

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 9, 2005

1:31 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Max Gruenberg

MEMBERS ABSENT

Representative Les Gara

COMMITTEE CALENDAR

HOUSE BILL NO. 81

"An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration."

- MOVED CSHB 81(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 99

"An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

- MOVED CSHB 99(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 81

SHORT TITLE: CONTRACTOR LICENSE ENFORCEMENT

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/19/05 (H) READ THE FIRST TIME - REFERRALS
01/19/05 (H) L&C, JUD, FIN
01/21/05 (H) L&C AT 3:15 PM CAPITOL 17
01/21/05 (H) Heard & Held
01/21/05 (H) MINUTE(L&C)
01/26/05 (H) L&C AT 3:15 PM CAPITOL 17
01/26/05 (H) Moved CSHB 81(L&C) Out of Committee
01/26/05 (H) MINUTE(L&C)
02/02/05 (H) L&C RPT CS(L&C) NT 5DP 1NR
02/02/05 (H) DP: LYNN, KOTT, LEDOUX, GUTTENBERG,
ANDERSON;
02/02/05 (H) NR: ROKEBERG
02/09/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 99

SHORT TITLE: CRIMES INVOLVING CONTROLLED SUBSTANCES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) JUD, FIN
02/09/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JON BITTNER, Staff
to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 81 on behalf of the sponsor,
Representative Anderson.

AL NAGEL, Supervisor
Mechanical Inspection
Division of Standards & Safety
Department of Labor & Workforce Development (DLWD)
Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion
of HB 81.

JEFF DeSMET, President
Southeast Alaska Building Industry Association (SABIA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 81.

JOHN BITNEY, Lobbyist
for Alaska State Home Builders Association (ASHBA)
Palmer, Alaska

POSITION STATEMENT: During discussion of HB 81, provided comments on behalf of the ASHBA and responded to questions.

DAVE DILLARD, President
Alaska State Home Builders Association (ASHBA)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 81.

CATHY BALDWIN-JOHNSON, M.D.
Wasilla, Alaska

POSITION STATEMENT: During discussion of HB 99, provided comments regarding the harm and dangers that befall children as a result of their exposure to methamphetamine and its manufacture, and said she is in favor of anything that will help keep children safe.

ED BRYANT, Detective
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 99, and provided comments regarding the harm and dangers that befall children, as well as adults, as a result of their exposure to methamphetamine and its manufacture.

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

POSITION STATEMENT: Presented HB 99 on behalf of the administration and responded to questions.

AUDIE HALLOWAY, Deputy Chief
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 99.

JAMES STEELE, Children Services Manager
Southcentral Region
Child Protective Services
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS);
Deputy Chief

Central "Mat-Su" [Matanuska-Susitna] Fire Department
Matanuska-Susitna Borough
Palmer, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 99 and relayed that he is interested in seeing the bill move forward.

TIMOTHY D. BIRT, Sergeant
Southeast Alaska Narcotics Enforcement Team (SEANET)
Alaska State Troopers
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 99.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [1:31:32 PM](#). Representatives McGuire, Anderson, Coghill, and Dahlstrom were present at the call to order. Representatives Kott and Gruenberg arrived as the meeting was in progress.

HB 81 - CONTRACTOR LICENSE ENFORCEMENT

[1:32:11 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 81, "An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration." [Before the committee was CSHB 81(L&C).]

[1:32:22 PM](#)

JON BITTNER, Staff to Representative Tom Anderson, Alaska State Legislature, sponsor, said on behalf of Representative Anderson that HB 81 changes the way the state deals with unregistered contractors. Currently, Alaska exempts individuals from getting a contractor's license if they're working on a job that costs less than \$5,000 in materials and labor. This has resulted in

about 1,600 unregistered handymen operating in Alaska today, representing about 23 percent of the "contractor market." This exemption category is by far the largest category of any contractor category, he noted. Under current statutes, the Department of Labor & Workforce Development (DLWD) and the Department of Commerce, Community, & Economic Development (DCCED) handle violations of work performed by unlicensed contractors by issuing citations, which are left to the Department of Law (DOL) to prosecute; enforcement of these citations, he remarked, is extremely difficult.

