

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 12, 2005

8:23 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 246

"An Act requiring a member to opt into a class action; and amending Rule 23(c), Alaska Rules of Civil Procedure."

- HEARD AND HELD

HOUSE BILL NO. 96

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing for an effective date."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53

"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to a duty and standard of care for services to children and families, to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to the retention of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; establishing

a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state citizens' review panels for certain child protection and custody matters; amending the duty to disclose information pertaining to a child in need of aid; authorizing additional family members to consent to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules; amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

- HEARD AND HELD

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 246

SHORT TITLE: REQUIRE OPT-IN FOR CLASS ACTIONS

SPONSOR(S): JUDICIARY

04/01/05	(H)	READ THE FIRST TIME - REFERRALS
04/01/05	(H)	JUD, FIN
04/11/05	(H)	JUD AT 1:00 PM CAPITOL 120
04/11/05	(H)	Postponed to 4/12
04/12/05	(H)	JUD AT 8:00 AM CAPITOL 120

BILL: HB 96

SHORT TITLE: CRIMES INVOLVING MARIJUANA/OTHER DRUGS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) JUD, FIN
04/08/05 (H) JUD AT 8:00 AM CAPITOL 120
04/08/05 (H) Heard & Held
04/08/05 (H) MINUTE(JUD)
04/11/05 (H) JUD AT 1:00 PM CAPITOL 120
04/11/05 (H) Scheduled But Not Heard
04/12/05 (H) JUD AT 8:00 AM CAPITOL 120

BILL: HB 53

SHORT TITLE: CHILDREN IN NEED OF AID/REVIEW PANELS
SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/10/05 (H) PREFILE RELEASED 1/7/05
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) HES, JUD, FIN
03/02/05 (H) SPONSOR SUBSTITUTE INTRODUCED
03/02/05 (H) READ THE FIRST TIME - REFERRALS
03/02/05 (H) HES, JUD, FIN
03/15/05 (H) HES AT 3:00 PM CAPITOL 106
03/15/05 (H) Heard & Held
03/15/05 (H) MINUTE(HES)
03/22/05 (H) HES AT 3:00 PM CAPITOL 106
03/22/05 (H) <subcommittee meeting>
03/31/05 (H) HES AT 3:00 PM CAPITOL 106
03/31/05 (H) Moved CSHB 53(HES) Out of Committee
03/31/05 (H) MINUTE(HES)
04/04/05 (H) HES RPT CS(HES) NT 5DP
04/04/05 (H) DP: ANDERSON, KOHRING, MCGUIRE, SEATON,
WILSON
04/11/05 (H) JUD AT 1:00 PM CAPITOL 120
04/11/05 (H) <Bill Hearing Rescheduled to 4/12>
04/12/05 (H) JUD AT 8:00 AM CAPITOL 120

WITNESS REGISTER

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 246 on behalf of the House
Judiciary Standing Committee, sponsor.

PATRICK SHEEHAN
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 96.

MICHAEL "WES" MACLEOD-BALL, Executive Director
Alaska Civil Liberties Union
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 96, requested that certain witnesses be allowed to speak in a particular order.

BILL PARKER

Alaskans for Marijuana Regulation and Control (AMRC)
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 96, relayed that members' packets include his written comments.

JACK COLE, Executive Director
Law Enforcement Against Prohibition (LEAP)
Medford, Massachusetts

POSITION STATEMENT: During discussion of HB 96, provided comments and asked the committee to not pass any bills that tie up police hours in projects that do nothing to lessen the incidence of death, disease, crime, or drug addiction.

DARA AHRENS

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 96, provided comments and responded to questions.

STEVE ANDISON

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 96, provided comments and responded to questions.

MITCH EARLEYWINE, Ph.D., Associate Professor of Psychology
University of Southern California (USC)
California

POSITION STATEMENT: During discussion of HB 96, provided comments and responded to questions.

SCOTT T. CALDER

Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of SSHB 53.

MARCI SCHMIDT

Wasilla, Alaska

POSITION STATEMENT: Provided comments during discussion of SSHB 53 and recommended changes.

ROBERT B. FLINT, Attorney at Law
Hartig Rhodes Hoge & Lekisch, PC
Anchorage, Alaska

POSITION STATEMENT: On behalf of Catholic Community Services, Inc., provided comments during discussion of SSHB 53.

MARILYN MORENO, Director
Pregnancy Support and Adoption Services
Catholic Social Services, Inc.

POSITION STATEMENT: Provided comments during discussion of SSHB 53.

EVELYN THOMAS, Vice President
Crooked Creek Tribal Council
Crooked Creek, Alaska

POSITION STATEMENT: Provided comments during discussion of SSHB 53.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [8:23:13 AM](#). Representatives McGuire, Coghill, Dahlstrom, and Gara were present at the call to order. Representatives Anderson and Gruenberg arrived as the meeting was in progress.

HB 246 - REQUIRE OPT-IN FOR CLASS ACTIONS

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 246, "An Act requiring a member to opt into a class action; and amending Rule 23(c), Alaska Rules of Civil Procedure."

