

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

March 31, 2005  
9:07 a.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative John Coghill, Vice Chair  
Representative John Harris  
Representative Vic Kohring  
Representative Lesil McGuire  
Representative Ethan Berkowitz

**MEMBERS ABSENT**

Representative Beth Kerttula

**COMMITTEE CALENDAR**

HOUSE BILL NO. 95

"An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

- MOVED CSHB 95(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 88

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

- MOVED CSHB 88(RLS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 95

SHORT TITLE: PUBLIC HEALTH DISASTERS/EMERGENCIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	HES, JUD
02/10/05	(H)	HES AT 3:00 PM CAPITOL 106
02/10/05	(H)	Moved CSHB 95(HES) Out of Committee

02/10/05 (H) MINUTE(HES)  
02/11/05 (H) HES RPT CS(HES) NT 2DP 2NR 1AM  
02/11/05 (H) DP: CISSNA, WILSON;  
02/11/05 (H) NR: GARDNER, ANDERSON;  
02/11/05 (H) AM: KOHRING  
03/04/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/04/05 (H) Heard & Held  
03/04/05 (H) MINUTE(JUD)  
03/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/07/05 (H) Moved CSHB 95(JUD) Out of Committee  
03/07/05 (H) MINUTE(JUD)  
03/09/05 (H) JUD RPT CS(JUD) NT 1DP 6NR  
03/09/05 (H) DP: ANDERSON;  
03/09/05 (H) NR: GRUENBERG, KOTT, DAHLSTROM,  
COGHILL, GARA, MCGUIRE  
03/31/05 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HB 88

SHORT TITLE: OFFENSES BY MINORS/AGAINST TEACHERS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/05 (H) READ THE FIRST TIME - REFERRALS  
01/19/05 (H) JUD, FIN  
01/26/05 (H) JUD AT 1:00 PM CAPITOL 120  
01/26/05 (H) -- Meeting Canceled --  
02/02/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/02/05 (H) <Bill Hearing Postponed to Fri. 2/4/05>  
02/04/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/05 (H) -- Rescheduled from Wed. 2/2/05 --  
02/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/07/05 (H) Heard & Held  
02/07/05 (H) MINUTE(JUD)  
02/16/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/16/05 (H) Moved CSHB 88(JUD) Out of Committee  
02/16/05 (H) MINUTE(JUD)  
02/18/05 (H) JUD RPT CS NT 1DP 6NR  
02/18/05 (H) DP: GRUENBERG;  
02/18/05 (H) NR: ANDERSON, KOTT, COGHILL, DAHLSTROM,  
GARA, MCGUIRE  
03/16/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/16/05 (H) Bill Postponed To 3/17/05  
03/17/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/17/05 (H) Heard & Held  
03/17/05 (H) MINUTE(FIN)  
03/21/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/21/05 (H) Moved CSHB 88(FIN) Out of Committee  
03/21/05 (H) MINUTE(FIN)

03/22/05 (H) FIN RPT CS(FIN) NT 8NR  
03/22/05 (H) NR: HAWKER, WEYHRAUCH, JOULE, MOSES,  
HOLM, KELLY, CROFT, STOLTZE  
03/31/05 (H) RLS AT 9:00 AM FAHRENKAMP 203

#### **WITNESS REGISTER**

DR. RICHARD MANDSAGER, Director  
Division of Public Health  
Department of Health and Social Services (DHSS)  
Juneau, Alaska  
POSITION STATEMENT: Answered questions regarding HB 95 and  
proposed amendments to it.

DAN BRANCH, Senior Assistant Attorney General  
Human Services Division  
Civil Division (Juneau)  
Department of Law  
Juneau, Alaska  
POSITION STATEMENT: Answered questions regarding HB 95 and  
proposed amendments to it.

JOHN BITNEY, Lobbyist  
Alaska Nurses Association  
Palmer, Alaska  
POSITION STATEMENT: Discussed Amendment 2 to HB 95.

RANDY RUARO, Assistant Attorney General  
Legislation & Regulations Section  
Office of the Attorney General  
Department of Law  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 88.

#### **ACTION NARRATIVE**

**CHAIR NORMAN ROKEBERG** called the House Rules Standing Committee meeting to order at [9:07:37 AM](#). Representatives Rokeberg, Coghill, Harris, Kohring, McGuire, and Berkowitz were present at the call to order.

#### **HB 95-PUBLIC HEALTH DISASTERS/EMERGENCIES**

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 95, "An Act relating to public health and public health emergencies and disasters; relating to duties of

the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date." [Before the committee was CSHB 95(JUD).]

[9:08:14 AM](#)

REPRESENTATIVE MCGUIRE referred to HB 95 as the quarantine bill. She informed the committee that Alaska is one of the few states without quarantine capabilities. She explained that the legislation includes language which would allow for a civil cause of action against a state employee. However, it has been determined that a criminal penalty would be more appropriate, with which she noted her agreement [to the notion and the amendment]. The legislation expands the different locales where there could be a cause of action against a state employee who abused his or her power. She pointed out that [the committee packet should also include another amendment] which would add nurse practitioners to the list of medical individuals in the legislation. She noted her support of the aforementioned amendment.

