

MINUTES
SENATE FINANCE COMMITTEE
January 10, 2006
9:31 a.m.

CALL TO ORDER

Co-Chair Green convened the meeting at approximately [9:31:57 AM](#).

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR CHARLIE HUGGINS; DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law

Attending via Teleconference: From Anchorage: "WES" MICHAEL MACLEOD BALL, Representative, American Civil Liberties Union/Alaska; BILL PARKER; From an Offnet Site: DIRK R. NELSON; From Fairbanks: KELLY DREW

SUMMARY INFORMATION

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

The Committee heard from the Department of Law and adopted a committee substitute and one amendment. The bill was held in Committee.

SB 74-CRIMES INVOLVING MARIJUANA/JUANA/OTHER DRUGS

The Committee heard from the Department of Law and took public testimony. Two amendments were adopted and the bill was held in Committee.

#sb70

CS FOR SENATE BILL NO. 70(JUD)

"An Act relating to controlled substances regarding the crimes of manslaughter and misconduct involving a controlled substance; relating to listing certain anabolic steroids as controlled substances; amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective date."

This was the third hearing for this bill in the Senate Finance Committee.

Co-Chair Green noted that this legislation is sponsored by Governor Frank Murkowski.

[9:32:31 AM](#)

Co-Chair Wilken moved to adopt committee substitute Version 24-GS1049\C as the working document.

Co-Chair Green asked the Department of Law to explain the differences between the Version "C" committee substitute and the previous committee substitute, Version 24-GS1049\L.

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law noted that during the Legislative Interim, the Murkowski Administration had been in communication with representatives of the retail industry, specifically Safeway Stores. "A number of tentative agreements were reached about some of the provisions in the bill." One of the primary agreements was that "retailers could not sell pseudoephedrine products to someone under the age of 18."

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Mr. Guaneli stressed that this provision was important because there is recent evidence that Methamphetamine (Meth) manufacturers often solicit youth to purchase pseudoephedrine products, such as Sudafed, that are used in the production of Meth. Therefore, prohibiting the sale of pseudoephedrine products to those under the age of 18 would assist in curbing this "disturbing trend." This provision is included in Sec. 11(c) page nine line 30 through page ten line two.

Mr. Guaneli continued that another new provision is specified in Sec. 11(b) page nine, lines 24 through 29. This "important" provision would require the entirety of pseudoephedrine and similar decongestant "combination products" sold in retail outlets to be secured behind a counter.

Mr. Guaneli exemplified a variety of pseudoephedrine and similar substance products that could be used to manufacture Meth. It was once thought "that only the products with pure pseudoephedrine" could be utilized to produce Meth; however, that is not the case. After pure pseudoephedrine products were banned or restricted in some states, manufacturers developed "combination products". While "the yield" from these combination products might be "a little bit lower" they could be used to produce Meth.

Mr. Guaneli noted that another important provision contained in Version "C" is the lowering, from nine grams to six grams, the amount of pseudoephedrine products that a person could possess. The Department of Public Safety is supportive of this change. Many other states have already adopted this quantity.

Mr. Guaneli demonstrated the quantities of pseudoephedrine contained in various Sudafed products available on the market. The dosage contained in one package of Sudafed would provide cold symptom relief to an adult for approximately one and a half days. Eight of these packages, or a 12-day supply of cold medication, would equate to six grams. Other Sudafed products would provide a twelve-day dose and would equate to approximately three grams. While a person would be limited to purchasing two boxes of the latter product, that quantity would provide 24 days of medication. He noted the manufacturer recommendation that a person contact a physician were their symptoms to continue more than seven days. A child's dosage would be half that of an adult's.

[9:38:01 AM](#)

Mr. Guaneli shared that the results of a survey conducted in the State of Iowa indicated that 95-percent of consumers typically purchased about half of the six-gram limit. Seldom was there a purchaser who desired to purchase more than six-grams "at any one time."

Mr. Guaneli identified these three provisions as being the key changes in Version "C".

[9:38:41 AM](#)

Mr. Guaneli pointed out that Version "C" continued to include the provision that would allow certain types of business such as lodges and hunting camps to possess more than six-grams of the product, as their situation might demand a need for a larger supply to be on hand.

Co-Chair Green identified that language being included in Sec.

3(d)(2) page four lines 11-17.

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Mr. Guaneli concurred and noted that, due to a drafting error, this language was inadvertently omitted from Sec. 6 of Version "C". A technical amendment to correct that would be forthcoming.

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Senator Bunde asked whether this exemption would also apply to people residing in remote areas in the State who might not be able to shop on a regular basis.

[9:40:06 AM](#)

Mr. Guaneli stated that, while the location factor is one of the exclusions, that situation is not specifically addressed. However, the language "impractical for the participants in the activity to obtain medicinal products" would suffice. This language is located in Sec. 3(d)(2) page four, line 16.

[9:40:39 AM](#)

Senator Stedman recalled concerns being raised by retailers about being required to maintain a logbook of pseudoephedrine products purchases. He asked for further information about how that requirement might impact retailers. In addition, he asked that further information be provided regarding the term "secured area".

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Mr. Guaneli clarified that there was no logbook requirement in Version "C". There was some question as to whether the additional burden that maintaining a logbook would place on retailers would be outweighed by its ability to deter the purchase of these products.

[9:41:37 AM](#)

Mr. Guaneli stated that provisions pertaining to the security of the products are included in Sec. 11(b) page nine, lines 24 through 29. This language would provide "sufficient guidance for retailers, many of whom are adopting these provisions voluntarily." Retailers are already experienced with monitoring the purchases of tobacco and alcohol products. No retailer has raised concern in regards to this language.

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Senator Stedman stated that his questions had been for the benefit of the public.

Senator Stedman asked regarding the intent of the language restricting the sale of pseudoephedrine products to people age 18 and older as specified in Sec. 11(c) page ten, line 30 through page ten line two.

[9:43:21 AM](#)

Mr. Guaneli stated that, "the age of 18 was selected because it has been found that a number of manufacturers of methamphetamine are actually using people under the age of 18 to go in and buy the products." Thus people under 18 might be present in an area where the drug was being manufactured. Therefore, the intent of the age restriction would be to stop this occurrence.

[9:44:19 AM](#)

Mr. Guaneli noted that this could be a policy question for the Committee.

[9:44:35 AM](#)

Mr. Guaneli pointed out that the fact that there are age-related dosages on the products, also adds to the question as to whether children should be able to make these purchases.

[9:44:59 AM](#)

Senator Hoffman, while understanding the reason that retailers would be opposed to a logbook, questioned the effectiveness of the legislation without that requirement. Presenters at a conference he had attended stated that having "the logbook was the way to stop reoccurrence." Absent a logbook and its record of purchases, a person could buy six-grams per transaction over a short period of time or could make purchases from a variety of different stores. "The profits are so high" that people would go to that extra effort.

Senator Hoffman concluded that the only deterrent would be to have the name of the purchaser in a logbook.

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Mr. Guaneli stated that that is "certainly a legitimate concern; a number of states do require logbooks." The original version of the

bill had included logbook requirements. However, after discussions with retailers, the Administration was satisfied that retailers would endeavor to monitor these transactions "and alert the authorities" about suspicious activities.

