

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**January 12, 2006**  
**9:04 a.m.**

**CALL TO ORDER**

Co-Chair Lyda Green convened the meeting at approximately [9:04:45 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:** REPRESENTATIVE JAY RAMRAS; DARWIN PETERSON, Staff to Senator Lyda Green; WILLIAM TANDESKE, Commissioner, Department of Public Safety; DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law

**Attending via Teleconference:** FROM OFFNET SITES: DR. LESTER GRINSPOON, Professor, Harvard University and the American Civil Liberties Union; DR. EARLYWINE, Professor, New York State University; WES MICHAEL MACLEOD-BALL, American Civil Liberties Union

**SUMMARY INFORMATION**

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

The Committee briefly addressed the bill and held it in Committee.

SB 74-CRIMES INVOLVING MARIJUANA/OTHER DRUGS

The committee heard from the Department of Public Safety, the American Civil Liberties Union, and experts in the study of marijuana. The bill was held in Committee.

HB 149-CONTROLLED SUBSTANCES

The committee heard from the sponsor, the Department of Public Safety, the Department of Law, and Committee Staff. A committee substitute was adopted. Four amendments were considered with two being adopted, one being withdrawn, and one failing adoption. The bill reported from Committee.

[9:05:29 AM](#)

#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 fourth hearing for this bill in the Senate Finance Committee.

Co-Chair Green ordered the bill SET ASIDE.

[9:05:56 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 second hearing for this bill in the Senate Finance Committee.

Co-Chair Green stated that public testimony pertaining to this issue would be provided.

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DR. LESTER GRINSPOON, Emeritus Professor of Psychiatry, Harvard University testified via teleconference from an offnet site. He informed the Committee that he has studied marijuana for 40 years and is the author of numerous books and other publications on the subject. He declined to testify, stating that the 15-minute timeframe being afforded for his testimony would be an insufficient amount of time in which to adequately address the 18 separate

Findings presented in Sec. 2 of the bill. Each finding would individually "demand" a minimum of 15-minutes of "careful discussion since they are so off-target from a scientific point of view that they have to be carefully discussed; together they seem to comprise a kind of modern day reefer madness." He opined that the limited timeframe being provided to this legislation was an indication that the Committee had "no interest in what we [testifiers] have to say" and that the Committee had "already prejudged this, because the nature of your Findings are so absurd that if you're really serious about those Findings" sufficient time would have been allotted for discussion.

In response to a comment from Co-Chair Green, Dr. Grinspoon stated that it was not that he has chosen not to testify, it was that he "can't testify"; he could "barely introduce himself" in the time allotted and, as a result, the Committee would be denied the "benefit" from his remarks. He wished "the citizens of Alaska good luck; I hope they're not burdened with this bill the way it is."

DR. EARLYWINE, Professor, New York State University, testified via teleconference from an offnet site. His credentials included the authoring of a book titled "Understanding Marijuana" which was based on his review of approximately 500 marijuana studies.

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Dr. Earlywine characterized the history of marijuana as being "extensive," with cannabis use being documented as early as 8000 BC and its medical use documented as early as 2800 BC. While no lethal dose of marijuana has been established to date, research estimates that an individual would be required to smoke a minimum of two pounds of marijuana in that regard.

Dr. Earlywine shared that one of the concerns that has been raised during his presentations on marijuana is "the notion that today's marijuana has an increase in potency" when compared to its potency in the 1970s. While it is "true that marijuana today is probably a little stronger than it was back in the 1970s ... the increase is nowhere near as big as what some of us have been led to believe" via "certain alarmist media reports". Rather than today's estimates being "awry, it's that the estimates" conducted in the 1970s "were inaccurate." It was unknown at that time, how tetrahydrocannabinol (THC), which is the active chemical ingredient in marijuana, "broke down." Therefore, the one percent THC reading estimates that are considered "typical of that era" were based on marijuana "that had been thrown in pot police evidence lockers and allowed to degrade" before being sent for laboratory analyses.

Dr. Earlywine informed that, in a laboratory setting, a person who smoked marijuana with a one-percent THC level might simply experience a headache and thus think they had been provided a placebo. Marijuana "is not psychoactive at that level"; it could be compared to the "THC levels in hemp and things used for clothing..." The consensus could be that the 1970s studies underestimated the THC strength.

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Dr. Earlywine continued that while one might hear reports today of marijuana with THC levels ranging between 15 and 20 percent, the average would be in the four to six percent range. He shared that, in the 1970s, an independent laboratory that did not rely on police marijuana evidence, had reported average THC readings in the two to four percent range. Thus "a doubling" of the THC concentration might be the appropriate manner in which to consider the strength of the increase.

Dr. Earlywine stated that, "underlying all this is the tacit assumption that ... stronger marijuana is somehow more dangerous." While, "it's true that stronger proof" alcohol might lead to "problems more readily", that is not the case with marijuana. Laboratory research indicates that when people smoke marijuana with higher THC content, "they subconsciously take shorter and smaller puffs" in an effort to control their level of intoxication. In addition, "the impact of any inhaled smoked drug is very rapid" so that an individual could determine "what the dose is within a few seconds rather than the case with alcohol" consumption where it might take more than half an hour to experience the effect. Numerous factors such as the "state of your stomach" would come into play with alcohol. "This idea that more potent marijuana is necessarily more dangerous is also worth questioning." Some people would argue "that more potent marijuana has a kind of protective effect because it would lead to smoking less in total". Therefore there would be less lung exposure to carcinogens.

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Co-Chair Wilken understood therefore that contrary to the ten to 14-percent THC potency range reflected in Sec. 2(1) page two lines eight through 18 of the bill, Dr. Earlywine's testimony would be that today's marijuana THC content would be in the four to six percent range. To that point, he asked whether different regions of the country might produce higher potency levels than another.

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Dr. Earlywine responded that there is "an incredible variation across different strains and like any other plant, it responds to good care and light" and other factors. While there is marijuana with 14 percent THC levels, it is "extremely rare". Most of the samples he has reviewed range between two and five percent. Other researchers' support a four to six percent THC range.

Co-Chair Wilken pointed out that language in Sec. 2(1) page two lines 13 and 14 states that, during the period from 1997 to 2004, the THC level of Alaska marijuana ranged from ten to 14 percent.

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Dr. Earlywine next addressed the respiratory effects of marijuana. "Lungs are designed to breath fresh clean air and anything that's inhaled into them" could cause potential problems. The media portrays marijuana as being four or eight times more carcinogenic than cigarettes. However, there is insufficient data to support such claims. A California study found that while those who solely smoked marijuana "didn't have any real differences in their rates of lung cancer", they did portray "an increase in some respiratory problems" such as coughing and bronchitis. However, their 36 percent rate of these problems was only slightly higher than the 33-percent rate of those who did not smoke anything at all. Even though the increase is minor, efforts to reduce respiratory issues are being furthered. To this point, new technology "for consuming cannabis" has been developed to prevent respiratory problems. This device, referred to as a "Vaporizer", would "capitalize" on the fact that marijuana could be heated to a point at which it releases THC and other chemicals in mist form, without igniting the marijuana; thus no carcinogens, which are the sources of respiratory problems, would be released into the air. Therefore, while the respiratory issues associated with cannabis are nowhere "near as bad as cigarettes", "the advent of the vaporizer" would negate any respiratory issue relating to marijuana use.

