

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 11, 2011
1:07 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Lance Pruitt
Representative Mike Chenault (alternate)

OTHER LEGISLATORS PRESENT

Representative Mark Neuman

COMMITTEE CALENDAR

HOUSE BILL NO. 80

"An Act relating to self defense in any place where a person has a right to be."

- MOVED HB 80 OUT OF COMMITTEE

HOUSE BILL NO. 7

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

- MOVED CSHB 7(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 127

"An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 80

SHORT TITLE: SELF DEFENSE

SPONSOR(S): REPRESENTATIVE(S) NEUMAN, FEIGE, LYNN, COSTELLO

01/18/11 (H) PREFILE RELEASED 1/14/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) JUD, FIN
02/09/11 (H) JUD AT 1:00 PM CAPITOL 120
02/09/11 (H) Heard & Held
02/09/11 (H) MINUTE(JUD)
02/11/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 7

SHORT TITLE: SYNTHETIC CANNABINOIDS AS SCHEDULE IIA

SPONSOR(S): REPRESENTATIVE(S) MUNOZ, HERRON, KERTTULA, GATTO,
LYNN, PRUITT

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) JUD, FIN
02/04/11 (H) JUD AT 1:00 PM CAPITOL 120
02/04/11 (H) Heard & Held
02/04/11 (H) MINUTE(JUD)
02/11/11 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ROY BURKHART

(No address provided)

POSITION STATEMENT: Provided comments during discussion of
HB 80.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section

Criminal Division

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to
questions during discussion of HB 80.

KENDRA KLOSTER, Staff

Representative Cathy Munoz

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented a proposed committee substitute (CS) for HB 7, Version E, on behalf of one of the bill's joint prime sponsors, Representative Munoz.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns about HB 7.

DENNIS A. WHEELER, Municipal Attorney
Department of Law
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Indicated that the MOA supports the original version of HB 7 over proposed Version E.

JENNIFER MESSICK, Assistant Municipal Prosecutor
Criminal Division
Department of Law
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments in support of the original version of HB 7 over proposed Version E, and responded to questions.

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

POSITION STATEMENT: Speaking as the drafter, responded to questions during discussion of HB 7.

WALLACE H. TETLOW, Attorney at Law, Vice President
Board of Directors
Alaska Association of Criminal Defense Lawyers (AKACDL)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns regarding HB 7.

TONY NEWMAN, Social Services Program Officer
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 7.

ROBERT THOMPSON, Sergeant
Fairbanks Police Department (FPD)
City of Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 7.

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

POSITION STATEMENT: Responded to questions during discussion of HB 7.

ACTION NARRATIVE

[1:07:20 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Gatto, Lynn, Keller, Thompson, Gruenberg, and Holmes were present at the call to order. Representative Pruitt was excused. Representative Neuman was also in attendance.

HB 80 - SELF DEFENSE

[1:07:43 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 80, "An Act relating to self defense in any place where a person has a right to be."

[1:09:46 PM](#)

ROY BURKHART, offering an example of someone drinking at a party who goes outside for some reason but then gets confused and goes into the wrong house and then gets shot, asked how many times something like that's happened, and how many times there have been situations wherein someone mistakenly thinking he/she is entering his/her own home then shoots the real resident. Mr. Burkhart relayed that one time at about 3 a.m., an inebriated man came banging on his door, and Mr. Burkhart got his pistol ready only to find out that the man was simply hoping that someone in the house would wake up and call him a cab home; that situation could have had a far different ending had the man come

through the door instead of staying out in the yard. He asked the committee to keep such examples in mind.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 80.

[1:11:43 PM](#)

REPRESENTATIVE THOMPSON made a motion to bring a new zero fiscal note [for the Department of Law (DOL)] before the committee.

CHAIR GATTO explained that this zero fiscal note would not replace [the DOL's] original fiscal note of \$450,000 but would instead simply accompany it. In response questions, he offered his recollection that the Department of Public Safety (DPS) testified that passage of HB 80 wouldn't affect the department's workload, and so he'd asked committee staff to draft a new fiscal note - a zero fiscal note from the committee - [for the DOL].

