

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

February 25, 2008  
1:42 p.m.

**MEMBERS PRESENT**

Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Jay Ramras, Chair

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 196(FIN) am  
"An Act relating to establishing a controlled substance  
prescription database."

- MOVED HCS CSSB 196(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 400  
"An Act relating to a person who seeks medical assistance for a  
person experiencing a drug overdose."

- HEARD AND HELD

HOUSE BILL NO. 237  
"An Act authorizing the governor to remove or suspend a member  
of the Board of Regents of the University of Alaska for good  
cause; establishing a procedure for the removal or suspension of  
a regent; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 255  
"An Act relating to dual sentencing of certain juvenile  
offenders; amending Rule 24.1, Alaska Delinquency Rules; and  
providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 196

SHORT TITLE: PRESCRIPTION DATABASE

SPONSOR(S): SENATOR(S) GREEN

01/16/08 (S) PREFILE RELEASED 1/4/08  
01/16/08 (S) READ THE FIRST TIME - REFERRALS  
01/16/08 (S) L&C, FIN  
01/29/08 (S) L&C AT 1:30 PM BELTZ 211  
01/29/08 (S) Heard & Held  
01/29/08 (S) MINUTE(L&C)  
02/05/08 (S) L&C AT 1:30 PM BELTZ 211  
02/05/08 (S) Moved CSSB 196(L&C) Out of Committee  
02/05/08 (S) MINUTE(L&C)  
02/06/08 (S) L&C RPT CS 4DP 1NR SAME TITLE  
02/06/08 (S) LETTER OF INTENT WITH L&C REPORT  
02/06/08 (S) DP: ELLIS, DAVIS, HOFFMAN, STEVENS  
02/06/08 (S) NR: BUNDE  
02/14/08 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/14/08 (S) Moved CSSB 196(FIN) Out of Committee  
02/14/08 (S) MINUTE(FIN)  
02/15/08 (S) FIN RPT CS 3DP 2NR SAME TITLE  
02/15/08 (S) L&C LETTER OF INTENT WITH FIN REPORT  
02/15/08 (S) DP: HOFFMAN, STEDMAN, THOMAS  
02/15/08 (S) NR: ELTON, OLSON  
02/19/08 (S) TRANSMITTED TO (H)  
02/19/08 (S) VERSION: CSSB 196(FIN) AM  
02/20/08 (H) READ THE FIRST TIME - REFERRALS  
02/20/08 (H) JUD, FIN  
02/22/08 (H) JUD AT 1:00 PM CAPITOL 120  
02/22/08 (H) Heard & Held  
02/22/08 (H) MINUTE(JUD)  
02/25/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 400

SHORT TITLE: MITIGATING FACTOR: CARE FOR DRUG OVERDOSE

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/19/08 (H) READ THE FIRST TIME - REFERRALS  
02/19/08 (H) JUD, FIN  
02/25/08 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

GINGER BLAISDELL, Staff  
to Senator Lyda Green

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SB 196, presented Version 0 on behalf of the sponsor, Senator Green.

REPRESENTATIVE BETH KERTTULA  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 400 as the sponsor.

AURORA HAUKE, Staff  
to Representative Beth Kerttula  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions on HB 400 on behalf of the sponsor, Representative Kerttula.

ANGELA HULL  
Juneau, Alaska

**POSITION STATEMENT:** Testified on HB 400.

RODNEY DIAL, Lieutenant, Deputy Commander  
A Detachment  
Division of Alaska State Troopers (AST)  
Department of Public Safety (DPS)  
Ketchikan, Alaska

**POSITION STATEMENT:** Responded to questions on HB 400.

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

**POSITION STATEMENT:** Testified on HB 400.

GERALD LUCKHAUPT, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on SB 196.

#### **ACTION NARRATIVE**

**REPRESENTATIVE COGHILL**, acting as chair, called the House Judiciary Standing Committee meeting to order at [1:42:30 PM](#). Representatives Coghill, Samuels, Lynn, Holmes, and Gruenberg

were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress.