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Dr. Earlywine also addressed "the idea of marijuana as being a gateway drug." It is commonly believed that once a person uses marijuana they would be "propelled downwards towards a desire to use cocaine and heroin and" other drugs. However, he has determined that this is not the case. While there are people who use heroin who say that they "used marijuana first, the vast majority of folks who use marijuana have never even seen heroin or hard drugs". Rather than there being "a pharmacological connection between using cannabis and hard drugs", the connection is that "they are just part of the same underground market."

Dr. Earlywine stated that another California study indicates that certain personalities are risk-takers: not only might they use hard drugs, they would also not wear their seat belts, they would have unsafe sex, and they would ride in the front car on a roller coaster. Such individuals would tend to be the ones using a variety of different drugs and doing other risky things. Therefore, marijuana usage would not predetermine that the user be on "an inevitable quest towards hard drugs, it's just that there is a whole subset of folks who happen to use marijuana first and then go on to use hard drugs."

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Co-Chair Wilken understood therefore that evidence would indicate that for the "vast majority" of marijuana users, the drug is not a gateway. However, marijuana use might be a gateway for a minority of the State's population; perhaps more so in Rural areas as evidenced by the amount of problems the State is experiencing in those areas. There might also be a physiological propensity for Native Alaskans in this regard as well.

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Dr. Earlywine responded that this would depend on the definition of gateway. The original studies used the term "stepping stone"; the idea being that people would use marijuana prior to using other drugs. Over time, the idea has transitioned to the belief that marijuana use "leads to these other drugs." However, no studies would support that position. It could be that marijuana users are exposed to other drugs due to the fact that the wares are available in "the same underground market."

Co-Chair Wilken acknowledged.

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Dr. Earlywine next addressed the theory that cannabis use could lead to aggression by voicing surprise that this theory has resurfaced as laboratory research conducted 30 years prior negated the theory. Research has been conducted in which an aggressor has been "planted" in the laboratory setting to test the response of the user when aggressed upon, wronged, or subjected to things such as having their hand placed in cold water. "Counter to the affects that we get with alcohol, marijuana either has no impact on the aggressive response or in one study actually decreased the aggressive response, relative to the folks who smoked a placebo." It should be pointed out that there could be "a subset of

aggressive" personalities who happen to use marijuana; however, research would support "that marijuana does not increase aggression, and if anything it stays the same or actually lowers."

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Senator Dyson thanked the testifier for providing his expertise to the Committee. He asked whether an individual's judgment might be impaired by marijuana.

Dr. Earlywine responded that the studies that have been conducted have focused on tasks that might not be relevant to the key issues being experienced in Alaska. Research involving complex reaction time tasks such as requiring a person under the influence of marijuana to press, for instance, the red light when it lights up or the green button when it lights up, have found that a person's reaction is somewhat impaired. However, findings do not indicate that a person would be willing "to take more risks" or "engage in anything potentially dangerous". One study found the opposite affect.

Senator Dyson clarified that, rather than to the affect on one's coordination, his question was to whether a person's judgment of right or wrong might be affected. He recalled theories attesting that marijuana use inflated egos and changed "cultural norms". There has been testimony to the fact that some users might be less capable of making judgments about what would be "appropriate conduct and response".

Dr. Earlywine communicated that a person intoxicated on alcohol could "lose some of your connection to your idea of your stated morals". In other words "the super ego is alcohol soluble". Unfortunately the literature on marijuana is unclear on this matter, as it is difficult to study in a laboratory setting. People in test studies are not willing to make risky decisions "even when they are intoxicated".

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Senator Dyson understood therefore that a person intoxicated on marijuana might not be impaired in the matter of making good decisions on their own behalf.

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Dr. Earlywine affirmed that to be the result of laboratory testing. However, he noted that clinical researchers who work with marijuana abusers have stated that the abusers have reported doing "some

silly things" when they were "high". To that point however, laboratory testing has indicated "that often people have that expectation or they use it as an excuse" for doing something that they had intended to do all along. "In truth, the impact of marijuana on tasks that require ... making the best decision has been really minimal."

Senator Dyson asked regarding the danger of allowing a marijuana user to operate heavy equipment.

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Dr. Earlywine stated that studies relating to driving abilities of those under the influence of marijuana have been "very controversial". He would not recommend that anyone should "drive after smoking marijuana". The findings of three studies that tested marijuana users after they were involved in an accident found that results "were comparable to folks who hadn't smoked marijuana". A foreign study in which people smoked marijuana in a controlled setting and drove on the streets of Amsterdam in the Netherlands reported some small problems such as staying in the center of the driving lane, but no impairment of stopping distance, direction following abilities, or turn signal abilities. It appeared that people were actually compensating in that they increased the distance between their car and other cars, were unlikely to pass other cars, and "they drove more slowly than the folks who had smoked a placebo". Therefore, the study found that people who were driving under the influence were actually compensating for their condition.

Senator Dyson acknowledged.

[9:31:00 AM](#)

Senator Stedman stated that he would be unwilling to work around someone who was using marijuana or drinking alcohol and operating heavy equipment or involved in other dangerous situations.

Dr. Earlywine agreed.

Senator Stedman asked how children and young adults are affected by using marijuana or by living in a home "where marijuana use is prevalent", specifically how it might affect their short-term memory and their ability to learn.

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Dr. Earlywine noted that he is currently studying this issue, as it

is the basis for another book he is writing. No one could dispute the idea that marijuana is not for children. School literature on this issue is "complicated". There are claims that marijuana use would cause young people to lose their motivation and that teens would decide not to continue their schooling or would "do very poorly" in school. Studies have found that "high school students who used marijuana had lower grades than their peers who did not use". However, it was found after reviewing those students' grades before they began to use marijuana, that their grades "were also lower then". Therefore, rather than marijuana use lowering their grades, the thought is that "students who are having trouble in school end up using marijuana at a younger age. Nevertheless", as medical tests, including MRIs, are developed, "it is becoming clearer and clearer that marijuana is hard on the developing brain... this is not something that teens should play with."

Dr. Earlywine continued that literature regarding short-term memory clearly indicates, "that during intoxication, it is extremely hard to learn new material". "Students should not go to class high" as doing so would impair their ability to "absorb" new information. Nonetheless, studies indicate that when adults are no longer intoxicated, both their short-term and long-term memories seem to be relatively "unaffected" by either occasional or frequent use over a couple of years.

Senator Stedman stated that while that is good to hear, there would continue to be concern about youth in high school who use marijuana during those formative years, as they would have "a substantial gap in their education".