MR. BITTNER explained that HB 81 will allow the DLWD and the DCCED to issue civil fines for violations - \$1,000 for the first violation, and \$1,500 for subsequent violations - and the fines can be appealed to an administrative officer. The benefit of this proposed system, he posited, is that it allows the DLWD and the DCCED to quickly and effectively prosecute violators in way that is currently unavailable. In conclusion he mentioned that the violations "in this section" won't be applied to communities of less than 1,000 people not connected by road or rail to Anchorage or Fairbanks - roughly 232 communities.

[1:34:13 PM](#)

REPRESENTATIVE DAHLSTROM, referring to those 232 communities, asked whether the DOL has raised any concerns regarding equal protection.

MR. BITTNER offered his understanding that the DOL has seen the bill and has not raised any such concerns.

CHAIR McGUIRE noted that the language in question can be found on page 2, in subsection (e) of Section 2. She asked what the rationale was for such an exemption.

MR. BITTNER suggested that industry representatives might be better able to address that question.

[1:35:38 PM](#)

AL NAGEL, Supervisor, Mechanical Inspection, Division of Standards & Safety, Department of Labor & Workforce Development (DLWD), relayed that he did not know the rationale for that language.

[1:37:41 PM](#)

JEFF DeSMET, President, Southeast Alaska Building Industry Association (SABIA), testified in support of HB 81. Referring to an e-mail he sent to Chair McGuire, he paraphrased as follows:

As a member of the construction industry in Alaska for 30 years, I urge you, Madame Chairman and your committee, to support HB 81. As you are aware, there are problems with unlicensed contractors building homes in Alaska. These people continue to ignore the current statutes and thumb their noses at licensed professional builders and remodelers. Your support of HB 81 would go along way to protect Alaskan consumers from illegal contractors and help [the DLWD and the Division of] Occupational Licensing enforcement officers pressure these individuals into current statute compliance. As a member of the board of directors for the Alaska State Home Builders [Association] as well, representing over 250 licensed general contractors, we strongly would urge your consideration of HB 81.

[1:39:44 PM](#)

JOHN BITNEY, Lobbyist for Alaska State Home Builders Association (ASHBA), relayed that HB 81 is the product of an industry work group. One of the issues raised in putting the bill together pertained to the ability of those living in rural Alaska to obtain a licensed contractor, and although HB 81 doesn't change current standards for licensure, it does attempt to recognize that it is difficult to hire licensed contractors in very small communities due to economies of scale. For example, there might no be enough work in a community to make it worthwhile for a carpenter to go get registered [with the state]. He pointed out, however, that subsection (e) of Section 2 merely provides an exemption from the civil penalties proposed in the bill; violations of AS 08.18 in such communities would still be subject to citation.

REPRESENTATIVE KOTT mentioned that he'd heard the bill in the House Labor and Commerce Standing Committee.

[1:42:27 PM](#)

DAVE DILLARD, President, Alaska State Home Builders Association (ASHBA), relayed that the ASHBA, via HB 81, is looking for ways to protect the consumer. He noted that [licensed] contractors

must satisfy bonding, insurance, and continuing education requirements, and that there is a growing concern regarding persons acting as contractors without having satisfied those requirements. The ASHBA recognizes that there is a great need for the handyman, but wants to make sure that the people who are doing small jobs are staying within the handyman category; therefore, if a job goes over \$2,500, the ASHBA wants to make sure that the person doing that job is qualified.

MR. DILLARD remarked that the other part of the equation is that people want to build their own homes, and the ASHBA feels that that should be possible. However, there are a lot of people who say they are building a home for themselves but are really just building a house for the purpose of selling it within a year. Therefore the bill proposes a requirement that a person has to wait two years before selling a home he/she has built. The goal of the bill, he indicated, is to afford people protection against unlicensed contractors.

[1:45:36 PM](#)

CHAIR McGUIRE surmised that the bill is intended to address situations wherein people are representing themselves as qualified to build/repair homes but are doing so without the proper knowledge, insurance, and bonding and are thus leaving consumers without recourse for jobs done poorly.

MR. DILLARD concurred.

REPRESENTATIVE ANDERSON said he wants those who've satisfied bonding, insurance, and continuing education requirements to be on an equal playing field with those [who haven't]. He mentioned that there is also the issue of safety when homes are being built or repaired by unqualified contractors, as well as the fear that the work of licensed contractors will be devalued. Referring to the aforementioned two-year requirement, located on page 5, he explained that this language is intended to preclude someone from claiming that he/she is building a home for living in, in order to get around licensing requirements, when really he/she is building the house with the intention of selling it right away. He noted that this two-year requirement can be waived on a case-by-case basis if the person can demonstrate that waiting two years will cause an undue hardship.