SB 196 - PRESCRIPTION DATABASE

1:42:59 PM

REPRESENTATIVE COGHILL announced that the first order of business would be CS FOR SENATE BILL NO. 196(FIN) am, "An Act relating to establishing a controlled substance prescription database."

1:43:30 PM

REPRESENTATIVE SAMUELS moved to adopt the proposed House committee substitute (HCS) for SB 196, Version 25-LS1092\O, Luckhaupt, 2/23/08, as the working document.

REPRESENTATIVE GRUENBERG objected. He then withdrew his objection.

REPRESENTATIVE COGHILL announced that Version 0 is before the committee.

1:44:21 PM

GINGER BLAISDELL, Staff to Senator Lyda Green, Alaska State Legislature, on behalf of the sponsor, Senator Green, explained the changes contained in Version 0 of SB 196. She stated that there are no changes in pages 1-3 of SB 196. She explained that on page 4, line 9-13, proposed AS 17.30.200(d)(1), the language suggested by the Alaska State Medical Association was deleted. She pointed out that the specific language, "under a search warrant, subpoena, or order issued by an administrative law judge or a court;" was included in Amendment 1, previously adopted by the committee.

MS. BLAISDELL, in response to Representative Coghill, answered that practitioner is now defined as, "has the meaning given in AS 08.80.480;".

MS. BLAISDELL referred to page 5, lines 10-14, proposed AS 17.30.200, which she conveyed includes language that addresses Representative Coghill's concern regarding tribal and military agreements to use the database. She offered that Legislative Legal and Research Services added the following language:

The board shall prohibit a dispenser that is not regulated by the state from accessing the database if the dispenser that is not regulated by the state from accessing the database if the dispenser has accessed information in the database improperly, discloses information in the database improperly, or allows nonauthorized persons access to the database.

REPRESENTATIVE COGHILL noted that everyone under state authority who uses the database and violates this provision will be charged with a felony, so he said he thought that this added language is a small consolation. However, he related his understanding that the military would work under the United States code so they could be charged with a crime for disclosing information contained in the database. He cautioned that those who are not licensed by the state and have access to this database could pose a problem. He noted that he will continue to work on this issue.

REPRESENTATIVE HOLMES stated that she shares some of those concerns. She noted that she does not have an amendment to offer at this time, but suggested adding language along the lines that in order to enter into agreements with others that the board has to be satisfied. She also related her understanding that dispensers not regulated by the state would not be subject to the felony penalties. She encouraged the sponsor to consider allowing only the Board of Pharmacy to enter into these agreements.

REPRESENTATIVE COGHILL agreed that some type of memorandum of agreement should be offered.

REPRESENTATIVE GRUENBERG referred to page 5, line 10-12, proposed AS 17.30.200(f), which in part reads, "The board shall prohibit", and said it was designed to address Representative Coghill's concerns. However, Representative Gruenberg said that he is concerned that the word "improperly" will cause litigation and "wiggle room" because it is an impossible standard to define. He noted that "improper" is a relative term, and strongly suggested that a more precise term be used.

[1:50:13 PM](#)

MS. BLAISDELL stated that the intent is to identify someone who used the database differently than how it is specified in the bill.

REPRESENTATIVE GRUENBERG suggested adding the language "contrary to law", which would include regulation, as well.

REPRESENTATIVE COGHILL suggested instead that the provision could read, "failure to fulfill the requirements of this section".

REPRESENTATIVE GRUENBERG said that he preferred "contrary to law" because that encompasses all the laws.

REPRESENTATIVE COGHILL cautioned that "contrary to law" is a much broader approach. Thus, he suggested that the language be narrowed down to apply only to this subsection.