Dr. Earlywine agreed. Nobody could attend high school and absorb all that they were being taught if they were high.

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Senator Bunde, noting that there is considerable concern about exposing children to second hand tobacco smoke, asked regarding the affect of second hand marijuana smoke on children.

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Dr. Earlywine stated that no studies have been conducted in this area. "The issue is an interesting one in part because although marijuana may have more chemicals in it than tobacco smoke, people tend to smoke markedly less marijuana than they do tobacco." Thus the issue might be "relatively minor in comparison". The more prominent issue might be the idea of smoking marijuana in front of teens or children. This would be "ill-advised".

[9:36:04 AM](#)

Dr. Earlywine addressed the economic costs of the prohibition of marijuana. Research indicates that absent this prohibition, billions of dollars could be saved nationwide and law enforcement efforts could be focused on other important issues, such as the use of hard drugs like methamphetamine. Another recommendation would be that law enforcement efforts focus on youth rather than adult usage as that has more serious consequences, developmentally.

Dr. Earlywine stated that a big social issue is the evolving of marijuana for medical uses. A number of ailments such as AIDS-related wasting, cancers, spinal cord injuries, and migraine headaches respond extremely well to marijuana. Allowing use of medical marijuana for such things would be "a humane way" of dealing with them.

Co-Chair Green noted that medical marijuana uses have been discussed in Alaska for many years.

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Senator Olson, a medical doctor, asked whether some research findings might be outdated; specifically whether Dr. Earlywine agreed with the "findings that cannabis does not have any affect on the exhibition of violence".

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Dr. Earlywine replied that those findings are "consistent with laboratory data. There is a subset of folks who seem to be aggressive who also seem to use marijuana, but actual marijuana intoxication doesn't increase aggression."

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Senator Olson asked whether those finding would be maintained "in spite of the incidents within the criminal community that has pointed out or have stated that they do become aggressive when they do smoke marijuana."

Dr. Earlywine remarked that upon close review, "most of those antidotes" end up involving marijuana combined with the use of alcohol. His own data would support that the use of alcohol "is the contributor to aggression."

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Senator Olson revisited Dr. Earlywine's comments regarding the carcinogens associated with smoking marijuana. A publication by a researcher named Iverson stated that rather than the issue being THC, the level of tar in the product is of concern.

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Dr. Earlywine agreed. The aforementioned Vaporizer would address that issue.

Senator Olson noted that research quoted in Iverson's publication found that pre-malignant lesions occurred when the skin of mice was exposed to marijuana.

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Dr. Earlywine characterized that study as "an interesting one". However, due to the fact that "the dosage that the mice were exposed to was so high relative to what a normal human dosage would be" that he was hesitant to draw a conclusion from those findings.

Senator Olson voiced concern in regards to the impact of marijuana on pregnancy, particularly in regards to Alaska Native women. This would not only affect "the generation at hand" it would affect "the next generation". In his clinical setting experience, he has observed that THC appears "to exacerbate other mental illnesses".

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Dr. Earlywine recounted that a 1990s study involving people who had been diagnosed with schizophrenia had determined that those people "should clearly stay away from marijuana", as it tended "to make their subsequent psychotic breaks happen more readily." The media however has encouraged the theory that marijuana could cause schizophrenia. "That's an exaggeration".

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Co-Chair Green thanked Dr. Earlywine for his testimony.

Dr. Earlywine voiced appreciation for the opportunity to speak to the Committee and encouraged them to contact him were there any further questions.

Co-Chair Green acknowledged.

WILLIAM TANDESKE, Commissioner, Department of Public Safety,

remarked that his approach to any issue is one of focusing primarily on whether the action being taken would affect the Department's "constituents in a positive way and how do we reduce the incidents that come up in the public's safety arena."

Commissioner Tandeske stated that the Department has identified some "core missions for the Alaska State Troopers" including drug and alcohol issues, rural public safety services, and Statewide criminal investigations.

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Commissioner Tandeske stated "drug issues, including marijuana, tend to reach across all three of those disciplines." The Department must be provided the tools necessary to address the issues. Since he has been involved in law enforcement in the State since 1973, he is aware of numerous Alaska State Court decisions, specifically the *Crocker v. State* decision that served to impede law enforcement efforts to obtain search warrants. "It was an issue that did not need resolution because the search warrant process is a check and balance process involving a judicial officer and law enforcement where information is vetted properly prior to issuance of a search warrant."

Commissioner Tandeske noted that he had reviewed search warrants obtained by his drug enforcement staff in regards to "marijuana grows". While a significant number of those involved very small amounts of marijuana, 90-percent of the 81 marijuana grows search warrants in the Matanuska Valley over a four-year period involved over a pound of marijuana. More than 92-percent of them involved more than a quarter pound of marijuana. The conclusion is that "the process that was in place prior to the Crocker decision was working effectively in addressing the public's expectation of the Department".

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Commissioner Tandeske continued that the second issue of importance in this legislation "that is long overdue" is how the Department would "quantify" or "weigh products" without having "to process a marijuana grow" as a dealer would. The proposed process would allow the Department to spend more time conducting law enforcement and intelligence efforts and less time on the "tedious processing issue".

Commissioner Tandeske stated that this legislation "would maintain the checks and balances that are appropriate and that the public expects." It would also allow the Department to conduct its

activities in a manner expected by the public.

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Co-Chair Green shared that a concern that has been expressed to her is the retention of the rights of the recreational user who might have a small amount of marijuana; therefore she asked whether safeguards to address this concern have been incorporated into this legislation.

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Commissioner Tandeske responded "absolutely". The fact that 90-percent of the search warrants that had been served in the Mat-Su Valley had involved more than a pound of marijuana would indicate that the efforts are focusing on commercial grows.

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Senator Hoffman, recalling that 92-percent of the search warrants involved at least a quarter pound of marijuana, asked the smallest amount prosecuted relating to the remaining eight percent.

Commissioner Tandeske stated that that information would require research. It was his experience that small amounts of marijuana have not been prosecuted. He deferred to the Department of Law to address the parameters for what would result in prosecution as well as "how many convictions for small amounts might have resulted from plea agreements from larger amounts down to smaller amounts".

Senator Olson asked regarding an earlier testifier's claim that the THC content of marijuana thirty year's ago might have been one percent, as this is contrary to the Department of Law's message that the THC content might range from 14 to 20 percent. To that point, he asked whether the Commissioner was "disputing" that information due to shelf life and other factors.

Commissioner Tandeske voiced being unqualified to speak to the scientific aspects of marijuana. However, he recalled that when he was an active Alaska State Trooper, "there was a time that marijuana in the Matanuska Valley was marketed as the best in the world".

Senator Olson asked opponents' position on the quantifying measures being proposed in Sec. 6 of the bill, specifically whether the determination that the end product would be one-sixth of a live marijuana plant's weight "would be a credible number".