[8:23:57 AM](#)

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, relayed on behalf of the House Judiciary Standing Committee, sponsor of HB 246, that the bill proposes changes to the notice provisions of Rule 23 of the Alaska Rules of Civil Procedure, which is the rule providing procedures for class action lawsuits in the state; class action lawsuits are lawsuits filed by one or more people on behalf of themselves and a larger group of people who are similarly situated. Rule 23 sets out the prerequisites that

must be met and the factors that must be weighed by the court when determining whether a class action lawsuit should be maintained and would be preferable to allowing separate claims by individuals.

MS. TONDINI explained that once it is determined by the court that a class action lawsuit should be maintained, the court must then direct notice to all members of the class and must use the best notice practicable to all members that can be identified through reasonable efforts. Currently that notice must tell members the date by which they must opt out of the class action lawsuit, that any members not opting out will be affected by any forthcoming judgments, and that any members not opting out may enter an appearance through counsel; in other words, members of a class action lawsuit must take affirmative action in order to opt out of the class. The change proposed by HB 246 simply changes the notice provisions of Rule 23 such that potential members of a class action lawsuit must take affirmative action in order to become a part of it.

MS. TONDINI suggested that the reason for proposing the change offered through HB 246 is because currently there is the potential for members of a class action lawsuit to unknowingly be swept up into it, thus having their lives and business affected without them ever consenting to being a part of the suit. She mentioned that under the change proposed by HB 246, one would automatically be maintain his/her right to file an individual claim. She then relayed that President George W. Bush recently signed into law the Class Action Fairness Act of 2005, which requires that all [interstate] class action lawsuits be brought in federal court, and which addresses the issue of judgments in the form of coupons being awarded to members of a class while the prevailing attorneys in such cases get awarded large attorney fees. In past instances where coupons have been awarded, she remarked, those coupons have been of little or no value. Additionally, once an award has been determined, members of a class action lawsuit must accept it and are then left without further recourse.

MS. TONDINI recounted a couple of the examples that were used by President George W. Bush, when he signed the aforementioned Act into law, to illustrate how being required to opt out of class action lawsuits has been problematic for those that get swept into them. She concluded her explanation by offering her belief that the change proposed by HB 246 is an appropriate one to make, particularly given that it is sometimes difficult to

contact Alaskan citizens because they are often somewhat transient.

CHAIR MCGUIRE, speaking as chair of the House Judiciary Standing Committee, sponsor of HB 246, relayed that the bill is neither retroactive nor is it targeted at any particular [current] lawsuit. Rather, the issue of having to opt out of a class action lawsuit has been of concern to her for a long time, as well as of concern to people she's spoken with, she remarked, adding that even Senator Ben Stevens has been swept into a class action lawsuit without being aware of it for six months.

[8:31:23 AM](#)

REPRESENTATIVE GARA characterized the issue addressed by the bill as a complex subject, and said he is uncomfortable attempting to deal with it in a short period of time. Remarking that there are those who are far more knowledgeable about class action lawsuits than he and who could probably list hundreds of cases in which people, had they been acting individually, would not have been able to stand up to, and obtain remedy from, a large corporation, entity, or agency, he offered an example of a situation involving an automobile manufacturer in which a class action lawsuit was used to address a situation involving a severe amount of corporate misconduct towards its customers. He also acknowledged that there are situations in which the class action lawsuit system has been misused, but added that for him, it comes down to the question of whether to throw the baby out with the bathwater.

REPRESENTATIVE GARA said his preference would be to take the same approach that the federal government is taking, that of stipulating that only certain small groups of people - such as a group of employees with a claim against an employer, for example - should be provided with the opt-in method, and that all other groups should continue to be provided with the opt-out method. In situations involving class action lawsuits regarding consumer goods, he predicted, an opt-in method would result in there never being enough class members to make the litigation possible. He added, "I wouldn't mind identifying some of those areas where there's been abuse [of the current opt-out method] and trying to put a crimp on it." With regard to the issue of awarding coupons, he said he would hate for someone to only get a 1\$ coupon at the end of a class action lawsuit - such would be an insult to the member - and so perhaps such coupon awards could be pooled together and given to a charity, for example, so that the award as a whole actually means something.

CHAIR McGUIRE said her goal in having a hearing on the bill today was to have members start thinking about the underlying issues it raises. She mentioned that perhaps the committee could consider looking into contingency fees, and reiterated that her concern centers on fact that there are class action lawsuits which result in the attorneys receiving large fees while the consumer receives almost nothing and yet is barred from any further recourse regardless of whether he/she is even aware that he/she is part of the class action. She mentioned that some states, because of their laws regarding class action lawsuits, even attract such activity and therefore have a worse problem than Alaska.

REPRESENTATIVE GARA offered some examples of appropriate class action lawsuits wherein members did benefit from the ability to pool their litigation resources. He suggested that perhaps the attorney fees in class action lawsuits could be limited to "one and a half times the going rate."

[8:38:51 AM](#)

REPRESENTATIVE GRUENBERG said he has some serious problems with the bill, and relayed that in a California Supreme Court case, Dar v. Yellow Cab Company, the customers had been overcharged, and it would have been impossible for the individual customers to maintain a meaningful case against the company; as members of a class, however, they were awarded a coupon book to help pay for future cab fare. He offered his belief that class action lawsuits were developed because individual consumers can't afford to protect their own rights; a class action lawsuit also consolidates and simplifies the case, keeps the defendants all together, and reduces the risk of inconsistent judgments.

