

HOUSE FINANCE COMMITTEE
February 24, 2011
1:39 p.m.

1:39:56 PM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:39 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Les Gara
Representative David Guttenberg
Representative Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

James Armstrong, Staff, Co-Chair Bill Stoltze; Leslie Houston, Director, Division of Administrative Services, Department of Corrections; Sue Stancliff, Legislative Liaison, Department of Public Safety; Jerry Luckhaupt, Assistant Reviser of Statutes, Legislative Legal Services; Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; Kendra Kloster, Staff, Representative Cathy Munoz, Sponsor; Representative Bob Lynn, Sponsor; Thomas Reiker, Staff, Representative Bob Lynn.

PRESENT VIA TELECONFERENCE

Orin Dym, Forensic Laboratory Manager, Alaska Crime Lab, Department of Public Safety; Lt. Rodney Dial, Alaska State Troopers, Department of Public Safety; Shelly Mellot,

Manager, Anchorage Division of Motor Vehicles, Department of Administration.

SUMMARY

HB 7 SYNTHETIC CANNABINOIDS AS SCHEDULE IIA

CS HB 7(JUD) was REPORTED out of committee with a "do pass" recommendation and with attached new indeterminate fiscal note by the Department of Corrections, new zero impact note by the Department of Law, and new zero impact note by the House Finance Committee for the Department of Public Safety.

HB 19 SPECIAL REQUEST LICENSE PLATES

HB 19 was REPORTED out of committee with a "do pass" recommendation and with attached previously published zero impact fiscal note: FN1, ADM.

#hb7

HOUSE BILL NO. 7

"An Act classifying certain synthetic cannabinoids as schedule IIA controlled substances; and providing for an effective date."

1:41:11 PM

JAMES ARMSTRONG, STAFF, CO-CHAIR BILL STOLTZE, explained that the fiscal notes adopted out of the House Judiciary Committee had not been updated. He stated that the three fiscal notes from the Departments of Corrections, Public Safety, and Law were in order. He noted that there could be future supplemental or incremental requests for some that were indeterminate.

Co-Chair Stoltze believed there could be consequences and costs when something was made illegal. He noted there were still questions about the accuracy of the fiscal notes.

Vice-chair Fairclough requested more information about the Department of Corrections (DOC) fiscal note. She wanted a quantifiable range of potential costs, and wondered whether other fiscal notes coming from the department would be indeterminates.

LESLIE HOUSTON, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS, responded that there would not be across-the-board indeterminate fiscal notes from DOC. She detailed that there had to be a certain type of data based on past convictions in order to quantify incarceration costs. There was no data available; DOC usually looked to the Department of Law (DOL) for a base to draw from. Since there were no numbers, DOC made the fiscal note indeterminate, knowing that one conviction would indicate an impact.

[1:44:55 PM](#)

Vice-chair Fairclough asked whether DOC could provide numbers based on the current population in jail because of drug convictions. Ms. Houston replied that DOC did not look at all the drug convictions, but were trying to consider drug convictions in the same class as the schedule on the legislation and anything that could be considered a parallel. There was no correlation for the particular schedule III cannabinoid.

Co-Chair Stoltze queried the population incarcerated solely for drug convictions, not convictions connected with other charges such as armed robbery. He did not think there were many people incarcerated for drug possession alone. Ms. Houston responded that someone could be arrested for felony drunk driving with possession.

Co-Chair Stoltze wanted the numbers for drug possession alone. Ms. Houston replied that the data could be obtained. She noted that there had been a delay in releasing the 2010 offender profile, which would break the numbers down; she told the committee the profile would be released within in the next month.

Vice-chair Fairclough wanted the department's best guess at the cost or possible range of costs for the legislation. Once it was known how many drug offenders the state had incarcerated, she thought the next question would relate to the average length of incarceration for the drug offenders, which could provide some numbers. She queried the average length of incarceration. Ms. Houston offered to look at the data more broadly; the department had considered the information more specifically.

Representative Joule wondered whether there was a mechanism to reference a particular offense back to a particular piece of legislation so that specific costs of the legislation could be determined. He pointed out that an indeterminate note put the detail of the costs off for awhile, but he noted that he often did not see the reference back to the original fiscal note.