[9:09:57 AM](#)

REPRESENTATIVE HARRIS moved that committee adopt Amendment 1, labeled 24-GH1002\F.2, Mischel, 3/24/05, which read:

Page 2, line 29:

Delete ", isolation, medical treatment, or"

Insert "or isolation, or by"

Page 2, line 31:

Delete "in circumstances provided under AS 18.15.388"

Insert "for damages caused by medical treatment provided under AS 18.15.355 - 18.15.395 by a state employee"

Page 9, following line 17:

Insert a new subsection to read:

"(c) A person who knowingly discloses identifiable health information in violation of this section or a regulation adopted under this section is guilty of a class B misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a)."

Page 16, lines 22 - 25:

Delete all material.

REPRESENTATIVE BERKOWITZ objected.

[9:10:49 AM](#)

DR. RICHARD MANDSAGER, Director, Division of Public Health, Department of Health and Social Services (DHSS), echoed Representative McGuire's earlier testimony that Alaska is the only state in the nation without adequate quarantine and isolation authorities. He noted that the committee packet should include PowerPoint slides that summarize the journey of this legislation through the committee process. The legislation, he opined, does three things of importance for the state: it updates the state's public health authorities; it places due process provisions in the legislation for someone who wants to appeal action; and it updates the standards and management of identifiable health information. Amendment 1 is in response to an amendment on page 16, lines 22-25, added in the House Judiciary Standing Committee. The parts of Amendment 1 that make changes on page 2, place DHSS employees at the same level as any other health care practitioner in the state. Therefore, if DHSS employees don't manage medical treatment, they are held to the same standard as any other physician or nurse in the state. Furthermore, if [DHSS employees] don't meet medical standards of care, there is liability for the lack of appropriate medical care. The part of Amendment 1 that makes changes to page 9 inserts subsection (c) regarding the identifiable health information, and makes a knowing violation of the disclosure of health information a criminal violation. Dr. Mandsager viewed it as appropriate that [DHSS employees] be held to a standard that imposes criminal penalties as individuals. The reason to eliminate the civil liability is because when there is an appeal, the courts are involved, except for an emergency order by a medical officer. The aforementioned can even be taken to court within 72 hours, if there is the contention that the department isn't managing appropriately.

[9:15:28 AM](#)

CHAIR ROKEBERG related his understanding that a licensed physician in the state who reveals confidential patient information is subject to criminal prosecution as a misdemeanor.

DR. MANDSAGER clarified that there are federal Health Insurance Portability and Accountability Act (HIPAA) standards that must be met.

9:16:08 AM

DAN BRANCH, Senior Assistant Attorney General, Human Services Division, Civil Division (Juneau), Department of Law, said that he is unaware of any state provision regarding a private physician breaching confidentiality.

CHAIR ROKEBERG recalled that in the patients' bill of rights he authored there were standards of privacy, but he didn't recall any criminal sanctions. Therefore, he questioned whether it would be a federal cause of action.

MR. BRANCH said that he wasn't sure how it would proceed. The HIPAA standards place a heavy burden on the state and physicians to protect confidential or identifiable health information. He offered to let committee staff know the answer after some research.

CHAIR ROKEBERG said he would appreciate such because this would create a new crime.

MR. BRANCH clarified that this is analogous to other provisions protecting confidential information, such as child protection information. Those in violation of AS 47.10 would be liable for a misdemeanor.

9:17:57 AM

REPRESENTATIVE BERKOWITZ inquired as to how knowingly quarantining someone is distinguishable from kidnapping or falsely imprisoning someone.

MR. BRANCH specified that the legislation wouldn't make it a crime to violate the quarantine and isolation provisions. As Dr. Mandsager explained, there's no need to have a civil cause of action for suing the state for violations of quarantine and isolation provisions because the rights provided by the provision to the respondents can be enforced within the hearings provided by the statute itself. An individual wrongly quarantined will be able to come before a judge and relate his or her story and have an attorney help with that. At the time it's most important to protect an individual's rights, there's already a remedy provided by this legislation. Therefore, it's unnecessary to provide a criminal sanction or a civil sanction for a violation of the quarantine and isolation provision.

9:19:25 AM

REPRESENTATIVE BERKOWITZ remarked that the aforementioned presumes that the individual knows to secure an attorney and is capable of doing so.

MR. BRANCH opined that the provision provides a requirement of notice to be given to an individual being quarantined.

REPRESENTATIVE BERKOWITZ clarified that he was posing a situation in which there is a knowing violation, a knowing quarantine even though it's improper, and he questioned the recourse the improperly quarantined individual would have.

CHAIR ROKEBERG asked whether the individual would go the Attorney General's Office.