[1:51:50 PM](#)

MS. BLAISDELL continued with her analysis of the changes to Version 0. She referred to a letter in the packet from the Maine Department of Health and Human Services, dated January 18, 2006. She referred to paragraph 3, and stated that 38 U.S.C. 5701 is the specific provision that would allow the military to participate.

REPRESENTATIVE COGHILL opined that under that code the accountability would apply and thus he is satisfied with the language.

MS. BLAISDELL referred to page 5, line 15, proposed AS 17.30.200(g). She explained that Amendment 3 was adopted to add the word "promptly". She stated that on page 5, line 17, the following language was added: "all or part of". Ms. Blaisdell referred to page 5, line 28, proposed AS 17.30.200(h)(1), and noted that it no longer says "prescribed or", but instead there is a new paragraph (2) allowing a method for a person to challenge information in the database that the person believes is incorrect. She noted that this provision was added to address the concern that SB 196 does not have an appeal process.

[1:54:17 PM](#)

REPRESENTATIVE GRUENBERG made a motion to [rescind] the committee's action in adopting Amendment 2.

REPRESENTATIVE COGHILL objected.

MS. BLAISDELL explained that the definition is located on page 4 in Version 0 and is proposed AS 17.30.200(d)(1).

REPRESENTATIVE GRUENBERG referred to page 2, line 20, in proposed AS 17.30.200. He explained that this provision would adopt the definition of "practitioner". He referred to the definition section of controlled substances in current AS 17.30.900(A) which he read, as follows:

Unless the context clearly requires otherwise, the definition set out in AS 11.71.900 applies to this chapter.

REPRESENTATIVE GRUENBERG stated that AS 11.71.900(19) reads:

"practitioner" means

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer or use in teaching, or chemical analysis of controlled substance in the course of a professional practice or research in this state;

(B) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

REPRESENTATIVE GRUENBERG noted that the statute that he referenced at the last House Judiciary Standing Committee hearing was AS 08.80.480(28), which defined practitioner in a similar fashion. He read:

(28) "practitioner" means an individual currently licensed, registered, or otherwise authorized by the jurisdiction in which the individual practices to prescribe and administer drugs in the course of professional practice;

REPRESENTATIVE GRUENBERG explained that AS 11.17.900(17) contains the definition already implied in SB 196 and also defines a practitioner in relation to controlled substance activities. Title 11 specifically includes professionals such as veterinarians and professionals engaging in experimental

research, he said. Thus the meaning of "practitioner" in Title 11 is a little broader, but he said that it would satisfy him if the definition was referenced in this chapter of SB 196.

REPRESENTATIVE COGHILL removed his objection.

[1:57:40 PM](#)

REPRESENTATIVE GRUENBERG again made a motion that the committee rescind it's action in adopting Amendment 2. There being no objection, the committee rescinded it's action in adopting Amendment 2.

[1:57:51 PM](#)

REPRESENTATIVE COGHILL explained the effect of rescinding the adoption of Amendment 2 is to remove the language:

"practitioner" has the meaning given in AS 08.80.480.

REPRESENTATIVE GRUENBERG noted his agreement.

[1:58:20 PM](#)

REPRESENTATIVE GRUENBERG referred to page 5, lines 12-13, proposed AS 17.30.200(f), which he stated relates to dispensers that are not regulated by the state who "improperly" access or disclose information in the database.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1 to Version 0, as follows:

On Page 5, line 12:  
Delete "improperly"

On page 5, line 12, following, "database":  
Insert "contrary to this section"

On page 5, line 13:  
Delete "improperly"

On page 5, line 13, following, "database":  
Insert "contrary to this section"

REPRESENTATIVE SAMUELS objected. He inquired as to the amount of the penalties associated with the subsection.

MS. BLAISDELL answered that if the improper access or disclosure was by someone in a non state regulated entity, no penalty would apply. The only penalty under the board's control would be to deny future access to the database, unless penalties were addressed in the memorandum of agreement (MOA) with the non state regulated entity.

