioned that he has been an attorney for 33 years, 32 in Alaska, and has served 17 years as a part-time judge. He said that he is very interested in serving on the CJC and feels that he could make a significant contribution.

REPRESENTATIVE SAMUELS asked what happens if there is a complaint against [an Alaska Supreme Court judge].

MR. ASCHENBRENNER said that although there is a procedure to address such circumstances, he is unable to recall at the moment what that procedure entails.

REPRESENTATIVE GRUENBERG noted that Mr. Aschenbrenner has a very excellent reputation, and said he recommends his appointment.

Number 0366

REPRESENTATIVE SAMUELS made a motion to advance from committee the nomination of Peter J. Aschenbrenner as appointee to the Commission on Judicial Conduct. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Violent Crimes Compensation Board

Number 0381

CHAIR McGUIRE announced that the committee would next consider the appointment of Gerad G. Godfrey to the Violent Crimes Compensation Board.

Number 0424

GERAD G. GODFREY, Appointee, Violent Crimes Compensation Board (VCCB), said that as a current member of the VCCB, he has become familiar with the inner workings of the VCCB, its process, its history, and the legal issues it faces; therefore, he opined, it would be ideal for him to continue as a member given his experience. He mentioned that he has a scholastic background in criminal justice and counseling/psychology, and believes this to be a reasonable fit with his duties as public member.

REPRESENTATIVE GRUENBERG said he appreciated Mr. Godfrey's testimony on past legislation.

Number 0552

REPRESENTATIVES GRUENBERG and HOLM made a motion to advance from committee the nomination of Gerad G. Godfrey to the Violent Crimes Compensation Board. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Board of Governors of the Alaska Bar

Number 0574

CHAIR McGUIRE announced that the committee would next consider the appointment of Michael J. Hurley to the Board of Governors of the Alaska Bar.

Number 0602

MICHAEL J. HURLEY, Appointee, Board of Governors of the Alaska Bar, in response to the question of why he wishes to serve on the Board of Governors of the Alaska Bar, said:

I'm the senior commercial analyst with ConocoPhillips Alaska, Inc., in Anchorage. As a commercial analyst, I've dealt extensively with attorneys, both in-house attorneys and outside counsel, on a lot of different issues. Some of my previous jobs ... [include] tax regulatory issues in front of the commission [and], as a commercial analyst right now, one of my major support areas is supporting the attorneys in a lot of the commercial issues that they deal with. I feel that my experience with the attorney community will

help to make me a beneficial member, as a public member, of the [Board of Governors of the Alaska Bar].

REPRESENTATIVE GARA noted that in a recent conversation he'd had with Mr. Hurley, Mr. Hurley had given responses similar to Mr. Faulhaber's regarding the issues raised at Mr. Faulhaber's confirmation hearing on 4/23/04.

CHAIR McGUIRE relayed that she, too, had recently spoken with Mr. Hurley regarding the issues raised during Mr. Faulhaber's confirmation hearing, and recapped those issues.

MR. HURLEY said he is looking forward to working with the Board of Governors of the Alaska Bar on those issues.

REPRESENTATIVE ANDERSON said he is glad Mr. Hurley is willing to serve on the Board of Governors of the Alaska Bar, and he endorses the appointment.

Number 0811

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Michael J. Hurley as appointee to the Board of Governors of the Alaska Bar. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

SB 255 - ILLEGAL USE TRAFFIC PREEMPTION DEVICE

Number 0834

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 255(FIN), "An Act relating to traffic preemption devices."

Number 0883

DENNIS MICHEL, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, on behalf of Senator Therriault, said that traffic preemption devices are used to change stoplights from red to green in the direction one is traveling in, and this allows one to pass through intersections without having to wait on traffic coming from other directions. Traffic preemption devices have been used by emergency response providers in Alaska for the past 15 years. Unfortunately, because traffic preemption devices are available for purchase by the public,

their use by the public in the Lower 48 has led to accidents and traffic problems.

MR. MICHEL explained that SB 255 would make it illegal for someone who is not either an emergency response provider or driving a state or municipal road maintenance vehicle or public transit vehicle to use a traffic preemption device. Additionally, before a public transit vehicle can use a traffic preemption device, it has to be approved by the local municipality's "general council."