REPRESENTATIVE BERKOWITZ remarked that the history of imposing quarantines in this country isn't particularly impressive. Quarantines have been imposed for various nefarious reasons. If an individual in a community wanted to impose a quarantine in violation of these rules, he didn't believe the quarantined individual would be informed of his or her rights to an attorney. Therefore, he said he was hesitant to carve out the liability. The state's liability keeps the infrastructure of the state vigilant before anyone imposes a quarantine. However, he said he knows of cases in which health information was disclosed in small communities for vindictive reasons.

CHAIR ROKEBERG suggested that the act of imposing a quarantine is notice to the public, in and of itself, that there will be restricted access.

REPRESENTATIVE BERKOWITZ questioned how anyone would know when an individual has been quarantined. Furthermore, if the aforementioned is done in knowing violation of the rules, he questioned the recourse available to the improperly quarantined individual.

9:22:08 AM

REPRESENTATIVE COGHILL questioned whether it would be appropriate to hold a department employee who makes a spurious claim to quarantine criminally liable.

REPRESENTATIVE BERKOWITZ indicated agreement, but reiterated that if the state remains civilly liable, then the state will

remain vigilant in regard to its personnel. If the state isn't going to be held accountable for the actions of its employees, then it's difficult to relay the message of accountability. Every time the legislature makes the state exempt from liability, the legislature sends a message.

[9:23:25 AM](#)

REPRESENTATIVE MCGUIRE opined that a criminal charge is more of an incentive for a state employee to be accountable. The old law was a \$1,000 civil fine, which amounts to one permanent fund dividend check. Representative McGuire then drew attention to page 12, which lists very specific circumstances under which the government can impose a quarantine. There are also conditions and standards, such as notice and a superior court order. She highlighted that page 13 specifies what the petition to the superior court has to allege. Therefore, the notion of an individual being locked up somewhere without anyone knowing is preposterous.

[9:25:16 AM](#)

REPRESENTATIVE BERKOWITZ emphasized that when people don't follow the rules, there needs to be some recourse for the victim. The victim would be someone who is falsely or improperly quarantined. He pointed out that the state would hold someone criminally and civilly liable for kidnapping and he didn't see much difference between the aforementioned and a knowing false quarantine. He questioned why the state should be exempted from its responsibility to ensure that its employees are behaving properly.

[9:26:11 AM](#)

REPRESENTATIVE COGHILL said that although he would tend to agree, he opined that an individual who misuses or circumvents the state law should be held criminally liable.

REPRESENTATIVE BERKOWITZ pointed out that criminal liability doesn't make the victim whole. Therefore, civil liability should be allowed if the desire is to allow the victim to be made whole.

CHAIR ROKEBERG asked if someone who felt he or she was improperly quarantined would have any recourse to appeal to the courts for relief.

MR. BRANCH replied yes, and pointed out that [the department] must go to court in order to obtain a quarantine in the first place. He agreed with Chair Rokeberg that the first remedy would be to appeal to have the quarantine set aside. Furthermore, the legislation provides for requests for review during the quarantine if an individual believes it's no longer necessary.

[9:27:52 AM](#)

REPRESENTATIVE BERKOWITZ moved to divide the question such that Amendment 1A would read as follows:

Page 2, line 29:

Delete ", isolation, medical treatment, or"

Insert "or isolation, or by"

Page 2, line 31:

Delete "in circumstances provided under AS 18.15.388"

Insert "for damages caused by medical treatment provided under AS 18.15.355 - 18.15.395 by a state employee"

Amendment 1B would read as follows:

Page 9, following line 17:

Insert a new subsection to read:

"(c) A person who knowingly discloses identifiable health information in violation of this section or a regulation adopted under this section is guilty of a class B misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a)."

Amendment 1C would read as follows:

Page 16, lines 22 - 25:

Delete all material.

CHAIR ROKEBERG ruled that the question is divisible as specified above.

REPRESENTATIVE BERKOWITZ stated that fundamentally the question is whether the state should be liable when its employees do something wrong. He opined that the state has a responsibility as an employer; it should be no different than a private employer.

[9:29:18 AM](#)

CHAIR ROKEBERG asked if there is objection to Amendment 1A [text provided previously].

REPRESENTATIVE BERKOWITZ objected to Amendment 1A.

A roll call vote was taken. Representatives Harris, Coghill, McGuire, and Rokeberg voted in favor of the adoption of Amendment 1A. Representatives Kohring and Berkowitz voted against it. Therefore, Amendment 1A was adopted by a vote of 4-2.

The committee took a brief at-ease from 9:29 a.m. to 9:30 a.m.

[9:31:06 AM](#)

CHAIR ROKEBERG announced that the adoption of Amendment 1B [text provided previously] is before the committee.

[9:31:12 AM](#)

REPRESENTATIVE BERKOWITZ asked if there is a criminal penalty for someone who knowingly quarantines or isolates [an individual] in violation of the statutes.

MR. BRANCH replied no.

REPRESENTATIVE MCGUIRE highlighted that [Amendment 1B] is an expansion of rights.