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Mr. Guaneli noted that language in Sec. 11(d) page ten lines three through seven would address the fact that retailers could contact law enforcement about suspicious activities. The requirement that these products be secured in a restricted area would address the concern spoken by Senator Hoffman, as many retailers assign specific staff to those areas. The hope would be that the provisions contained in this bill would address the issue without the need to incorporate "more stringent requirements".

Mr. Guaneli opined that the most important requirement of all is that the purchaser must present identification. This would deter Meth addicts as users of the drug have a tendency to become "paranoid". They would hesitate to make repeat purchases in the same or surrounding stores, "simply because they're afraid that the clerk is going to notice." He believed that clerks would notice. "The feeling was let's see how this works". The issue could be reevaluated if necessary.

[9:49:57 AM](#)

Senator Hoffman asked for further information about the six-gram limitation.

[9:50:08 AM](#)

Mr. Guaneli clarified that a person would be limited to purchasing six-grams in 30-day period. Language in Sec. 3(d) page three lines 21 through 27 presumes that a person in possession of more than six grams would have the intent of using "it for an improper purpose.

Mr. Guaneli stated that language in Sec. 6(a) page six lines 15 -18 would make it a crime for a person to purchase more than six grams in a 30-day period. People who might use the product "for improper purposes" would worry about having to provide identification. All of these things combined might have an affect.

[9:51:23 AM](#)

Senator Hoffman stated that without the logbook, there would be no written record and the onus would be placed on the memory of a salesclerk. The nature of the retail business is to sell products;

"they are profit motivated". The absence of a logbook would provide an opportunity for further abuses of this dangerous drug.

Senator Hoffman warned that, while the use of Meth is uncommon in Alaska today, it could occur and the lack of the logbook requirement would provide a "large hole" through which to obtain it.

[9:52:20 AM](#)

Co-Chair Green voiced that the people involved in this trade might have more than one identity "and could quickly figure out a way around any kind of logbook." Continuing, she opined that "tracking someone in Rural Alaska" would be easier than tracking someone in a large community such as Anchorage or the Mat-Su Valley. A small community could rally against this behavior.

[9:53:03 AM](#)

Co-Chair Green noted that the majority of the State's large retailers are computerized and networked, and "are already reporting to the troopers." In addition, they have already isolated the products in a secured place and have protocols in place through which to address the concern. "Anything we do will fall short of eradicating Methamphetamine manufacturing until the hearts and minds of people change a whole lot and quit being illegal purveyors."

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Co-Chair Wilken likened the procedures proposed in Sec. 11(b) page nine, lines 24 through 29 to the procedures in place for the sale of tobacco.

Mr. Guaneli nodded agreement.

Co-Chair Wilken stressed that, "it is important to note that we control tobacco just as we are asking this to be controlled. The system's in place." He recalled how concerned retailers were when efforts to control tobacco were proposed; however, the process has been effective. He acknowledged that while it did increase retailers' cost of operations, that same process could be used to control this product. There is not much difference in the approach being proposed for the control of pseudoephedrine products to that effectively in place for tobacco.

[9:55:02 AM](#)

Mr. Guaneli agreed that the processes would be comparable.

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Mr. Guaneli stated that the sales clerks working the pseudoephedrine product counters would be cognizant of their customers. This is supported by the fact that large retailers typically assign specific clerks to deal with tobacco and liquor products. The fact that small retailers have a limited number of staff would also be a positive factor.

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Co-Chair Wilken asked whether this legislation would allow the City of Fairbanks, for example, to enact "law that would trump State law."

Mr. Guaneli responded that, in general, a municipality could not enact an ordinance "that would be inconsistent with State law". Furthering that point, a municipality could "impose additional restrictions" beyond the State law. The courts would not view that as being inconsistent with the State Statute.

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Mr. Guaneli surmised that it would be deemed acceptable were a municipality to enact an ordinance setting a purchase limit of three grams rather than six-grams. "That would not be inconsistent with what this bill does."

[9:57:14 AM](#)

Co-Chair Green asked whether a city could require some sort of registry.

Mr. Guaneli believed that they could.

Co-Chair Wilken stated that were that the case, a retailer who had stores in numerous communities, would be required to conduct different training. "That would create some problems from their standpoint." Further consideration of this matter should occur. It might be deemed appropriate to clarify that local communities could not enact ordinances beyond the State law.

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Mr. Guaneli stated that this issue could be further addressed. It would be a policy question for the Committee. "The Legislature has,

in other instances, preempted municipality laws."

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Senator Stedman understood therefore that Co-Chair Wilken would be opposed to allowing a local government "to enact more stricter ordinances".

Co-Chair Green affirmed.

Co-Chair Wilken opined that in this case, a single "blanket law should cover the State ... All rules apply equally across all municipalities."

Senator Stedman asked whether the reason was to prevent a retailer from taking "advantage of another retailer in a more stricter area."

Co-Chair Wilken cited enforcement of the law as the reason. Tobacco sting operations have occurred around the State in order to test the system. Problems in this regard might occur were communities to adopt differing restrictions.

[9:59:43 AM](#)

Senator Bunde understood that the enforcement of the six-gram limit is really one of possession rather than purchase.

[10:00:13 AM](#)

Mr. Guaneli responded that the possession limit is critical. This legislation would allow law enforcement officers to "take action" were a person, for example, in possession of ten grams of pseudoephedrine. He agreed with Co-Chair Green and Senator Hoffman that one way or another people might "find a way to buy within a certain period more than" the allowable amount. The more than six gram possession language would remove the onus on officers "to prove that they intended to manufacture it etc."

[10:01:27 AM](#)

Senator Bunde echoed Co-Chair Green's comments by stating that, no matter what laws are adopted, these people "are not stupid" and would endeavor to find a way around them. He informed the Committee that he had also attended the same Meth Abuse Seminar as Senator Hoffman. It was reported at that seminar "that 20 to 30-percent of the Meth that's available on the street comes from these mom and pop manufacturing things that use Sudafed sources." The other 70-

percent is from large scale manufacturing operations in such places as California. To that point, he asked whether the Administration was aware of that and, if so, how that issue might be dealt with.

[10:02:38 AM](#)

Mr. Guaneli responded that currently in the State, "the vast majority of what is found and sold on the street comes from local manufacturers." However, were the supply of raw materials "to dry up" as a result of this law, other supply chains would be sought.

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Mr. Guaneli stated that Meth obtained from another state could be likened to cocaine, heroin and other similar drugs "that aren't manufactured in the State" in that they must be transported here. The Department of Public Safety has been working closely with the United States Postal Service to obtain additional authority through which to seize packages. The Department has also established good relationships with other transportation carriers including FedEx and Alaska Airlines. Officials also monitor the Alaska State ferries. The standard interdiction methods that Alaska State Troopers have would apply to Meth that is transported into the State. This legislation would serve to dry up the local production.

Senator Bunde remarked therefore that the Administration is aware that curbing supply in one area would drive the operations in another direction.

Mr. Guaneli affirmed.

[10:04:19 AM](#)

Senator Dyson noted that teenagers are able to obtain prescription medicines that have "higher procedural standards", from a variety of sources including the Internet.

Senator Dyson, while acknowledging Co-Chair Wilken's comments in regards to regulation consistency, spoke in favor of allowing local jurisdictions to implement stricter provisions including the requirement for a logbook, were there a need to address localized problems. This legislation would enact regulations in areas of the State in which there are no problems or where there might be only one store.

