

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 21, 2011

1:30 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

SENATE BILL NO. 86

"An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 17

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

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 86

SHORT TITLE: PROTECTION OF VULNERABLE ADULTS/MINORS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/09/11	(S)	READ THE FIRST TIME - REFERRALS
02/09/11	(S)	JUD, FIN

02/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 17

SHORT TITLE: SYNTHETIC CANNABINOIDS

SPONSOR(s): MEYER

01/19/11 (S) PREFILE RELEASED 1/7/11
01/19/11 (S) READ THE FIRST TIME - REFERRALS
01/19/11 (S) HSS, JUD
02/09/11 (S) HSS AT 1:30 PM BUTROVICH 205
02/09/11 (S) Moved SB 17 Out of Committee
02/09/11 (S) MINUTE(HSS)
02/11/11 (S) HSS RPT 5DP
02/11/11 (S) DP: DAVIS, ELLIS, MEYER, EGAN, DYSON
02/11/11 (S) FIN REFERRAL ADDED AFTER JUD
02/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DUANE MAYES, Director
Division of Senior and Disabilities Services
Department of Health and Social Services
Anchorage, AK

POSITION STATEMENT: Provided introductory comments on SB 86.

ELIZABETH RUSSO, Supervising Attorney
Civil Section
Public Guardian
Office of Public Advocacy
Department of Administration
Anchorage, AK

POSITION STATEMENT: Provided information related to SB 86.

SCOTT STERLING, Supervising Attorney
Elder Fraud and Assistance
Office of Public Advocacy
Department of Administration
Anchorage, AK

POSITION STATEMENT: Provided information related to SB 86.

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 17.

CHRISTINE MARASIGAN
Staff to Senator Meyer

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information related to SB 17 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK

POSITION STATEMENT: Testified on SB 17 and stated concern about the proposed schedule IIA classification.

QUINLAN STEINER, Public Defender
Public Defender Agency
Anchorage, AK

POSITION STATEMENT: Testified on SB 17 and stated concern about the proposed schedule IIA classification.

ACTION NARRATIVE

[1:30:53 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Paskvan, Coghill, and French.

SB 86-PROTECTION OF VULNERABLE ADULTS/MINORS

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CHAIR FRENCH announced the consideration of SB 86 relating to the protection of vulnerable adults and minors.

[1:32:08 PM](#)

DUANE MAYES, Director, Division of Senior and Disabilities Services (DSDS), Department of Health and Social Services (DHSS), said SB 86 will strengthen Alaska laws and address the growing problem of financial exploitation of the elderly and other vulnerable people. He noted that the Department of Labor and Workforce Development estimates that Alaska's 50,000 seniors will likely number 80,000 by 2017.

SB 86 has two components. First is a temporary conservatorship procedure that will work much the same as the temporary guardianship procedure that is already in statute. The vulnerable victim will retain autonomy while receiving assistance. Second is the ex parte relief from fraud procedure, which is similar to existing domestic violence protection law.

This will allow vulnerable adults to independently obtain straightforward, expedited relief from a magistrate or judge.

This bill will amend the adult protective services statutes to enhance DHSS's investigatory authority and expand the list of mandatory reporters to include employees of nursing homes. It will add the concept of undue influence when a person of trust uses their role to exploit and gain control over a vulnerable adult, and it will enhance penalties in criminal cases where there is abuse of an elderly victim.

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KELLY HENRIKSEN, Assistant Attorney General, Civil Division, Human Services Section, Department of Law (DOL), said she represents the Department of Health and Social Services. In this role she does guardianships and conservatorships in Southeast Alaska when Adult Protective Services brings a petition.

CHAIR FRENCH asked her to explain the basic difference between a guardianship and a conservatorship.

MS. HENRIKSEN explained that a guardianship is basically what a parent would be for a child. They do things to protect the well-being and welfare of a person in terms of health care, transportation, and appointments, although it can include finances. A conservator is strictly financial and deals with assets and property. She agreed with Senator French that the guardianship covers a broader panoply of needs than the conservatorship.