REPRESENTATIVE GARA said he supports the bill, but opined that those who install such devices are guilty of the worst conduct. He suggested that the sponsor should look into creating a criminal penalty for those who install traffic preemption devices in the vehicles of people who are not authorized to use such devices.

MR. MICHEL indicated he would research that issue.

REPRESENTATIVE GRUENBERG mentioned that the "firefighters association" has relayed to him that this issue is one of its top three legislative priorities.

MR. MICHEL concurred.

Number 1119

REPRESENTATIVE ANDERSON moved to report CSSB 255(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG asked whether [unauthorized] use of traffic preemption devices has caused accidents.

MR. MICHEL reiterated that there have been reports of such occurring in the Lower 48. He added, "But because most of these devices are not illegal at the time of the accident, they aren't factored in on other accidents, so I'm sure there's more than what is reported."

REPRESENTATIVE GRUENBERG offered his belief that intentional unauthorized use of a traffic preemption device would not be considered negligence per se, and asked whether there have been any civil cases regarding this issue or whether any state statutes address the civil aspect of it.

MR. MICHEL said he did not believe so, adding, "I know, of the states that have enacted bills to this extent, that they haven't gone as far as civil cases; most times they're able to catch them before they cause the accidents and ... therefore they don't need to address it."

REPRESENTATIVE GRUENBERG remarked:

It might be worth doing because I could see somebody causing a terrific accident, and actually, not only the accident there, but contributing to the emergency - somebody has a heart attack and the ambulance is in an accident and never saves life, or there's another accident and the fire truck doesn't make it and there's a horrible fire. So they could really contribute to two, different, terrible events. You might want to take a look at that.

REPRESENTATIVE GARA opined, however:

I don't think there'd be a need to take a look at that. ... I think it'd still be clearly admissible in a civil case, it would clearly be an exacerbating circumstance, [and] probably subject the person to punitive damages - as it should - and once we make it a crime, that would be relevant to the court's analysis as to how sanctionable that conduct is in the civil case. I don't think we need to do any more work on that.

Number 1230

CHAIR McGUIRE asked whether there were any objections to the motion to report CSSB 255(FIN) out of committee. There being none, CSSB 255(FIN) was reported from the House Judiciary Standing Committee.

HB 535 - LIMIT STATE AID FOR MENTAL HEALTH CARE

Number 1260

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 535, "An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an effective date." [Before the committee was CSHB 535(HES).]

Number 1282

ROBERT HAMMAKER, Interim Treatment and Recovery Manager, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), indicated that HB 535 will alter recently enacted statutes that fund "local psychiatric hospitalization in lieu of going to [the Alaska Psychiatric Institute (API)] alone." He went on to say:

Most of the hospitalization - 98 percent of those hospitalizations - occur in Fairbanks and Juneau, and ... roughly a dozen other local hospitals are eligible to take people for local psychiatric hospitalization as well (indisc.). Now, this bill is in response to our sort [of] approaching a point where [we're] exceeding our budgets and not wanting to exceed the budget as announced. It's an important service; it's a critical service to have local hospitalization as well [the] API and local community programs. This bill will give us the ability to better manage the funding and the kind of services that are provided in the local hospitals. ...

Among the stakeholders ... there's broad consensus supporting the idea of improved management that this bill gets us. There is controversy over Section 2, which limits the funding to the legislative appropriation. The [Alaska Mental Health Trust Authority (AMHTA)] and the [Alaska Mental Health Board (AMHB)] are concerned about that limitation. It's important enough to us to gather the letter of intent and modify some of the language so that we're saying that if [we] were to run out of the money, we would look across to the department to see if there was some other way we could fund this important service. ...

And I've got two handouts: one is ... a number of questions and answers that have come up in previous hearings; and a second one almost might look ... like it doesn't belong here, but one of the challenges ... to this bill is that it was pretty unusual to limit an important service to the legislative appropriated amount, and this [handout lists] ... a dozen or so other bills that [contained] limitations to the legislative appropriations - it's a common part of the language - and that's its only point.

Number 1404

REPRESENTATIVE GARA indicated that he would like an explanation of the bill's sections.

REPRESENTATIVE GRUENBERG concurred.

CHAIR McGUIRE asked why HB 535 had been referred to the House Judiciary Standing Committee, and whether the prior committee had left any contentious issues unresolved.