[1:48:32 PM](#)

Ms. Houston responded that once there was a conviction and someone was sentenced, the department did have a way to measure the costs. The data would be put into a fiscal note at that time. She provided the example of SB 222 (the sexual assault and domestic violence initiative that addressed unregistered sex offenders); DOC had come back in the current year with the specific data resulting from convictions since July because of the legislation.

Representative Guttenberg referred to a discussion with the commissioner of DOC, whom he had asked for the number of people in corrections institutions who were there solely because of marijuana possession or trafficking. He pointed out that he had not gotten the numbers.

Co-Chair Stoltze added that he had asked for the information repeatedly and had not received it either. Ms. Houston agreed that the question had been asked.

Co-Chair Stoltze strongly stated concerns about questions that had not been answered by the department. He had concerns about what was not being said. He stated that he would ask repeatedly. Ms. Houston answered that she understood.

Representative Wilson asked how the cities of Fairbanks and Anchorage would handle the costs of testing.

SUE STANCLIFF, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, replied that the state crime lab did the testing for all the cities. The crime lab's responsibility was state-wide; the cost was not charged back to the cities.

Co-Chair Stoltze surmised that the fiscal impact of the local ordinance was not brought before the committee in the legislature.

1:51:46 PM

Representative Doogan thought only one case related to the legislation had gone through the crime lab to date, and that there was no prediction about how many cases there would be once the substance was made illegal. He thought it was fair to guess that there would be fewer people using the substance rather than more once it was illegal. He wanted to know why the department thought there should be a new and separate employee position created to enforce the specific law. Ms. Stancliff responded that the crime lab would receive the substance to be analyzed before the issue went to DOC or DOL. She stressed that the key to synthetic drugs was analysis to determine what they were and what they were not. The commissioner had told her that it was important to have adequate staffing at the lab. Currently there was only enough resource to adequately maintain current levels of response. She noted that additional positions were included in the 10-year plan for the new crime lab, but the new lab would not open for another year and a half. House Bill 7 would take effect immediately, which the department anticipated would impact the crime lab while the substance was still on the street.

ORIN DYM, FORENSIC LABORATORY MANAGER, ALASKA CRIME LAB, DEPARTMENT OF PUBLIC SAFETY (via teleconference), added that the crime lab had not seen any of the material, since it was currently but not illegal. Once the substance became controlled, scientific analysis was the only way to determine if any suspect plant material had the drug present. He stated that there were no field tests for the substance and no officer recognition protocol, which there was with marijuana. He expected that any suspect plant material would come to the crime lab first to determine the presence of the drug.

Representative Doogan wanted to make sure that DOC was able to produce evidence in future years that the request for the position was necessary. He stated that he would deny the increment as there was no evidence to support the idea that it would be necessary. He was willing to make a "leap of faith" if necessary, but he wanted evidence in the future.

Vice-chair Fairclough stated that she was contemplating asking for a zero fiscal note. She asked whether there would be training for law enforcement officers to

prioritizing testing. Ms. Stancliff replied that there would be training for the Alaska State Troopers; she believed the training would also be shared with municipal officers.

Vice-chair Fairclough queried the criteria established so that officers would know when to request testing.

LT. RODNEY DIAL, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY (via teleconference), responded that any new regulation or law was immediately followed by a training bulletin and then in-service training. Officers were trained at the academy to forward any substance that they suspected was illegal to the crime lab for actual analysis; the practice would be continued for the new substance.

[1:59:48 PM](#)

Vice-chair Fairclough explained that she was familiar with the processing and costs of the rape kit, but not with the process of drug analysis. She asked whether everything brought forward was tested or whether the officers set priorities concerning what should be analyzed. Lt. Dial responded that the issue would be decided on a case-by-case basis. He opined that procedures would be developed in consultation with DOL if there were ways to recognize the substance without analyzing it and the offense was low-level. However, for something more serious, such as injury resulting in death because an individual was under the influence, the substance would be sent to the crime lab. The substance would be sent outside the state if the state crime lab did not have the ability to analyze it.

Vice-chair Fairclough queried the physical attributes of the substance and how it might be identified. Lt. Dial responded that the substance could be sprayed onto anything that could be smoked and onto some things that were not smoked, such as potpourri. He said there was no way for officers in the field to make a visual determination or to identify the substance through smell.