MS. HENRIKSEN said the bill has three main parts. The first has the provisions that deal with temporary conservatorship and financial protective orders. The second part includes new criminal provisions when somebody violates a financial protective order. The third part clarifies and augments Adult Protective Services powers in Title 47. Basically, the phrase "undue influence" has been added in all the different places in Title 47 where "vulnerable adult" is described to clarify that this is another way that a person can be made vulnerable.

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MS. HENRIKSEN provided the following sectional analysis:

Section 1 makes a knowing violation of a financial protective order a crime.

Section 2 amends the definition of protective orders in AS 11.56.740 to include financial protective orders. These are criminal provisions.

Section 3 makes the fact that a defendant would knowingly direct criminal conduct at a person age 65 or older an aggravating factor at sentencing.

Section 4 adds being a victim of fraud as a basis for appointing a conservator by amending AS 13.26.165(2)(a). Two standards must be met for a conservator to be appointed. First, there has to be some reason why a person is being exploited. Second, a person has to be in danger of having some of their property wasted or dissipated. Being a victim of fraud doesn't mean that a person necessarily suffers from some mental or physical deficiency.

CHAIR FRENCH asked if Section 4 is describing a court process by which a conservator is appointed.

MS. HENRIKSEN agreed that this section sets out the standard that needs to be met in order to have a conservator appointed by the court.

CHAIR FRENCH reviewed the reasons that a court would appoint a conservator starting on page 2 and opined that adding "fraud" as a reason seems unusual because there is no showing that the person is in any way disabled. He asked if the intent is to give the court the ability to use the power to appoint a conservator in that circumstance.

MS. HENRIKSEN said yes; there are more and more cases of individuals, usually older individuals, who don't have a mental or physical deficiency, but somebody is tricking them or cheating them or using undue influence. These people are in effect perpetrating a fraud and the victim doesn't realize that it's happening. The Office of Public Advocacy suggested this addition and APS is fully supportive.

CHAIR FRENCH asked if the person being defrauded would be present at the hearing.

MS. HENRIKSEN answered that would typically be the case unless there is a physical reason for not attending.

CHAIR FRENCH asked if it would be dispositive if the person said he or she did not want the conservatorship.

MS. HENRIKSEN replied the court oftentimes will have colloquy with the respondent to gauge whether the person really understands.

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SENATOR PASKVAN asked if these cases are typically one-on-one or if a class of elderly is targeted.

MS. HENRIKSEN replied it's typically one-on-one and more often than not it's a family member who is perpetrating the fraud or exerting undue influence. She cited examples of fraudulent calls from Jamaica, supposedly from family members.

SENATOR PASKVAN asked if Alaska's criminal laws segregate this type of fraudulent activity.

MS. HENRIKSEN said she didn't know other than what this bill adds. Both the FBI and the police were alerted in the Jamaica fraud and neither could do anything.

SENATOR COGHILL asked if proceedings to appoint a conservator could commence based solely on adding fraud to section .165.

MS. HENRIKSEN said that's correct.

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Section 5 adds attorneys, caregivers, and the Department of Health and Social Services (DHSS) as entities who may petition for conservatorship for an individual.

Section 6 creates a procedure for requesting the appointment of a temporary conservator just like the guardianship statutes. This would be used when a petition for a regular conservator was pending.

Section 7 adds two new statutes to deal with a temporary conservator. The first provides the statutory basis for temporary conservators to protect the victims of fraud and financial abuse and to ensure that funds are obtained to meet the needs of the respondent and their dependents.

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CHAIR FRENCH asked if Section 4 deals with a temporary conservatorship or a regular, permanent conservatorship.

MS. HENRIKSEN replied it's about either one.

CHAIR FRENCH asked if there's a definition for "temporary."

MS. HENRIKSEN explained that this tracks the guardianship language so it will last until a permanent conservator is appointed or the petition is dismissed.

SENATOR PASKVAN asked what standard the judge follows under either the temporary or permanent conservator.

MS. HENRIKSEN said she believes it's the clear and convincing evidence standard just as it is for guardianships, but she would find out.

SENATOR COGHILL asked who is present at the 72 hour hearing.

MS. HENRIKSEN replied the petitioner, the petitioner's attorneys, the respondent, the respondent's attorney, and if there's an allegation of incapacity it's possible that a doctor would attend. Oftentimes family members are there as well. The notice requirements for a temporary conservator aren't as strict as those for a regular, permanent conservator.