MR. HAMMAKER reiterated that there is broad consensus for the concept of the DBH handling people who go into local hospitals; that there is controversy over Section 2 because it limits funding to the appropriated amount; that the AMHTA and the AMHB don't want that limitation; and that in an attempt at compromise, the DHSS is supplementing the bill with a letter of intent that acknowledges the importance of this service and will endeavor to fill any funding shortfalls from departmental resources. He added:

The "hospital association" was okay with this if we would assist in moving people out of the local hospital to [the] API or other appropriate community programs in a timely way rather than leaving them stuck in an unfunded position in a local hospital. ... That's the most controversial part.

MR. HAMMAKER turned attention to Section 3, and pointed out that the very first sentence reads in part: "The department shall provide financial assistance ...". The language in Section 2, however, makes that [mandate in Section 3] somewhat weak. He noted that CSHB 535(HES) no longer contains language to the effect that if the program ran out of money, "we would start prorating the amount we pay." With regard to the latter change, he said that the "hospital association" didn't want to get partial payment; instead, "they wanted ... all or none, and, if it's none, help move people out of our hospital." The AMHB and AMHTA didn't have any strong feelings about that provision, and it is no longer in the current version of the bill. As the bill is currently written, it's very much a matter of trying to live within the appropriations, he concluded.

REPRESENTATIVE GRUENBERG asked whether the bill limits a person's right to appeal.

Number 1581

MR. HAMMAKER said that issue has not been controversial, though there was concern about "how we would manage the legislation." He went on to say:

This bill would register people on the first day of admission - it doesn't approve [them] - so that we have a clue to who's coming down the road. The "old legislation" said we would be the payor of last resort up to 180 [days] - they don't have to submit the bill, though, for 180 days after they've been admitted, which is a long time for us to try [to] ... figure out what bills are coming down the pike. Now [under CSHB 535(HES)] we know on the first day of admission that somebody might be coming to us, [though] that's not a final determination of whether ... we are going to make payment or not.

We'll get more information to know if they meet the ... criteria - this is for people who are determined to be dangerous to themselves or others. And there's ... two levels of local designated evaluation and treatment hospitals. One level is for evaluation, and that goes up to 7 days. And there's a second level, and that's treatment, and that ... can be extended up to 40 days.

At day 8, when you transition between those two, we'll make an assertive determination of whether they appear to be committable or not, and we'll set up a process whereby ..., if there's two ... apparent denials from the information that we set up ... in the normal process, ... we'll go to a physician ... discussion [with] the local hospital doctor and either the API doctor or first health [doctor] to have a conversation [about] whether the person's committed or not. It won't be a bureaucrat or a lesser medical person making that determination. That was the one area where there was some controversy about who would be determining whether somebody was eligible or not.

REPRESENTATIVE GRUENBERG directed attention to language in Section 8 that read: "A denial or reduction of assistance under the is chapter due to insufficient appropriations for financial assistance under this chapter may not be appealed under this section". He surmised that this language means that if someone

is denied mental health assistance simply because of insufficient appropriations, then he/she is not allowed to appeal that determination.

Number 1751

MR. HAMMAKER remarked:

We'll run the program full speed until we're out money, and then what happens is that there ... won't be the local hospital option but there'll still be an API option. So people will always get service. Nobody will be denied service. It's the location of the service that would change when we run out of local hospitalization money.

REPRESENTATIVE GRUENBERG asked, "Might this run afoul of the constitutional right to care in the least restrictive setting?"

MR. HAMMAKER replied, "That is a concern."

REPRESENTATIVE GRUENBERG remarked, "That's a federal right under Donaldson v. O'Connor."

MR. HAMMAKER added:

It's not ideal that there isn't unlimited local hospitalization. We are trying very hard to continue this program, [and] with ... a disproportionate share [of] funding, we'll have sufficient money next year. And that's become a high priority in the process of the stakeholder discussions around this subject. But the possibility is that we would run out of money [and] ... there would be less of a local hospitalization option for some people who have no other means of paying, and they would go to [the] API instead. Four years ago we didn't have local hospitalization assertively funded with the bill, so, in some ways, it's not a brand new possibility.