REPRESENTATIVE GRUENBERG noted that Rule 23(c)(2) already says that the court must absolutely notify all individual members of the class using best notice practicable under the circumstances, and that this usually includes direct mail and publications. He offered the following quote, which he attributed to Oliver Wendell Holmes: "The law does enough when it does all that it can." He added, "I'd like us to think very carefully before we change this rule, which isn't used very often here, but when it is used, it affects a lot of people." Noting that Rule 23.1 pertains to derivative action by shareholders, and that HB 246 would not in any way affect that rule, he surmised that instead the bill will only affect consumer protection class action lawsuits, and offered his belief that [the committee] should

think the issue through several times before doing something that will divest consumers of any of the legal protections they currently have.

[8:42:08 AM](#)

MS. TONDINI said she agrees with Representative Gruenberg's points, but offered her belief that because class action lawsuits are so important, and because it is the consumer they are trying to protect, HB 246 will further protect the consumer by giving him/her more power to determine his/her own fate in becoming part of a class action lawsuit.

CHAIR MCGUIRE, acknowledging that there are examples of both types of cases, noted that there are some who will say that the notice provisions of Rule 23 are not as meaningful as they should be. Rather, many consumers only become aware that they are a member of class action lawsuit when they receive a check, any yet they might have been a class member for many years, and would perhaps have preferred to preserve their own individual claim. And so although there are some cases for which the current system has worked, she remarked, there are also some cases for which the current system has proven to be broken.

REPRESENTATIVE GRUENBERG said that before he upsets the common law, he wants to be sure that he knows more about an issue than the people who went before him and established that common law in the first place.

[HB 246 was held over.]

HB 96 - CRIMES INVOLVING MARIJUANA/OTHER DRUGS

[8:44:19 AM](#)

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 96, "An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing for an effective date."

[8:45:02 AM](#)

PATRICK SHEEHAN relayed that he suffers from a traumatic brain injury and temporal lobe epilepsy, a rare form of epilepsy, and because of such also suffers from depression, and that his main concern is with regard to what the state is doing for his well-

being. Currently, he explained, he cannot work and cannot take antidepressant medication because it conflicts with his anti-seizure medication. He said that he has discovered that marijuana has medical significance for those with depression and disorders similar to those that he suffers from, adding that he has been consuming marijuana for 16 years and has not experienced any of the side effects that previous speakers on the bill have suggested would occur. For him, he explained, marijuana takes the place of antidepressant medication and he is able to control his depression simply through the use of just small amounts of marijuana.

[8:49:37 AM](#)

MICHAEL "WES" MACLEOD-BALL, Executive Director, Alaska Civil Liberties Union (AkCLU), relayed that the AkCLU and the group, Alaskans for Marijuana Regulation and Control (AMRC), have provided the committee with a roster of witnesses, and asked that those witnesses be allowed to speak in a particular order.

[8:51:17 AM](#)

BILL PARKER, Alaskans for Marijuana Regulation and Control (AMRC), relayed that his written testimony is included in member's packets.

REPRESENTATIVE GARA remarked:

The governor has presented this bill; he wants the legislature to make these extreme findings after detailed hearings which, at the end of session, we frankly don't have the time to make. So this bill might move, there might be findings in it, [but] they're, frankly, not going to be findings that are real, [and] they're not going to [be] findings that we've had the time to consider. And I just think, if the governor's going to have a major initiative like this, he's got to expect that we're going to need more time to deal with it. If it's the administration's view that it needs to rush through, then it will rush through, but the findings aren't going to be real, in my view.

CHAIR MCGUIRE mentioned that it is not her intent to move the bill from committee today.

[8:53:21 AM](#)

JACK COLE, Executive Director, Law Enforcement Against Prohibition (LEAP), relayed that he is a retired detective lieutenant from the New Jersey State Police, where he'd been working as an undercover narcotics officer for 14 out of 26 years. He went on to say:

My investigations spanned the spectrum of possible cases, from street-level drug dealers up to international, billion-dollar, drug-trafficking organizations. ... [Law Enforcement Against Prohibition] was founded by five former cops to give voice to all the members of law enforcement that believe that the war on drugs is not only a dismal failure but is a terribly destructive policy.

And in the two and a half years that we've existed, we've grown to over 2,000 members who are no longer just cops - we are police, judges, prosecutors, prison wardens, [and] we even have retired [U.S. Drug Enforcement Administration (DEA)] officers who help make up our bureau of 85 speakers. What LEAP would like to suggest to you today is that passing bills that raise criminal penalties and assess harsher sentences for nonviolent drug offences is a very poor public policy.

In 1975, Alaska started a 15-year trek of decriminalizing adult use of marijuana in the privacy of one's own home. And then ... from 1990 to 2003, they [changed] back to a de facto prohibition, which was reversed again in 2003 until the present, and, again, you've been able to use decriminalized marijuana in your own home. According to Alaska's statistics, overall use of marijuana among children in grades 6 to 12 has decreased from the level of use before that marijuana was decriminalized in 1975. However, [in] the rest of the United States, marijuana use among that age group has increased; according to Monitoring the Future, the largest survey ever done in this country about that, it says that the increase is 30 percent for 12th graders, 65 percent for 10th graders, and 88 percent for 8th graders.