[1:48:34 PM](#)

REPRESENTATIVE COGHILL referred to page 4, lines 15-25, and expressed concern that he might run afoul of that stipulation when he gets paid more than \$5,000 for labor and materials on jobs he is doing for friends.

CHAIR MCGUIRE pointed out that that language is part of current statute.

REPRESENTATIVE KOTT mentioned that the legislature changed that amount from \$10,000 to \$5,000 just last year.

REPRESENTATIVE COGHILL indicated that although he doesn't want to run afoul of the law, he also doesn't want to have to give away his labor when helping out a friend.

REPRESENTATIVE KOTT pointed out that this language is intended to ensure that handymen aren't holding themselves out as qualified to do jobs so big that they ought to be done by licensed contractors rather than handymen.

REPRESENTATIVE COGHILL mentioned that he's done jobs over the stipulated amount several times for friends and as a church volunteer without thinking that he needed to be a licensed contractor.

CHAIR MCGUIRE suggested to Representative Coghill that he consider proposing an amendment addressing the issue of volunteer work.

REPRESENTATIVE COGHILL indicated that he's done such jobs for money, although not as his primary vocation, but hasn't gone out and solicited such work.

[1:55:37 PM](#)

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 81.

REPRESENTATIVE KOTT opined that with the changes made in the House Labor and Commerce Standing Committee, the bill is a good piece of legislation.

CHAIR MCGUIRE suggested that the committee request a legal opinion regarding any potential equal protection issues being raised because of [subsection (e) of Section 2].

REPRESENTATIVE ANDERSON indicated that he would be willing to work with Representative Coghill regarding his concerns, and expressed a desire to move the bill along quickly because the construction season will be starting soon.

REPRESENTATIVE KOTT surmised that there may not be any equal protection issues raised, since the proposed civil penalties are not mandatory.

[1:57:39 PM](#)

REPRESENTATIVE ANDERSON moved to report CSHB 81(L&C) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 81(L&C) was reported from the House Judiciary Standing Committee.

HB 99 - CRIMES INVOLVING CONTROLLED SUBSTANCES

[1:57:58 PM](#)

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 99, "An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

[1:58:13 PM](#)

CATHY BALDWIN-JOHNSON, M.D., relayed that she is a family physician in Wasilla, works for Providence Matanuska Health Care, and is the volunteer medical director for The Children's Place, a children's advocacy center in the "valley." She said that her interest in and concerns about methamphetamine are related to the impact it has on children. The number of methamphetamine laboratories ("labs") is rapidly increasing in Alaska, especially in the Matanuska-Susitna ("Mat-Su") valley. When people manufacture methamphetamine in their homes, there are many hazards and risks with the parent chemicals that are being used, with the manufacturing process itself, and with the final drug product; additionally, it is very common that children are in these homes.

DR. BALDWIN-JOHNSON said that it is known that substance abuse either causes or exacerbates at least 7-10 case of child abuse and neglect [yearly] and, with methamphetamine in particular, there are significant [risks] for children, including injuries from the chemicals used in manufacturing and from the needles

which surrounding adults use to inject themselves, and the diversion of resources because parents are spending all of their time, energy, and money on methamphetamine and the manufacture of methamphetamine instead of on buying food and clothing, and otherwise providing for their children's needs. There are problems with attachment to their children if the parents are spending all their time indulging in substance abuse, there are environmental dangers, and children are exposed to criminal behavior and to a lot of strange people coming in and out of the home to buy methamphetamine.

DR. BALDWIN-JOHNSON said that methamphetamine use is associated with escalated levels of violence, with pornography, and with sexual aggression, none of which constitute a healthy environment for children. Some specific risks to children include organ damage - studies in other state have shown that these children suffer from kidney, liver, spleen, and brain damage, the latter of which sometimes results in permanent aggressive behavior - and the inability of their parents to be good parents because they also suffer from brain damage. When a parent use methamphetamine during pregnancy, it presents a significant risk to the unborn child, including death, birth defects, and irreversible brain damage; the latter effect is measurable once the child hits grade school.