Co-Chair Stoltze referred to television shows in which people readily admitted what substance they were using and wondered whether the troopers had similar experience. Lt. Dial replied that the statement could be true for a substance like marijuana. He did not have experience with the particular substance in the bill. He noted that there

were field-test kits for most substances that could be used to confirm the identity of a suspected substance. However, the substance being discussed came in many varieties and there were no known test kits. The issue would be developing the best evidence possible in the field to try and support what an officer thought the substance was; if that could not be done, the substance would have to be sent to the crime lab.

Representative Costello stated concerns about spending money to test victims affected by the substance instead of spending money to educate possible users. She believed young people were being exposed to the new drug and needed information about the risks. She suggested talking to the Department of Health and Social Services about including questions on the Youth Behavior Risk Survey to find out more about how widespread the use was. She asked whether the volume of work at the lab correlated to the crime rate. Mr. Dym thought the connection between the two was difficult to make; there had been a 15 percent increase in business the prior fiscal year over the previous fiscal year, which was greater than the increase in the crime rate. He believed that the crime laboratory had become more efficient as backlogs had decreased, but there were then more submissions.

[2:05:39 PM](#)

Representative Costello did not understand the logic behind the fiscal note. Mr. Dym replied that the crime lab had had 1,250 cases of potential controlled substances submitted in the last calendar year. The 1,250 cases comprised 2,700 items; 2,400 of the items were substances that were illegal (such as 375 items of cocaine, 325 items of methamphetamine, and so on).

Mr. Dym continued that the department had heard testimony that the substance being discussed was popular with people who wanted to circumvent employment drug-testing. There was currently no mechanism for employment screening detection of the drug and it had become popular with people who wanted to alter their sense of reality without losing their jobs. The role of the crime lab connected to suspect plant material was to determine whether or not the drug was present so that a decision could be made about how the case moved forward in the justice system.

Representative Costello believed that the drug could have unanticipated effects that were very severe. She wondered whether people would use it instead of marijuana. She questioned whether marijuana was a gateway drug to the drug being discussed. She thought more information about the use and effects of the drug was needed before attaching a fiscal note.

Co-Chair Stoltze noted the presence of Jim Duncan in the committee room.

Representative Guttenberg admitted that he had originally been cynical about the legislation, and that his feelings about it had gone back and forth. He wanted to know whether an officer sent marijuana to the crime lab to be tested each time it was found. He thought the employment testing aspect was problematic. Lt. Dial responded that most pot encountered in the field was not sent to the crime lab, as law enforcement was able to conduct a field test and forward charges. He noted that there was the ability to send the substance off to get a higher-level verification of the substance if the district attorney's office felt that was important.

Lt. Dial opined that the department would start an education program with officers if the legislation passed. He anticipated that the substance would most likely be encountered in the motoring public; people would be driving with obvious signs of impairment and officers would try to find out the cause. He stated that the substance concerned him because it was far more potent than average marijuana, currently easy to access, legal, and would make it possible for a person to pass a drug test.

[2:12:27 PM](#)

Lt. Dial continued that it would be imperative for officers in the field to have the ability to confirm what the substances were in cases where they might not be able to detect them otherwise. In addition, they would need to be able to build a case in order to make prosecutions, hopefully without sending the substance to the lab. He thought the most important cases would be potential felonies.

Representative Gara asked whether the first possession of marijuana was a crime or a violation. Lt. Dial responded

that the first incident of possession was generally a crime.

Representative Gara saw no proof that a full-time person would be needed to analyze the substance. He wondered whether overtime could be used during the first year, or if there were other ways to get the work done. Mr. Dym responded that currently, 68 percent of the crime lab's cases were turned around in a reasonable amount of time; he noted that there was always a lot of drug work to be done. He acknowledged that there was a question as to how much additional work would come in with the passage of the legislation. He assured the committee that the additional position would not result in "idle hands" at the lab, but a faster turn-around time in drug cases in general. In addition, with the particular substance, he anticipated increased court time; 20 percent of cases that the crime lab worked resulted in subpoenas. Court time tended to run anywhere from one to three days depending on where the analysis was sent. He pointed out that in addition to analysis time, there could be a lot of additional court time spent explaining the drug to a jury, such as what positional isomers were and why the substance was actually controlled. The other function that would be needed was law-enforcement training to provide screening tools for officers in the field. He opined that it would be possible to keep an additional position very busy.