MR. COLE continued:

So apparently you have been doing something correctly in Alaska. What I'd like to say about this war on drugs is that for 35 years, with a budget of half a trillion dollars, [the] United States has fought the war on drugs with ever harsher penalties and, since the year 2000, we've arrested 1.6 million people in this country for nonviolent drug offences - fully half of those offenses are marijuana violations - and all we have to show for all this money so ill spent ... and all these lives ruined is that today, drugs are cheaper, more potent, and far easier to get than they were in 1970 when I started buying them undercover.

Now, to me, that is the very essence of a failed public policy. What I would like to suggest is, please, please don't pass bills that tie up more police hours in projects that do nothing to lessen the incidence of death, disease, crime, or drug addiction. Let police get back to protecting us from violent crime; we'll all be much better. Thank you very much.

...

[8:56:59 AM](#)

DARA AHRENS, after relaying that she has been a certified nursing assistant (CNA) since 1987, said that she has been ... taking care of patients who use medicinal marijuana, including one who got more relief from the pain caused by his amyotrophic lateral sclerosis (ALS) - Lou Gehrig's disease - by using medicinal marijuana than by using 20 cc of morphine, which was the drug doctors prescribed for him. She characterized HB 96 as a backdoor attempt to outlaw medical marijuana. Noting that her life partner has chronic, progressive multiple sclerosis (MS) and can now barely speak, she also mentioned that she and her adult son suffer from severe, attention deficit hyperactivity disorder (ADHD) but can't afford the medication normally prescribed for it and yet medicinal marijuana helps her son focus. In conclusion, she opined that the use of medicinal marijuana should be regulated to prevent addiction.

MS. AHRENS, in response to questions, offered her belief that marijuana should be considered a [schedule IIA] substance and require a doctor's note in order to use it for medicinal purposes. She said she didn't like to skulk around, adding that her years of care giving have left her with bulging spinal discs, pinched nerves and compression fractures, all of which cause her extreme pain; occasional use of medicinal marijuana

provides her with more relief from that pain than does the Percocet she has been prescribed.

9:02:37 AM

STEVE ANDISON mentioned that his wife has multiple sclerosis (MS) and asked that he be allowed the time to testify for them both. Characterizing the issue raised by HB 96 as a complicated one, he said he sees two categories of marijuana use: medicinal use and social use. He offered his belief that rather than curb marijuana use, passage of HB 96 will only result in higher retail prices, heavier competition among sellers, and the development of an increasingly potent product. He said that in obtaining marijuana for his wife to use in order to alleviate her chronic pain, he discovered that the product available today is entirely different than that which was available in '60s and '70s, and thus he does have some concern, given the increased potency levels of today's product and the fact that most of those in his generation are only familiar with what marijuana was like three and four decades ago.

MR. ANDISON mentioned that although the testimony he's heard from present-day experts on the subject has encouraged him to pay more attention to the issue, he is not convinced that the evidence upon which that testimony is based has reached the level of being a preponderance of the evidence, nor reached "an interval of confidence" showing that marijuana is addictive. Is alcohol addictive? Perhaps to some, but not universally, he remarked, and then posited that much the same could be said of marijuana. Furthermore, even though the prevailing sentiment is that children should be prevented from getting hold of marijuana, it should be remembered that children could also get hold of any other medication that is being kept in their own home. With regard to the fears expressed that people driving under the influence of marijuana present an increased danger, he pointed out that there are already laws that govern and criminalize such behavior.

CHAIR McGUIRE asked Mr. Andison whether his wife has a prescription for medical marijuana.

MR. ANDISON said no, adding that technically, doctors could write a prescription, but doctors tend to want to know the dosage that they are prescribing, and currently there isn't a controlled product available on the street. Additionally, doctors have not been trained in this modality, they don't know much about the drug, and they certainly don't think of it as a

legitimate drug to prescribe - they haven't been trained to do so. Then, in addition to the challenge of finding a doctor that will prescribe marijuana, there is also the challenge of getting that prescription filled. Theoretically, he acknowledged, he could grow the marijuana in his own home, but since he is not a horticulturist and doesn't have the room or finances to do so, he really can't grow it. Instead, he would prefer to be able to take a prescription to a legitimate source.

MR. ANDISON opined, therefore, that if the government is going to legitimize the use of medicinal marijuana, it also ought to get involved and help in the regulation, licensing, control, and standardization of medicinal marijuana. Currently, though, there is no real legitimacy in obtaining medical marijuana and so he still winds up skulking around, buying it off the street, and trying to look for someone with integrity who does not deal "death for a dollar." So even though on paper there might appear to be a legitimate process to follow, in reality such a process doesn't actually exist.

[9:08:13 AM](#)

REPRESENTATIVE GARA asked whether the government provides medicinal marijuana to those who have a valid prescription, or whether there is a regulated way to get medicinal marijuana.