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Commissioner Tandeske, while reiterating that science was not his field of expertise, believed that "imperial data ... would support that as being a reasonable way of quantifying a grow."

Senator Olson acknowledged.

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Senator Bunde noted that "alcohol has been a problem" with most cultures for thousands of years. One of the most common arguments in defense of not limiting access to marijuana "is that it's no worse than alcohol; it's not as bad as alcohol". He requested the Department's view of this; in other words, "why bother with marijuana" when there are worse issues to address.

Commissioner Tandeske stated that in his 26-years of experience as a State Trooper, he has seen the affects of both "drugs and alcohol all too graphically. It is hard to minimize the impact of marijuana": its impact on Rural Alaska, its involvement in motor vehicle accidents, gun "shoot outs" and other violence such as robberies that goes with the drug trade. One of the consistent things accompanying a marijuana grow is its being accompanied by weapons and money. There could also be a crossover into other drugs. He recounted that in a recent case involving a search warrant obtained for cocaine, marijuana for sale and illegal weapons and cash were found. Such things usually accompany the drug trade. In response to an earlier testifier's comments that a marijuana user who is driving might overcompensate for their condition, he shared having arrested many people driving under the influence of alcohol who also overcompensated for their condition. "There's a lot of parallels."

Senator Bunde asked whether it would "be fair to summarize" that a marijuana user might "tend to be non-violent" whereas the producer of marijuana would "tend to be violent".

Commissioner Tandeske "hesitated to make such blanket characterizations" of users or producers of marijuana; however, he declared, "there is violence in the drug trade." He has had physical confrontations with people under the influence of marijuana as well as those under the influence of alcohol and other drugs.

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Senator Dyson restated the question he had asked of a previous

testifier in regards to the effect that marijuana use might have on a person's judgment. While acknowledging people's opinion that marijuana users are "more laid back and less aggressive", he asked whether they could also be considered as being "more compliant"; specifically whether evidence would indicate that marijuana is being used as "a vehicle to enhance ... sexual seduction".

Commissioner Tandeske responded that differentiating the cause of a person's behavior is sometimes difficult. In addition to marijuana, alcohol might have been consumed. Ultimately, the combination of factors occurring in Rural Alaska resulting in such things as accidental deaths, suicides, and violent crime must be addressed. This effort would be part of the solution.

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Senator Dyson further clarified his question by asking whether the Commissioner has ever encountered sexual assault, albeit non-violent, caused by a perpetrator using marijuana "as a kind of an access drug".

Commissioner Tandeske responded that due to the fact that he has not recently worked in the field, he could not specifically recall encountering such as situation.

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Senator Stedman shared that when he was in high school, he and other students characterized the government's drug education findings as being "almost comical due to the inaccuracies". While not as blatant, the findings of this legislation could be viewed as being "tilted over the line in that direction." With exception to the Findings, he was more comfortable with the enforcement components that would assist the Department of Public Safety with its mission of providing public safety, obtaining search warrants, and dealing with those possessing four or more ounces of marijuana.

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Senator Stedman opined that the Legislature would better serve the public by concentrating more "on the intent and direction of this bill" than on the Findings section. While the testimony thus far has focused on the affect of marijuana on adults, he voiced concern that the State would face more problems in the future with the impact of the drug on children. Schoolteachers have told him that they could smell marijuana on children's clothes in elementary school.

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Senator Hoffman commented to the fact that the Department of Public Safety indicates in its fiscal note that the passage of this legislation would have zero fiscal impact. While that might be the case, in separate testimony, the Department has testified that, "they are overworked". It could be assumed that the added responsibilities that would be imposed were this legislation adopted would result in something else being moved to a position of lesser priority. Therefore, he asked whether this was a matter of concern to the Department, in light of the fact that no additional personnel were being requested.

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Commissioner Tandeske responded that the Department is not concerned as this legislation would reinstitute search warrant provisions that had been in effect two years prior. Thus, the probable cause provisions dealing with search warrants for marijuana grows would be less cumbersome. Nothing else would be negatively affected.

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WES MICHAEL MACLEOD-BALL, American Civil Liberties Union, testified via teleconference from Anchorage and shared that, while it did not work out, efforts had been exerted to have another testifier, Jeffrey A. Miron, Professor of Economics at Harvard University, discuss his June 2005 study titled "Budgetary Implications of Marijuana Prohibition". That study's findings indicate that legalizing marijuana would save the nation \$7,700,000,000 annually in regards to government spending on efforts to enforce the prohibition on marijuana. Therefore, it could be extrapolated that criminalizing marijuana in this State would incur expenses relating to enforcing anything more than zero marijuana possession issues as opposed to its sale or manufacturing. A table in the study indicates that Alaska "spends less than the national average in terms of marijuana possession arrests, but about in the middle of the nation percentage wise in terms of sale and manufacturing enforcement issues". Changing the marijuana possession level to anything more than zero would not necessarily change those figures.

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Mr. Ball asked the Committee to research other drug reform studies that are available on the Internet including Citizens Against Government Waste's website at [www.taxpayer.net/drugreform](http://www.taxpayer.net/drugreform) and the American Enterprise Institute's website [www.aei.org](http://www.aei.org). These studies

would be informative in regards to the fiscal impact of marijuana related legislation.

Co-Chair Green ordered the bill SET ASIDE.

AT EASE [10:04:07 AM](#) / [10:13:46 AM](#)

#hb149

SENATE CS FOR CS FOR HOUSE BILL NO. 149(JUD)

"An Act relating to controlled substances regarding the crimes of manslaughter and misconduct involving a controlled substance; relating to the manufacture of methamphetamine and to the sale, possession, and delivery of certain substances and precursors used in the manufacture of methamphetamine; relating to listing certain anabolic steroids as controlled substances; relating to the listing of property that constitutes an illegal drug manufacturing site; amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

[10:14:13 AM](#)

Co-Chair Wilken moved to adopt committee substitute Version 24-LS0596\Z as the working document.

Co-Chair Green objected for discussion.

DARWIN PETERSON, Staff to Senator Lyda Green, informed the Committee that, "in essence" the Version "Z" committee substitute is a combination of HB 149 and SB 74-CRIMES INVOLVING MARIJUANA/OTHER DRUGS, both of which relate to controlled substances.

Mr. Peterson informed the Committee that the committee substitute also included Committee action in regards to SB 74 and SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES that had occurred on Tuesday, January 10, 2006, as follows.

Language adopted to SB 74 by Amendment #1 was incorporated into this bill in Sec. 2 page two line nine following "Alaska." as follows.

"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, language that was adopted in Amendment #1 to SB 74 was inserted into Sec. 2(9) on page four following "sell;" on line seven as follows.

"the street value of 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"

And furthermore, the following language was added after "(Alaska App. 2004)" in Sec. 2(9) page four line eleven as per the adoption of Amendment #1 to SB 74.