REPRESENTATIVE HOLMES objected to the motion. She offered her recollection that although the DPS had testified that HB 80 wouldn't affect the DPS, the DOL had testified that the bill would increase the DOL's workload because it would result in more people making the claim that they killed another person in self defense.

CHAIR GATTO offered his understanding, though, that under HB 80, fewer such cases [would go to trial] and thus fewer DOL resources would be needed.

[1:17:55 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), offered her recollection and the DOL's belief that a bill such as HB 80 would increase the number of such cases that go to trial and the number of self-defense claims that are raised. Under Alaska statutes, the DOL would have to disprove, beyond a reasonable doubt, that the defendant had the right [to kill someone] in self defense, and that can be difficult to do. In response to comments, she said it's the DOL's belief that under HB 80, more trials involving a claim of self defense are likely to occur because there would no longer be a duty to retreat from places a person had a right to be even if he/she could retreat safely, and relayed the DOL's disagreement that passage of HB 80 would result in the DOL simply choosing not to prosecute such cases.

REPRESENTATIVE GRUENBERG made a motion to table the question of whether to bring the proposed new zero fiscal note before the committee.

REPRESENTATIVE LYNN objected.

The committee took an at-ease from 1:24 p.m. to 1:28 p.m.

REPRESENTATIVE GRUENBERG withdrew his motion to table the question.

REPRESENTATIVE THOMPSON withdrew his motion to bring a new zero fiscal note [for the Department of Law (DOL)] before the committee.

[1:29:04 PM](#)

REPRESENTATIVE THOMPSON made a motion that the House Judiciary Standing Committee send a letter with HB 80 to the House Finance Committee asking it to review the DOL's original fiscal note. There being no objection, it was so ordered.

CHAIR GATTO expressed concern about the existing language in AS 11.81.335(b) that says a person may not use deadly force if he/she "knows" that he/she can retreat with complete personal safety, because it requires a determination regarding what the person knew.

REPRESENTATIVE GRUENBERG relayed that he has a concern with Alaska's self defense laws in general in that they are confusing and have engendered a lot of litigation. He expressed his hope that those laws would, at some point, either via HB 80 or another bill, be redrafted, either by the sponsor or the committee, so that they become simple and easy to apply, adding that he would be willing to help with effort.

REPRESENTATIVE HOLMES expressed concern that people who aren't really acting in self defense will use HB 80 to get away with murder, that the DOL will find it too difficult to prosecute them, and offered her belief that the existing self defense statute already provides sufficient protection for those who are truly acting in self defense, that people are not required to make a split-second determination regarding whether they can retreat safely.

CHAIR GATTO pointed out that the statutes could be amended again if the bill doesn't have the intended effect.

[1:35:14 PM](#)

REPRESENTATIVE THOMPSON moved to report HB 80 out of committee with individual recommendations and the accompanying fiscal notes and the accompanying letter regarding the fiscal notes. There being no objection, HB 80 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:36 p.m. to 1:39 p.m.

HB 7 - SYNTHETIC CANNABINOIDS AS SCHEDULE IIA

[1:39:05 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 7, "An Act classifying certain synthetic cannabinoids as schedule IIA controlled substances; and providing for an effective date." [Included in members packets was a proposed committee substitute (CS) for HB 7, Version 27-LS0044\E, Luckhaupt, 2/9/11.]

[1:39:32 PM](#)

KENDRA KLOSTER, Staff, Representative Cathy Munoz, Alaska State Legislature, on behalf of Representative Munoz, one of HB 7's joint prime sponsors, referring to a proposed committee substitute (CS) - Version E - in members packets and noting that she's spoken with the Department of Law (DOL) and Legislative Legal and Research Services, relayed that Version E is proposing to add the synthetic cannabinoids named therein to the list of schedule IIIA controlled substances. This approach was taken because there are other synthetic materials/compounds that mimic the effects of tetrahydrocannabinol (THC), as well as THC itself, already in schedule IIIA, and so it made sense to add those listed in HB 7 as well, since they, too, can mimic some of the effects of THC.

[1:41:11 PM](#)

REPRESENTATIVE THOMPSON moved to adopt the proposed CS for HB 7, Version 27-LS0044\E, Luckhaupt, 2/9/11, as the working document. There being no objection, Version E was before the committee.