[2:16:19 PM](#)

Representative Gara voiced concerns that HB 7 would be charged for the cost of doing other work in the lab. He thought the budget request should come in separately.

Representative Joule asked whether the substance levels of THC were traceable in the way they were traceable in marijuana use, in terms of employment testing. Lt. Dial replied in the affirmative. He explained that since there was no current urinalysis test for the substance, the drug had become a problem for the military and for other states in the year since it had been introduced. He did not know whether a test had been developed or whether there was a special place to send a sample to; the usual places did not have the ability to detect the substance.

Representative Joule asked whether the substance would conceal the effects of the marijuana when it was applied to

a joint. Lt. Dial did not believe it would, and that the THC from the marijuana would show up on the urinalysis.

Representative Joule thought the things tested would not be other controlled substances as much as everyday substances like cigarettes or candy. Lt. Dial responded that their experience had been that the synthetic drug was being applied to legal substances, such as potpourri; he expected that practice to continue.

Representative Joule wondered how to measure the kinds of things the labs would be testing for in a fiscal note.

2:20:02 PM

Vice-chair Fairclough asked whether the product had to be smoked to create the chemical reaction, or whether it could go on something like a candy bar. Lt. Dial did not know, since he did not have a lot of experience with the substance.

Vice-chair Fairclough asked for more information about the field test used to check for marijuana. Lt. Dial answered that an officer might identify impairment in the field and then attempt to determine whether the impairment was caused by something that could be a violation of law, such as driving a motor vehicle with possession of a firearm. An officer would attempt to determine whether the impairment was caused by introduction of an illegal substance, or whether the issue was medical, or something else. He stated that there were field tests for most illegal substances; for substances that have been consumed but not found in the vehicle, the officer could do a standard field sobriety test. There were tests for alcohol. There were drug-recognition experts in the department who did a series of tests to determine drug impairment, such as dilated pupils. Ultimately, if enough probable cause can be developed, an officer can seek a search warrant for blood or urine and send that off for analysis.

Vice-chair Fairclough thought there were at least two different types of tools to test for the substance either in the bloodstream or the urine. She still had concerns about the fiscal note. She wondered whether there could be a scenario in which a motor vehicle would have to be stored through the length of a trial because it possibly contained evidence.

2:23:59 PM

Representative Wilson questioned whether different items would be looked for in a car, or whether there would be a blood or urine test. Lt. Dial responded that if impairment were detected, the investigation would be worked from that point. He thought investigations could be lengthy if the substance could be sprayed on an item and the result was as serious as a death from a motor vehicle accident. Based on prior investigative practices, in a serious crime, the time would be taken to determine what the person was impaired by. Evidence would be taken, and if the evidence did not provide the information, a search warrant would be sought to obtain blood and urine samples.

Representative Wilson asked whether the substance stayed on a product for a long time. She was more comfortable with testing the impaired person rather than all the items in their car. Lt. Dial agreed. He noted that there were times when a drug dog was used to speed the process of identifying possible substances, because physically testing all the surfaces of a car for residue from other substances was not practical. He thought there would be a learning curve for the department; training would be needed as well as policy to develop the best way to test for the substance.

Co-Chair Stoltze recalled testimony that the crime lab tested all the work the municipalities sent. He speculated about the amount of sworn officers and thought 40 or 50 percent of the work would be done in the municipality of Anchorage in an urban environment. He wondered whether the testing would be needed whether or not the bill passed. Lt. Dial responded that if the substance was not made illegal and an officer had reason to believe someone was impaired, they would still work the case in the same way.

Co-Chair Stoltze clarified that he was talking about the department accepting work from the municipality of Anchorage, which had passed an ordinance about the substance. He asked whether the department would get the work whether or not the bill passed. Lt. Dial believed that the substance would be referred to the crime lab since the municipality had made the substance illegal.

2:28:28 PM

Representative Gara asked whether there was any way a fiscal note could be used that was not the cost of a full-time employee. He also wanted to know whether the Anchorage ordinance had been around long enough to get a sense of the work load. Mr. Dym replied that staff at the crime lab was not eligible for overtime, so using overtime would not be an option. He stated that there was a real lack of experienced drug chemists in Alaska, let alone any who were interested in part-time work, so a part-time position would not be an option.