"to invalidate search warrants for commercial marijuana-growing and,"

Mr. Peterson specified that language was deleted in Sec. 8 page 10 following line 2 "that would have made the possession of marijuana while driving a Class A Misdemeanor". Language was also deleted from Sec. 9 page 10 following line 13 that "would have made possession of marijuana as a passenger in a motor vehicle a Class B Misdemeanor. Both of these deletions are also the result of Amendment #1 to SB 74".

Mr. Peterson recalled testimony from Mr. Guaneli from the Department of Law that specified that these deletions "would serve to streamline the bill since this conduct" is already provided under Alaska Statutes.

Mr. Peterson stated that the following new section was incorporated into Sec. 12(b) on page 12 lines 22 through 27 per Amendment #2 to SB 70. This language would be required to insure the exemptions to the six-gram limit on pseudoephedrine products for such things as lodges and schools.

(2) more than six but less than 24 grams of a listed chemical identified in (a) of this section in an 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, day care center, treatment center, 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.

Mr. Peterson communicated that per Amendment #2 to SB 74, the entirety of Sec. 16, page 15 lines 5 through 31 was added to HB 149. This language would "provide protection for the personal use of marijuana in a person's home by imposing a fine rather than jail time for the first two convictions."

\* Sec. 16. AS 12.55.135 is amended by adding a new subsection 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 once 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 procedure in another jurisdiction, of possession of marijuana; "previously convicted" does not include a judgment that has been reversed or vacated by a court.

Co-Chair Green asked that this section be further explained.

Mr. Peterson stated that this language would address the criticism

that has been received that this legislation would negatively affect the recreational user. It would "clarify that the Committee's intent is to give the Department of Public Safety the tools they need to go after the large marijuana growers." An individual who was "caught using marijuana in the privacy of their own home would not be faced with any sort of a jail time. There would only be a fine."

[10:18:10 AM](#)

Mr. Peterson stated that per Committee discussion on Tuesday, January 10, 2006, new language to address the concern regarding emancipated minors and members of the military under the age of 18 has been incorporated into Sec. 18(c) page 16, lines 20 and 21 in order "for those individuals to be treated in the same manner as an adult".

Mr. Peterson noted that the final change to HB 149 would involve the addition of new language as reflected in Sec. 18(g) on page 17 lines 8 and 9 that reads as follows.

(g) Notwithstanding another provision of law, a municipality may not enact or enforce an ordinance that is inconsistent with this section.

Mr. Peterson noted that this section would prohibit a local government from "preempting State law with regard to the sale or dispensation of restricted ephedrine products".

[10:18:52 AM](#)

Mr. Peterson stated that the rest of the bill is identical to the work that the Committee conducted in regards to SB 70 and SB 74 on January 10, 2006.

[10:19:11 AM](#)

Co-Chair Green asked whether there were any questions regarding the bill; specifically whether there were any questions about "the merger of these two drug enforcement bills". The bills were merged "for convenience and hearings ... as they have so much in common".

[10:19:34 AM](#)

Senator Olson concurred that the issues have many similar properties: "the addictiveness, the dependency, the mind altering psychoactive component". However, he voiced difficulty in regards to the public policy question, respectful of the fact that there

are two different substances and that, unlike methamphetamine, there is a medical prescriptive component to marijuana.

[10:21:00 AM](#)

Co-Chair Green, while noting that she would defer to Mr. Guaneli of the Department of Law, communicated that the purpose of combining the marijuana and methamphetamine bills was to address "the final result" of the products, specifically their "harm" and the efforts having to be exerted by the Department of Public Safety, health officials, and others "to curb those".

[10:21:30 AM](#)

Senator Olson acknowledged Co-Chair Green's comments. His reservation would be that combining the two bills might jeopardize a doctor's medical license were the doctor to prescribe medical marijuana.

Co-Chair Green asked Mr. Guaneli to speak to Senator Olson's concern.

[10:21:54 AM](#)

DEAN GUANELI, Chief Assistant Attorney General, Department of Law, informed the Committee that this bill would address three controlled substances: marijuana, methamphetamine, and anabolic steroids. The fact that the bill's title includes the reference to controlled substances would allow the bills to be combined as that term would meet the single subject requirement required by law.

Mr. Guaneli continued that separate State Statute "directly relating to medical use" would address the question pertaining to the medical use of marijuana. This bill would be limited to illegal rather than legal uses of controlled substances.

In response to a comment from Co-Chair Green, Mr. Guaneli reiterated that "there is good grounds for combining the bills and that the medical aspect is a completely separate issue dealt with in separate law."

[10:23:23 AM](#)

Senator Olson stated that while the legal aspect might be substantiated, he continued to have concerns in regard to the public policy issue. He pointed out that while there are medical reasons to prescribe such things as cocaine, that substance has not been included in this bill.

[10:23:58 AM](#)

Mr. Guaneli voiced appreciation of Senator Olson's public policy concern; however, specified that he had been directed to address the legal aspects of the bill. The Alaska Court System has provided "broad authority to the Legislature to consider any number of measures of public concerns as long as it fits within a single subject..." The Courts have provided the broadest authority in regards to issues involving health and safety concerns.

Mr. Guaneli pointed out that testimony has supported the fact that the State has a meth, marijuana, and anabolic steroid problem. The effort to address all of those issues in one bill might "raise policy questions" but "is certainly legitimate and an efficient way to proceed".

[10:25:21 AM](#)

Senator Hoffman commented that marijuana has been a controversial issue in the State for more than a decade. Continuing, he noted that there was "broad support" for the original version of HB 149, which focused on meth. That is the issue that might cause some problems for some people. To that point, he asked that Representative Jay Ramras, the sponsor of HB 149, provide input to the Committee.

[10:26:13 AM](#)

Co-Chair Green conveyed that in discussions with people about whether combining the two bills might provide a workable solution the response had been favorable.

[10:26:37 AM](#)

Co-Chair Green stated that she is looking forward to the process and "arriving at a solution" through which to immediately address the dilemma the State is facing.

Senator Bunde agreed that these are all controlled substances. He noted that each of them might have some medical application to which a competent physician would be aware.

[10:27:28 AM](#)

Co-Chair Green clarified that the focus of the bill is the illegal use of these controlled substances.

Mr. Guaneli informed the Committee that there is "a very narrow medical use for methamphetamine" in that there is an FDA approved product, which is used to treat severe cases of obesity. He noted however, that the effectiveness of that product is such that it is not used very often. Nonetheless, this would support the fact that a manufacturer could "carve out a little niche for a product". The illegal use of the drug "far outweighs its legal use".

[10:28:39 AM](#)

Senator Olson shared that in his experience, prescribed methamphetamine is very effective in treating obesity; however its side affects are the issue.

[10:29:00 AM](#)

Co-Chair Green removed her objection to the committee substitute.

There being no further objection, Version "Z" was ADOPTED as the working document.

Conceptual Amendment #1: This amendment deletes Sec. 18(g) on page 17, lines eight and nine. The language being deleted reads as follows.