MS. KLOSTER, in response to a question, relayed that in Alaska, the list of schedule IA controlled substances includes those substances [that are found to have the highest degree of danger or probable danger to a person or the public], such as opium, methadone, and heroin, to name a few; the list of schedule IIA controlled substances includes those substances [that are found to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IA], such as cocaine and various hallucinogens, to name a few; and the list of schedule IIIA controlled substances includes substances such as barbiturates and hashish, to name a few. Again, Version E is proposing to add the synthetic cannabinoids listed therein, commonly referred to as "K2" or "Spice," to the list of schedule IIIA controlled substances.

[1:43:10 PM](#)

MS. KLOSTER, in response to another question, concurred that the penalty associated with schedule IIIA controlled substances varies depending on the amount [and other circumstances]. For example, if a person possesses less than [25 tablets, ampules, or syrettes containing a schedule IIIA controlled substance, or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than three grams containing] a schedule IIIA controlled substance, the penalty would be a class A misdemeanor; possessing greater amounts would result in a felony, as would [manufacturing or] delivering any amount, [or possessing any amount with the intent to manufacture or deliver, or possessing any amount] within certain distances of locations that children frequent, or delivering any amount to children [under a certain age].

MS. KLOSTER, in response to further questions, clarified that marijuana itself is listed as a schedule VIA controlled substance, whereas in contrast, the synthetic cannabinoids listed in the bill are considered to be more dangerous, causing far more severe reactions such as hallucinations and death; that both the U.S. Drug Enforcement Administration (DEA) - which has temporarily banned [five of the compounds listed in HB 7] - and the majority of the other states that have enacted legislation to ban synthetic cannabinoids have included them in their schedule I controlled substances' lists, which are similar to Alaska's schedule IIA controlled substances' list; that Version E would result in the same penalties as those provided for other schedule IIIA controlled substances; that the prices of the synthetic cannabinoids listed in the bill vary, ranging from \$30 to \$500, depending on the type and amount; that the

synthetic cannabinoids listed in the bill are available both over the Internet and in some local stores; and that the Anchorage assembly has voted to ban such substances.

CHAIR GATTO indicated his belief that HB 7 would not be affecting "normal" commerce.

[1:48:04 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), acknowledged the change proposed by Version E; cautioned that even as schedule IIIA controlled substances, delivery of one of the synthetic cannabinoids listed in the bill [to someone under 19 years of age who is at least three years younger than the person delivering it] would result in that person being charged with an unclassified felony for the crime of misconduct involving a controlled substance in the first degree; and indicated that when scheduling controlled substances, establishing a good public record can promote parity and fairness of outcome and process when such cases are prosecuted. In response to questions, he stressed the importance of scheduling controlled substances appropriately and of creating a public record that includes factual documentation, rather than just anecdotal testimony, regarding a particular substance's effects. In terms of scheduling, treating a particular substance more harshly than other substances with more severe effects creates a credibility problem within the criminal justice system. In terms of at least putting a stop to the sale of these synthetic cannabinoids by local stores, adding them to any schedule would serve that purpose, he concluded.

[1:54:00 PM](#)

DENNIS A. WHEELER, Municipal Attorney, Department of Law, Municipality of Anchorage (MOA), said that the MOA supports HB 7 and the senate companion bill - SB 17 - but at this time doesn't necessarily support adding the synthetic cannabinoids named in the bill to the lower, schedule IIIA controlled substances' list, as Version E proposes, because their effects are far more serious than those of other schedule IIIA controlled substances; rather, the effects of the synthetic cannabinoids listed in the bill are more in line with those of the controlled substances currently found in schedule IIA.

[1:55:43 PM](#)

JENNIFER MESSICK, Assistant Municipal Prosecutor, Criminal Division, Department of Law, Municipality of Anchorage (MOA), explained that about 100 synthetic cannabinoids have been developed, though not all have psychoactive properties, and only about 7 of them are being referred to as "K2" or "Spice." In its pure form, a synthetic cannabinoid is a white powder - just like cocaine - that is then dissolved, usually in acetone, and then sprayed onto some other substance, generally some green leafy substance so as to be marketed as synthetic [marijuana]. The [researchers] who developed these synthetic cannabinoids were trying to come up with a compound that contained all of the medicinally-desirable effects of THC but none of the bad effects. They found, however, that in addition to affecting the body, synthetic cannabinoids bind to the receptors in the brain with up to 800 times the potency of THC, and so abandoned their work - after getting as far as testing the compounds on animals - and published their findings.