REPRESENTATIVE COGHILL explained that under SB 196, a breach would constitute a class C felony, but if a MOA exists, the felony would not apply.

REPRESENTATIVE SAMUELS inquired as to whether disclosure of a name and an address constitutes a felony.

MS. BLAISDELL clarified that if a person were to access the database beyond the scope of his/her authority, that action would constitute a class A misdemeanor. Thus, if a medical clerk accessed someone's name or address and did not have the authority to do so, he/she would commit a class A misdemeanor. However, if he/she "knowingly" disclosed that information or attempted to manipulate the information, the person would commit a class C felony.

REPRESENTATIVE SAMUELS stated that he agrees with the intent of the bill, but he is speechless that a disclosure of information would constitute a felony.

[2:04:20 PM](#)

REPRESENTATIVE COGHILL expressed his concern that a loophole would exist for those entities covered under a MOA since the dispensers and others who disclose information would not be subject to the class C felony penalties.

REPRESENTATIVE DAHLSTROM inquired as to how many agency pharmacies are non state regulated.

MS. BLAISDELL answered that non state regulated providers would include Indian Health Service (IHS) and military entities. She surmised that only a handful of military bases are non state regulated pharmacies. However, she opined that a small percentage of providers for IHS serve a significant percentage of the native population.

MS. BLAISDELL, in response to Representative Dahlstrom, answered that currently illegal activity exists. However, no one has been able to track this type of activity. Under SB 196, a

system will be in place to track improper practices. She surmised that detection will also depend on the regulations that the Board of Pharmacy adopts. She opined that the Board of Pharmacy would probably develop regulations that would aid in detection, perhaps to enable enforcement to respond as quickly as within a week of the improper or illegal activity.

2:07:35 PM

REPRESENTATIVE DAHLSTROM expressed concern about the authority of the Board of Pharmacy to affect people's livelihood.

MS. BLAISDELL agreed that SB 196 extends additional authority to the Board of Pharmacy. However, the outcry from the medical community is so strongly in favor of this, [that it is warranted]. Additionally, she opined the proposed regulations would receive a great deal of scrutiny. Finally, she surmised that out of 400 pharmacists and at least twice that number of medical prescribers, that the regulations would achieve a good balance.

REPRESENTATIVE LYNN inquired as to whether the pharmaceutical companies samples offered to physicians are recorded and regulated.

MS. BLAISDELL answered that most physician samples are not scheduled substances such as painkillers.

REPRESENTATIVE COGHILL reminded members that Conceptual Amendment to Version 0 is still before the committee.

2:10:00 PM

REPRESENTATIVE HOLMES inquired as to whether that would include any regulations promulgated.

REPRESENTATIVE COGHILL answered that the authority to promulgate regulations is given under this section, so he surmised that the answer is yes.

2:11:24 PM

REPRESENTATIVE SAMUELS posed a scenario such that a pharmaceutical clerk forwards the name of one customer from the database. He inquired as to whether the clerk would be subject to a class C felony. He further inquired whether the clerk

would be charged with multiple felonies if he/she forwarded 1,000 names from the database to a third party.

MS. BLAISDELL said she was not sure.

REPRESENTATIVE COGHILL announced that the committee would set aside SB 196, Version 0, as amended, including the committee's action to rescind the adoption of Amendment 2 to CSSB 196(FIN) am. SB 196, Version 0, was set aside, with the question of whether to adopt Conceptual Amendment 1 left pending.

HB 400 - MITIGATING FACTOR: CARE FOR DRUG OVERDOSE

[2:14:18 PM](#)

REPRESENTATIVE COGHILL announced that the next order of business would be HOUSE BILL NO. 400, "An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose." [Included in members' packets was a proposed committee substitute (CS) for HB 400, Version 25-LS1518\M, Luckhaupt, 2/23/08.]