MR. ANDISON said that if such a way exists, he has not found it. He acknowledged that there is Marinol - a synthetic form of tetrahydrocannabinol (THC) - but pointed out that it does not have the same effects as the actual plant. He relayed that he has asked a couple of neurologists and some other experts about this issue and has been told that the most comfort - surcease of pain - will be derived through the use of the actual marijuana plant that has been subjected to heat and the smoke thereof then inhaled. Additionally, Marinol is cost prohibitive. So although medicinal marijuana is not a cure for MS, it does provide some quality of life; therefore, if members know of a legitimate source of medicinal marijuana, he relayed, he would like that information. He predicted that because of socioeconomic issues in rural areas, simply drying up the source of marijuana will not result in a decrease in substance abuse; in rural areas, if marijuana is not available, people simply resort to abusing other substances as a form of escapism.

MR. ANDISON, in response to a question, offered his belief that for his wife, an ounce of marijuana for medicinal purposes would be an adequate amount to possess; that marijuana - along with

guns, alcohol, and all prescription medication - should be kept out of the hands children; and that there should be culpability for those that don't hold the fragility of youth in high regard. He went on to remark that marijuana is actually a business, and whether it's considered a legitimate business or not, it has to reach certain scales of economy; there is a need to legitimize the business of medical marijuana so that those that need it can afford it.

MR. ANDISON, with regard to Ms. Ahrens's comment that HB 96 is a backdoor way of shutting down medicinal marijuana, surmised that if the amount of medicinal marijuana that one may possess is decreased too much, then those that are providing it will not be able to maintain a viable business interest, and this will, in effect, dry up the sources of medicinal marijuana for those that need it. In response to a comment, he reiterated that simply growing marijuana for medicinal purposes is not a practical solution; marijuana is not simple to grow and it is expensive to get into the art and science of growing it. He offered the analogy that people are not having to resort to peeling and boiling their own birch bark in order to make their own aspirin; instead there are legitimate sources of aspirin available, and there should likewise be legitimate sources of medicinal marijuana available.

[9:13:54 AM](#)

MITCH EARLEYWINE, Ph.D., Associate Professor of Psychology, University of Southern California (USC), relayed that he is the author of the book titled, Understanding Marijuana, and teaches substance abuse treatment to USC's clinical psychologists in training. He went on to say:

I'd like to emphasize that it took me 15 months to review this literature and write a book that reported on all this work, and so I have to commend [the legislature] for trying to do such a difficult task in such a short period. The recurring themes I seem to see concern some of the potency issues, stories about cannabis being linked to aggression, it's addictive propensity, its impact on driving, and I'd like to address these as quickly as possible.

You're going to hear quite a few stories about individual cases where somebody may have used cannabis and been involved in an aggressive act, but I want to emphasize that laboratory research suggests that

cannabis does not increase aggression. A study by "Myers Coffin Taylor" (ph) has shown that when you bring people into the laboratory, have them use cannabis, and then actually provoke them and irritate them, they still do not get more aggressive than the folks who have used a placebo, and that individual cases where we see [that] somebody has behaved aggressively after using cannabis are, in a sense, just a spurious result - something that may have happened simply by chance - that cannabis does not play a causal role in aggressive acts.

The addictive propensity of cannabis has been overestimated. I have new data suggesting that when you ask clinicians how addictive is cannabis, they rank it in a wave comparable to the addictive propensity of caffeine; [and] that this is not a drug that is used by itself, often, and so a lot of times problems with alcohol or problems with other drugs get attributed to cannabis, ... so that people assume that cannabis is the source of these addictive problems when, in fact, it often stems from other drugs.

DR. EARLEYWINE continued:

The issues about potency, I understand, are very complex. The bottom line is that yes, cannabis has increased in potency over the years, but it has not increased as much as we've often heard. So I will occasionally read things that suggest that cannabis is 25 times stronger or a 100 times stronger than it was in the 1970s. These estimates are usually based on a misunderstanding of the way cannabis potency was assessed back in the 1970s: we didn't understand how THC worked back then and so, a lot of times, [when] police officers confiscated cannabis, they put it in a hot evidence locker where the THC - the active ingredient - would degrade, and then they would later send it down to the University of Mississippi to have its potency assessed.

And, what a surprise, a lot of the THC had degraded and we would get estimates [of] around 1 percent THC. Well, when 1 percent THC is used in the laboratory, people report that it's a placebo - they don't get any effect at all. Surely in [the] 1970s people were getting some effect from this drug or they wouldn't

have used it, [so] obviously this is an error. And so when we say it's 25 times stronger than it was in the 1970s, it's because we have an inaccurate estimate of how strong it was in the 1970s. The other thing to consider in the potency issue is that people actually smoke less now than they did in the times when cannabis was generally less strong.

So ... when you look at data from the Monitoring the Future study or things along those lines, people tend to report only getting a certain level of subjective effect, and no more, for the last 35 years. So it's not as if people are getting higher simply because they smoke more potent cannabis. Also, in the laboratory, we find that people adjust the way they smoke cannabis when it's more potent, so that they take small inhalations and hold those inhalations for a shorter period in order to get the desired effect without creating any kind of aversive effect, so that stronger cannabis need not be more dangerous cannabis, and, in fact, the cannabis of today is not as strong as we've been led to believe.