Mr. Dym clarified that the crime lab viewed their mission as conducting analysis related to state statute, not to municipal ordinance; the lab was not currently analyzing substances controlled by municipal statute. The lab would perform the analysis for the municipality if the substance were to be controlled at the state level under a state statute.

Representative Gara had been under the assumption that the crime lab processed municipal crime. He asked whether the state crime lab would analyze the substance that was illegal because of municipal law. Mr. Dym replied that the crime lab did analysis for all state law enforcement, including all municipal law enforcement for those materials that were controlled or illegal per state law. In the instance where a municipality passed an ordinance that was not covered by state statute, the crime lab would not do the work.

Representative Gara pointed out that the municipality must have some experience. He queried the work load done by the crime lab for the municipality to get a sense of the work load for the fiscal note. Mr. Dym replied that discussion with the municipal prosecutor's office had revealed that the municipality was not currently pursuing possession charges under the municipality, so there was no data. However, the municipality was pursuing DUI-related charges, which were not sent to the crime laboratory.

[2:32:36 PM](#)

Representative Gara MOVED Amendment 1 (27-LS0044\T.1, Luckhaupt, 2/23/11):

Page 1, line 1, following "**substances**":

Insert "and relating to penalties for possession of those substances"

Page 1, following line 3:

Insert new bill sections to read:

"* **Section 1.** AS 11.71.040(a) is amended to read:

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

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(i) three grams or more containing a schedule IIIA or IVA controlled substance **except a controlled substance in a form listed in (ii) of this subparagraph;**

(ii) six grams or more containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material;

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more

containing a schedule VA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center; or

(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing that prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or

(10) affixes a false or forged label to a package or other container containing any controlled substance.

* **Sec. 2.** AS 11.71.050(a) is amended to read:

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

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance;

(2) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than

(i) three grams containing a schedule IIIA or IVA controlled substance **except a controlled substance in a form listed in (ii) of this subparagraph;**

(ii) **six grams or more containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material;**

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance; or

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30."

Page 1, line 4:

Delete "**Section 1**"
Insert "**Sec. 3**"

Renumber the following bill section accordingly.

Co-Chair Stoltze OBJECTED.

Representative Gara explained Amendment 1. He thought the drug was serious enough that dealers should be treated as felons; he stressed that that part of the bill would be unchanged by the amendment. People who used the drug were sometimes doing so unwittingly and sometimes simply trying to mimic the use of pot. He wanted to find a way to allow people who used the drug for the first time in a relatively small amount for personal use to be treated as a misdemeanor and not a felon. The original bill would stipulate that possession of three grams of the substance was a felony. Amendment 1 would change the amount to six grams. He recalled that three grams was something like nine cigarettes worth of the substance; the amendment would double the amount for a felony charge.

Representative Gara believed that felony charges should be reserved for the worst crimes. He thought dealing was a bad crime and that possession of a lesser amount should not fit into the category of worst crimes. He noted there was a question left open by the way the amendment was drafted as to whether the substance was covered in pill form. He had thought the substance had to be smoked, which was reflected in the amendment.

JERRY LUCKHAUPT, ASSISTANT REVISER OF STATUTES, LEGISLATIVE LEGAL SERVICES, reported that in most cases the ultimate user would use the substance by smoking it. The products identified as "K2" or "Spice" that could be bought in many communities in the state were made by taking synthetic THC (probably in a solid form from overseas) and making a solution which was then sprayed onto an organic material, either tobacco, herbs, or potpourri. The individual packet of the organic material that had been laced with the synthetic THC could then be made into a cigarette or smoked in a pipe to get the euphoric effect. The substance could also be bought in a purer form in a solution or solid directly from manufacturers, such as Cayman Chemical. He said the pure form would have more effect than spraying the substance on other material. However, three grams in the pure form would have a greater effect than three grams of

organic material with the substance laced into it. He had been charged by Representative Gara to not make the later a felony.

Mr. Luckhaupt continued that he had come up with a method to distinguish between possession in a pure form and possession of the substance on other material. Possession of the substance in a pure form would remain a felony with the amendment; in most cases the possessor would not be using the substance in the pure form as it could kill them. End users would be using the laced organic material. There was no way of removing the controlled substance from the organic material to weigh it separately, so the law considered the total weight of the material. The organic material was weighed and the amount doubled. A person could theoretically possess up to six grams of a material that had been laced with the substance and be charged with a misdemeanor.