(g) Notwithstanding another provision of law, a municipality may not enact or enforce an ordinance that is inconsistent with this section.

Senator Bunde moved Amendment #1.

Co-Chair Wilken objected.

Senator Bunde stated that the organization of government in the State allows for a multitude of ways to address issues and problems that arise, including "some fervent local control" as supported by the fact that some communities in the State do not allow alcohol and that there are different taxing levels on tobacco. Thus, it "is unusual" that a provision would be included in this bill that would prohibit a local community from "changing the law on marijuana and methamphetamine or steroids". Local people should be allowed the option to make "more stringent laws" in regards to these substances if so desired. Alaska Legislators are often frustrated that federal law limits their ability to make decisions on the State level.

[10:32:07 AM](#)

Co-Chair Wilken stated that this might be the first time he has

"spoken against local control". This legislation is "a big step" in the effort against these substances. The hope is that society would hear the message that these substances "do much more harm than good". His concern is that were contiguous communities to adopt different rules and law, there would be confusion, including the fact that retailers operating in more than one community would be required to conduct different training rules. Furthermore, there could be enforcement problems.

Co-Chair Wilken continued that were local communities able to impose different laws, a person conducting these activities might choose to operate in a community having looser restrictions than another. The fact that this is a Statewide issue would support there being a single common rule.

[10:33:49 AM](#)

Co-Chair Wilken, characterizing this legislation as being "a big step", stated that the issue could be readdressed in the future. The confusion that would be created by allowing local communities to make their own laws and the concern that one community's laws might negatively affect another community would undermine the Statewide effort.

[10:34:42 AM](#)

Senator Hoffman spoke in support of allowing local control. This amendment would enable communities to instill "higher protections". People move to other communities for many reasons including different sales tax amounts and commerce reasons.

Senator Hoffman informed the Committee that at a conference he and Senator Bunde had attended, there was support for requiring logbooks at retail outlets. While requiring that pseudoephedrine products be kept behind a counter would reduce the problem, the logs "would provide more protection or reduction in the abuse of this drug".

[10:36:13 AM](#)

Co-Chair Green clarified that the provision included in Sec 18(g) would only apply to meth-related products.

[10:36:36 AM](#)

Senator Stedman also spoke in support of the amendment, as he is unconvinced that this legislation is "quite going far enough." The State of Oregon recently passed legislation requiring

pseudoephedrine to be a prescription drug. Unless this drug could be controlled in our communities, the issue would require redressing.

[10:37:09 AM](#)

Senator Olson stated that this amendment would have a positive aspect, as it would allow "a proactive community" to implement ordinances that could assist in "diverting" problems that might be experienced by a neighboring community. In addition, law enforcement efforts in many of the communities he represents are conducted by the Alaska State Troopers. Oftentimes the laws that they must uphold are of a different magnitude to those of the local ordinances. A local police force should not be inhibited were a community to desire to become more proactive.

Senator Olson also pointed out that due to the fact that meth "is such a rising issue, federal law might preempt our State laws in the very near future".

[10:38:48 AM](#)

Co-Chair Green understood that the federal policy on meth "is tied to the Patriot Act" and as that Act develops, "a totally different set of rules" might come into play.

[10:39:07 AM](#)

Senator Bunde understood Co-Chair Wilken concerns; however, he noted that local control is currently allowed in regards to alcohol. While people might choose to live in one community verses another due to the local alcohol ordinances, there has been no effort to remove local control in that regard. Were it found that removing the local control prohibition in regards to this bill was in error, it could be readdressed.

A roll call was taken on the motion.

IN FAVOR: Senator Dyson, Senator Hoffman, Senator Olson, Senator Stedman, and Senator Bunde

OPPOSED: Co-Chair Wilken and Co-Chair Green

The motion PASSED (5-2)

Amendment #1 was ADOPTED.

[10:40:42 AM](#)

Amendment #2: This amendment deletes the Findings language in Sec. 2(7) page 3 lines 23--26. The language being deleted reads as follows.

(7) a high percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of the arrest; the percentage is particularly high for adults arrested for domestic violence who test positive for marijuana at the time of the arrest;

Senator Stedman moved for consideration of Amendment #2. He reiterated his earlier comments that some of the Findings were extreme. This Finding insinuates that the use of marijuana would lead to violence; however, earlier testimony would not support that position. "Clearly marijuana has a tendency" to sedate people as opposed to making them violent. Removal of this language would keep the issue "on point".

Senator Bunde stated that rather than interpreting this Finding to indicate that marijuana use causes people to commit violent offenses and domestic violence, his interpretation is that people who do those things "may also be marijuana users". Therefore he would not deem the Finding as being "factually incorrect".

[10:42:42 AM](#)

Mr. Guaneli communicated that, "there's nothing in that Finding that says that marijuana causes violence". He voiced appreciation for Dr. Earlywine's comments and characterized him as "a very knowledgeable and thoughtful witness" whose remarks before the Committee were "very candid and he conceded a lot of points about marijuana". Nonetheless, there is a difference between studies conducted in a controlled laboratory setting and those provoked in a real setting. This Finding is based on a long-term study of people in the Anchorage jail that was conducted by the University of Alaska. Urine samples of those arrested were tested for marijuana. The findings of the total male arrestees found that approximately 50-percent tested positive for marijuana. The percent of males arrested on Domestic Violence (DV) charges who tested positive for marijuana "went up significantly" to approximately 70-percent. That is what is presented in this Finding. The findings of the University of Alaska study concluded that a significantly greater percentage of people arrested for DV tested positive for marijuana. "The point" that should be recognized is that "most domestic violence occurs in the home; that's where people are smoking marijuana; that's where domestic violence abuse occurs, and

there's" some unknown "correlation". This is "the actual finding in Alaska today".

[10:45:33 AM](#)

Senator Stedman opined that Mr. Guaneli's comments supported his point. While 50-percent of the men tested in the Anchorage jail study tested positive for marijuana, 50-percent did not. In his experience in Southeast Alaska, "alcohol is much more pervasive" than marijuana. He ventured to guess that the people who tested positive in the University of Alaska jail study also "tested positive for other illegal drugs and most likely alcohol also." Alcohol use would be more common in DV situations in Southeast Alaska. He would support moving away from the beliefs that were commonplace in the 1960s and 1970s "and move to be more on-point in this area of the bill and the message that is being sent" to marijuana users and youth. "The generational disconnect" should be acknowledged. The intent would be to convey "a clean concise message" to people, particularly youth, that this product has far reaching affects on them. He referenced earlier testimony regarding the impact of marijuana use on youth's memories and their ability to absorb new information. Such "impacts could last for generations in terms" of what experiences might have been lost as a result of marijuana use at one's younger age. The language in Sec. 2(7) should be excluded from the bill.

[10:48:27 AM](#)

AT EASE: [10:48:42 AM](#) / [10:49:39 AM](#)

Without objection, Senator Stedman WITHDREW Amendment #2.