MR. HAMMAKER, in response to questions, relayed that the Senate companion bill has passed out of the Senate Finance Committee, and the objective is to have HB 535 move on to the House Finance Committee so that the two bills can "meet" there.

REPRESENTATIVE GRUENBERG asked why the bill includes a provision stating that a person doesn't have the right to appeal,

particularly given the constitutional issues raised by Donaldson v. O'Connor. He added, "It seems to me to make poor public policy ...."

MR. HAMMAKER suggested that the Department of Law might be better able to address that point. In response to a question, he noted that the Senate companion bill was not referred to the Senate Judiciary Standing Committee.

Number 1952

REPRESENTATIVE GARA asked whether the AMHTA opposes Sections 2 and 8.

MR. HAMMAKER again reiterated that the AMHTA objects to Section 2 but is somewhat satisfied with the aforementioned letter of intent.

REPRESENTATIVE GARA opined that Section 8 essentially repeats Section 2. He asked what appeal rights a patient who gets denied state funding for treatment in a private facility currently has. How does the bill change things in that regard?

MR. HAMMAKER offered that nothing will change dramatically unless the program runs out of money, and then there could be challenges; in the past, when the program has run out of money, the DHSS sought supplemental appropriations. The commissioner has relayed, however, that the DHSS will no longer seek supplemental appropriations.

REPRESENTATIVE GARA asked, "Has this been ... the subject of litigation in the past, where people have said they had a right to stay." "By changing the law in that regard, are you going to then, in essence, prevent litigation by people who say, 'You should fund my stay in a private facility'," he also asked.

MR. HAMMAKER said he is not aware of any past litigation on this issue.

REPRESENTATIVE GRUENBERG asked whether there is any danger that someone too ill to register under the provisions of the bill will fall "through the cracks."

MR. HAMMAKER said that any interested party can file for such persons, including hospital staff.

REPRESENTATIVE GRUENBERG offered his belief that the DHSS is well intentioned, but asked that the bill be held over for the purpose of gathering information from interested parties.

REPRESENTATIVE GARA relayed that he has concerns about Sections 2 and 8 and suggested that they remove those sections from the bill, either at the bill's next hearing in the House Judiciary Standing Committee, or when the bill is heard on the House floor.

Number 2131

CHAIR McGUIRE indicated that HB 535 would be held over.

SB 179 - CRIMINAL BACKGROUND CHECKS/TEACHERS

Number 2153

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 179(FIN), "An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development due to a delay in receiving criminal history records; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

Number 2163

ZACH WARWICK, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, presented SB 179 on behalf of Senator Therriault. He relayed that the concept of SB 179 was brought forth by a constituent who was a retired teacher that had decided to start teaching again and was required to go through the process of getting another teaching certificate. In order to obtain a teaching certificate, a criminal history background check, through both state and federal government agencies, is required. The problem this constituent faced, however, is that over the course of teaching for many years, she has worn away her fingerprints. Currently, there are approximately 30 individuals attempting to get teaching certificates who face this same problem - their fingerprints are worn out to the point where they can no longer be used to obtain a criminal history background check.

MR. WARWICK said that the goal of SB 179 is to create a process by which school administrators and the state will be assured that such a person has received some form of criminal history background check. He elaborated:

What it would do is, if you rolled two subsequent sets of prints and they were determined to be ... illegible due to ... poor quality [of fingerprint ridges], that they would give them a social-security- and a name-based background check so [as] to give us some kind of assurance.

MR. WARWICK relayed that because results of background checks are commonly delayed and not available within the current three-month statutory timeframe, the Senate Health, Education and Social Services Standing Committee changed the period of time in which a person may teach without a teaching certificate from three months to five months if the delay is due solely to the fact that the U.S. Department of Justice (DOJ) has not provided the results within the initial three months. So currently, under the bill, if such a delay occurs, the Department of Education and Early Development (DEED) can grant a 60-day extension of the original three-month period.

Number 2257

MR. WARWICK explained that currently, without this extension, should the DOJ delay in returning the results of a criminal background check, the teacher automatically loses his/her teaching certificate. To get around this problem, a majority of schools simply hire such persons as substitute teachers for an additional three months while waiting for the results of the background check. The provisions of CSSB 179(FIN), in effect, shorten the total time to five months in those circumstances. He mentioned that the DEED has informed him that it doesn't intend to make excessive use of the extension, and was, in fact, hesitant at first to have it included in the bill.