[2:39:26 PM](#)

Mr. Luckhaupt emphasized that he wanted to distinguish using the substance in a pure form, which was much more dangerous than when it was added to other material.

Representative Costello queried the sentencing options for Class B and Class C felonies and how the amendment would affect the sentencing options for a judge in a case involving the substance.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, believed that the amendment would mean that a person could possess six grams of the material and still be prosecuted for a Class A misdemeanor. It would take more than six grams of the substance on vegetable material or possession of three grams and above in the pure form for possession to be a Class C felony. The maximum term for a Class C felony was five years imprisonment; for a Class A misdemeanor the maximum term was one year imprisonment.

Representative Costello queried the minimum sentence for Class B and Class C felonies. Ms. Carpeneti responded that for the first conviction of a Class C felony, the sentencing range was from zero to two years; for the first conviction of a Class B felony, the range was one to three years.

Mr. Luckhaupt added that basically zero to two years meant there was no presumptive term for a first Class C felony conviction; a person would get a term less than what a second felony conviction would be or than the person convicted of a Class B felony. The range for a Class B felony was one to three years, so the person convicted of a Class C felony should usually get something less than one year. For a Class A misdemeanor, a person could get up to one year; there was no minimum term.

[2:43:49 PM](#)

Vice-chair Fairclough asked whether district attorneys had the opportunity to negotiate charges down. For example, she wondered whether a district attorney could take a Class B felony and negotiate it to a Class A misdemeanor or something lower than the Class B felony under a possession charge. Ms. Carpeneti responded that Alaskan district attorneys had the authority to negotiate plea agreements. Generally, that was done through charges, and would have to be a reasonable interpretation of the facts. The charges could be reduced if the facts and circumstances justified that. A district attorney could not get a conviction for a Class B felony and call it a Class C felony; they would have to look at other charges and determine what was reasonable under the circumstances.

Vice-chair Fairclough surmised that a district attorney had the discretion to charge a person with terms that were like a Class A misdemeanor if they believed that the case was not severe enough or the evidence presented was not severe enough to warrant a Class B felony,. Ms. Carpeneti responded that they had the authority to do that.

Vice-chair Fairclough asked whether district attorneys had the authority to charge at a higher level. Ms. Carpeneti responded that district attorneys brought charges that they believed they could prove beyond a reasonable doubt to a jury of peers of the individual being charged. She called that an ethical obligation; a district attorney could not charge a higher offense than the facts justified, or than the person felt he or she could prove beyond a reasonable doubt.

Vice-chair Fairclough believed that the law left public safety officers and the court system with the ability and

flexibility to appropriately charge and punish each individual. She opined that lowering the threshold for the punishment would affect that flexibility.

Vice-chair Fairclough spoke in opposition to the amendment. She argued that a product that was not distilled but of the same weight could be very harmful to a person. She was not familiar with packages of cigarettes being passed by youth; she thought nine joints or cigarettes were a lot and to double the amount to 18 seemed unreasonable. She did not want youth or workers to think they could have six grams of the substance and think that was okay. She emphasized that the issue was a safety issue for people on the roads. She pointed out that the bill matched federal law and the way that they were proposing to hold users as well as dealers accountable. She stated that she supported the original bill and opposed the amendment.

[2:48:10 PM](#)

Representative Guttenberg spoke in support of the amendment. He stated that the amendment addressed concerns he had about the bill. He pointed to the words "any quantity" in the original bill (page 1, line 7). He reminded the committee that Alaskan citizens had the right to possess minimal amounts of marijuana, although they could not grow it or buy it. He was concerned that someone could go down the street to acquire a substance and then find out inadvertently that "any quantity" was a felony. He believed the amendment addressed the difference between someone possessing in order to sell and someone inadvertently possessing something that would make them a felon. He emphasized that he did not support the ability of any person to drive inebriated, drunk, stoned, or high; there would still be reckless endangerment charges. He thought it was appropriate to make the charge a felony for someone who had enough to know they were selling it.

Representative Wilson spoke against the amendment. She stated that she was not a chemist and would not be able to distinguish between the different amounts outlined in the amendment. She did not want to make the same decision for citizens. She respected what the amendment was trying to do, but believed a strong stand should be taken against the substance, as it was dangerous no matter how much a person possessed.