SENATOR COGHILL said he pays attention to this because he's seen instances where people weren't included due to oversight or deliberate action.

MS. HENRIKSEN said her experience has been that the court will not proceed if it's apparent that the respondent hasn't had a chance to talk to an attorney.

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The second part of Section 7 establishes a process for obtaining a financial protective order to immediately stop suspected financial abuse. It is modeled after domestic violence protective orders. A person may directly petition the court to obtain a 20-day ex parte protective order. This can be done without giving notice to the person the petitioner believes is defrauding or financially harming him or her. The protective order may be extended up to six months, but this requires both notice and a hearing. It's a probable cause standard and the petitioner must show he or she has been defrauded and that there will be an immediate wasting or dissipation of their assets. In that sense it tracks the regular conservatorship legal standard requirements.

CHAIR FRENCH asked if other states use ex parte protective orders for matters of financial loss and fraud.

MS. HENRIKSEN deferred the question to Mr. Sterling or Ms. Russo.

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ELIZABETH RUSSO, Supervising Attorney, Civil Section, Public Guardian, Office of Public Advocacy, Department of Administration (DOA), said she believes that other states have ex parte protective orders for financial loss and fraud. She deferred to Mr. Sterling as to which states do this.

CHAIR FRENCH deferred the question until Mr. Sterling testified.

SENATOR COGHILL reviewed the proposed Sec. 13.26.209(a) and filing a protective order under AS 13.26.180(a) and said he's trying to figure out the circumstances under which this could be misused.

CHAIR FRENCH asked if the department could file for an ex parte order.

MS. HENRIKSEN answered yes.

CHAIR FRENCH added that it could be a police detective or someone who is aware of fraud being perpetrated in the community.

MS. HENRIKSEN agreed.

SENATOR COGHILL reiterated that he was trying to figure out how this could be misused.

CHAIR FRENCH said it will be brought into sharper relief in later sections.

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MS. HENRIKSEN continued the sectional analysis.

Section 8 adds a definition of fraud to the conservatorship statutes. It's the same definition that's in the Office of Elder Fraud and Assistance statutes.

Section 9 excludes the crime of violating a financial protective order from the crimes that are subject to warrantless arrest.

Sections 10 and 11 add financial protective orders to the registry of protective orders maintained by the Department of Public Safety (DPS) and updated by law enforcement officers.

Section 12 adds the concept of undue influence to the list of reportable harms to a vulnerable adult. It also adds employees of nursing homes, residential care or health care facilities and the staff of educational institutions to the list of those who are mandated reporters.

Section 13 clarifies what information may be contained in a report of harm to include contact information regarding the vulnerable adult [and information regarding any undue influence.]

Section 14 adds "undue influence" to the list of reportable harms that subject a reporter to a class B misdemeanor if not reported.

Section 15 adds "undue influence" to the list of reportable harms and clarifies that a mandatory reporter is not prohibited from reporting harm in their non-occupational capacity. It also clarifies that no person is prohibited from making a report of harm. This language comes from the Office of Children Services statutes.

Section 16 requires mandated reporters to contact law enforcement in situations where they believe the vulnerable adult is at imminent risk of serious physical harm and it is not possible to contact the department. "Undue influence" is added to the list of reportable harms. Law enforcement is then required to contact DHSS within 24 hours of receiving the report.

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SENATOR COGHILL said he understands that a class B misdemeanor is attached to a mandatory reporter, but he'd like confirmation there no penalty is attached to the timeliness provision.

MS. HENRIKSEN said she believes that's correct, but she would follow up.

CHAIR FRENCH said it's interesting because page 9, line 5, changes the requirement to report from "may" to "shall" and that implies some sort of consequence.

MS. HENRIKSEN reiterated that she would follow up.

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Section 17 adds "undue influence" and "abandonment" to the list of harms that can be reported regarding a vulnerable adult residing in an out-of-home care facility. Reporting to the long-term care ombudsman satisfies the reporting requirement.

Section 18 adds two new subsections. The first states that a mandatory reporter is not relieved of the obligation to report to DHSS by reporting to their supervisor or another employee. The second subsection makes an individual who willfully or recklessly makes a false report liable for civil damages.