Co-Chair Green stated that when trying to balance the issue, consideration should be given to the fact that large retailers, who have the most advanced computerized systems, currently sell more

than 60 percent of goods in the State. Thus, there are a limited number of retailers selling the majority of the groceries, sundries, and other products in the State. Allowing communities to implement differing law would instill more hardship on large retailers than they would on small mom and pop retail operations.

Co-Chair Green reminded the Committee that the federal government might also develop legislation that would supersede the State's regulations in this regard.

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Senator Hoffman stated that the subject of this legislation is a drug that has been developed to provide relief to people suffering from a cold. The problem is that the ingredients of this drug have been used to develop "a highly addictive" substance that has caused significant problems in the State. There are numerous non-pseudoephedrine over the counter medications that could be used to effectively treat a cold. While manufacturers are aware of this, they have been reluctant to move in that direction.

Senator Hoffman stated that unlike cigarettes, which are also secured behind a counter, pseudoephedrine products could be used to make a product with a high profit margin. Absent a logbook, it would be incumbent upon a retail clerk to recall who the product had been sold to. Therefore, the exclusion of a logbook requirement could be likened to leaving the backdoor open, as the steps that would be imposed would not be a deterrent in light of how much profit would be made. This point was stressed at the seminar that he and Senator Bunde attended. States that have required a logbook have experienced an 80 percent reduction.

Co-Chair Green shared that the State of Texas, which enacted similar legislation to what is being proposed in this bill, has had dramatic results. Unfortunately Texas must contend with finished Meth products being imported from Mexico.

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Senator Olson voiced concern to the language restricting the purchase of pseudoephedrine products to people 18 year of age or older as specified in Sec. 11 (c) page nine line 30 through page ten, line two. There are many people under that age who are parents, serving in the military, or are emancipated. Restricting the purchase of this medicine to such people would be a disservice to law-abiding people.

Senator Olson continued that the difference between tobacco and the

products targeted in this legislation is that pseudoephedrine products have a therapeutic effect.

[10:13:18 AM](#)

Senator Olson asked for further discussion of the age specification.

Mr. Guaneli stated that this language was included in response to the Alaska State Trooper observations that kids were being used to purchase the products for manufacturers. He was unsure as whether 13 and 14 year olds or 17 and 18 year olds were making these illegal purchases. In this case, the age of 18, which is the age people are viewed as legal adults, was determined to be "the fair line". He reminded that persons must be 19 years old to purchase tobacco.

Mr. Guaneli acknowledged Senator Olson's concerns, and stated that he would verify with Alaska State Troopers the age of the youth being hired by Meth manufacturers. The age line could be redrawn.

Co-Chair Green asked whether a married person under the age of 18 would be recognized as being at the age of majority.

Mr. Guaneli replied that there are certain provisions through which being married or being an emancipated minor would provide the person the same authority as being an adult. Some of those provisions could be included in this bill.

Co-Chair Green asked Senator Olson whether such language would address his concern.

Senator Olson replied that it would.

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Senator Dyson also voiced support for including that language in the bill.

Co-Chair Green asked whether any other categories should be considered.

Mr. Guaneli responded that those two are the common ones included in other statutes.

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Co-Chair Wilken asked how such a person would be able to prove

their emancipated or married status.

Mr. Guaneli acknowledged that that would be "the problem". A retailer would more than likely refuse the sale until the individual provided their marriage certificate. At that time, the information could be logged for future reference. It would be a logistical issue.

Co-Chair Green noted that that would be the deciding factor were the individual accused and a court proceeding to ensue.

[10:17:08 AM](#)

Mr. Guaneli reminded the Committee that the issue regarding an individual under the age of 18 would be a matter for the Juvenile Court. However, he clarified that the language in Sec. 11(c) would serve to prohibit the retailer from selling to a person under the age of 18. Any citation that might be written in this regard would be against the retailer.

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Senator Stedman observed that another avenue through which to control pseudoephedrine abuse would be to make it a prescription only medication.

Co-Chair Green stated that doing so would incur the expense of making a doctor's appointment "for a ten-dollar product".

[10:18:19 AM](#)

Senator Dyson stated that the reason for classifying a product as a scheduled drug that would require a prescription would be because the drug could be dangerous. There is no issue in that regard with this drug was it used, as intended, to treat a cold. Therefore, as espoused by Co-Chair Green, requiring pseudoephedrine to be a prescription only medication would place people who had a cold or sinus problems at a disadvantage.

Senator Olson noted that the Federal Drug Administration (FDA) has deemed pseudoephedrine products to be an over the counter drugs. A federal process might be required to change the designation to a prescription medication.

Co-Chair Green expressed doubt in that regard as another state had done that. To that point, she noted that the effort had not been very successful.

There being no further discussion, Co-Chair Green announced that the committee substitute was ADOPTED.

Amendment #2: This amendment inserts a new subsection into Sec. 6 page seven line three. This language would mirror language in Sec. 3(d)(2) page four lines 11 through 17.

() more than six but less than 24 grams of a listed chemical identified in (a) of this section in the ordinary course of a legitimate business or nonprofit organization, or as an employee of a legitimate business or nonprofit organization, operating a camp, lodge, school, daycare center, treatment center, or other organized group activity, and the location or nature of the activity, or the age of the participants, makes it impractical for the participants in the activity to obtain medicinal products.

Co-Chair Wilken moved for the adoption of Amendment #2.

Co-Chair Green explained that this language would mirror language in Sec. 3. It was determined that this language should also be included in Sec. 6.

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There being no objection, Amendment #2 was ADOPTED.

Co-Chair Green ordered the bill HELD in Committee.

[10:21:42 AM](#)

#sb74

CS FOR SENATE BILL NO. 74(JUD)
"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."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Green specified that this legislation is sponsored by Governor Frank Murkowski.

[10:22:22 AM](#)

Co-Chair Wilken moved to adopt the Judiciary committee substitute,

Version 24-GS1054\F, as the working document.

There being no objection, the JUD committee substitute was before the Committee.

[10:22:42 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law explained that this bill was developed to address "the confusion" occurring in the State in regards to its marijuana law and the Alaska Court System's interpretation of that law. The confusion climaxed a few years prior "when the Alaska Court of Appeals essentially held that" every person in the State age 18 or older has "a Constitutional right to possess up to four ounces of marijuana in their home."

Mr. Guaneli stated that "the genesis" of that ruling was the 1975 Alaska Supreme Court ruling, *Raven v. State*, which held that, "based on what was known about marijuana at the time, the State had not proven a sufficient interest in regulating marijuana in the home that the State could criminalize it." In the early 1980s, the Legislature adopted legislation allowing for possession of up to four ounces of marijuana by adults. However, in 1990, voters approved an initiative that recriminalized marijuana. "Since that time, there have been a number of attempts to place ballot initiatives before the voters to decriminalize marijuana again, and each of those" attempts have been defeated. "The only provision that has been accepted by the voters is to allow marijuana for medical purposes." This bill would not alter the medical use of marijuana.

Mr. Guaneli explained that this bill would update the information about marijuana that was used in the 1975 Alaska Supreme Court ruling on the *Raven V. State* case to reflect current scientific and sociological knowledge. "A lot has changed in the last 30 years."

[10:26:05 AM](#)

Mr. Guaneli explained that the Legislature's recognition of what has changed is reflected in the nine Findings identified in the bill. Many volumes of information were provided to both the Senate Health and Social Services Committee (Senate HES) and the Senate Judiciary Committee that heard the bill during the First Session of the Twenty-Fourth Legislature.