DR. BALDWIN-JOHNSON said that a 2003 youth risk behavior survey showed that 6 percent of Alaskan high school students admitted to using methamphetamine at least once. High school is a time when adolescent brains are undergoing a lot of change and growth, so it's a really vulnerable time for these children to get hooked on methamphetamine. Nationally, somewhere between 30-50 percent of home methamphetamine labs have children living in them, and in the Mat-Su valley, the unofficial count, from "our drug team there," is significantly higher, perhaps closer to 75 percent. A really frightening statistic from the Lower 48 shows that 80 percent of children taken out of an active methamphetamine lab will test positive for methamphetamine if a urine drug screen is performed within two hours. This is not because two-year-olds, for example, are using methamphetamine; instead, it's because methamphetamine is in their environment: it's on the floors where they crawl, it's on the food that they eat, it's in the refrigerator right next to beverage containers from which they drink, it's in the air that they breath.

[2:03:01 PM](#)

DR. BALDWIN-JOHNSON pointed out that in addition to the aforementioned exposure risks, children are also at risk from fires and explosions because such are common in methamphetamine labs due to the dangers involved in the manufacturing process. Also, children are often neglected and abused by their parents and the various people who are coming in and out of their homes. Children are more vulnerable to the environmental hazards of methamphetamine because, in relation to body weight, they have more skin surface, they breath more air, they eat more food, and they drink more water than adults; also, children's organ systems are immature and thus more easily damaged by exposure to methamphetamine and the parent chemicals used in its manufacture. She noted that a national organization has looked at model state drug laws and has found that with regard to methamphetamine and the children exposed to it, Alaska has lenient drug laws compared to other western states. In conclusion, she said she is absolutely in favor of anything that will help keep children safe from what she surmised to be an increasing problem in Alaska - [methamphetamine use and manufacture].

[2:04:20 PM](#)

REPRESENTATIVE COGHILL asked Dr. Baldwin-Johnson whether HB 99 is significantly different from laws in other states, and whether she has any further recommendations for proposed changes.

DR. BALDWIN-JOHNSON replied that she would like to see significantly stiffer penalties for people that manufacturer methamphetamine around children, and would like to see such behavior classified as a type of child abuse and have it be escalated to a higher level of child endangerment offense. She offered her understanding that the bill provides for a class C felony if one is convicted of manufacturing methamphetamine in a building inhabited by children.

REPRESENTATIVE COGHILL referred to the portion of the bill which provides that a person could be charged with manslaughter if someone dies as a result of the person manufacturing or delivering a controlled substance in violation of AS 11.71.

DR. BALDWIN-JOHNSON opined that Alaska law needs something [similar] for children who are actually in homes where methamphetamine is being manufactured, not just for those that die.

REPRESENTATIVE COGHILL mentioned that he is seeking input on these issues for a bill he is working on.

2:06:16 PM

ED BRYANT, Detective, Anchorage Police Department (APD), Municipality of Anchorage (MOA), relayed that he has been assigned to the drug unit for about nine years, and so has seen the rise in methamphetamine production. He said he would echo Dr. Baldwin-Johnson's comments regarding the damage to children caused by exposure to methamphetamine and its manufacture. As currently proposed, the bill is certainly needed for the protection of children and the general public. He offered the following example:

[On] January 19 [2005], we took down a methamphetamine lab in Anchorage in a multiunit apartment building. Even being outside the building there was evidence of the methamphetamine production because the acid gases that were produced in the lab came out of the vent and actually discolored and damaged the exterior of home. The inside of the home was a light yellow color, all of the walls were [a] light yellow color, except in the very corners where the iodine and other chemical fumes wouldn't settle because of the dead air space in the very corners. Inside this home was an eighteen-month-old child.

MR. BRYANT noted that currently, if someone is [19 years of age or older], AS 11.71.010 provides that it is an unclassified felony for delivering a schedule IA or schedule IIA controlled substance to a person, under the age of 19, who is three or more years younger. The bill, however, addresses circumstances involving people - namely children inside these labs - who don't have the option of refraining from exposure to these substances. Why, he asked, would the penalty for manufacturing or attempting to manufacture methamphetamine in a residence where there are children be any less severe than that provided for in AS 11.71.010.