REPRESENTATIVE BERKOWITZ reiterated that there's no criminal penalty for a knowing violation of quarantine or isolation. Therefore, if an individual knowingly and falsely quarantines someone, there is no criminal penalty. [Amendment 1B] speaks only to the disclosure of health information.

[9:32:27 AM](#)

DR. MANDSAGER reiterated his earlier testimony that the only time a departmental employee can quarantine an individual is in an emergency and for only a maximum of 72 hours. Every other time there is a quarantine, a court must be involved. Therefore, he couldn't see how there could be a knowing quarantine or isolation.

REPRESENTATIVE BERKOWITZ maintained that an individual with the authority to impose a quarantine can do so, and it could be a knowing violation, and yet there is no direct criminal sanction attached.

[9:33:32 AM](#)

REPRESENTATIVE BERKOWITZ moved that the committee adopt a conceptual amendment to Amendment 1B "that would bring in knowing violations of quarantining or isolation."

REPRESENTATIVE COGHILL indicated that the aforementioned would fall under AS 18.55.385.

[9:34:04 AM](#)

REPRESENTATIVE HARRIS asked then if the penalty is merely a class B misdemeanor.

REPRESENTATIVE BERKOWITZ commented that the aforementioned seems to be a problem.

CHAIR ROKEBERG asked if Representative Berkowitz wanted to make knowing violations of quarantining or isolation symmetrical with kidnapping.

REPRESENTATIVE BERKOWITZ surmised that the prosecution would have some discretion in regard to how to charge in these circumstances.

CHAIR ROKEBERG asked if there were any objections to the conceptual amendment to Amendment 1B. There being no objection, the conceptual amendment to Amendment 1B was adopted.

CHAIR ROKEBERG announced that Amendment 1B, as amended, is before the committee. There being no objection, Amendment 1B, as amended, is adopted.

[9:35:53 AM](#)

CHAIR ROKEBERG then announced that before the committee is Amendment 1C [text provided previously].

REPRESENTATIVE BERKOWITZ objected. He opined that the state shouldn't be "let off the hook," which would be the case with the deletion of the language specified in Amendment 1C.

[9:36:14 AM](#)

REPRESENTATIVE MCGUIRE characterized this as a difference in philosophy. Over the last couple of years, the legislature has expanded some of the sovereign immunity provisions in the state. Representative McGuire opined that a criminal penalty sends a strong message. However, placing a civil cause of action provides a liability that sits. The aforementioned is onerous, she opined. Furthermore, there is no precedent for it. She reminded the committee of the DNA legislation, which seems to fall in line with this and it has a criminal penalty as well.

[9:37:50 AM](#)

REPRESENTATIVE HARRIS surmised that if the amendment passes, any reference to civil penalties would be deleted and due to the adoption of Amendment 1B, as amended, criminal charges have been added. He questioned why it wouldn't be appropriate for a [victim] of a [false quarantine or isolation] to be able to receive civil compensation.

REPRESENTATIVE MCGUIRE reiterated that it's a philosophical difference. Imagine a circumstance in which a quarantine is imposed; she suggested that it would be absolute chaos. She opined that it would be quite a [burden] to also have civil liability exposure with a \$1,000 fine for each single violation. Furthermore, those civil actions hang over an individual's ability to secure loans, purchase houses, and follow the individual forever. Representative McGuire emphasized that this is a matter of public health, which benefits all. Moreover, the civil penalty might deter individuals from doing such work.

[9:40:22 AM](#)

DR. MANDSAGER related that this amendment has caused a great deal of distress for [Division of Public Health] staff because of the compensatory damages for which the division employee would be personally liable. He expressed concern with [the division's] ability to recruit staff if they may be personally liable for their actions.

[9:41:19 AM](#)

CHAIR ROKEBERG noted that he is sensitive to where Alaska sits in relation to international trade, traffic, and importation of infectious diseases. He said he would vote in favor of the amendment as a vote of support for the [division's] staff.

REPRESENTATIVE BERKOWITZ maintained his objection.

[9:42:01 AM](#)

A roll call vote was taken. Representatives Harris, Coghill, Kohring, McGuire, and Rokeberg voted in favor of Amendment 1C. Representative Berkowitz voted against it. Therefore, Amendment 1C was adopted by a vote of 5-1.

[9:42:30 AM](#)

REPRESENTATIVE MCGUIRE withdrew Amendment 2, labeled 24-GH1002\F.4, Mischel, 3/30/05.

REPRESENTATIVE BERKOWITZ suggested offering Amendment 2 without the portion on page 12, line 13, following "restrictive", inserts "or most effective".

REPRESENTATIVE MCGUIRE explained that she had thought Amendment 2 would only add nurse practitioner and expand the definition. She said that although she would be willing to [consider] the portion of Amendment 2 on page 20, line 18, which deletes "nurse," and inserts "licensed nurse, nurse practitioner," she still had concerns. She characterized the first part of Amendment 2, which on page 12, line 13, following "restrictive", inserts "or most effective", as egregious because it expands governmental authority beyond what is desired. The portion of Amendment 2 that addresses highly toxic agents actually moves in the complete opposite direction of where the debate led the legislation in the House Judiciary Standing Committee. Therefore, she decided to withdraw Amendment 2.