Mr. Guaneli requested the Committee's direction as to whether he should explain the Findings of the bill or explain the intent of the bill.

[10:26:51 AM](#)

Co-Chair Green asked that any information provided to the Committee be accompanied by a disclaimer in the event there were forthcoming changes.

Mr. Guaneli stated that the first Finding, Sec. 2(1) page two lines nine through 19 addresses the potency of marijuana.

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Mr. Guaneli noted that in 1975, the Alaska Supreme Court held that marijuana contained approximately one-percent of the psychoactive ingredient, tetrahydrocannabinol (TCH). The opponents of this bill would argue that the true percentage was in the 1.5 to two percent range. The common ground would be that the range was between one and two percent. Today, however, the TCH content of marijuana nationwide is approximately six to eight percent. "Opponents have conceded" to that fact and have testified that today's marijuana is two to three times stronger than it was in the 1970s. It should be noted that Alaska marijuana "is significantly stronger" than the national average. It has been determined to be in the ten-percent range over the past decade and as high as 14-percent based on data available from 2004. Regardless of the percentages, opponents have likened marijuana from the 1970s to the marijuana of today as comparing "beer and whiskey".

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Mr. Guaneli stated that the opponents of this bill have weighed in on some of the Findings. "The prime sponsor of the last ballot initiative to decriminalize marijuana has said that ... there is no denying that there is health concerns with marijuana." He has been quoted as saying that "nobody disputes that it's hard to remember after you've smoked a bowl of marijuana. The experts provided by the opponents" have stated "it's not a completely harmless substance." In addition, an expert who provided written testimony for the opponents of this bill stated that ten-percent of the people who use marijuana regularly become dependent on it.

Mr. Guaneli stated that during the committee process the previous session, the bill's opponents discussed marijuana in the context of adult usage. During its Senate Judiciary Committee hearings, Senator Charlie Huggins asked Dr. Grinspoon, Psychiatry Professor, Harvard University, "who has testified for years in support of marijuana" whether he would allow his children to use marijuana. His reply was "It's not for children, I don't want children to use

it."

Mr. Guaneli opined that that would make sense since marijuana has psychoactive effects on the brain. The developing brain of children and adolescents are "subject to any number of substances". The percent of high school age youth who use marijuana in the State of Alaska is significantly higher than the national average. Recent youth risk behavior surveys indicate that 40-percent of high school students who used marijuana in the last 30-days started using marijuana before the age of 13. Studies conducted on middle school students indicate that seven to ten percent of them started prior to the age of eleven.

Mr. Guaneli stated that when asked by Senator Huggins and Senator Ralph Seekins about precautions a person might take in regards to the potency of their marijuana, Dr. Grinspoon, an opponent of the bill, suggested that a person test its strength by taking "one puff, and wait for a while and take another puff." One of two things would occur: either the person would "get relief from whatever symptoms or they will get high; or they will become anxious". A psychology professor from Southern California suggested that a person should take small inhalations and then wait approximately 15 minutes "to access the facts before smoking more".

Mr. Guaneli interpreted these remarks as indicating "that marijuana is so powerful now, that you need to take one puff and wait and wait and wait and see what happens to you before going on to take another puff." Think about that in terms of the nine ten and eleven year olds who are using marijuana in Alaska. The question is whether children would hear "or heed" that message.

Mr. Guaneli pointed out that in addition to the fact that the percent of Alaska's youth who use marijuana is higher than the national average the number of the State's pregnant women who use it is nearly double the national average. The number of pregnant Native women is four times the national rate. While bottles of alcohol have warning labels that alcohol use could cause birth defects, bags of marijuana do not.

[10:35:34 AM](#)

Mr. Guaneli declared that people perceive marijuana usage as being okay since Alaska's Courts have upheld people's right to use it. According to recent Department of Health and Social Services surveys, six percent of pregnant women in the State use marijuana and approximately 14-percent of pregnant Native women use it.

Mr. Guaneli stated that the intent of his remarks is to communicate

what the experts have stated about marijuana and "how that relates to its actual use and who is actually using it in Alaska".

[10:36:18 AM](#)

Mr. Guaneli noted that the other Findings included in Sec. 2 support that, in addition to its increased potency, its value has also increased. The Alaska State Troopers have determined that the selling price of marijuana in urban areas is approximately \$350 per ounce. It could be as high as \$550 an ounce in Rural areas. It is "a highly profitable enterprise. Marijuana growers have become very sophisticated." A plant with high THC is "cloned" and traded with other marijuana growers. Such cooperation allows a grower whose operation might be shut down by police, "to get back in business".

Mr. Guaneli stated that this bill is designed to curb Marijuana growers. Troopers have discovered that as a result of a Court of Appeals opinion issued approximately one and a half years ago, "it is much more difficult for them" to obtain a search warrant to investigate commercial marijuana growing. The ruling was that every adult has a Constitutional right to have up to four ounces. Absent Troopers ability to prove that every adult in that home is in possession of more than four ounces of marijuana, the Courts have denied search warrants.

[10:38:16 AM](#)

Senator Bunde calculated that a person in Rural Alaska could legally possess \$2,000 worth of marijuana were it valued at \$550 an ounce.

Mr. Guaneli affirmed.

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Mr. Guaneli stated that the Court of Appeals accepted the Legislature's view that possession of four ounces of marijuana is indicative of intent to sell. However, possession of a quantity less than that is Constitutionally allowed. Due to their inability to obtain search warrants the Troopers have been inhibited in their ability to stop marijuana growing. Therefore the growers have continued to grow "essentially unimpeded". The number of marijuana seizures has declined for the past two or three years, and there is more marijuana on the market. In Rural Alaska, alcohol is being replaced with marijuana. Marijuana weighs less than alcohol, is more valuable, and is getting into Rural Alaska villages at "an alarming rate."

Mr. Guaneli stated that due to today's potency levels, one ounce of marijuana could be made into approximately 100 marijuana cigarettes. Even though marijuana might sell at \$550 an ounce, kids could combine their money and purchase a marijuana cigarette at prices ranging between ten and twenty dollars. "The profit motive" of such an enterprise "is tremendous".

[10:41:16 AM](#)

Mr. Guaneli characterized the "commercial" aspect of marijuana as being "a big business". Producers grow, harvest, and dry the marijuana. Then a middleman buys the crop and distributes it. The growers "never leave their house and see the actual consumer". The fact that the grower does not actually sell the product has further compounded the difficulty to conduct investigations. This, coupled with the restrictions that the Courts have placed on search warrants, has contributed to there being more marijuana on the market.

Mr. Guaneli stated that the inclusion of the Findings in the bill would communicate to the Courts "that, after many many years ... the Legislature has taken another look at marijuana ... The Courts generally give great deference" to, particularly, findings on scientific matters made by the Courts." The belief is that, based on 2005 and 2006 information, the Courts would agreed with the Legislature that there are "good grounds for making marijuana a crime, even in the home." "Too many kids are using it because of its availability in the home." In conclusion, the Courts would uphold all of the State Statutes on marijuana, and, as a result, the Troopers would be able to get search warrants to address commercial growing of marijuana in the manner that had been utilized in the past.

[10:43:20 AM](#)

Senator Hoffman, recalling the statement that ten percent of marijuana users become dependent, asked regarding the dependency level for Meth users.