MS. MESSICK suggested that because synthetic cannabinoids have a lot of similarities with lysergic acid diethylamide (LSD), phencyclidine (PCP), and methamphetamine - all schedule IIA controlled substances and all also manmade - those listed in the bill should also be classified as schedule IIA controlled substances. Also, the manufacturing processes of synthetic cannabinoids are very inconsistent, thereby leading to a very unpredictable range of symptoms. Although marijuana has some legitimate medical use, the synthetic cannabinoids [listed in the bill] - as well as LSD, PCP, and methamphetamine - have no legitimate use and are considered to be "unknown cyclics," meaning they affect users differently and very unpredictably. For example, some people may just have hallucinations, while others may become violent, and it's very common for users to dissociate from pain; also, some people may just become really relaxed, or they may lose consciousness, or they may go into convulsions. There is no way to predict how a user is going to be affected, even from one dose to the next. All such cyclic drugs pose an incredible danger to law enforcement officers, emergency medical responders, and anyone attempting to deal with those who are under the influence of such drugs.

[2:00:32 PM](#)

MS. MESSICK noted that in contrast, marijuana and hashish - all naturally-occurring - affect users in similar, predictable ways; users can become tired, lazy, hungry, euphoric, relaxed, happy, funny, but they won't actually "overdose." However, that's not the case with the synthetic cannabinoids listed in the bill - or

LSD, PCP, or methamphetamine, for that matter; an overdose of synthetic cannabinoids can result in a loss of consciousness and even death. Furthermore, the [federal poison control center] reports that the symptoms of synthetic cannabinoids are much more like those of methamphetamine and PCP than those of marijuana; symptoms include very rapid heart rate - tachycardia - elevated blood pressure, dilated pupils, delusions, hallucinations, and [seemingly] super-human strength, which raises safety concerns. Law enforcement agencies - both nationwide and locally - report that the symptoms of synthetic cannabinoids are more similar to those of LSD and PCP, but acknowledge that they can also resemble the symptoms of methamphetamine.

MS. MESSICK relayed that the MOA could provide the committee with documentation from the Anchorage Police Department (APD), the Anchorage Fire Department and their medics and EMS personnel, school resource officers, parents, and other law enforcement agencies across the nation; furthermore, in what she referred to as a "wet" laboratory, tests were conducted on subjects who'd been dosed with very, very small amounts of synthetic cannabinoids, and she could provide that [documentation] as well. She, too, remarked that the DEA has temporarily banned possession of [five of the compounds listed in HB 7] and is considering adding them to the federal list of schedule I controlled substances. Symptoms of synthetic cannabinoids that raise safety concerns, particularly when someone attempts to drive under the influence of these compounds, include what's sometimes referred to as a "hundred-yard stare" [wherein the person becomes dissociated; synesthesia - a mixing of the senses; dilated pupils; disorientation; incoherency; poor physical and mental coordination; memory loss; flashbacks; [seemingly] super-human strength; combative/violent behavior; delusions; over excitement; convulsions; [and death]. Again, those are not the symptoms that [typically] result from marijuana use.

[2:04:06 PM](#)

MS. MESSICK indicated that potential problems with the bill are related to the fact that there are about 100 synthetic cannabinoids but [the DEA and various agencies conducting research on this issue] have only identified 7 of them, and so manufacturers, in anticipation of legislation such as HB 7, [are already] packaging analog compounds, which would affect the body similarly but their chemical structure would be slightly different and thus might not be covered by the bill as currently

written. Furthermore, manufacturers could start using some of the alternate recipes that were discarded by the initial researchers. Noting that the list of schedule IIA controlled substances already contains language addressing analog compounds of PCP, she recommended inserting similar language pertaining to synthetic cannabinoids into the bill. On the issue of what other states are doing with regard to synthetic cannabinoids, she relayed that some states are treating synthetic cannabinoids just like marijuana, though in those states marijuana itself is treated differently than it is in Alaska, more along the lines of how Alaska treats its schedule IIA or schedule IIIA controlled substances; that some states are treating synthetic cannabinoids as warranting felony charges just like PCP and LSD; and that some states have listed synthetic cannabinoids in a schedule equivalent to Alaska's schedule IIIA.