[9:44:39 AM](#)

CHAIR ROKEBERG moved that the committee adopt Amendment 2, 24-GH1002\F.4, Mischel, 3/30/05, which read:

Page 12, line 13, following "restrictive":  
Insert "or most effective"

Page 12, line 14, following "others":  
Insert "or to prevent the exposure to or transmission of a highly toxic agent or substance. The department shall carry out isolation or quarantine"

Page 19, line 7:  
Delete "radiological"  
Insert "radioactive"

Page 19, line 10:  
Delete "radiological"  
Insert "radioactive"

Page 20, line 18:  
Delete "nurse,"  
Insert "licensed nurse, nurse practitioner,"

Page 20, following line 19:  
Insert a new paragraph to read:  
"(13) "highly toxic agent or substance" means an agent or substance, or the quality of an agent or substance, that can cause serious illness, injury, or death to a person exposed to the agent or substance; "highly toxic agent or substance" includes a radioactive material or an individual who has been exposed to a radioactive material."

Re-number the following paragraphs accordingly.

REPRESENTATIVE MCGUIRE objected.

[9:44:50 AM](#)

JOHN BITNEY, Lobbyist, Alaska Nurses Association, acknowledged that Amendment 2 opened up more than was intended. Furthermore, he related that he now understands that the toxins are covered elsewhere in HB 95. The idea [with Amendment 2] was to ensure that things such as dirty bombs, although not contagious, could be transmitted from another person, should also be subject to the legislation.

MR. BITNEY did request that the committee consider adopting the portion of Amendment 2 on page 20, line 18, which deletes "nurse," and inserts "licenses nurse, nurse practitioner,". A licensed nurse would essentially be an R.N., he noted.

[9:46:26 AM](#)

CHAIR ROKEBERG moved to amend Amendment 2 such that it would read as follows:

Page 20, line 18:

Delete "nurse,"

Insert "licensed nurse, nurse practitioner,"

REPRESENTATIVE MCGUIRE asked if Dr. Mandsager could think of a [situation] in which the public health would benefit from including LPNs or another class of nurses or nurse practitioners.

DR. MANDSAGER pointed out that the on page 20, line 13, the definitions section includes "nurse practitioner". With regard to whether to include a general nurse, he suggested just keeping "nurse" as long as "nurse practitioner" is kept [in the definitions section].

[9:48:17 AM](#)

REPRESENTATIVE MCGUIRE said she could understand that there are situations in which a nurse practitioner would be [desirable], but she believes the legislation covers them. However, she said she didn't want to exclude pieces of the public health model.

CHAIR ROKEBERG withdrew his amendment to Amendment 2. He then announced that Amendment 2 was off the table.

[9:49:13 AM](#)

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 3, which read:

Page 26, following line 30:

Insert a new bill section to read:

**\*Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

GRANT APPLICATIONS. The Department of Health and Social Services is encouraged to apply for appropriate funding sources relating to transforming health care quality through information technology, including one or more of the implementation grants sponsored by the United States Department of Health and Human Services, the National Institutes of Health, and the National Library of Medicine."

Renumber the following bill section accordingly.

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ informed the committee that there are many grants that could be available to the state from the health information networks. The health information networks have been touted as a way to improve the quality of health care while reducing the costs. He expressed the hope that Amendment 3 would encourage the Division of Public Health to apply for some of these grants.

REPRESENTATIVE MCGUIRE said that she had no objection to Amendment 3.

REPRESENTATIVE COGHILL commented that he has no objection to the concept, but he questioned whether HB 95 is the correct vehicle. He suggested that perhaps budget legislation would be a better place for such language.

REPRESENTATIVE BERKOWITZ maintained his motion to adopt Amendment 3. He pointed out that Amendment 3 merely encourages the department to apply; there is no mandate.

CHAIR ROKEBERG inquired as to whether Amendment 3 fits under the current title of HB 95.

REPRESENTATIVE BERKOWITZ pointed out that the legislation is an Act relating to public health.

REPRESENTATIVE HARRIS commented that Amendment 3 is germane to the title of HB 95.

[9:52:22 AM](#)

CHAIR ROKEBERG withdrew his objection, and therefore Amendment 3 was adopted.