DR. EARLEYWINE concluded:

Finally, [with regard to] the issues about driving, and obviously no one in any state wants to see people drive while they're impaired under any drug, but a lot of this data had been confounded, where people are reported to have cannabis in their system when they were driving and had an accident, but a close look at those data reveal that these people were also consuming alcohol. And obviously alcohol really contributes to driving problems, and those get neglected when we're sometimes interpreting these data. As an expert in this field and someone who's written an entire book on the behavioral effects of cannabis, I really want to encourage you to take a great deal of time to look at this complex literature.

I want to emphasize that criminalizing possession isn't going to fix any cannabis-related problems, and I'd also like to make myself available to answer any question at all on any of these behavioral or medical effects of this really complicated substance. Thanks very much.

[9:18:54 AM](#)

CHAIR MCGUIRE, referring to Dr. Earleywine's book, asked what the THC levels were in the tests that he reviewed.

DR. EARLEYWINE said most of those laboratory studies used marijuana with either 4 percent or 2 percent THC, since those were the varieties of marijuana that were available from the National Institute on Drug Abuse (NIDA).

CHAIR MCGUIRE noted that testimony at the bill's last hearing indicated that the average THC level of the marijuana samples from Alaska is higher than that of the samples from any other state, and that the THC level in Alaska's samples has reached as high as 14 percent.

DR. EARLEYWINE said although there is cannabis that is that strong, laboratory studies have shown that people don't smoke as much marijuana when it has a higher THC level. Using an analogy involving alcohol, he pointed out that a person who generally drinks beer would not simply consume the same volume of whiskey.

CHAIR MCGUIRE said she is concerned about children having access to marijuana, and with the fact that unlike alcohol, the potency of which can often be determined simply by its odor, there is no way of knowing the THC level of a particular kind of marijuana without first consuming it.

DR. EARLEYWINE concurred, but noted with regard to the latter point that this same point is often used as an argument for creating a legal market for cannabis with the dosage and THC level specified so that people don't have to go to the underground market and purchase marijuana of unknown potency. He relayed that in his and a colleague's ongoing prevention efforts, they are explaining to folks that this argument should be kept in mind, and are emphasizing that the way to smoke cannabis is to do it in very small doses, keeping inhalations brief and small, and allow for time to pass in order to assess the effects before consuming more; he and his colleague have had good luck with that approach among [medicinal] users in Los Angeles.

CHAIR MCGUIRE, with regard to the issue of driving under the influence of marijuana, relayed that she is bothered by the fact that the courts in Alaska are routinely denying the introduction of evidence that marijuana is present in a driver's bloodstream at the time of a vehicle accident, and are doing so because of

the view that the prejudicial value outweighs the probative value. She asked Dr. Earleywine to comment on whether he thinks marijuana has any impact on a person's driving abilities.

DR. EARLEYWINE relayed that in the Netherlands, [studies conducted by] Professor Roby (ph) have shown that individuals who smoke cannabis but don't have any alcohol in their systems don't show really dramatic impairments in their driving, such as in turning or in following another car, though the one domain in which they do show problems is in not staying perfectly in the center of the lane. He pointed out, too, that one of the problems with relying on blood and urine samples for the purpose of showing whether a person is under the influence of marijuana is that he/she may no longer be feeling the subjective effects of the marijuana but could still test positive for metabolites in the blood and urine even if the marijuana use occurred several days before. So if laws are based on urine or blood analyses, people would essentially be discriminated against if they used cannabis even up to 14 days prior.

CHAIR MCGUIRE noted that in one of the chapters of his book, Dr. Earleywine speaks to the issues of perception, complex reaction time, and recall, and said she hopes that those skills/abilities do factor into a person's driving.

DR. EARLEYWINE replied:

As it turns out, some of those tests are not good analogs to actual driving, which is why I actually would recommend checking the driving section in my book as well, which mentions Dr. Roby's (ph) study, where he actually had people drive in city and highway driving [situations] in the Netherlands and found markedly fewer deficits than you would expect, and certainly markedly fewer than we have with alcohol.

[9:25:40 AM](#)

REPRESENTATIVE DAHLSTROM said that she has great sympathy for those that have found relief in using marijuana for medicinal purposes, and that she understands the inherent conflict of not being able to go to a pharmacy and get a prescription for medical marijuana filled. Additionally there is the value Alaskan's place on privacy for actions occurring in their own homes. Her concern revolves around the fact that all the information she is currently familiar with says that there is a residual amount of marijuana that stays in a person's system for

up to 26 days after use. Given this fact, what a person does in his/her own home over the weekend or while on vacation then becomes her business when she or her child have to rely on someone who's consumed marijuana, such as a school bus driver, or a doctor, or a dentist; the purported residual effects of marijuana consumption dramatically changes the dynamics regarding the issue of privacy.

DR. EARLEYWINE replied:

That 26-day figure is common for presence of THC metabolites in the urine. So yes, you could still detect if someone has used the drug 26 days previously; however, the subjective effects, the cognitive impairment, some of these small changes in memory and reaction time, only last for a couple of hours after use. And I try to make that clear in the chapters on cognitive effects, but that 26-day figure is a dictation of metabolites in the urine, it is not a period of impairment that follows the use of cannabis.

REPRESENTATIVE DAHLSTROM noted that for those with a caffeine addiction or a tobacco addiction, the effects of withdrawal from those substances last more than just a few hours.