REPRESENTATIVE KELLER questioned why the bill only lists 10 synthetic cannabinoids, expressing concern that as currently written, the bill might not accomplish its intended goal.

MS. MESSICK said she doesn't know why the bill lists 10 synthetic cannabinoids, ventured that perhaps some of them aren't as psychoactive as the others, and opined that having the bill be as comprehensive as possible would be the best approach. In response to other questions, she reiterated that it's the MOA's preference for the synthetic cannabinoids listed in the bill to be added to schedule IIA rather than to schedule IIIA, because they share more of the characteristics of the other drugs already listed as schedule IIA controlled substances; offered her belief that a homologue, [which is referred to and defined in Version E,] is not the same as an analog; and reiterated her recommendation that the bill include a reference to analogs.

[2:11:06 PM](#)

GERALD LUCKHAUPT, Assistant Revisor, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter of HB 7, indicated that the term "analog" isn't used in Alaska's controlled substances' schedules to mean similar substances, and that no state has thus far been successful at doing so. The bill instead uses the terms "salts" - which are what's left after hydrogen atoms have been removed from particular compounds - and "isomers" - which mirror particular compounds; under Alaska law, those terms are considered to mean the same drug since, for the most part, they have the same effect. The courts have already found those terms

to be more proper, and the federal government has used those terms with success. He then pointed out that the synthetic cannabinoids listed in the bill aren't marijuana and aren't anything like it. In Alaska, the definition of marijuana does not include its active ingredient - THC - nor is THC included as part of the definition of marijuana under the federal schedules.

MR. LUCKHAUPT relayed that the Alaska Supreme Court, in Ravin v. State, determined that THC should be considered a separate drug because it is so much more powerful - at least 100 times more powerful - than marijuana itself, and that a person would have to use approximately 40,000 normal doses of marijuana - or perhaps as many as 400 normal doses of THC - at one time in order to cause death. In contrast, it only takes about 30 normal doses of cocaine used at one time to cause death. He ventured that one rationale for proposing to add the synthetic cannabinoids referred to in the bill to the list of schedule IIIA controlled substances is that that's where all the other THC compounds - other than marijuana itself - are listed; the naturally-occurring compounds currently listed in schedule IIIA are hashish, hashish oil, and THC, and the synthetic compounds are parahexyl, dronabinol, and nabilone, which are all very similar to the synthetic cannabinoids listed in the bill. He then recounted his understanding of which types of drugs are currently listed in which of Alaska's schedules, and which types of drugs are listed in some of the federal schedules, and of how the federal schedules vary considerably from Alaska's schedules, particularly with regard to marijuana itself.

[2:20:58 PM](#)

MR. LUCKHAUPT relayed that some states which include marijuana in their schedules of most dangerous drugs address the fact that marijuana isn't as dangerous by providing an exception for it in their sentencing statutes such that crimes involving marijuana are sentenced at a lower level than crimes involving the other drugs in those schedules. He characterized this as a more complicated approach for dealing with marijuana than that taken by Alaska, which, partially in response to the Ravin decision, simply created a specific, separate schedule for marijuana and thus specific sentencing. In terms of deciding which schedule should contain the synthetic cannabinoids listed in the bill, he concurred with the PDA that the legislature should provide supporting documentation for its decision, particularly given that normally Alaska doesn't schedule a particular drug until after the federal government has done so. The federal government has only just started the scheduling process with

regard to the synthetic cannabinoids listed in the bill, and then only for 5 of them, though it had already scheduled 1 of the others listed in the bill several years ago. He indicated that he and the sponsor chose the 10 synthetic cannabinoids listed in the bill based on which synthetic cannabinoids other states have addressed, with Missouri having addressed all 10 of them.