[2:14:29 PM](#)

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, sponsor, stated that she introduced HB 400 at the request of a constituent. She explained that her staff found a New Mexico program that is using mitigation and immunity to try to encourage others to help people who are having drug overdoses. She noted that the jury considers mitigating factors, as well. She said that she decided to sponsor the bill because it can help to save a life, which she opined "is a reasonable step."

[2:17:20 PM](#)

REPRESENTATIVE COGHILL turned the gavel over to Vice Chair Dahlstrom.

[2:17:48 PM](#)

AURORA HAUKE, Staff to Representative Beth Kerttula, Alaska State Legislature, stated on behalf of the sponsor, Representative Kerttula, that a proposed committee substitute would add an immunity provision for possession involving a controlled substance of misconduct in the fourth to sixth degree.

[2:18:23 PM](#)

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) for HB 400, Version 25-LS1518\M, Luckhaupt, 2/23/08, as the working document.

VICE CHAIR DAHLSTROM objected.

MS. HAUKE offered some statistics to support introduction of HB 400. She stated that over the past 5 years in Alaska, approximately 85 people died per year from drug overdoses, which is well over the national average as is the drug usage rate in Alaska. She noted a recent New York study showed that at least 50 percent of the time witnesses do not call for medical help. The reason most cited in not calling or in delaying to call for help was fear of police.

REPRESENTATIVE SAMUELS inquired as to whether the sponsor could explain the committee substitute in terms of immunity issues. He expressed concern that someone could be granted immunity and could later confess to having committed other crimes, perhaps even murder. He specifically asked whether a person who possessed a firearm and was granted immunity, if the firearm could be used as evidence.

MS. HAUKE answered that the intent is to offer immunity for only the possession of a controlled substance.

[2:21:36 PM](#)

ANGELA HULL stated that on March 26, 2007, her 27-year-old daughter was at home with two other adults who were all using drugs. Neither of the two other adults called 911. She said that her 4-year-old granddaughter went to a neighbor to ask for help, while her 10-year-old grandson performed cardiopulmonary resuscitation (CPR) on his mother as he had seen done on television. Once the other adults realized that emergency medical help was coming, they locked the first responders out. She said she did not know how long that her daughter was [unconscious] and whether it would have made a difference if medical help arrived sooner. She opined that if the other adults using drugs had not been afraid of being arrested, they may have called 911 and it may have made a difference to her daughter.

MS. HULL explained that people with substance abuse problems do not think in the same way as normal adults think. However, they

know the laws and know how to "skirt" trouble. Drug users understand that if they are caught possessing drugs they will not only be arrested, but will lose access to their drugs, she stated. Instead of calling for help, the drug abusers use that precious time to dispose of their paraphernalia and drugs, she stated. In her daughter's instance, small children did the right thing and called 911, she stated. It is too late for her daughter and some of her friends, she explained, since in the last 5 years, 7 of her daughter's friends also lost their lives to drug overdoses. She opined that HB 400 would provide a small safety net that could save lives.

[2:25:14 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), stated that the DPS is neutral on HB 400, but understands the goals of HB 400. He expressed concern that immunity would transfer to all actions taken after the call. He posed a scenario that outlined his concern such that a murder victim could be found at the scene when police arrive. Additionally, he explained that children who live in homes where methamphetamine is produced can be poisoned. He posed another scenario in which a child is brought to a hospital suffering from meth exposure. He inquired as to whether law enforcement would be barred from investigating the incident due to the immunity clause in HB 400. In the event, the DPS could investigate, would the court refuse to issue a search warrant since the parents may be considered immune and not be subject to any crime. Lieutenant Dial noted that the many times the ones who would benefit from immunity offered in HB 400 are under conditions of release and are on probation or parole. He inquired as to whether HB 400 would conflict with the conditions of the caller who is on probation or parole.