Amendment #3: This amendment deletes "the percentage is particularly high for adults arrested for domestic violence who test positive for marijuana at the time of the arrest;" following ";" in Sec. 2(7) on page 3 lines 25 and 26.

Senator Stedman moved to adopt Amendment #3.

Senator Olson asked whether Senator Stedman is implying that the language being omitted is incorrect.

Senator Stedman allowed that while "there might be validities" to the language being offered for deletion, he was "more concerned with the message that it sends". An effort should be made to make the Findings and the message "more on point". The point is better made by eliminating the language proposed in Amendment #3 as opposed to deleting the entirety of Sec. 2(7) as was proposed in

Amendment #2.

Senator Stedman concluded that the adoption of this amendment would not impact "the ability of law enforcement agencies to do what needs to get done".

[10:52:45 AM](#)

Senator Bunde doubted that few 15-year olds would be reading the findings in Sec. 2.

Senator Bunde characterized domestic violence as being "a huge problem" in the State. The University of Alaska findings that indicate the majority of people who commit DV also have evidence of marijuana in their system should not be ignored. He opined that if anything should be removed from Sec. 2(7) it should be the first portion rather than the second portion of the Finding.

A roll call was taken on the motion.

IN FAVOR: Senator Stedman, Senator Hoffman, and Co-Chair Green

OPPOSED: Senator Bunde, Senator Dyson, Senator Olson, and Co-Chair Wilken

The motion FAILED (3-4)

Amendment #3 FAILED to be adopted.

[10:54:16 AM](#)

Senator Olson observed there being seven references to Alaska Natives in the Findings presented in Sec. 2 pages two and three. Testimony pointed out that there was no difference in the results of studies relating to Alaska Natives verses other population groups within the State. He questioned whether there was intent to target the Alaska Native population, as there are no references to other minorities such as Blacks. Therefore, he asked to the reason for including these references.

[10:55:40 AM](#)

Co-Chair Green noted that each year, there is discussion during Legislative drug, alcohol, and substance abuse hearings about "the designation of great sums of money on a racial basis" to Native Alaskan and Rural Alaska programs. This could not continue to be done while claiming "that it's not a problem".

[10:56:10 AM](#)

Mr. Guaneli stated that this Finding was not intended to "denigrate Alaska Natives or any other group"; rather the intent was "to make the case that we're dealing with a problem in Alaska". Marijuana in this State "is particularly potent". In order to address the issue fairly, the fact that "there are certain populations within Alaska that seem to be more disproportionately affected by this than others" must be recognized. The Finding that "more than half being children under 18 years of age and more than a third being Alaska Natives" as depicted in Sec. 2(2) page 2 lines 25 and 26, was derived as a result of testimony presented by the Division of Behavioral Health, Department of Health and Social Services to the Senate Health and Social Services and Judiciary Committees the previous Legislative session. The statement in the Finding pertaining to pregnant women was based on a recent Department of Health and Social Services study.

Mr. Guaneli noted that this information is consistent with information compiled several years earlier. The averages of Alaska Native high school youth users came from Youth Risk Behavior surveys which indicate that Native use in this age group "is 20 percent higher than non-Native use. Those were the most striking differences among various groups." Variations between Blacks, Asian, and Pacific Islanders and other non-Native groups as compared to Native youth are minor. "This is a recognition that in Alaska we have particular problems that would justify a solution for Alaska only". Testimony provided by the Alaska State Troopers contended that Alaska Native villages would likely be impacted by marijuana production and availability. "It's all joined together and no disrespect" was intended. The Finding is simply "recognition that there are Alaska specific problems that need to be dealt with."

[10:59:23 AM](#)

Senator Olson asked Mr. Guaneli whether he would support an amendment to remove the Native references.

[10:59:58 AM](#)

Mr. Guaneli responded that he could not "agree with the characterization that those are pejorative references. They are an accurate reflection of what is happening in our society." The question would be in regards to the reason for removing the language. Were the language removed, a Court in the future might determine that the Legislature had not perceived there to be a problem in Rural Alaska and that the problem was less than thought.

The Findings were developed "to reflect what the experts and the statistics show". There was no disrespectful intent.

[11:00:58 AM](#)

Senator Olson opined that this language would have a "subconscious effect" on non-Native individuals of targeting Alaska Natives.

Mr. Guaneli, acknowledging being non-Native, noted that this was not his interpretation of the language.

[11:01:39 AM](#)

Senator Dyson voiced being impressed by Senator Olson's comments. Therefore, he questioned whether the implications of the data might be "more geographic than racial". He suggested that replacing the term Native with the term "Rural" might address Senator Olson's concerns.

[11:02:22 AM](#)

Senator Olson responded that the difficulty with Senator Dyson's proposal is that people in the studies identified themselves as Native rather than Rural.

Mr. Guaneli commented that the people in the Department of Health and Social Services studies "self-report" themselves as being Alaska Native.

[11:03:05 AM](#)

Mr. Guaneli noted that he would not be opposed to making changes to address this concern as long as it was "clear that the reason for the deletion of references to Alaska Natives is because of concern that somehow the findings were disrespectful or pejorative, not that there is a doubt about the statistic." The studies would speak for themselves and could be argued in Court regardless of the exclusion of the references to Alaska Natives in these findings.

[11:04:04 AM](#)

Senator Bunde stated that, "with all due respect to Senator Olson and the Native people of Alaska, denial is one of the huge parts of treating drug dependency and alcohol abuse." No one has argued that, "these facts are not true". Therefore, an attempt "to gloss over or ignore the problem, Native or non-Native" would not assist in addressing the problem. Rather than being "pejorative, acknowledgement is the first step toward" addressing the problem.

He likened this to a family in denial of having a family member who is an alcoholic or a drug abuser. That denial would allow the behavior to continue.

[11:05:06 AM](#)

Senator Stedman noted that he has not had an opportunity to review the studies. Nonetheless, he would expect there to be a high correlation between someone having an education level of grade twelve or beyond and economic opportunities within the geographic area, regardless of the location in the State. While he was unsure as to how education factored into the studies, references have been made to those having low education skills, regardless of ethnic background and economic opportunities. The State should be cautious in regards to language that is used.

[11:06:32 AM](#)

Conceptual Amendment #4: This amendment removes references to Alaska Natives in the bill's findings by deleting "and more than a third being Alaska Natives" following "age" in Sec. 2(2) page 2, lines 25 and 26 and removing "and the percentage of pregnant Alaska Native women using marijuana is more than double the national average and the average for non-Native Alaskan women; the percentage of Alaska Native high school youth who have used marijuana is significantly higher than among non-Native youth;" following "average" in the same section, lines 27 through 30.

In addition, the language ", particularly among Alaska Natives" is deleted from Sec. 2(5) page 3 line 12 following the word "marijuana".

Senator Hoffman moved to strike the references to Alaska Natives in the Findings. This action is based on the comments made by Mr. Guaneli.