MR. WARWICK relayed that the language in all but Sections 8 and 10 of the bill were suggested by the Department of Public Safety (DPS) and the Department of Law (DOL). One of the problems that SB 179 is intended to address is the fact that Alaska statutes pertaining to criminal history background checks are not in compliance with federal law. For example, federal law requires that state statute list all occupations for which the state allows criminal history background checks. Section 7 now includes that language. Additionally, the bill's drafters went

through the other sections of the bill to ensure that it includes all necessary conforming language, for example, language regarding the fees that are required to be paid by the department in order to get a criminal history background check.

CHAIR MCGUIRE asked what kind of liability the department would face should the person who is granted an extension under Section 8 commit a crime against a child during that extension and the criminal background check ultimately came back showing that the person had a known record of such behavior.

MR. WARWICK declined to answer that question, and reiterated what currently happens when there is a delay in getting the results of a criminal history background check from the DOJ.

**TAPE 04-73, SIDE B**

Number 2397

CHAIR MCGUIRE suggested that instead of providing for a two-month extension, the bill could just allow a person's preexisting fingerprint sample to be used if the results are not back from the DOJ within the initial three-month time period.

MR. WARWICK indicated that the person would then have to go through the application process all over again, adding that currently under the bill, "it's at the discretion of the commissioner of [the DEED] to decide whether this person should be getting this extension.

CHAIR MCGUIRE said she doesn't have a problem with requiring a person to go through the application process again and just use a preexisting fingerprint sample. She relayed that her concern centers on the fact that under the bill as currently written, a person would remain in the classroom for another two months without the department knowing the results of the background check. She suggested that they narrow the bill down by giving the department the discretion to allow use of preexisting fingerprint samples and paperwork in the reapplication process.

MR. WARWICK relayed that he is not that familiar with the nuts and bolts of the application process and didn't have a specific answer as to why such a suggestion might or might not be feasible. He suggested that the DEED's application experts could better address this issue.

REPRESENTATIVE OGG pointed out, however, that Mr. Warwick has mentioned that many school districts are simply hiring people as

substitute teachers in order to get around the problem engendered by the current three-month deadline. If such is the case, those people are already being allowed to remain in the schools and so why not grant the extension.

CHAIR McGUIRE reminded members that in legislation which recently passed the House, there is a provision that requires a person to have submitted fingerprints to the department for use in a criminal history background check and to have been found by the department to be suitable for employment in order to be eligible for a limited teaching certificate. She asked whether a limited teaching certificate is what a substitute teacher must have.

Number 2203

MR. WARWICK suggested that the DEED could best answer that question. Regarding his earlier comment that schools hire those waiting for the results of background checks as substitute teachers, he added that some schools reclassify such people so as to allow them to work temporarily in a capacity that doesn't require a background check. He opined, however, that the current practices surrounding this issue are disruptive to the classroom.

CHAIR McGUIRE noted that a few years ago, she'd been approached by a constituent of hers whose daughter had been sexually abused by a volunteer athletic coach and her constituent felt very strongly that all volunteers who have close and continuing contact with children ought to have criminal history background checks. A task force was convened over the following interim for the purpose of addressing that issue, and she relayed that she'd heard compelling arguments for requiring background checks on such people, and said she has grave concerns about allowing a teacher to stay in the classroom for another two months without knowing what the results of a criminal history background check will be. "Putting them into a clerical position seems absolutely appropriate to me because [then] they are not in close and personal contact, with that power, if you will, over the young people that they're in close proximity to," she added. Section 8 concerns her a great deal, she concluded.

MR. WARWICK noted that the Matanuska-Susitna Borough School District has relayed to him that over the past 12 years, it has never had an applicant's criminal history background check come back with an indication that the applicant should not be hired. He offered his belief that it is much easier to find out

something about a person by checking his/her employment history than it is via doing a criminal history background check.

Number 2101

REPRESENTATIVE GARA asked for clarification:

There's the background check that says whether you have a prior conviction, right? And ... you don't need fingerprints for that, is my understanding - you ... deal with the FBI [Federal Bureau of Investigation], you deal with [the Alaska State Troopers], we do [what's known as] an [Alaska Public Safety Information Network (APSIN)] check, right? And that should come pretty immediately; that should say whether you have any convictions for anything. ... Am I right that we require that before we hire anybody? Am I right about that?