[9:53:22 AM](#)

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

Insert the following language:

AS 47.04.020(b) is amended to read:

(13) persons under age 19 who are not covered under (a) of this section ANS whose household income does not exceed

[(A) \$1,847 A MONTH IF THE HOUSEHOLD  
CONSISTS OF ONE PERSON;

(B) \$2,489 A MONTH IF THE HOUSEHOLD CONSISTS OF TWO PERSONS;

(C) \$3,130 A MONTH IF THE HOUSEHOLD CONSISTS OF THREE PERSONS;

(D) \$3,722 A MONTH IF THE HOUSEHOLD CONSISTS OF FOUR PERSONS;

(E) \$4,414 A MONTH IF THE HOUSEHOLD CONSISTS OF FIVE PERSONS;

(F) \$5,055 A MONTH IF THE HOUSEHOLD CONSISTS OF SIX PERSONS;

(G) \$5,697 A MONTH IF THE HOUSEHOLD CONSISTS OF SEVEN PERSONS;

(H) \$6,339 A MONTH IF THE HOUSEHOLD CONSISTS OF EIGHT PERSONS;

(I) \$6,339 A MONTH, PLUS AN ADDITIONAL \$642 A MONTH FOR EACH EXTRA PERSON ABOVE EIGHT PERSONS WHO IS IN THE HOUSEHOLD IF THE HOUSEHOLD CONSISTS OF NINE PERSONS OR MORE] 200 percent of the federal poverty guideline as defined by the Federal Office of Management and Budget and revised under 42 U.S.C. 9902(2);

(14) pregnant women who are not covered under (a) of this section and whose household income does not exceed

[(A) \$2,489 A MONTH IF THE HOUSEHOLD CONSISTS OF TWO PERSONS; A PREGNANT WOMAN IN A HOUSEHOLD ALONE IS CONSIDERED TO BE A HOUSEHOLD OF TWO PERSONS;

(B) \$3,130 A MONTH IF THE HOUSEHOLD CONSISTS OF THREE PERSONS;

(C) \$3,772 A MONTH IF THE HOUSEHOLD CONSISTS OF FOUR PERSONS;

(D) \$4,414 A MONTH IF THE HOUSEHOLD CONSISTS OF FIVE PERSONS;

(E) \$5,055 A MONTH IF THE HOUSEHOLD CONSISTS OF SIX PERSONS;

(F) \$5,697 A MONTH IF THE HOUSEHOLD CONSISTS OF SEVEN PERSONS;

(G) \$6,339 A MONTH IF THE HOUSEHOLD CONSISTS OF EIGHT PERSONS;

(H) \$6,339 A MONTH PLUS AN ADDITIONAL \$642 A MONTH FOR EACH EXTRA PERSON ABOVE EIGHT PERSONS WHO IS IN THE HOUSE HOLD IF THE HOUSEHOLD CONSISTS OF NINE PERSONS OR MORE;] 200 percent of the federal poverty line as defined by the Federal Office of Management and Budget and revised under 42 U.S.C. 9902(2).

CHAIR ROKEBERG objected.

REPRESENTATIVE BERKOWITZ specified that Amendment 4 is for Denali Kid Care. He reminded the committee that when Denali Kid Care was changed a couple of years ago, [the legislature] locked in to some numbers rather than a percentage of poverty. As a result, fewer and fewer people are able to take advantage of Denali Kid Care, which was a successful program. The aforementioned was a step the legislature shouldn't have taken. Given the budget surplus today, health care can be provided to a broader group of people, he opined.

CHAIR ROKEBERG maintained his objection, and indicated that he didn't believe HB 95 is the appropriate venue for Amendment 4.

[9:54:48 AM](#)

REPRESENTATIVE HARRIS commented that Amendment 4 would cause HB 95 to have a fiscal note and thus would require a referral to the House Finance Committee.

[9:55:20 AM](#)

A roll call vote was taken. Representative Berkowitz voted in favor of the adoption of Amendment 4. Representatives Coghill, Kohring, McGuire, Harris, and Rokeberg voted against it. Therefore, Amendment 4 failed by a vote of 1-5.

[9:55:45 AM](#)

REPRESENTATIVE MCGUIRE moved that the committee adopt Conceptual Amendment 5, which would change the title in order to more accurately reflect the quarantine subject of HB 95. There being no objection, Conceptual Amendment 5 was adopted.

[9:56:26 AM](#)

REPRESENTATIVE MCGUIRE moved to report CSHB 95(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 95(RLS) was reported out of the House Rules Standing Committee.

HB 88-OFFENSES BY MINORS/AGAINST TEACHERS

CHAIR ROKEBERG announced that the final order of business would be HOUSE BILL NO. 88, "An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing

for certain offenses committed against a school employee; and providing for an effective date."

9:57:10 AM

RANDY RUARO, Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law, informed the committee that the Anchorage school District supports HB 88. He related his understanding that the Fairbanks School District has submitted a letter of support for the Senate's [companion] legislation. Mr. Ruaro said that there are three substantive sections of HB 88, Sections 2-4. Section 2 creates a new aggravating factor for certain crimes against a person or arson committed on school grounds or a school bus. Section 3 limits an existing mitigator that has been applied in at least one [Alaska] Superior Court in a manner not believed to be as it was originally intended. He explained that in one superior court, the mitigator for assisting authorities determined that it can apply that mitigator, even in subsequent cases. Therefore, a person who assisted authorities, say five or more years ago and received credit for an offense at that time, can claim that credit again in future cases. However, [the department] doesn't believe that was the intent of the original language. This provision clarifies that the mitigator only applies for the offense before the court at the time. Section 4 automatically waives 16-17 year olds charged with certain serious crimes, such as misconduct involving weapons, using a firearm at a drug deal, or shooting at someone in a drive-by shooting. The criminal division has reviewed Representative Hawker's proposed amendment and supports it.