Senator Hoffman expressed that criminalizing marijuana is a very controversial issue. While he desired to support this legislation, including the references to Alaska Natives "as justification ... for criminalizing marijuana, is going down the wrong track."

[11:07:51 AM](#)

Senator Dyson stated that this amendment as well as the amendment previously offered by Senator Stedman, cements the fact that the Members, as well as experts, "are struggling with separating what's correlation and what's cause and affect".

Co-Chair Green agreed that that is a hard determination.

Senator Dyson supported Senator Stedman's position that "there are a lot of things that correlate with the abuse" of controlled substances. He voiced his desire to separately review the University of Alaska study referenced by Mr. Guaneli. He characterized Anchorage as being "the largest Native village" in the State. He was curious whether those who self-report themselves as Natives had "a higher propensity" for marijuana abuse. If not, then it must be assumed that there are other factors. Were the study to not indicate an ethnic driven propensity of abuse, he would support this kind of amendment. Additional opportunities would be provided to address this again during the bill's advancement process.

Mr. Guaneli identified the portions of the Findings that include the references to Native Alaskans. The identified portions are depicted in the amendment.

[11:10:06 AM](#)

Following a brief discussion, Senator Hoffman and Senator Olson agreed that the reference to "Alaska Natives" in Sec. 2 page two, line five could be retained in the bill.

[11:12:23 AM](#)

Senator Hoffman concurred with the references identified by Mr. Guaneli.

[11:12:56 AM](#)

Co-Chair Wilken stated that he would not support the amendment. He assumed that the references to Alaska Natives were the result of information included in "Tab E" of a 100-page study [copy not provided] that had been distributed to members of the Senate HES Committee. He noted that he would be investigating whether the population that was studied was "a broad population". He agreed with Senator Dyson that there would be additional opportunities through which this issue could be re-addressed.

Co-Chair Wilken commented that were the study to concentrate on Alaska Natives then it "would not be fair to highlight them in the bill". However, were the study to have a wide population, and Alaska Natives found to have higher percentages than other populations, then it would be appropriate. He reiterated that while it would be his intent to vote no at this time, he would be open to a follow up amendment were the study found to be narrow.

[11:14:15 AM](#)

Senator Bunde voiced that he too would desire to review the study before supporting the amendment. He asked whether deletion of the reference to Alaska Natives in the findings might allow for denial of treatment programs for targeted groups of people in the future. "If there's not a problem, we ought not to be spending money on it."

Co-Chair Green stated that she had also intended to mention that.

[11:15:09 AM](#)

Senator Hoffman stated that rather than his remarks to deny there being a problem, the intent was to point out "that pinpointing this cultural group in this legislation would have no affect on the law." While he is supportive of re-criminalizing marijuana, he could not support including Native Alaskans in the legislation as "justification" for approving that controversial issue. He opined that were the references to Alaska Natives to continue in the findings, he and other Native colleagues would not support the bill.

Co-Chair Green noted that in her initial review of the bill, she had not been "blinded" by the words. She opined that any references to one-third of the being Native population meant that two-thirds were non-Native.

[11:16:29 AM](#)

Senator Stedman spoke in support of the amendment. This is a Statewide problem. There might be ethnic groups that have more challenges than others with these substances. There are certain geographic areas that have more problems. There is a problem in Southeast Alaska. The same effect could be obtained and a "better message" could be delivered, were the amendment adopted.

[11:17:22 AM](#)

Senator Bunde asked whether the Findings information had been included in the original bill presented by Representative Jay Ramras or in the Senate bills.

Co-Chair Green recalled this information being available to the Senate HES Committee; however, she was uncertain as to whether the Department or the sponsor had provided it.

[11:18:05 AM](#)

REPRESENTATIVE JAY RAMRAS stated that, being the sponsor of the bill, he would "take responsibility for this language". From the perspective of being "the youngest" Legislator "at this table", he shared that he had been "introduced to marijuana in the seventh grade by a Native kid .... The kids I smoked weed with in high school were all non-Native. So, it's difficult for me as the bill sponsor to support language that draws a distinction between Natives and non-Natives because when I grew up, the problem was indistinguishable."

Co-Chair Green and Senator Bunde thanked Representative Ramras for his remarks.

[11:19:06 AM](#)

In response to a question from Senator Olson, Mr. Guaneli responded that removal of this language would not affect law enforcement efforts. The purpose of the Findings would be to allow the Court to consider the Legislature's judgment in regards to issues such as the use of marijuana by young people or pregnant women were a lawsuit challenging the marijuana laws brought before the Courts. The studies and evidence that the State has compiled "would speak for themselves"; in other words, he believed that the Courts would take into consideration the fact that the studies would support there being "a disproportionate impact on certain groups, whether it be geographic related or something else." In summary, he did not consider "this amendment as crippling our efforts in any way" and that "the laws would be upheld".

[11:20:37 AM](#)

Mr. Guaneli acknowledged the Member's concerns about the use of marijuana by certain groups. "That message is going to be heard loud and clear by the Courts ultimately," regardless of whether the amendment is adopted.

[11:20:56 AM](#)

Senator Olson asked whether the adoption of this amendment would diminish the ability for the State to prevail were there a legal challenge.

Mr. Guaneli responded that it would not.

[11:21:13 AM](#)

Senator Bunde recalled there having been "Court-ordered activity by the State in other arenas". To that point, he asked whether the removal of this language would "make it less likely that the Court then would say we need to have targeted enforcement or targeted remedial activities."

[11:21:43 AM](#)

Mr. Guaneli responded that rather than the challenge arising as a result of "one area of the State" or another being targeted, the anticipation is that the challenge would be based "on just a single case and the ultimate question is going to be is there sufficient justification based on what is known about marijuana and its effects Statewide to justify the Legislature regulating this substance". He believed that even were the amendment adopted, "there's sufficient justification for the Courts saying that."

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Hoffman, Senator Stedman, Senator Dyson, and Co-Chair Green

OPPOSED: Senator Bunde and Co-Chair Wilken

The motion PASSED (5-2)

Amendment #4 was ADOPTED.

[11:23:03 AM](#)

Co-Chair Green noted that the bill's fiscal notes are either zero or indeterminate.

Senator Hoffman asked Representative Ramras his opinion in regards to combining the bills.

Representative Ramras voiced being "comfortable" with the bills being combined because the primary activity "being addressed here is criminal enterprise; that seems to be a common denominator amongst the commercial sale of marijuana, distribution of steroids, and methamphetamine."

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SCS CS HB 149 (FIN) was REPORTED from Committee with five new January 12, 2006 fiscal notes: a zero fiscal note from the Department of Public Safety; a zero fiscal

note from the Department of Law; a zero fiscal note from the Department of Health and Social Services; an indeterminate fiscal note for the Public Defender Agency, Department of Administration; and an indeterminate fiscal note from the Office of Public Advocacy, Department of Administration.

#

**ADJOURNMENT**

Co-Chair Lyda Green adjourned the meeting at [11:24:58 AM](#).