[10:44:01 AM](#)

Mr. Guaneli responded that the ten percent addiction rate for marijuana would be slightly less than the dependency rate of people addicted to alcohol. Approximately 20 percent of Cocaine users are addicted and between 20 and 30 percent of Heroin users are addicted. The addiction rate for both Meth and tobacco is in the 30 to 40 percent range. Many factors contribute to the difficulty in determining exact percentages for Meth: people who use it on a

regular basis have higher addiction rates than those who might use it one time and then become addicted. "Hard and fast data" on Meth use doesn't exist in the manner that "it exists for other drugs".

Mr. Guaneli stated that the dependency rate of marijuana users is on the low end of the scale in terms of drug abuse. However, while heroin has a higher dependency rate, there are a significantly smaller number of users in Alaska, particularly child users. In contrast, upwards of 50 percent of high school students in the State have used Marijuana. There is also a high percent of children under the age of 13 who have used it. The difference in the number of people under the age of 18 who have used marijuana is the most striking information.

[10:45:59 AM](#)

Senator Bunde asked the status of the fiscal notes.

Co-Chair Green stated that fiscal notes would be forthcoming.

[10:46:13 AM](#)

Co-Chair Wilken noted that the penalties levels specified in Sections 3, 4, and 5 would appear to increase according to the amount of a controlled substance in one's possession. To that point, he asked for further explanation of the language in Sec. 5(a) page six lines 27 and 28 that reads as follows:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

Mr. Guaneli explained that a crime of misconduct in the sixth degree is a Class B misdemeanor, which is the lowest level of crime in the State. The maximum penalty would be 90 days in jail and a \$2,000 fine.

Mr. Guaneli continued that historically the fine for people convicted of possessing small amounts of marijuana in public is \$50 to \$100. Typically, the person would not be sentenced to jail for that offense unless they were using the substance while driving. The charge would then be "drunk driving."

[10:47:33 AM](#)

Co-Chair Wilken asked regarding the penalty depicted in Sec. 3(a) page four, lines nine and ten that reads as follows.

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

Mr. Guaneli stated that a crime of misconduct in the fourth degree is a Class C felony, which is the lowest level of felony charges in the State. The maximum jail time that could be awarded would be five years; however the presumptive range would be zero to two years and a Judge would not be required to sentence any jail time for that offense. "Ordinarily" a small amount of time, such as 30 days "or none at all", might be imposed.

Co-Chair Wilken asked whether a crime of misconduct in the fifth degree as reflected in Sec. 4(a) page five, lines 28 and 29 would be a felony charge.

Mr. Guaneli stated that a crime of misconduct in the fifth degree is a Class A misdemeanor with a maximum jail time of one year. Drunk driving is also a Class A misdemeanor. The difference is that there is a minimum three-day jail sentence for a first time drunk driving offense.

[10:48:58 AM](#)

Co-Chair Wilken stated that having this information on file would be helpful.

Co-Chair Green concurred.

[10:49:14 AM](#)

Co-Chair Green noted that, during the interim between the first and second session, this bill, which had transited through several committees during the first session, has been revised to address concerns that were raised. To that point, she asked that the amendments that have been drafted to address further Legislative and constituent concerns be explained.

[10:50:00 AM](#)

Senator Olson asked for assurance that doctors who might prescribe medical marijuana would not "be tormented by this bill".

Mr. Guaneli stated "there is nothing in this bill that changes any of the Statutes relating to medical use of marijuana". This bill would be limited to the illegal possession of marijuana. A separate and specific section pertaining to medical marijuana is included in

the State's drug laws.

[10:51:05 AM](#)

Mr. Guaneli assured there to be no intent to change State law in regards to medical marijuana. Any action that might be taken by the federal government would be done independent of State law.

Mr. Guaneli clarified that a person could acquire medical marijuana without a prescription as the law allows for a doctor's recommendation to suffice.

[10:52:07 AM](#)

Senator Olson inquired as to how law enforcement officials would be able to differentiate between medical marijuana and criminal use of marijuana.

Mr. Guaneli communicated that according to Alaska Medical Marijuana Statutes, a person authorized to use medical marijuana would, after providing proof of their doctor's recommendation, receive a State card from the Division of Vital Statistics, Department of Health and Social Services that would identify them as a medical marijuana user. In addition, their name would be included on a confidential State registry. There are also provisions through which a caregiver and an alternate caregiver could receive identification if necessary.

Senator Olson asked whether the definition of motorized vehicles as specified in Sec. 4(a)(3)(F) page six and Sec. 5(a)(4) page seven would include such things as snowmachines and four-wheelers.

Mr. Guaneli affirmed. However, he noted that the references to motor vehicles would be deleted were a forthcoming amendment adopted.

[10:54:22 AM](#)

Senator Stedman asked how this bill would affect a situation in which a law enforcement officer encountered a person in their home who appeared to be under the influence of marijuana.

Mr. Guaneli stated that language in Sec. 3(a)(f) page four would specify the threshold between a misdemeanor and a felony charge. The former would apply to amounts less than four ounces. "Even the Alaska Appellate Courts have recognized" that the possession of more than four ounces of marijuana "may indicate an intent to sell". As Senator Bunde pointed out earlier, the value of that

amount could equate to \$2,000. "It's a lot of marijuana." According to Alaska State Trooper testimony, the potency of marijuana "degrades" over time and there is a point in time at which it reaches a half point. Therefore, a person would be required to use it "or distribute it" within a few months or it would degrade to a point at which it would lose its value. It would be difficult for a person to consume four ounces of marijuana in a few months. This was the basis upon which the four-ounce determination was derived.

Mr. Guaneli assured that there would be "no intention" on the part of law enforcement officials "to go around to people's houses looking for people who are smoking it recreationally." Their focus would be on the commercial grower. This legislation would change the current process through which officials obtain search warrants in regards to the commercial grower.

[10:56:45 AM](#)

Mr. Guaneli stated that were "great inroads made" in respect to the commercial growing of marijuana, there would be less product on the market and the price would increase.

Mr. Guaneli noted that were a law enforcement officer called to a residence for some reason such as domestic violence "and make observations that somebody's using marijuana," the officer might take action at that point.

Mr. Guaneli stated that currently when an officer observes the odor of marijuana, they typically do not take action. Recreational users of marijuana are not currently within officers' "list of priorities".

[10:57:39 AM](#)

Senator Stedman stated that the issue of children being exposed to marijuana in their home differs from that of alcohol use in the home. One concern with marijuana is secondhand smoke. Thus, he asked whether provisions in the bill would address marijuana use in the home's impact on children. Elementary school teachers have expressed that they can smell the odor of marijuana on children's clothes. This is oftentimes the result of parental behavior.

[10:59:23 AM](#)

Mr. Guaneli shared that studies indicate that kids in homes with parents who use marijuana or parents who "don't actively discourage its use" are "likely to end up using it themselves". There is a similarity between the affects of secondhand tobacco and second-

hand marijuana smoke. While nothing in the bill would directly address second-hand smoke, the hope is that reducing the availability of marijuana, making its possession a crime, and the fact that the Courts would support the findings presented by the Legislature, specifically the Finding that marijuana is "more dangerous" today, would discourage people, and parents of young children in particular, from using it.

[11:01:14 AM](#)

Co-Chair Green recalled there being separate legislation that addressed the handling or manufacturing of drugs in front of children.