MR. WARWICK indicated that he didn't know.

REPRESENTATIVE GARA continued:

So at a minimum we need to make sure we're doing that, right? You can't start until we have the results from your criminal history check. The fingerprinting check, my understanding is, that helps us determine whether your fingerprints match any sort of open criminal investigation: there's been a spree of child molestations somewhere, you've given your fingerprint check, and that helps us determine whether you are actually a suspect in a pending, open case. ...

So I'm looking at this letter from the [Young Men's Christian Association (YMCA)], and this one talks about somebody who was [almost] hired who had a significant criminal conviction history. And I think that gets resolved as long as we have the [APSIN] and out-of-state criminal background check before we hire somebody, and I think a fingerprint check might be a different issue. I just wanted to bring that [to] everybody's attention as we ask questions; they're both important, but that's where my confusion lies.

Number 2014

KEVIN SWEENEY, Special Assistant, Office of the Commissioner, Department of Education and Early Development (DEED), with regard to Chair McGuire's concern about the two-month extension, said that the DEED had the same concern about a bill that was [introduced] last year. He went on to say:

The way the procedure is now, someone applies for their certificate and they're given a conditional [teaching] certificate once we get their application in and everything's in order, and we send out their fingerprints to the FBI and the [DPS] here for the background check. There was backlog in the past, particularly from ... our [DPS], in getting them back in time, and so we did have a considerable amount of teachers out there ..., where the three months would come up, and the way the law is written, they're technically not allowed in a classroom. I think what the department then did was reissue them another conditional certificate, so they were given another three months extension anyway. I'm fairly certain that's the case. ...

We had a concern with just ... changing that three months to five months; what we wanted to do is see them be more efficient. ... Rather than say there's a problem out there so let's change it to five months, let's address the problem and get the results back quicker so that we know we don't have teachers in classrooms that have criminal ... history. And at some point last year, our [DPS] went to a more automated system, and the case now [is that] we are getting our history back in, I think, about six to eight weeks from [the DPS] and even less time from the FBI.

I know we are getting them back now in an efficient manner, so that I don't really see us, at least in the present case, using this [two-month] extension very often because of the fact that we're getting those records back. And the way that that's written, we did have a concern that we wanted to make sure that it was up to the discretion of the department because of a backlog at [the DOJ or the DPS], not just an automatic [two-months] because perhaps somebody waited until the last minute: they'd been in a classroom for two and a half months and waited to the last minute to apply. So, as long as it's up to the department to be able to

determine that ... there is actually some sort of backlog, we didn't have a major concern with a [two-month] extension.

Number 1903

MR. SWEENEY continued:

As far as [Representative Gara's] question [regarding whether] ... there's a background check ..., I know ... I have had sort of the same concern because, the way it's happening now is, ... teachers are getting another conditional certificate, another conditional certificate, and sometimes they've resubmitted their fingerprints seven or eight times. Which is why this bill originally came, [so] that we could go to that name-based check instead of the fingerprints. What we wanted to see was maybe the second they submit their fingerprints, if they come back as being non-readable, that they instantly institute that name-based check, rather than wait for a second go-around. But I think that the way ... the rules are written by the FBI, ... you can't do that. ...

And [with regard to] Section 10, which deals with the non-legible fingerprints and the people with the physical disability, we have a regulation on the books now that accomplishes basically the same thing; our language is a bit different in that [when compared with] Section 10 [subsection (j)(1) and (2)], we require that the teacher have written documentation from a physician. And in doing that, we wanted to [ensure] that there was some sort of check to make sure that there was, in fact, a skin condition. And I guess [we've] found out since then that the [DPS] and the FBI actually do have the people that are the experts in being able to look at a fingerprint itself ... to determine ... [whether] the person has skin condition or ... [whether] it's just smudged.

MR. SWEENEY concluded:

So I think we ... will change our regulations if this law passes, to reflect the changes here, and remove, at least from [the regulation similar to paragraph 2], the requirement from the physician. I think in ... the first instance, where it's somebody with a

physical disability, meaning they don't have fingerprints, ... since the [DPS] would have to be making that determination from afar, they obviously can't see the person, ... we would ... still leave in our regulation ... [requiring] a physician's note that says ... the person doesn't have ... fingerprints. But I think that's a rare case.