[9:29:07 AM](#)

DR. EARLEYWINE remarked that nicotine addiction is markedly more dramatic than that of cannabis, and that in the search for the effects of withdrawal from cannabis, it took 60 years before someone was able to develop a questionnaire that identified the symptoms of marijuana withdrawal. Those symptoms are very mild, he remarked, and can include decreased appetite and mild irritability; nowhere near the types of withdrawal symptoms associated with nicotine, heroin, cocaine, and similar drugs. The parallel being made to caffeine is that marijuana is comparable to caffeine in its ability to produce an addiction, but the withdrawal from caffeine is notorious - yes, that headache is really terrible and can last for up to three days - but people addicted to cannabis who then quit often report experiencing no withdrawal symptoms at all or only minor symptoms such as those mentioned earlier.

DR. EARLEYWINE, in response to a question, said that depending on the dosage, if one performs a cognitive test four hours after marijuana consumption, short-term memory, reaction time, and all other cognitive abilities would have returned to normal.

9:31:28 AM

DR. EARLEYWINE, in response to other questions, said:

As far as emotional problems are concerned, since the 1800s people have been discussing the idea that maybe cannabis use somehow increases the risks for certain emotional disorders. I have data [suggesting] that for the case of depression, this is clearly not the case, that cannabis use does not seem to increase people's risk for depression, and the idea that people smoked cannabis before becoming depressed obviously isn't enough to prove that it's causal. ... So everybody seems to know some cannabis user who is depressed, and they attribute the depression to cannabis when, in fact, it's often socioeconomic or family things that are contributing to the depression, not the cannabis.

As you can imagine, I have a hard time publishing those data, but the bottom line is, cannabis doesn't seem to increase depression. There's a new thing coming out suggesting that cannabis may increase psychotic symptoms in folks who are at risk for psychosis [and] so if you have a bunch of schizophrenics in your family, you shouldn't smoke cannabis because you may then develop a schizophrenic break as well. Schizophrenia is a relatively rare disorder, [it] affects fewer than 1 percent of the population, and I'm not sure how big a deal to make out of this, [but] I'd recently had a paper in "Psychiatry Research" suggesting that in fact these people had these symptoms before they used cannabis, not afterwards.

Some research in Scandinavia suggests that my research is wrong, we're still going to have to hash that out, [but] the bottom line [is that] I don't think anybody with a psychotic disorder should go near any psychoactive drug, but I don't see cannabis as causal in the creation of schizophrenia. As far as addiction is concerned, as I mentioned, yes, there's about 7 to 9 percent of folks who use cannabis regularly who report some dependant symptoms, but they're often things like tolerance or having to spend a lot of time to go find the drug, which may be more a product of

its illicit stature than anything that's inherent in the drug itself, or reporting some conflict with their family about their use; it's not as if it's an addictive thing like heroin or cocaine where people are reporting tremendous craving and turning to prostitution to support habits or anything anywhere near those kinds of lines.

And then this notion that pot makes [one] lethargic actually goes back to something that we probably all had in junior high health class, this idea of "amotivational syndrome," where somehow smoking cannabis turns you into this unmotivated slug. And I have data suggesting that people who use cannabis are no less motivated than folks who have never used ever in their lives. Dr. Kassner (ph) has shown that in fact, when you look at people's sick days or the amount of money they earn, or the [amount] ... of time they spend on vacation, cannabis doesn't seem to (indisc.) with that at all, and in one study actually found that folks who made more money were the ones who were the cannabis users, not those who made less money.

DR. EARLEYWINE concluded:

So it's unclear to me how amotivated or lethargic these [users] are. Again, what happens is, we tend to remember folks who fit our stereotypes, so everybody seems to know one cannabis user who is lethargic and unmotivated, and we remember that one, but we often don't know the other 100 million Americans who've tried cannabis and who are paying their taxes and doing a great job meeting their goals and reaching their dreams.

CHAIR McGUIRE relayed that HB 96 would be held over.

HB 53 - CHILDREN IN NEED OF AID/REVIEW PANELS

[9:37:00 AM](#)

CHAIR McGUIRE announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53, "An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to a duty and standard of care for services to children and families,

to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to the retention of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; establishing a right to a trial by jury in termination of parental rights proceedings; reestablishing and relating to state citizens' review panels for certain child protection and custody matters; amending the duty to disclose information pertaining to a child in need of aid; authorizing additional family members to consent to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care; mandating reporting of the medication of children in state custody; prescribing the rights of grandparents related to child-in-need-of-aid cases and establishing a grandparent priority for adoption in certain child-in-need-of-aid cases; modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending treatment service requirements for parents involved in child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules; amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date." [Before the committee was CSSSHB 53(HES).]

REPRESENTATIVE COGHILL, speaking as the sponsor of SSSH 53, said he would like the committee to address some of the legal issues dealing with jury trials, civil liability, and court rules. The bill currently rolls together HB 113, HB 114, HB 17, and HB 53, he explained. "This is dealing with Title 47, child-in-need-of-aid proceedings - everything from who has access to the courts, how the courts act, and procedures on termination of parental rights, and all the way down to how do we brighten the due process line," he said.