Mr. Guaneli clarified that the provisions in that bill pertained to the manufacturer of drugs that were being sold. Senator Stedman's question was to parental use or recreational use in a home.

Senator Bunde asked whether the State's child endangerment laws might address this issue.

Mr. Guaneli noted that in a recent conversation, the State Attorney General who had recently reviewed Civil Division, Department of Law reports regarding child protection reports, had shared that the "vast majority" of cases in which children were taken into protective custody due to people using illegal drugs other than alcohol, involved marijuana and meth. Therefore, there are means through which to remove children from homes were the parents unable to care for them due to drug use.

[11:03:20 AM](#)

Co-Chair Green pointed out that the quantifying of marijuana language as denoted in Sec. 6 page seven "was badly needed". This language reads as follows.

Sec. 6 AS 11.17.080 is amended to read:

Sec. 11.71.080. Aggregate weight of live marijuana plants. For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be one-sixth of the measured weight of the marijuana plant after the roots of the marijuana plant have been removed.

Mr. Guaneli stated that the Alaska State Troopers have advocated for the establishment of this quantitative measurement for many years, as it would assist in possessing a case more expediently. Currently, officials must cut, dry, and process live marijuana plants in the same manner as a drug dealer or manufacturer would.

This is a "burdensome process" that has required huge warehouses and time. The process is necessary as the amount of product would be the basis for establishing the penalty. Through experimentation, a "wet weight" ratio calculation has been developed: six pounds of a wet marijuana plant would equate to one pound of sellable marijuana.

Co-Chair Green, noting that numerous people wish to testify to the bill, shared that it would be her desire to first address the amendments to the bill, as they might address some of the testifiers' concerns.

[11:06:11 AM](#)

Amendment #1: This amendment deletes "To carry out the intent of the voters and the legislature, it will ultimately be necessary for the courts in Alaska to come to different conclusions about state statutes relating to marijuana than those expressed in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), and *Crocker v. State*, 97 P.3d 93 (Alaska App. 2004)." in the Findings language in Sec. 2 page two lines four through seven and replaces it with the following.

The legislature has also considered its obligation to carry out the intent of the voters of Alaska in recriminalizing marijuana by ballot initiative in 1990, and in defeating ballot initiatives to again decriminalize marijuana in 2000 and 2004.

In addition, the following language is inserted following "sell" in Sec. 2(9) page four line three.

the street value of Alaska marijuana today is between \$350 and \$550 per ounce; the legislature heard evidence that possession of four ounces or more indicates an intent to distribute, and therefore this is the appropriate amount to justify a felony offense.

Furthermore, "adopt requirements for search warrants to investigate marijuana-growing that" is deleted in Sec. 2(9) page four, lines four and five and replaced with "invalidate search warrants for commercial marijuana-growing and".

In addition, [OR] is replaced with "or" in Sec. 4 (a)(2)(D) page six, line 17.

The word "or" is deleted following "substance;" in Sec. 4(a)(2)(E) page six, line 20.

The entirety of Sec. 4(a)(2)(F) page six, lines 21 through 23 is deleted. The language being deleted reads as follows.

(F) one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while driving or operating a motor vehicle, aircraft, or motorized watercraft;

In addition, the entirety of Sec. 5(a)(3) and Sec. 5(a)(4), which read as follows, are deleted.

(3) possesses one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while a passenger in a motor vehicle, aircraft, or motorized watercraft;

(4) being the driver or operator of a motor vehicle, aircraft, or motorized watercraft, knowingly permits a passenger to possess one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance;

Co-Chair Wilken moved Amendment #1.

Co-Chair Green objected for explanation.

Mr. Guaneli observed that a number of findings, such as the addictive capacity of marijuana, that were included in the original bill sponsored by the Governor "were amended substantially" by the Senate Judiciary Committee.

Co-Chair Green remarked that the fact that the original bill was substantially longer than the Judiciary version of the bill being considered by the Committee would be indicative of that fact. "A significant amount of trimming went on in Senate Judiciary." The findings were limited to those that "were more substantial and quantifiable."

[11:07:12 AM](#)

Mr. Guaneli stated that the first provision in Amendment #1 would pertain to language in Sec. 2 page two lines four through page two lines four through seven. The new language would "simply reflect the Legislature's view that what it is doing in this bill is trying to carry out the intent of the voters of Alaska who recriminalized marijuana for the first time in 1990, and then, in 2000 and 2004," voted against amendments to the State's Constitution "that would have decriminalized it again".

[11:08:03 AM](#)

Mr. Guaneli shared that while it has been argued that the 2004 vote was close, "the supporters of legalized marijuana are well financed by people largely outside of Alaska", and the opponents of legalizing marijuana were meagerly financed. The fact that the opponents were out-financed 50 to one, "and still ended up with a ten percent victory at the election", should be "viewed as a major victory".

Co-Chair Green understood that the first portion of the amendment would delete and replace language.

[11:10:00 AM](#)

Mr. Guaneli read the language that would be inserted.

Mr. Guaneli continued that the language being inserted in Sec. 2(9) page four, line three would address the value of marijuana today.

[11:10:37 AM](#)

Mr. Guaneli stated that the next provision of the amendment would address the court decisions pertaining to search warrants.

[11:11:17 AM](#)

Mr. Guaneli stated that the other changes that would be enacted by the adoption of the amendment include language pertaining to marijuana use and motor vehicles. This language would be removed from the bill due to the fact that other laws address this issue. Removal of this language would assist in "stripping the bill to its essential elements", as evidenced by Co-Chair Green's comments that efforts were taken to focus the bill on "the redrawing of the line" in regards to the four ounce possession, today's street value of marijuana, and the Class B misdemeanor.

[11:12:46 AM](#)

Senator Hoffman asked whether the felony provisions included in this bill would serve to deny an individual from receiving a permanent fund dividend (PFD) check.

Mr. Guaneli stated that the felony provisions for this offense would fall under State Statutes that would serve to deny a person convicted of a felony from being eligible for a PFD.

Co-Chair Green removed her objection.

There being no further objection, Amendment # 1 was ADOPTED.

[11:13:55 AM](#)

Amendment #2: This amendment inserts a new section into the bill following Sec. 6 as follows.

Sec 7. AS 12-55-135 is amended by adding a new section to read:

(k) A court may not impose a sentence of imprisonment or suspended imprisonment for possession of marijuana in violation of AS 11.71.060 if the defendant alleges, and the court finds, that the defendant was not under formal or informal probation or parole conditions in this or another jurisdiction at the time of the offense; that the defendant possessed the marijuana for the defendant's personal use within the defendant's permanent or temporary residence; and that the defendant has not been previously convicted more than one in this or another jurisdiction for possession of marijuana. If the defendant has not been previously convicted as described in this subsection, the maximum unsuspended fine that the court may impose is \$500. If the defendant has been previously convicted once as described in this subsection, the maximum unsuspended fine that the court may impose is \$1,000. In this subsection,

(1) "permanent or temporary residence" means a permanent structure adopted for overnight accommodation; "permanent or temporary residence" does not include

(A) vehicles, tents, prisons or other correctional facilities, residential treatment facilities, or shelters operated by a charitable organization or a government agency;

(B) any place where the defendant's possession or use of marijuana violated established rules for residents, such as a ban on smoking or a ban on marijuana or other controlled substances;

(2) "previously convicted" means the defendant entered a plea of guilty, no contest or nolo contendere, or has been found guilty by a court or jury, regardless of whether the conviction was set aside under AS 12.55.085 or a similar judgment that has been reversed or vacated by a court.