9:59:26 AM

REPRESENTATIVE MCGUIRE moved that the committee adopt Amendment 1, 24-GH1096\I.1, Luckhaupt, 3/24/05, which read:

Page 1, line 1, following "**minors;**":

Insert "**relating to the definition of 'recreation or youth center' for purposes of misconduct involving a controlled substance;**"

Page 1, line 9:

Delete "Sections 1, 2, and 4"

Insert "Sections 1, 3, and 5"

Page 1, following line 10:

Insert a new bill section to read:

"\* **Sec. 2.** AS 11.71.900(20) is amended to read:

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground

(A) run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors; or

(B) operated by a public or private agency to provide shelter, training, or guidance for minors."

Renumber the following bill sections accordingly.

Page 3, line 12:

Delete "Sections 2 - 4"

Insert "Sections 2 - 5"

REPRESENTATIVE BERKOWITZ objected. He turned attention to subparagraph (B) of Amendment 1, and opined that "operated by a public or private agency" encompasses practically everything and everyone.

MR. RUARO explained that the genesis for Amendment 1 was the Covenant House, which houses many youth in treatment for drug issues. Apparently, dealers are aware of the aforementioned and hang around such treatment facilities and try to sell drugs to the youth residing there.

REPRESENTATIVE BERKOWITZ said that he is supportive of the intent. However, he expressed concern with the loose language of Amendment 1 because a public or private agency encompasses everything. He related the need for the language to be more precise.

MR. RUARO related his understanding that because these treatment facilities are operated by both private and public entities, the language was broadly stated in order to cover all the various types of organizations that offer assistance to youth.

REPRESENTATIVE BERKOWITZ asked if this language would include his [private residence].

MR. RUARO said that he wasn't sure that a private residence would qualify as an agency. Certainly, the legislation isn't intended to apply to private residences.

[10:02:32 AM](#)

REPRESENTATIVE MCGUIRE suggested adding language to subparagraph (B) of Amendment 1 so that it would read: "operated by a public or private agency licensed to provide". She suggested that the facilities being [discussed] have to obtain a license.

MR. RUARO assumed that such facilities would at least have to have a business license.

[10:03:28 AM](#)

CHAIR ROKEBERG suggested inserting the following language: "formally organized and operated" to [subparagraph (B)].

REPRESENTATIVE BERKOWITZ pointed out that "agent" is defined in AS 11.71.900 where it means an authorized person who acts on behalf or or at the direction of a manufacturer, distributor, and dispenser. Therefore, he suggested changing the reference from "agency" to "entity."

CHAIR ROKEBERG suggested the word "organization."

[10:04:35 AM](#)

CHAIR ROKEBERG opined that purveyors and sellers of drugs and so forth actually target school buildings and [rehabilitation/treatment facilities] because of the lack of an aggravator. The intention [of the amendment] is meritorious and the committee just needs to wordsmith the language.

REPRESENTATIVE MCGUIRE suggested using the following language: "operated by a public or private entity that specifically provides".

CHAIR ROKEBERG suggested the following language: "formally organized" which relates the legislative intent.

REPRESENTATIVE MCGUIRE suggested that the language [in subparagraph (B) in Amendment 1] could read as follows: "formally organized public or private entity that specifically provides ...".

REPRESENTATIVE BERKOWITZ pointed out that "organization" has a definition specified in AS 11.81.900. Representative Berkowitz related his preference to utilize words that are already [used]. He then suggested the following language: "operated by an organization that is licensed to provide".

CHAIR ROKEBERG commented that "licensed" is of concern because as Mr. Ruaro mentioned one could say that having a business license means the entity is licensed.

REPRESENTATIVE HARRIS interjected that a business license may be all that some of the facilities being discussed have.

REPRESENTATIVE BERKOWITZ maintained that he is leery about including private homes [residences].

[10:06:35 AM](#)

REPRESENTATIVE COGHILL highlighted that [in the Fairbanks area] there are shelters that are nothing more than residences that open their doors for local youth.

[10:06:48 AM](#)

CHAIR ROKEBERG related his understanding that the language in subparagraph (B) of Amendment 1 would read: **"operated by a public or private organization licensed to provide shelter, training, or guidance for minors."**

REPRESENTATIVE HARRIS asked if the aforementioned language would exclude a residence from being licensed, as mentioned by Representative Coghill.

CHAIR ROKEBERG should be able to do so.

[10:07:45 AM](#)

CHAIR ROKEBERG moved that the committee adopt an amendment to Amendment 1, as follows:

Line 16 [as numbered on Amendment 1], after "**private**":  
Delete "**agency**"  
Insert "**organization licensed**"

There being no objection, the amendment to Amendment 1 was adopted. Therefore, Amendment 1, as amended, was before the committee. There being no objection, Amendment 1, as amended, was adopted.