MR. BRYANT noted that there has been a lot of research on the dangers of manufacturing methamphetamine, including a study done by the National Jewish Medical and Research Center in Colorado in which methamphetamine "cooks" were carried out in very controlled circumstances in 16 different locations, including residences, to find out what the residual amounts were of both the controlled substances and the accompanying toxic substances

used in their production. That study showed conclusively that methamphetamine and iodine residue can be found throughout the house in which methamphetamine is manufactured, and that the other accompanying toxic chemicals, which are very volatile, can generally be found in the location where the processing occurs; thus children in such locations are being exposed to methamphetamine.

MR. BRYANT noted that one of the reasons for methamphetamine's prevalent use is that it makes people feel really, really good. This is because it causes the transmitters for two very important brain chemicals - dopamine and serotonin - to fire all at once, resulting in an extreme amount of euphoria. Unfortunately, it also results in the destruction of both the transmitters and receptors of these chemicals in the brain; this is part of the brain damage spoken of earlier. Those two chemicals are what allow people to experience everyday pleasures and regulate moods; they are essentially what keep humans within the bounds of societal norms with regard to non-aggressive behavior and being able to cope with and solve different problems. The people who use methamphetamine or are subjected to it, as in the case of children living where methamphetamine is being manufactured, will suffer this brain damage.

MR. BRYANT, in conclusion, relayed that he is very much in support of HB 99, and is very passionate about this issue because he has seen the effects of methamphetamine use and exposure.

[2:12:00 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 5, paragraph (5), and asked why the language stipulates, "**methamphetamine in an organic solution**".

MR. BRYANT said that such a solution is a product of the reaction and results from the next to the last step in manufacturing; he noted that the phrase used in the bill is inclusive.

REPRESENTATIVE GRUENBERG mentioned that AS 11.81.900(b)(22) defines "dwelling" as, "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging". He asked whether the language currently located on page 3, lines 3-4, which says in part, "with reckless disregard that the building is a dwelling for one

or more children", should be changed to say the building is a "current dwelling".

CHAIR McGUIRE pointed out that the language says, "is a dwelling", and suggested that that phrase will be interpreted to mean, "current dwelling." She acknowledged, however, that if there are concerns regarding this issue, the language could be changed to say, "is currently a dwelling".

[2:17:09 PM](#)

REPRESENTATIVE ANDERSON - noting that lines 22-26 of page 2 address the issue of apartment complexes and other buildings consisting of separate units - indicated that if one apartment in an apartment complex is being used as a methamphetamine lab, even though there may not be children residing in that particular apartment, the hazardous effects and risks are present for everyone living in the rest of the building. He also indicated that he is in favor of strict penalties regardless of whether the building or a unit in the building is currently being used as a dwelling for children.

MR. BRYANT concurred, and offered an example of an explosion occurring in methamphetamine lab located in one unit of a six-unit apartment complex - the explosion was so severe that it resulted in the building being blown off of its foundation. So there is not only a risk from the toxins that can be found in a methamphetamine lab, there is also a risk from explosion and fire. For this reason, he remarked, he supports the bill's current definition of "building," which is located on page 2, lines 22-26.

REPRESENTATIVE ANDERSON agreed, characterizing that definition as important, and noting that it also addresses office buildings and other buildings that might rent separate units.

MR. BRYANT mentioned that smaller daycare centers are sometimes located in strip malls, where it would not be uncommon for someone to try to conceal a methamphetamine lab. Although discussion thus far has been limited to methamphetamine labs, he remarked, there are other types of labs that are just as dangerous if not more so.

[2:22:37 PM](#)

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

relayed that HB 99 does three things. The bill provides for a charge of manslaughter for manufacturing or delivering a controlled substance in violation of Alaska's drug laws if a person dies as a result of ingesting that controlled substance; this provision stipulates that that death does not require an additional culpable mental state as an element of the offense - the culpable mental state is the drug violation itself. She noted that other states have similar laws, either specifically in statute or in "decisional law based on felony murder statutes or laws."

MS. CARPENETI noted that currently, AS 11.51.130 makes the crime of allowing a child under the age of 18 to be present during illegal drug activities a class A misdemeanor, and relayed that the bill contains a child endangerment provision that makes it a class C felony for endangering the welfare of a child in the first degree by knowingly manufacturing or attempting to manufacture methamphetamine with reckless disregard that the building is a dwelling of one or more children under the age of 18. With regard to the provision pertaining to methamphetamine in an organic solution, she pointed out that the only reason for possessing such a solution is for the purpose of periodically extracting and distributing methamphetamine. Possession of methamphetamine is a class C felony, manufacture of methamphetamine is a class A felony, and possession of a precursor of methamphetamine with intent to manufacture methamphetamine is also a class A felony.