REPRESENTATIVE COGHILL said he rolled the bills together because they all dealt with Title 47, and he wanted to avoid confusion. He likened the legislation to a tractor that may be difficult to get going, but once it goes, "it should go pretty good." He said there are still some areas of contention with regard to the primacy of family and the protection of children. He said he

brought an assertion for a jury trial into the bill, regarding the termination proceedings where the state will forever sever the relationship between a parent and child. He said he thinks oversight is important in such a serious matter, and noted that there are provisions for oversight in the bill and so he may be convinced that they are sufficient.

REPRESENTATIVE COGHILL said he asked the department to change some of the civil liability language. "I am a firm believer that children need to be protected, so this is about asserting family rights, protecting children, and giving good governmental process." He said there are people who are helpful in handling children who've been severely abused, and the children advocacy centers are actually mentioned in the bill; such centers show respect for the child, and he mentioned that he is asking to record some of the interviews that these social workers do.

9:43:59 AM

SCOTT T. CALDER said his only child was kidnapped and tortured by state agents in Fairbanks. As a result of complaints to appropriate public officials, "there were cover-ups and reprisals against us, and various secondary crimes on fraud, obstruction - the list goes on," he said. Getting information about what was being done to him and his child was very problematic. He said the original bill was a pretty good first step, but it has been watered down to the point that, for the most part, it is window dressing with a few exceptions. He said he is confused on the different versions of the bill, but surmised that on page 5, line 19, there is language that says the provisions of proposed AS 47.10 shall be construed to mean that the parent possesses inherent individual rights to direct and control the education and upbringing of a child. That is language he has been trying to get introduced for many years, he stated.

MR. CALDER offered his belief that the section on citizen review panels was changed to conform to federal language, adding that in 1990, the legislature established, via House Bill 19, the Citizens' Review Panel for Permanency Planning, which provided for a cursory review by people who do not work in the system. The main thing he would like is more openness in the system, he said, adding, "We need a smell test for every single case." It is a human rights problem, he declared, and said, "We are talking about the extent to which state agents have committed grotesque crimes against children and families without due process and [are] then subsequently committing other crimes

against people who complain about that mistreatment." He wants frequent and recurring statewide public hearings, he concluded.

9:49:31 AM

MARCI SCHMIDT said she is very happy about the bill, but she has two suggestions. She noted that things change, and the department should put it in writing when it denies people visitation. She said she would strongly advise that an audio or video recording be done during interviews at schools because there have been instances where children have objected to being interviewed and the people in authority have then said that the children were lying. She said such recordings would protect both sides. With regard to a citizens' review panel, she strongly recommended that someone look into New Mexico's review panel; it is one of the best, she said, adding, "I hope this bill passes ... and I hope it's enforced."

9:51:50 AM

ROBERT B. FLINT, Attorney at Law, Hartig Rhodes Hoge & Lekisch, PC, on behalf of Catholic Social Services, Inc., noted that Section 5, regarding adoptions, would work a radical change in the finality of relinquishments in an agency's adoption process. There is a process of voluntary relinquishment of a child from a birth parent to a licensed agency, and this process does not require a court order or action, he explained. That is followed by a reconsideration period, which is determined in statute. He said the next step in the process is a six-month supervisory period for the adoptive couple, and then the adoption takes place. Subsection (n) on page 4 provides that after the termination and reconsideration period, the court can overturn the relinquishment. The [bill] refers to a birth parent being rehabilitated, but in a voluntary adoption to an agency, rehabilitation is not an issue. So this will extend the reconsideration period to six months, and this change, he opined, was likely unintentional. He offered his belief that no problems exist in the current system, and so it should not be changed.

9:55:43 AM

MARILYN MORENO, Director, Pregnancy Support and Adoption Services, Catholic Social Services, Inc., said her organization has been providing adoption services in Alaska since 1967, adding that there are very few private adoption agencies within the state. She said she is concerned with what the bill's

impact will be on adoption agencies. For example, when birth mothers come to them asking to relinquish their child privately, the proposed six-month extension will have an emotional impact on adoptive parents, birth parents, and children.

REPRESENTATIVE COGHILL explained that that provision is something the governor proposed in HB 114, and remarked that the House State Affairs Standing Committee may be working on that issue.

9:58:06 AM

EVELYN THOMAS, Vice President, Crooked Creek Tribal Council, said she has three victims of the Office of Children's Services (OCS) with her. Oversight on the OCS is long overdue, she stated, adding, "We have been victims of [the] OCS for many, many years." She said she has recently begun to speak out against the OCS because she no longer has small children that the OCS could take away from her for daring to speak out. She stated that when there is domestic violence, the OCS immediately removes the children, making them and their mothers victims of the state.

MS. THOMAS added, "We have no recourse; we cannot disprove what they say because confidentiality is only on the part of OCS, [and] they are the ones who benefit." She said she has seen children removed from families and the mothers were falsely accused of having a criminal record. The children were removed but the "guy who did the violence" was not removed, she related, noting that the children are taken away and put up for adoption, without giving the mother any recourse. "I realize we are only Natives, and we really don't know how your system works; however, right is right," she said. She requested that the victims present with her be able to testify.

CHAIR McGUIRE, noting that members were due to go on the House Floor, relayed that [CSSSHB 53(HES)] would be held over to allow for further testimony.

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 10:02 a.m. to a call of the chair. [The meeting was never reconvened.]