[10:08:26 AM](#)

REPRESENTATIVE BERKOWITZ moved that the committee adopt Conceptual Amendment 2, which would delete Section 3 and the portion of the title that reflects it.

REPRESENTATIVE HARRIS objected.

REPRESENTATIVE BERKOWITZ expressed concern that often law enforcement officers are able to make deals that may or may not be related to the offense. Without fully hearing the impact this amendment would have on law enforcement's ability (indisc.), he said he didn't believe it needs to be changed, especially if this is based on a single case. In response to Chair Rokeberg, Representative Berkowitz pointed out that Section 3 adds the following language, "after commission of the offense for which the defendant is being sentenced". He then posed a situation in which someone tells [law enforcement] about a crime, with which he or she is going to be involved, that is going to happen.

[10:10:31 AM](#)

MR. RUARO informed the committee that the language has been vetted by District Attorney Bob Linton in Anchorage, who believes the language will work. He related that [District Attorney Linton didn't believe law enforcement's] ability to obtain information would be compromised by this. The concern is that other superior court judges could apply mitigators to cases when individuals assisted authorities several years prior. The intent is to stop doubling and tripling of credit for the mitigator.

[10:11:36 AM](#)

REPRESENTATIVE MCGUIRE suggested that [the language in Section 3] might even allow a defendant on the hook for a separate crime to provide information about a crime and receive a mitigated sentence.

REPRESENTATIVE BERKOWITZ said he would feel better if District Attorney Linton were present in order to field some hypothetical situations.

[10:12:19 AM](#)

CHAIR ROKEBERG related his understanding that there is case law or actions of the judiciary that give rise to this particular provision.

MR. RUARO replied yes, [Section 3] arose out of an Alaska Superior Court decision in a felony case in Ketchikan. One of the superior court judges gave the defendant credit for a mitigator for an act of assisting authorities, the act was prior to the time the offense was committed and it related to a different case.

CHAIR ROKEBERG said that he shared Representative Berkowitz's concern that an individual shouldn't receive a mitigator for an action that hasn't taken place because that's prevention of a crime.

[10:13:19 AM](#)

REPRESENTATIVE MCGUIRE opined that there is enough "wobble room" to get at what is desired. She characterized this as a philosophical question regarding whether one wants more crimes mitigated or not. Although a mitigator should be allowed when someone is assisting, the problem is that the legislation is broadened with the earlier mentioned superior court decision. It's disconcerting, she opined, that [a judge] could look back in time and apply a mitigator to a completely separate occasion. Therefore, she expressed the desire to clean it up. She related her philosophical belief that the fewer mitigators, the better.

CHAIR ROKEBERG noted that the objections to Conceptual Amendment 2 were maintained.

[10:14:37 AM](#)

A roll call vote was taken. Representatives Kohring and Berkowitz voted in favor of adopting Conceptual Amendment 2. Representatives McGuire, Harris, Coghill, and Rokeberg voted against it. Therefore, Conceptual Amendment 2 failed by a vote of 2-4.

[10:15:14 AM](#)

REPRESENTATIVE BERKOWITZ turned attention to Section 4 of CSHB 88(FIN), and inquired as to why the bolded language doesn't track with AS 11.61.190.

MR. RUARO explained that it doesn't track with AS [11.61].190 because it includes a section about shooting at property. The House Judiciary Standing Committee amended [Section 4] such that

the situation should be limited to factual cases in which there is a person who was threatened by the shooting.

10:16:07 AM

REPRESENTATIVE BERKOWITZ pointed out that the language missing from AS [11.61].190 refers to the "discharge of firearm from a propelled vehicle while the vehicle is being operated".

MR. RUARO clarified that he was referring to the deletion of "or damage to property", which was the language that was dropped in the House Judiciary Standing Committee

REPRESENTATIVE MCGUIRE highlighted that the underlying point of this legislation is that it's an auto waiver of a minor into the adult system, which is very serious. The concern is that when discharging a weapon at property is involved, there are circumstances that she didn't believe one would want to include for auto waivers. Therefore, the language deviated from the original statute and was made more narrow.

REPRESENTATIVE COGHILL recalled that part of the discussion [in the House Judiciary Standing Committee] was that the crime against the person rose to the level of an auto waiver while a crime against property didn't.

10:18:10 AM

REPRESENTATIVE MCGUIRE moved to report CSHB 88(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal notes numbered 3 and 4.

REPRESENTATIVE BERKOWITZ noted that his committee packet didn't include a fiscal note from the Department of Corrections. Furthermore, some of the fiscal notes said that the legislation may or may not lead to increased costs, which could be said of anything at any time.

REPRESENTATIVE MCGUIRE interjected that the fiscal note to which Representative Berkowitz is referring is from the House Finance Committee, and noted that this [legislation] is not that committee's area of expertise.

There being no objection, CSHB 88(RLS) was reported from the House Rules Standing Committee.

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## **ADJOURNMENT**

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at [10:20:04 AM](#).