In addition, a new bill section is inserted on page seven, following line 17 as follows. [NOTE: The amendment incorrectly specified following line 7.]

Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. For purposes of AS 12.55.135(k), enacted by sec. 7 of this Act, "previously convicted" includes convictions as described in those provisions whether the convictions occurred before, on, or after the effective date of this Act.

Co-Chair Wilken moved to adopt Amendment #2.

Co-Chair Green objected for explanation.

Mr. Guaneli explained that this amendment "is aimed at blunting ...the unfair criticism of this bill". Many argue that this bill would put a lot of recreational marijuana users in jail. This was not the case in the 1970s prior to the time that the Alaska Supreme Court issued the *Raven v. State* decision, and, regardless of whether this amendment is adopted, that would not be the case now.

Mr. Guaneli noted that one of the opponents of this bill has testified that the enactment of this bill would incur great expense to the State in terms of dollars "in additional jail time". Therefore, in order "to blunt that criticism", this provision would specify that a person smoking marijuana in their home could not be sent to jail and that the maximum fine for the first offense would be \$500 and \$1,000 for a second offense. Class B Misdemeanor penalties would apply to someone for their third offense. This proposal could be likened to the approach applied to minor consuming offenses. A person who is charged with this crime a third time could be deemed as having "a problem that should be addressed" through such things as rehabilitation measures.

Mr. Guaneli stated that, while the bill would deem marijuana possession in small amounts as being illegal, the primary intent of this legislation would be to allow law enforcement officers to obtain search warrants to address commercial growing enterprises.

Without further objection, Amendment #2 was ADOPTED.

AT EASE [11:17:20 AM](#) / [11:23:35 AM](#)

[11:24:05 AM](#)

Co-Chair Green noted that public testimony would now be taken. She requested testifiers to limit their comments to five minutes. Written testimony would also be welcome.

"WES" MICHAEL MACLEOD BALL, Representative, American Civil

Liberties Union (ACLU) of Alaska, testified via teleconference from Anchorage and noted that, due to the late notice that was received on this hearing, there was inadequate time in which to arrange for "world renown experts" on this subject to testify. He characterized this legislation as being "a very complex and medically based issue" with a lot of scientific studies involved. While the Committee might have been provided volumes of scientific studies on the issue, he requested that the bill be held in order to allow the Committee the benefit of the expert testimony.

Mr. Ball characterized Mr. Guaneli's testimony as being "a continuation of what was heard" in previous committees of referral; "there is a sort of inflammatory rhetoric to a certain extent." There appears to be "a justification proposed for this bill that doesn't really relate to the bill's impact". For example, while there were numerous remarks pertaining to marijuana use by children, that activity "is already illegal", and this bill does not address that issue. Discussion has also occurred in regards to commercial growers; however, this bill would impact people who might possess four ounces or less of marijuana in their home. They "are not commercial growers".

Mr. Ball allowed the discussion pertaining to the changes in marijuana potency and its associated economic effects.

[11:27:29 AM](#)

Co-Chair Green asked whether Mr. Ball had received a copy of Amendment #1 and Amendment #2.

Mr. Ball affirmed that he had; however, they did not address his concerns. "The impact of this bill is to criminalize possession of less than ... four ounces" of marijuana and to increase the penalties for possession of four to sixteen ounces. "There is still a criminalization of those possessory amounts even if the possession is of very small amounts for personal use."

Mr. Ball understood that the adoption of Amendment #2 would change the penalty for a first offense. The "stated testimony" of an Alaska State Trooper last year was that "the individual in the home who has a little bit of marijuana for personal use" is not "the person who creates the problem" for the State Troopers or the State. The problem stems from the commercial growers. Therefore, he failed "to see how increasing penalties" on someone who might possess less than four ounces in their home and increasing the penalties for a person having between four and sixteen ounces in their home would address the "root problem" which is the commercial grower. To that point, he stressed that the bill would not increase

the penalty for possession of more than one pound. Those individuals would be the commercial growers. They should be the focus of the bill. This is his primary objection to the bill, as it relates to the issue of one's privacy. ACLU/Alaska is, "as a matter of policy", opposed to "the criminalization of drug possession". Were there a drug abuse problem, it "could be dealt with more effectively and cost efficiently in other ways."

[11:29:47 AM](#)

Mr. Ball stated that "the unique problem" in this State is "the right of privacy as expressed in the State's Constitution". This right is more pronounced in Alaska than in other states. While Mr. Guaneli focused on marijuana being "the context of the issue", the real issue should be the sanctity of the home. The question should be "whether the State has the right to come into somebody's home when they smell marijuana, without evidence of anybody being hurt in some other fashion." He asked whether this Legislature would desire "to go on record as saying that the police can strong arm their way into a house when they smell marijuana, regardless of whether there is any other evidence of wrongdoing." That "is not to say that smoking a small amount of marijuana personally is wrongdoing".

Mr. Ball stated that the question would be "at what point" would a person's right to privacy be jeopardized. In other words at what point would the State be able "to stick its nose into your personal business and say that what you are doing is wrong even if nobody else is getting hurt and we have the right to come in there and look for wrongdoing." The impact that would be made by the adoption of this bill is that "the State would theoretically be able to come into the home to search for criminal activity ... where there is just a small amount of marijuana being used for the purpose, in theory, of getting the commercial growers who have massive amounts of marijuana in their possession."

Mr. Ball stressed that "the impact on the innocent individuals, the innocent homeowners in the State, and on the very small users in the State, is huge. Yet the result of getting to the commercial growers in this situation, is very small." Furthermore, "it ignores the notion that there may be other tools available to the authorities" through which to get commercial growers. It would be unrealistic to hope that "some small percentage" of the homes where some small amount of marijuana might be present" might turn out to be homes of commercial growers.

Mr. Ball restated his initial request that the bill be held in Committee in order to allow expert testifiers to more thoroughly

review the expansive scientific information pertaining to the bill.

[11:32:49 AM](#)

Mr. Ball shared that over the past several decades, federal commissions "have uniformly looked at the comprehensive data and found that marijuana is relatively harmless". An effort must be made at some time to conduct a fair hearing on this issue. Absent such a hearing, the findings attached to this bill would be considered "a sham". Thus the reason for his request that the Committee hear further evidence. It would provide them "a complete understanding of the effect of marijuana on users, on the state, and on society".

Mr. Ball opined that absent the expert testimony on documentary evidence that is available, ACLU would object that the evidence is incomplete. The State has had the opportunity to present its evidence and those "who are opposed to this bill on civil liberty grounds, have had artificial limitations imposed".

Mr. Ball asked the record to reflect that ACLU could provide "conclusive evidence that contradict or mitigate almost all of the present findings." Evidence could also be provided that would support that drug treatment "far out-performs incarceration" and that the State has "manipulated data and presented it in misleading fashion for the simple purpose of establishing a legal foundation to overturn a legitimate decision of the Supreme Court".

Mr. Ball stated that there is "a legal way to do this if the will of the people is to do this, and that is to amend the Constitution. If the basis for this legislation is compelling, there would not be any problem with the legislature or with popular vote, and in fact it might be quicker than the Court challenge that is sure to follow this legislation."