[2:27:21 PM](#)

REPRESENTATIVE GRUENBERG expressed the same concern as Lieutenant Dial. He said that he did not believe he could support Version M. He referred to penalties for several crimes, such as the failure to report crimes against a child under AS 11.56.765, which is a class A misdemeanor for murder, kidnapping, and sexual assault. Last year a similar statute was passed by the legislature which adds AS 11.56.767, which is nearly identical for failure to report violent crimes against an adult, he stated. However, neither statute contained a provision for a failure to report a potentially fatal overdose,

he opined. He outlined that current AS 11.56.770, which relates to hindering prosecution of a felony in the first degree, is a class C felony. He further advised that AS 11.56.780, which relates to hindering prosecution of a misdemeanor in the second degree is a class B misdemeanor. He inquired as to whether the failure to place a telephone call in the case of a drug overdose is currently a crime in Alaska.

LIEUTENANT DIAL answered that in those instances the DPS would investigate and ask the district attorney's office to make a determination.

REPRESENTATIVE GRUENBERG inquired as to whether the two adults who barred the door and refused entry would currently constitute a crime.

LIEUTENANT DIAL stated that the district attorney would also make that determination.

[2:30:29 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), stated that the DOL has some concerns with HB 400. She relayed her fear that the bill would not address the situation outlined by Ms. Hull. She said she spoke to Captain Keith Mallard from Alaska Bureau of Alcohol and Drug Enforcement (ABADE), who advised her that he cannot remember ever prosecuting the second person when two people were using drugs together and one overdosed. She stated that she is worried that HB 400 will assist those who provide drugs to people in avoiding arrest. She offered that it may curb prosecution in cases such as possession of controlled substances with the intent to sell. Although the bill only pertains to possession, she pointed out that it doesn't limit the quantity of the drugs involved. She offered concern over the term "limited immunity" and concluded that the DOL has concern with the immunity provisions in the bill.

[2:33:08 PM](#)

REPRESENTATIVE SAMUELS stated that he preferred the original bill over Version M and withdrew his motion to adopt Version M.

REPRESENTATIVE GRUENBERG referred to his earlier questions and asked Ms. Carpeneti to respond.

MS. CARPENETI answered that she did not believe that failure to make a telephone call in instances of drug overdoses would constitute a crime. In further response to Representative Gruenberg, she said she thought that barring the door to medical personnel might be crime. She stated that she previously held discussions with Ms. Hauke about the crime of barring the door. She said she discussed the possibility of relating the crime of barring the door to hindering the delivery of medical care by a person instead of offering immunity to those who call for medical assistance. She related her understanding that this matter may be covered under AS 18.08.075.

REPRESENTATIVE COGHILL inquired as to whether the discussion could move to focus on the impact of mitigators, once the discussion of the Title 18 issue is finished.

MS. CARPENETI noted that a person who refuses to comply with an emergency medical technician request to deliver services is guilty of a class A misdemeanor, upon conviction.

[2:36:12 PM](#)

REPRESENTATIVE GRUENBERG noted that AS 18.08.075(a)(5) and (b) read:

(a) An emergency medical technician who responds to an emergency with an ambulance service or first responder service, who has in the technician's possession a current emergency medical technician identification card, and who provides emergency medical care or other emergency medical service, has the authority to ...

(5) enter a building, including a private dwelling, or premises where a report of an injury or illness has taken place or where there is a reasonable cause to believe an individual has been injured or is ill to render emergency medical care; ...

(b) A person who knowingly refuses to comply with an order of an emergency medical technician authorized under (a) of this section is, upon conviction, guilty of a class B misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a).

REPRESENTATIVE GRUENBERG stated that this statute has a very narrow meaning, and opined that the crime would not include refusing access to fire or police.

MS. CARPENETI suggested it would be interesting to also review the definitions that apply to the referenced statute, but noted that she has not yet done so.