MR. LUCKHAUPT, in response to questions, acknowledged that although Alaska's scheduling and treatment of marijuana is inconsistent with federal law, several other states also differ from the federal government with regard to how they schedule and treat marijuana, and indicated that use of the terms "salts" and "isomer" is necessary to address compounds that have a slightly different chemical structure from those currently listed in the bill.

[2:27:10 PM](#)

MS. MESSICK, upon being asked to comment, pointed out that [counter to what Mr. Luckhaupt had indicated,] the term "analog" is used in existing AS 11.71.150(b)(17) - part of the list of schedule IIA controlled substances - and relayed that some merchants are already selling synthetic cannabinoids that aren't those the DEA [has temporarily banned] and those merchants are providing their customers with documentation to that effect. On the issue of which schedule to add the synthetic cannabinoids listed in the bill to, she pointed out that the synthetic cannabinoids currently listed as schedule IIIA controlled substances have all been tested [on humans] and subsequently approved for human consumption, whereas [those listed in the bill] have not been tested on humans, and so no one has any idea what effects those compounds will have on the human body.

CHAIR GATTO questioned whether it would suffice to simply list as many [synthetic cannabinoids] as can be found and then add the phrase, "or similar drugs with similar effects".

MS. MESSICK said it seems that such a phrase would probably be a bit too broad and thus draw legitimate constitutional objections. She characterized the synthetic cannabinoids listed in the bill as being different from a lot of other drugs because they target a segment of society that might not normally experiment with drugs. What makes the listed compounds attractive to such people is a combination of three things: these compounds haven't yet been criminalized; synthetic materials are oftentimes viewed as being an improvement over

naturally-occurring materials; and the herbal substances that these compounds are being sprayed on are oftentimes viewed as being benign. In other words, the message being sent as a result of these three factors is that synthetic cannabinoids are better than marijuana but not as harmful and the government doesn't care about them. Classifying the listed compounds as schedule IIA controlled substances - appropriately, she opined - would instead send a very clear message to Alaskans that these compounds are very, very dangerous.

REPRESENTATIVE GRUENBERG also noted that the term "analog" is currently being used in AS 11.71.150(b)(17).

MR. LUCKHAUPT clarified that AS 11.71.150(b)(17) lists four specific drugs - four specific analogs of PCP; that there has never been a successful prosecution of any [analogs] other than those specifically listed; and that these four analogs are specified in Alaska statute as a result of their first having been scheduled by the federal government.

[2:34:07 PM](#)

WALLACE H. TETLOW, Attorney at Law, Vice President, Board of Directors, Alaska Association of Criminal Defense Lawyers (AKACDL), indicated that the AKACDL has concerns about adding the synthetic cannabinoids named in the bill to the list of schedule IIA controlled substances and thereby making possession of synthetic cannabinoids a class C felony, particularly given that the majority of those who use synthetic cannabinoids are [generally youths] ages 14-27, and given that in contrast, possession of real marijuana or actual THC might only be a class B misdemeanor or a class A misdemeanor, respectively. He offered his understanding that supporting documentation seems to indicate that the effects of the synthetic cannabinoids listed in the bill are similar to those of THC, and that there doesn't seem to be any information suggesting that the listed synthetic cannabinoids ought to be treated more harshly than the real thing, particularly given the serious impacts of being charged and convicted of a felony at a young age.

REPRESENTATIVE HOLMES explained that Version E of HB 7 is instead proposing to add the synthetic cannabinoids named in the bill to the list of schedule IIIA controlled substances.

MR. TETLOW, in response to a question, indicated that although that would be acceptable, the AKACDL's preference would be for the synthetic cannabinoids listed in the bill to be added to the

same schedule that includes marijuana - schedule VIA - noting that some states have already chosen to treat synthetic cannabinoids the same way they treat marijuana, states such as Alabama, Kentucky, Louisiana, and Mississippi.

[2:41:33 PM](#)

TONY NEWMAN, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that although the DJJ's counterparts in law enforcement have been picking up minors [who are under the influence or who are in possession] of the synthetic cannabinoids listed in the bill, the DJJ hasn't received any referrals, and so doesn't yet know what kind of impact on its workload enactment of HB 7 is going to have. The DJJ would be managing such youth in the same manner that it manages youth picked up for other controlled substance crimes, however, and this could involve a range of activities, anything from referring the youth to substance abuse treatment, to petitioning the court for a delinquency adjudication, which is different than a conviction in the adult justice system and therefore won't have the same impact. In conclusion, he indicated that the DHSS/DJJ has no position on HB 7.