[2:25:32 PM](#)

MS. CARPENETI - with regard to the language in the bill that says, "with reckless disregard that the building is a dwelling for one or more children" - offered her belief that "is a dwelling" is sufficient to address Representative Gruenberg's concern, but acknowledged that they could consider saying "currently used as a dwelling".

REPRESENTATIVE GRUENBERG said he totally agrees with the bill but want to ensure that the section being discussed won't be used too broadly.

CHAIR McGUIRE relayed that committee staff has suggested a possible fix: on page 3, line 3, after "is", delete "a dwelling", and insert "used as a person's permanent or temporary home or place of lodging". This additional language is currently used in AS 11.81.900(b)(22).

REPRESENTATIVE GRUENBERG expressed a willingness to offer that suggested change as a conceptual amendment.

[2:27:43 PM](#)

MS. CARPENETI, in response to a question, relayed that although the term "building" is currently defined in statute for the whole of Title 11, that definition excludes units in an apartment building, and since the DOL clearly wanted to have the bill apply to such units, it proposed the change, located on page 2, lines 22-26, to the definition of "building" as it would be used in the bill.

[2:28:15 PM](#)

REPRESENTATIVE GRUENBERG noted that portions of proposed AS 11.71.020(a) use the phrase, "intent to manufacture", but proposed AS 11.71.020(a)(5) uses the phrase, "intent to extract" He asked Ms. Carpeneti to comment.

MS. CARPENETI explained that the word "extract" was used because methamphetamine in an organic solution is methamphetamine, and so couldn't be called a precursor or treated like one in statutory language. In response to a further question, she noted that it can be difficult to prove whether someone intends to extract methamphetamine from the organic solution.

REPRESENTATIVE GRUENBERG asked whether they would be able to say that certain types of evidence shall be prima facie evidence of intent.

MS. CARPENETI said the DOL tries to be cautious [of such language], since it does have the burden of proving every element of an offense beyond a reasonable doubt.

[2:31:09 PM](#)

REPRESENTATIVE KOTT offered an example of one person selling a drug to another person who in turn sells it to someone who then dies from ingesting that drug. He asked who could be charged in such a situation.

MS. CARPENETI indicated that both the person initially selling the drug and the person acting as the middleman in that transaction could be charged, though proof that their actions contributed to the death must first be established.

[2:32:14 PM](#)

REPRESENTATIVE KOTT asked what the current law is regarding selling a drug to someone who then goes out and kills another person.

MS. CARPENETI relayed that the 2004 Alaska Court of Appeals case, Whitesides v. State engendered HB 99. In that case, a person sold heroin to someone who ended up dying from an overdose. The trial court found that the aggravating factor of somebody being physically harmed as a result of the crime should apply and thus the presumptive sentence should be increased. The Alaska Court of Appeals disagreed, however, because of the causation argument, since the person who ingested the drug made the choice to ingest that drug himself. House Bill 99 is intended to avoid that causation argument by saying the drugs themselves caused the death. She mentioned that she didn't know whether there is something in current law that addresses Representative Kott's last example, because although there are felony murder charges for drug offenses, such wouldn't apply in instances where a death is caused because of the ingestion of a drug.

[2:35:06 PM](#)

REPRESENTATIVE GRUENBERG referred to a hypothetical example regarding marijuana sale and use. If someone dies as a result of using the marijuana, could the original grower be found guilty of manslaughter?

MS. CARPENETI said, "If we could prove that, yes." That is the risk one takes when one manufactures or grows illegal drugs.

REPRESENTATIVE GRUENBERG asked why wouldn't the same argument apply to persons/entities that manufacture alcohol.

CHAIR McGUIRE suggested that that line of inquiry was getting off topic.