Number 1799

CHAIR MCGUIRE asked Mr. Sweeney, then, whether he even sees a need for those sections of the bill. Is there something the DEED can't accomplish via regulations?

MR. SWEENEY opined that all Section 10 would do would be to match statute up somewhat with current regulations; the DEED would then make appropriate conforming changes to its regulations. In response to further questions, he said that a wide variety of organizations and entities do fingerprinting; that it would be nice if all fingerprints were taken with electronic fingerprint scanners; and that the DEED wanted assurance that when fingerprints are illegible it isn't just because they are smudged.

REPRESENTATIVE GARA asked whether criminal history checks are done before someone is hired, offering his belief that such checks should only take a few days.

MR. SWEENEY offered that different school districts have different policies regarding that issue. Some districts don't allow a person to be in a classroom until the criminal history background check is completed even if it takes the entire three months. Some districts do their own, separate, criminal history background check, and some districts rely on the state's background check.

REPRESENTATIVE GARA said he hopes that criminal history background checks are not delayed until the results of fingerprint tests are returned.

MR. SWEENEY suggested that the DPS ought to be able to confirm that point. What the DEED wants from SB 179 is the ability to institute a name-based search immediately upon finding out that a person's fingerprints are illegible. He offered his belief, however, that the FBI won't do a name-based check until certain requirements are met.

REPRESENTATIVE GARA reiterating his belief that conviction and arrest records are available very quickly, and therefore he does not see any reason to delay doing a check for those.

CHAIR McGUIRE said that according to her understanding of [current statute], a person can be in the classroom for as long as three months without the results of a criminal history background check being known. Additionally, Section 8 provides for a two-month extension to that time period. She remarked, "I wonder if what we're doing is saying that we're relying on the [DOJ] for everything, including just that basic criminal history."

The committee took an at-ease from 4:30 p.m. to 4:40 p.m.

CHAIR McGUIRE noted that members have in their packet a position statement from the Anchorage School District (ASD) which reads in part: "The Anchorage School District does a local background check, but the national check may take 3-4 months." She mentioned the possibility of altering the bill such that the proposed two-month extension would be limited to just national criminal history background checks.

Number 1464

CYNDY CURRAN, Teacher Education & Certification, Teaching and Learning Support, Department of Education and Early Development (DEED), offered to answer questions.

REPRESENTATIVE GARA asked whether state law requires that at least the criminal conviction and arrest record are known before hiring a teacher.

MS. CURRAN replied, "When a teacher applies for certification and we send the fingerprint card to the [DPS], we get the results of the background check when it's completed - there's no preliminary anything that's done with that."

REPRESENTATIVE GARA surmised, then, that in cases where fingerprints cannot be read, the DEED is not getting the remaining results of the background check "in advance of that." Instead, all the results are arriving at the same time later on.

MS. CURRAN concurred, and clarified that if the fingerprints cannot be read, the DEED is notified by the DPS or FBI and in turn notifies the applicant that he/she needs to resubmit the fingerprint card. She said that if there are no problems or a

huge backlog at the agency performing the check, the process can take about three months. If an applicant has to redo his/her fingerprints, the DEED issues a conditional certificate as long as another set of fingerprints have been submitted. In response to further questions, she reiterated that the DEED does not get anything back from the FBI or the DPS in advance of a complete criminal history background check, which includes the results of the fingerprint check; explained that the DEED only deals with the teaching certification process, which enables a person to be considered for employment; and mentioned that individual school districts have their own policies regarding the actual hiring of teachers, and may institute their own criminal history background checks.

REPRESENTATIVE GARA asked, "And one of the things that they need to prove to you before they get a certificate is that they have no serious prior convictions of serious felonies, right?"

MS. CURRAN said that is correct.