Co-Chair Thomas spoke in opposition to the amendment. He wanted the drug to be cut off completely in the state. He did not want to show leniency related to possession of the drug in any amount.

Representative Gara acknowledged the difficulty of figuring out what the exact crime level should be. He noted that felonies cost the state more, because the jail term was longer. He believed the state needed to rank what sort of punishment it wanted to impose on people based on the crime that was committed.

Representative Gara pointed out that the amendment left two things the same in the bill. First, the pill form was the same. Second, possession of the non-smokable substance was still a felony for three grams. In the amendment, a person could have six grams of smokable material with the sprayed-on substance before the charge was a felony.

Representative Gara argued that people were not educated by the state making a crime s Class A or Class B felony or misdemeanor; people were educated differently. For example, people could be educated through the Department of Health of Human Services, through public service announcements, or having a public official like the governor draw attention to the issue. He stressed that people in the middle of committing a crime did not take the time consider whether the action would be a Class A or a Class B felony. He had a hard time thinking of people who would be low-level users of a substance they think is like pot as felons. He noted that the sentence would continually go up for repeat offenders.

Representative Gara argued that any level of engagement with the substance would still be a crime. People would not research the law books to determine what their sentence would be. He believed the substance would be cleared from the street because it would be a felony to sell it. He believed the dealers would go back to selling other substances.

[2:54:11 PM](#)

Vice-chair Fairclough stressed that workers were using the drug because they could not be screened for it at work. She was especially concerned about commercial drivers using the substance. She thought sometimes a "good swift kick" was

more appropriate than a lighter punishment. She believed the issue was a safety one.

Representative Gara pointed out that a person who killed another while driving under the influence of the substance would be charged with negligent homicide, manslaughter, or murder. He thought the distinction proposed in the amendment would not apply in those circumstances.

Co-Chair Stoltze queried the position of the sponsor and the administration on the amendment.

KENDRA KLOSTER, STAFF, REPRESENTATIVE CATHY MUNOZ, SPONSOR, stated that the sponsor liked the original bill. She understood Representative Gara's concerns, which had been discussed at length in the House Judiciary Committee; that was why the charge had been dropped to a Schedule III. She noted that the substance was sold in three-gram packets, so it would be a misdemeanor to possess one.

Ms. Carpeneti stated that the department was neutral on the legislation.

Representative Joule clarified that the unamended bill allowed three grams and the amendment would make the amount six grams.

[2:59:02 PM](#)

Co-Chair Stoltze MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg

OPPOSED: Wilson, Costello, Doogan, Fairclough, Joule, Thomas, Stoltze

Representatives Neuman and Edgmon were absent from the vote.

The MOTION FAILED (2/7).

Co-Chair Stoltze questioned the need to change the fiscal notes.

Vice-chair Fairclough MOVED to zero out the fiscal note for FY 12 through 17.

Co-Chair Stoltze OBJECTED to comment. He stated that there would be other discussions.

Co-Chair Stoltze WITHDREW his OBJECTION.

Representative Gara pointed out that regarding the fiscal note, the department could have a supplemental request the following year if actual experience caused a substantial amount of extra work. However, based on evidence currently available, he agreed with zeroing out the fiscal note.

Vice-chair Fairclough MOVED to report CSHB 7(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 7(JUD) was REPORTED out of committee with a "do pass" recommendation and with attached new indeterminate fiscal note by the Department of Corrections, new zero impact note by the Department of Law, and new zero impact note by the House Finance Committee for the Department of Public Safety.

[3:01:37 PM](#)

AT EASE

[3:04:45 PM](#)

RECONVENED

#hb19

HOUSE BILL NO. 19

"An Act relating to special request registration plates; and providing for an effective date."

[3:05:36]

REPRESENTATIVE BOB LYNN, SPONSOR, reported that during a visit to Indiana he had seen "In God We Trust" license plates and thought they would be good to have in Alaska. He added that 250,000 of the plates had been issued in Indiana. He detailed that the special license plate would be available only upon request and would reflect the patriotism and cultural heritage of other citizens around

the country. He described the procedure for issuing the license plates. A driver would be required to request a national motto plate and pay a \$30 fee. He listed other states that had the special license plate, including Kentucky, Virginia, and South Carolina.

Co-Chair Stoltze asked whether there had been opposition to the item. Representative Lynn responded that there had not been.