Mr. Ball concluded that "the State's assertive purpose in advancing this legislation is to restrict commercial growers but the impact of the legislation falls squarely on those who are not commercial growers." Were this legislation adopted, "the State would be able to strong-arm their way into private homes even if the marijuana used in the home harms no one." In addition, "the State's own witnesses" have attested to the fact that "there is no problem presented by people who have small amounts for personal use in the home". It is "obvious" that the reason the State is pursuing to "criminalize that conduct" is to enable them "to peer into the homes of everyone who has even a single seed of marijuana to find out which fraction of a fraction of a fraction of those people are commercial growers". This privacy invasion of people in "hundreds

or thousands of homes who aren't hurting anyone" might net a miniscule number of commercial growers. Methods such as improving law enforcement officials' investigative techniques would be a better alternative. The process being proposed would "pin a criminal record on those hundreds or thousands of harmless bystanders, would require more money to be spent on prosecutors and public defenders, probation officers, Court personnel, Department of Corrections personnel, and infrastructure that would be required."

Mr. Ball remarked that this is bad policy for civil liberties, and he urged the Committee to reject the bill.

[11:36:00 AM](#)

KELLY DREW, Associate Professor, University of Alaska Fairbanks, informed the Committee that her training included bio-pharmacology and her expertise is in neuro-pharmacology, which would include "the affects of drugs on the brain and behavior." She noted that some of the recommendations she had presented in her testimony to the Senate HESS Committee have been incorporated into the bill; particularly those relating to the addictive properties of marijuana.

Ms. Drew agreed with previous testifiers that research on this issue is complex. To that point, she recommended that the Committee read a book titled "The Science of Marijuana" authored by Dr. Les Iverson, a professor at Oxford University. She listed his credentials. This "is the best book on the pharmacology of marijuana". The complexity of the issue is compounded by the "political bias in the study of marijuana".

Ms. Drew focused her remarks to the public health concern as opposed to the financial impacts of marijuana. Her pharmacology background included years of experience studying the biology of addiction and dependence associated with stimulants. This background has provided her an "exceptional perspective" on the range of where drugs fall in terms of addiction, dependence, and the impact on public health. "Marijuana is on the low end" of public health risks, including alcohol, tobacco and caffeine.

Ms. Drew voiced being disturbed to see legislation that is focused "on changing the priorities of law enforcement to a drug that falls behind that line and to distract them from other drugs that I see from a professional perspective with significant public health" impacts; "primarily methamphetamine" which has reached "epidemic" use in other states. "It is on our heels here." Law enforcement officers should not be distracted from the effort "to something ...

that does not pose a significant health risk."

Ms. Drew suggested that estimates be developed as to the number of people who would be affected by this legislation: how many Alaskans do use marijuana in their homes. This legislation is about invading the privacy of adults in their homes. Marijuana poses a significantly less public health than allowed substances such as alcohol and tobacco.

Ms. Drew urged the Committee to consider the risk of Meth and "already overburdened" law enforcement. She shared the experience of a person who, while tracking the production of meth by other tenants in her building, alerted law enforcement officials of the activity. No response was forthcoming. Eventually the people moved. This affirmed her position that law enforcement officials are overburdened.

[11:42:35 AM](#)

Senator Olson, noting that the legislation contains seven distinctions between Alaskan Natives and non-Natives, asked Ms. Drew whether studies might indicate there being "a significant" distinction in the "half-life within the blood level" between Native and non-Native people.

Ms. Drew replied "there is no evidence to support that." She "suspected" that it would "be more likely to be sociological reasons that are associated with those claims if those are true." While she had not had a chance to review the sociological findings, it would appear that "the pharmacological findings that were misrepresented in the previous version have been modified or removed".

[11:43:31 AM](#)

DIRK R. NELSON testified via teleconference from an offnet site. He informed the Committee that as a former clinical social worker primarily in the field of mental health, he had never "encountered a client "whose primary issue was cannabis abuse or cannabis dependency".

Mr. Nelson referenced Mr. Guaneli's "often times out of context statements" about how the people in support of legalizing marijuana outspent their opponents ten to one. The issue is that over the last 68 years, and specifically the last 36, there have been nearly unbridled federal propaganda expenditures, in the millions of dollars, against marijuana. Despite this, there was a market increase of a minimum of three percent who supported legalizing the

sale of marijuana.

Mr. Nelson addressed the comments in regards to the effects of secondhand smoke on children. One renown doctor whom authoritative entities had consulted for years, "has stated that the carcinogenic affects" of Marijuana secondhand smoke are basically "non-existent" in comparison to tobacco. There is "no credible evidence" to support "there being psychotropic affects" from cannabis second hand smoke. Most testing laboratories disallow the argument from people who claim that they tested positive for marijuana due to being around people smoking it.

Mr. Nelson addressed several more issues including the presumption of guilt based on weight. This would "treat non-trafficking possession the same as it does possession".

[11:47:46 AM](#)

Mr. Nelson questioned the confidentiality of the records pertaining to those using medical marijuana, as federal agents in addition to State law enforcement officials could access it. Federal agents are arresting people who use medical marijuana in California. He communicated that people using medical marijuana have received registration renewal forms in the mail that have "medical marijuana registry" clearly printed on the return address. This could alert deviates that they could rob that house and find marijuana. Mr. Guaneli's statement that 100 cigarettes could be produced per ounce of marijuana is incorrect; 25 to 40 "joints" would be more realistic. The larger number would better support the rationalization for recriminalizing marijuana. "Many areas of the country are moving toward" lessening or eliminating penalties for Marijuana; "yet Alaska is attempting to felonize personal use amounts in contradiction to the State's Constitution as reasserted by the Appellate and Supreme Courts more than twice now."

Mr. Nelson concluded his remarks by noting that from 1975 to 1982 Hashish was not differentiated from cannabis. Hashish at that time contained THC levels of up to 75 percent.

[11:49:24 AM](#)

BILL PARKER testified via teleconference from Anchorage and informed the Committee that his testimony would be incomplete as the advance notice on this hearing was short. Due to the fact that three members of the Committee have not heard any of the expert testimony, it would unfair or improper to ask those Members to make a judgment on the issue. In addition, the experts should be provided an opportunity to rebut some of the Department of Law's "criticisms" of the expert testimony that transpired in previous

committees of referral.

Mr. Parker characterized every fiscal note as being a political document. The last line of the Department of Corrections fiscal note states "'however, if the impact of the bill proves to be significant, the Department will return to the Legislature with the request for more funding'. Of course, new felonies will produce new felons. If they don't, we're all just wasting our time here..."

Mr. Parker stated that were this legislation to become law, there would be new felonies and, consequently, new felons. It would be anticipated that those felons would be young. They would be convicted and go to prison. This would incur costs to the State and to society. Due to their possession of marijuana, these young people would be labeled as felons. This would be reflected on their loan applications for student loans, when joining the military and thousands of other situations over their lifetime. He asked that the bill be held in order for the Committee to hear both sides of the issue; specifically that the expert testifiers be provided an opportunity to rebut Mr. Guaneli's comments and further explain scientific data.

[11:52:30 AM](#)

There being no further testifiers or questions from Committee Members, Co-Chair Green ordered the bill HELD in Committee.

AT EASE [11:52:40 AM](#) / [11:52:58 AM](#)

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ADJOURNMENT

Co-Chair Green adjourned the meeting at [11:53:00 AM](#).