[2:36:12 PM](#)

AUDIE HALLOWAY, Deputy Chief, Anchorage Police Department (APD), Municipality of Anchorage (MOA), relayed that an average of nine persons per year clearly die from drug overdoses, but several other deaths occur under similar circumstances but don't get added to the aforementioned category because of the way the APD collects its data; for example, the drug use might result in

liver failure, or the person might die while receiving hospital care. He offered the following:

There's a lot of people in Alaska, and I know particularly in Anchorage, that do die because of drugs that are provided by other people, because of the inexact science of the way that they provide the drugs - they don't have any type of way to make sure that the drugs are safe nor do they care if the drugs are safe. I could remember two or three instances, when I ran the drug unit, where we had heroin come into town that was extremely potent, and we had two or three people die from [the] use of that; we had marijuana that was soaked in some kind of chemical that caused two young teenagers to end up in the hospital; we had a death, just last year, from a teenager that took some "thb" that was provided by an older person, and she died right within minutes of taking it, basically, and they didn't do anything to get her any help. So this kind of situation does exist out there and, at this point, a lot of times we can't do anything about it because of the fact that the person intentionally took it themselves.

[2:39:32 PM](#)

JAMES STEELE, Children Services Manager, Southcentral Region, Child Protective Services, Office of Children's Services (OCS), Department of Health and Social Services (DHSS); Deputy Chief, Central "Mat-Su" [Matanuska-Susitna] Fire Department, Matanuska-Susitna Borough, relayed that he is interested in seeing the bill move forward. He concurred with previous testimony regarding the risks and hazards associated with the manufacture of methamphetamine, and reminded the committee that those who are manufacturing these substances are not scientists and therefore the probability of mishap is very high.

MR. STEELE offered the following:

Two years ago the "Mat-Su Drug [Enforcement] Team" seized around 30 [methamphetamine] labs. Last year the numbers had increased to more than 50 [methamphetamine] labs. The Mat-Su field office for [the OCS is] now receiving approximately 40 calls ... monthly that involve methamphetamine in some aspect. During last year, we had 10 situations in which we had

to remove the children and take custody of them. Out of those 10, 8 of them involved active labs.

MR. STEELE opined that children are at a much higher risk in such surroundings because of their natural inclinations to explore and put things in their mouths, and because the entire living environment is contaminated.

[2:42:26 PM](#)

TIMOTHY D. BIRT, Sergeant, Southeast Alaska Narcotics Enforcement Team (SEANET), Alaska State Troopers, Department of Public Safety (DPS), relayed that the DPS supports HB 99. The inherent dangers of methamphetamine labs create great dangers, not only to persons living and in and near such labs, but also to those who are merely passing by. With regard to mobile labs, such as those in the trunks of vehicles, he pointed out that they create an extreme hazard for any children who are transported in such vehicles. In conclusion, he relayed that in his experience, those who manufacture methamphetamine have little regard for the health and safety of either themselves or others.

[2:44:39 PM](#)

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 99.

CHAIR MCGUIRE made a motion to adopt [Conceptual] Amendment 1, which read [original punctuation provided]:

Page 3, line 3:

After "is"
Delete "a dwelling"
Insert "used as a permanent or temporary home or place
of lodging"

CHAIR MCGUIRE asked whether there were any objections to [Conceptual] Amendment 1. There being none, [Conceptual] Amendment 1 was adopted.

[2:45:08 PM](#)

REPRESENTATIVE KOTT again raised the issue of causing damage or committing murder while under the influence of a controlled substance; he opined that [the state] should be able to

prosecute the original seller by establishing a nexus between that person and the person who did the damage or committed a murder while under the influence of the controlled substance. If there is not already a mechanism in place to address such situations, he remarked, then he wants [the legislature] to consider putting something in place that will.

REPRESENTATIVE GRUENBERG, referring to page 1, line 11, relayed that Ms. Carpeneti has told him that that provision of the bill would not be triggered in situations in which somebody knowingly possesses a controlled substance. So, for example, if a person possesses such a substance and someone steals it and then overdoses on it, the possessor could not be found guilty of manslaughter as proposed by the bill. He said he is anxious to ensure that before a person is convicted of manslaughter, that that person have some legal and moral culpability. He mentioned that he is still troubled that manufacturers and distributors of alcohol "are not thrown, logically, down the same road as these people," and is somewhat troubled that the bill might apply to a person who's only crime is to sell [a controlled substance] to someone who then turns around and sells it to others.

[2:48:15 PM](#)

REPRESENTATIVE KOTT moved to report HB 99, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 99(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:49 p.m.