Representative Costello queried the design of the license plate.

THOMAS REIKER, STAFF, REPRESENTATIVE BOB LYNN, replied that the issue had come up in the House State Affairs Committee. The Division of Motor Vehicles (DMV) would work with the sponsor regarding the design; he believed they would generate a design based on the existing plates in other states.

Representative Doogan did not want to have future requests for license plates by groups with a "different central figure in the pantheon." He asked for assurance that the state would not be asked for another license plate saying we trust in anybody else, such as Thor. Representative Lynn responded that anyone in the legislature could sponsor any bill they wanted, but he trusted the State Affairs Committee to not allow such a proposal to get far.

Representative Doogan was not concerned about other members of the legislature; people could file law suits on practically anything.

[3:10:32 PM](#)

Representative Doogan queried the experience of other states with the "In God We Trust" motto on license plates in terms of legal problems. Representative Lynn responded that the American Civil Liberties Union (ACLU) in Indiana had raised questions, but the questions were not about the motto. The questions were related to the fact that Indiana was going to issue the plate without an additional fee. He believed that went no place; Indiana did not charge an additional fee for the license plate. However, HB 19 required a fee of \$30 like other specialty license plates and was revenue neutral.

Mr. Reiker added that the controlling case from the U.S. Supreme Court was Lynch v. Donnelly; the ruling listed several different practices that the federal government undertook that could be construed as religious. One of the practices was printing "In God We Trust" on coins. He quoted the majority opinion: "Those practices, including printing 'In God We Trust' on coins, are not understood as conveying government approval of particular religious beliefs." He summed that "In God We Trust" had always been interpreted by the court to be more an expression of the national motto than an expression of religious belief. He did not think the measure would open the state up to other religions claiming equal protection.

Representative Gara stated that he did not oppose the bill, and that he was a "big fan of God." However, he was concerned that there would be more license-plate bills. He pointed to another that had already been filed. He thought a person who wanted to convey something political or religious on their car could get a bumper sticker. He believed people should be able to say whatever they wanted on their car, house, or T-shirt. He did not see a compelling need for the legislation, although he was not opposed to it.

Representative Wilson pointed out that one benefit to the state would be the revenue generated for the general fund.

Co-Chair Stoltze noted that the revenue generated would not go to a charity or specific program. He asked whether the revenue would cover the costs of producing the plates. Representative Lynn responded in the affirmative and reiterated that specialty license plates were designed to be revenue neutral.

SHELLY MELLOTT, MANAGER, ANCHORAGE DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION (via teleconference) testified that the bill would authorize the creation of a new plate for anyone wanting to purchase an "In God We Trust" license plate. She stressed that the plate was not for raising funds and would not require the creation of a special fund for appropriation by the legislature. The cost for establishing the plate would be minimal; therefore, the DMV had attached a zero fiscal note. The cost of the plate to the applicant would be \$30 under the bill, in addition to the registration fee and any tax established by local governments. The cost of each plate to the state would be

about \$10; the remaining fees collected would go into the general fund.

3:15:49 PM

Ms. Mellot continued that typically the DMV worked with the impacted entities on the design of the plate; in this case the DMV would work with the sponsors of the legislation on the initial design. The DMV would then work with law enforcement personnel to ensure that officers could easily identify the plate numbers for their purposes. Finally, she reported that the design would go before the commissioner of the Department of Administration for final approval before moving into production.

Co-Chair Stoltze queried the position of the administration. Ms. Mellot responded that the division was neutral.

Co-Chair Stoltze requested details about the possible revenue that could result to the state from the measure. Ms. Mellot offered to get the information.

Representative Doogan stated that he supported the bill. However, he pointed out that it was easy to support a bill that says "In God We Trust," since the phrase was the national motto. He stated for the record that it would be much more difficult for him to support other bills that had more "political baggage" than HB 19. He emphasized that he did not want to take committee time to debate about the issue.

Co-Chair Stoltze stated that HB 19 was before the committee because it was ecumenical and fairly uncontroversial.

Vice-chair Fairclough MOVED to report HB 19 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 19 was REPORTED out of committee with a "do pass" recommendation and with attached previously published zero impact fiscal note: FN1, ADM.

3:20:05 PM

Co-Chair Thomas reviewed the schedule for the following week.

ADJOURNMENT

The meeting was adjourned at 3:22 PM.