Number 1217

DIANE SCHENKER, Criminal Justice Planner, Division of Statewide Services, Department of Public Safety (DPS), in response to questions, said that state law allows anyone who's hiring someone that will be working with children to do a name-based check for criminal history in Alaska through APSIN. Such cannot be done for a national criminal history check, however, because federal law requires [fingerprints] before a record can be checked for employment licensing purposes. She relayed that a check via APSIN for employment licensing purposes wouldn't provide any out-of-state information, but that APSIN could provide a record regarding a person's criminal history in Alaska within a matter of days. She noted that any deviation from the current process of checking a person's criminal history through the federal system for employment licensing purposes would require a change in federal rules.

MS. SCHENKER, in response to further questions, explained that when the DEED sends the DPS the fingerprint card - and not before - the DPS starts the process of obtaining a person's state and federal criminal history records; once that information is gathered, it is forwarded onto the DEED so that the DEED may complete the certification process. She relayed that the turnaround time for criminal history records has been reduced to about 3 weeks.

REPRESENTATIVE HOLM said he is disturbed by the concept that while the DEED is waiting for the results of a fingerprint-based criminal history check, a person could be working in the classroom without even a cursory, name-based background check being performed.

MS. SCHENKER pointed out, however, that a person's court records are available to the public via the Internet, and that [school districts] can get a name-based check done through APSIN for a \$20 fee. She mentioned that she would follow up on the issue of possibly seeking a change to the federal rules.

CHAIR McGUIRE asked what terminology should be used if an amendment were made to institute a name-based check.

MS. SCHENKER said, "We refer to it as just a check of the record that is based on identification other than fingerprints."

The committee took an at-ease from 4:59 p.m. to 5:04 p.m.

Number 0453

LARRY WIGET, Executive Director, Public Affairs, Anchorage School District (ASD), offered the following:

The Anchorage School District does do [a] state background check on teachers before ... they are placed in the classroom. And it has been our experience [that] a national background check may take longer than ... three months, so we support the extension of [an additional two months] beyond the three months. That's based on some very strict criteria I see written in the law under Section 8 and that's with ... written permission of the [DEED]. I don't know the specifics of the exact time lately, I know [that] in the last couple of years ..., background checks have been taking longer than ... three months to get to us, and we just want to make sure that we have options available to us [for the teacher], having cleared [a] local background check, to remain in the classroom while we're looking [indisc. - background noise]. ...

The Anchorage School District ... supports the additional time for a national check to be completed, and that's only ... with the written extension granted by the [DEED]. We do our own local/state background

check ... before we put people into the classroom, and while we're waiting for those records to come back, sometimes it's been taking longer than the three months, and that what's precipitated cause for this section to be added to the law - it has been taking longer, in cases, to get [a fingerprint] ... check back from the FBI.

CHAIR McGUIRE indicated that the committee would be holding the bill over, and asked Mr. Warwick to relay to the sponsor the issues raised and find out which changes the sponsor would be amenable to.

Number 0071

REPRESENTATIVE CARL GATTO, Alaska State Legislature, opined that the goal [of SB 179] is to keep child molesters out of the classroom. He relayed that the school districts he has been in contact with do "an individual check" while waiting for the results of the fingerprint-based check.

**TAPE 04-74, SIDE A**

Number 0001

REPRESENTATIVE GATTO said that according to a conversation he'd had with the human resource manager of the Matanuska-Susitna School District, not once in eight years has a person who's been approved to work in the classroom while waiting for the results of a fingerprint-based background check had those results come back indicating that he/she should not be in the classroom. He offered his belief that the current time constraints create situations that are disruptive to the classroom; that the bill will make for better education; and that the main problem stems from delays at the federal level. He suggested that purchasing electronic fingerprint scanners could be another step towards protecting children, but until such is done, the bill provides an intermediate solution.

REPRESENTATIVE GARA asked how often state background checks are conducted.

REPRESENTATIVE GATTO said he did not know.

REPRESENTATIVE GARA indicated that he would be willing to consider making a statutory requirement that a person show that he/she has had a statewide criminal history background check conducted within the preceding five years.

Number 0472

REPRESENTATIVE GATTO pointed out, however, that a person can change, and thus requiring evidence that a background check was conducted within the past five years will not ensure that the person hasn't done something recently. He offered his belief that SB 179 will be helpful.

REPRESENTATIVE HOLM offered his belief that a teacher must be recertified every five years, and that this involves conducting a criminal history background check.

[SB 179 was held over.]

**ADJOURNMENT**

Number 0520

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