[2:43:28 PM](#)

ROBERT THOMPSON, Sergeant, Fairbanks Police Department (FPD), City of Fairbanks, expressed support for HB 7, and relayed that there have been cases in which law enforcement was unable to prosecute someone to the fullest extent of the law simply because the synthetic cannabinoids listed in the bill were not yet illegal. In one such case, the driver responsible for a motor vehicle accident admitted to smoking "Spice" and to it being a contributing factor in the accident, but law enforcement only charged the driver with reckless driving, rather than with driving under the influence (DUI), though witnesses stated that the driver was actually passed out when the accident occurred, and the responding officer described the driver as experiencing seizures and disorientation. As long as such compounds aren't listed as controlled substances, law enforcement can anticipate more such instances occurring. In conclusion, he opined that the synthetic cannabinoids listed in the bill pose a significant public safety hazard - particularly when used by someone driving, given that they can cause seizures, unresponsiveness, disorientation, hallucinations, and psychotic episodes - and asked that HB 7 be moved through the process in a timely fashion.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 7.

REPRESENTATIVE HOLMES indicated favor with Version E's proposal to add the synthetic cannabinoids named in the bill to Alaska's list of schedule IIIA controlled substances.

[2:49:07 PM](#)

MR. LUCKHAUPT, in response to questions, explained that Version E is proposing to add inclusionary language pertaining to salts and isomers to AS 11.71.160(f) in order to address compounds that have a slightly different chemical structure from those specifically named in the bill; that similar inclusionary language is already used in AS 11.71.150(b) and in the federal schedules; that the odd spacing associated with the last compound the bill is proposing to add is merely a function of formatting; and that the findings outlined in AS 11.71.120(c) were intended to serve as guidelines for a proposed Controlled Substances Advisory Committee to use when determining the proper scheduling of a particular substance, though that proposed committee was never actually formed. The synthetic cannabinoids listed in the bill are [forms of] THC, and the committee has heard testimony regarding their effects and that those effects are similar to those of the other compounds currently listed in Schedule IIIA; this should be sufficient, he ventured, to justify adding these synthetic cannabinoids to the list of schedule IIIA controlled substances, though it's always good to provide as much legislative history as possible with these types of bills because it could prove helpful to the courts later on. In response to another question, Mr. Luckhaupt indicated a belief that the administration has been remiss in complying with AS 11.71.120(b), which says, "If a substance is added as a controlled substance under federal law, the governor shall introduce legislation in accordance with the federal law."

REPRESENTATIVE GRUENBERG asked whether, if HB 7 becomes law, merchants currently selling synthetic cannabinoids could validly claim unlawful taking and thereby receive compensation.

MR. LUCKHAUPT opined that they could not.

[2:58:03 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety

(DPS), in response to questions, indicated that neither the bill's immediate effective date nor the Scientific Crime Detection Laboratory's ("Crime Lab") current state of readiness or lack thereof would negatively impact the DPS.

REPRESENTATIVE KELLER referred to the DPS's fiscal note, expressed a concern regarding its proposal to add a new position to the Crime Lab, and surmised that the House Finance Committee would be considering that particular issue further.

REPRESENTATIVE THOMPSON, referring to a USA Today article included in members' packets, said he doesn't believe that the legislature has enough information yet to add the synthetic compound being labeled as "bath salts" but being used as a drug to Alaska's controlled substances schedules.

REPRESENTATIVE GRUENBERG questioned whether the title of the bill should be broadened in order to allow for the inclusion of such a compound at some point.

CHAIR GATTO expressed a preference for moving HB 7 as is, and suggested that such a compound would be better addressed via a separate bill.

[3:02:09 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed CS for HB 7, Version 27-LS0044\E, Luckhaupt, 2/9/11, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 7(JUD) was reported from the House Judiciary Standing Committee.

[3:02:24 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.