[2:37:24 PM](#)

MS. CARPENETI, in response to Representative Coghill, answered that mitigating factors are proven to a judge by clear and convincing evidence at sentencing, after conviction. Mitigating factors are not proven to a jury. Furthermore, explaining how mitigating factors would be applied, she stated that if the sentencing range is for four years or below, the court could reduce the sentence to zero and if the sentencing range is above four years that the mitigating factors could reduce the sentence by half.

MS. CARPENETI, in response to Representative Samuels, clarified that if the lower end is a sentence of five years, that the court could only reduce the sentence to two and one-half years. She further added that mitigating factors give the judge discretion, but are not required to be applied.

MS. CARPENETI related her understanding that HB 400 would only apply to people using drugs together. She expressed concern about the person who supplied the drugs to the person who overdosed.

[2:41:12 PM](#)

VICE CHAIR DAHLSTROM announced her intention to hold HB 400 over to allow the sponsor an opportunity to address the concerns with the bill.

REPRESENTATIVE SAMUELS inquired as to whether drug overdose would also include alcohol.

MS. CARPENETI answered that HB 400 would only apply to AS 11.71, which relates to controlled substances and not to alcohol. She offered to research that issue further.

REPRESENTATIVE GRUENBERG said that he hopes that this matter of restricting access to patients will also be reviewed since people barring the door and not allowing medical personnel to enter could prove fatal in circumstances other than drug overdoses.

[HB 400 was held over.]

SB 196 - PRESCRIPTION DATABASE

2:43:27 PM

VICE CHAIR DAHLSTROM announced that as the final order of business the committee would return to the hearing on CS FOR SENATE BILL NO. 196(FIN) am, "An Act relating to establishing a controlled substance prescription database." [Earlier in the meeting Version 0 had been adopted as the work draft, and the committee had rescinded its action in adopting Amendment 2 to CSSB 196(FIN) am, thereby deleting its resulting change from Version 0; left pending from earlier in the meeting was the motion to adopt Conceptual Amendment 1 to Version 0.]

The committee took an at-ease from 2:43 p.m. to 2:44 p.m.

2:44:24 PM

VICE CHAIR DAHLSTROM drew attention to Conceptual Amendment 1 [text provided previously].

2:45:15 PM

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), stated that Conceptual Amendment 1 would probably be fine, but surmised that the Revisor of Statutes would probably suggest the use of some term other than "contrary".

2:45:57 PM

REPRESENTATIVE SAMUELS removed his objection.

VICE CHAIR DAHLSTROM announced that Conceptual Amendment 1 was adopted.

MR. LUCKHAUPT, on the question of whether a person who knowingly violates subsection (d) by disclosing information contained in the database could be charged multiple felonies under the penalty provisions of Version 0, surmised that if a person disclosed the information to five people at the same time that the person would be charged with a single felony charge. He further surmised that if the person subsequently knowingly disclosed information to people on separate occasions, then the person could be charged with a felony for each occasion that the confidential information was disclosed. He further responded

that it is possible to add language to SB 196 to make it clear that a separate charge for each disclosure would be imposed.

REPRESENTATIVE COGHILL inquired as to whether disclosing information from a database containing 50 names would be a single felony.

REPRESENTATIVE SAMUELS further inquired as to whether a clerk who discloses a single name once on each of 10 days would be charged with 10 felony counts. Additionally, he inquired as to whether a clerk who discloses the entire database of 40,000 people would be charged with a single felony.

MR. LUCKHAUPT referred to page 6, lines 5-6, proposed AS 17.30.200(j)(1)(A), and read:

accesses information in the database beyond the scope of the person's authority commits a class A misdemeanor;

MR. LUCKHAUPT offered that each day the offense was committed would be a completed crime. He surmised it would constitute one crime in the case of someone who improperly obtained access to the entire database. However, he surmised that it would depend on how the database was set up. He said he assumes that a person would only have access to one record at a time, which would pull up that person's information. Thus, if the clerk would subsequently pull up a second name and record, that action would constitute a second offense, he surmised.

2:50:20 PM

REPRESENTATIVE HOLMES referred to proposed AS 17.30.200(j)(1)(A), and offered her understanding that this provision would cover offenses by someone who accesses the database, but is not authorized to do so. She surmised that the penalty provision would also cover instances in which someone "knowingly" discloses that information. However, she pointed out that proposed subsection does not cover any negligent disclosure. She posed a scenario in which a person prints out the information and leaves that information laying around or tosses it in the trash. She noted that a prior provision in SB 196 would require the Board of Pharmacy to adopt regulations to protect the safety and security of the database. She inquired as to whether the bill would rely on the board to do so.

MR. LUCKHAUPT answered that one potential would be to prosecute the person, such as the janitor who would use the information he/she found. He referred to page 6 lines 12-15, proposed AS 17.30.200(j)(2), and stated that a person without authority to access the database that "knowingly" accesses the database or "knowingly" receives the information that the person is not authorized to receive could conceivably violate that provision. Otherwise, he surmised, the Board of Pharmacy would use the highest degree of security in creating its regulations. He further surmised that if the person disclosing is a dispenser, the board could impose disciplinary sanctions through proceedings.

REPRESENTATIVE HOLMES referred to page the language on 6, line 13, "knowingly receives", and inquired as to whether a person who "knowingly receives" information would be subject to a class C felony.

[2:54:18 PM](#)

MR. LUCKHAUPT surmised that a person who receives data may not know the information is confidential information. He opined that it is difficult to extrapolate for every circumstance. He speculated that unless the person used the information that was given to him/her, it is not likely that the person committed any criminal act.

[2:55:56 PM](#)

VICE CHAIR DAHLSTROM posed a scenario in which the person who receives the information recognizes that it is confidential, but doesn't really know what the information actually pertains to so the person passes the information on to a third party such as the Board of Pharmacy. She inquired as to whether the third party would be charged with a felony by accepting the information.

MR. LUCKHAUPT answered that would depend on whether the person would be prosecuted by the district attorney. He pointed out that cases in which the person contacted the board would be considered whistleblower actions. Thus, he said that he did not think any criminal charges would apply. He pointed out that in the scenario posed that the crime would be committed by the pharmacist or prescriber.

[2:57:53 PM](#)

MS. BLAISDELL offered her belief that investigators could determine who accessed the database and which records were accessed.

MR. LUCKHAUPT related an incident in which a person accessed a confidential law enforcement database, but the person did not use any information and was not prosecuted. He offered that it was highly unlikely a person who inadvertently receives information would be prosecuted.

[3:00:23 PM](#)

MR. LUCKHAUPT, in response to Representative Gruenberg, stated that mental states include "intentional" which would mean that the person intended a result, that "knowingly" would mean that the person is aware the result could happen, and "reckless" would be when a reasonable person would understand that a result could occur. He noted that mental states of criminal negligence and civil negligence also have standards.

REPRESENTATIVE GRUENBERG pointed out that the intent is set out in SB 196.

[3:02:07 PM](#)

REPRESENTATIVE GRUENBERG referred to page 5, lines 8-14, proposed AS 17.30.200(f). He argued that this subsection does not mention any mental state. He asked whether an "intention" is inferred.

MS. BLAISDELL answered that the intent for these provisions would be defined in the memorandum of agreement (MOA) between the board and the non state entity such as the military.

REPRESENTATIVE GRUENBERG inquired as to whether that should be left to the MOA or actually specified in SB 196.

MS. BLAISDELL answered that the MOA would be governed by federal law.

REPRESENTATIVE COGHILL stated that he would have issues with the proposed penalties if the MOA chooses to impose a lesser crime for violations committed by non-state-regulated database users than for state-regulated database users.

[3:04:22 PM](#)

REPRESENTATIVE GRUENBERG moved to report the proposed HCS for SB 196, Version 25-LS1092\0, Luckhaupt, 2/23/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 196(JUD) was reported from the House Judiciary Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.