CHAIR FRENCH commented that some of these provisions should have delayed effective dates to allow time for the department to do training and get the word out.

SENATOR PASKVAN referenced subsection (j) in Section 18 and asked if the intent is that there be actual damages as opposed to nominal damages. He opined that you would want someone who recklessly files a false report to be liable at least in nominal damages to the person that needs protection.

MS. HENRIKSEN asked if that's a suggestion.

SENATOR PASKVAN replied he was trying to figure out if anybody through about that. Now a person gets away with it if they recklessly file a false report and no actual damages are suffered.

MS. HENRIKSEN said she didn't recall a discussion on that point, but she'd be happy to discuss it further.

SENATOR COGHILL pointed out inconsistencies between subsection (i) in Section 18 and subsection (b) in Section 13, both dealing with Title 47. On the one hand the reporter is held highly accountable and on the other they're given anonymity under subsection (b).

MS. HENRIKSEN said she didn't recall any discussions about that inconsistency when the bill was drafted about two years ago, but she would follow up with an answer.

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MS. HENRIKSEN continued the sectional analysis.

Section 19 adds "undue influence" to the list of reportable harms to the section regarding adults who are not in an out-of-home care facility.

Section 20 adds "undue influence" to the list of reportable harms DHSS is required to investigate when there is an individual who is under 60 years of age living in an out-of-home facility. The long-term care ombudsman will deal with people over age 60 and APS will take on those under age 60.

Section 21 clarifies that the long term care ombudsman must provide the results of his or her actions or investigations to the office of the department that handles adult protective services.

Section 22 adds "undue influence" to the list of reportable harms included in the reports sent to the department by the long term care ombudsman. It clarifies that these reports are sent to the office of the department that handles adult protective services.

Section 23 adds "undue influence" to the list of reportable harms the department is required to investigate.

Section 24 adds "undue influence" to the list of reported harms that applies to an alleged perpetrator when the perpetrator is the one requesting that APS not investigate further. Someone who is capacitated may ask APS to stop an investigation and they have to honor the request, but they don't have to stop if the person isn't capacitated. Likewise, APS doesn't have to stop an investigation at a caregiver's request if the caregiver is the alleged perpetrator of the harm.

CHAIR FRENCH asked who makes the capacity decision.

MS. HENRIKSEN replied initially it would be APS, but that could be litigated if the case goes to court.

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Section 25 adds seven new subsections dealing with the powers of ASP to investigate reports of harm.

- Subsection (h) requires individuals and entities to provide the department access to health and financial records of a vulnerable adult as part of its investigation.
- Subsection (i) prohibits anyone from interfering in an investigation.

- Subsection (j) allows the department to file an ex parte order for access to records if necessary if no petition for guardianship or conservatorship has been filed.
- Subsection (k) allows adult protective services access to any departmental information necessary to assist in the case. This language and the idea came from the certification in the licensing statutes. It's to avoid problems with getting confidential information from the different offices and divisions within the department.
- Subsection (l) allows the department to audio or video tape an interview of a vulnerable adult with their consent and if they are not incapacitated. If they lack capacity, the department may not do this.
- Subsection (m) requires the department to provide training to investigators.
- Subsection (n) defines "financial records" that pertain to a vulnerable adult but that are held by some sort of fiduciary.

CHAIR FRENCH asked if filing an ex parte order for access to records is the same as an application for a subpoena.

MS. HENRIKSEN explained that she took this route because a court order carries more weight in terms of getting institutions to honor a request for records. Certainly in the age of HIPAA folks are slow to give health records and financial institutions are equally reluctant because of their own rules and regulations.

CHAIR FRENCH asked what happens if the individual or entity doesn't comply with the "shall" language.

MS. HENRIKSEN explained that she wanted the "shall" language to show that the request isn't discretionary; she would go to court to get an order if the request was ignored.

SENATOR PASKVAN asked if there would be a formed document so that the court's order complies with HIPAA.

MS. HENRIKSEN said she is the HIPAA attorney for the Department of Law (DOL) and she would be happy to help the court system develop the forms.

CHAIR FRENCH noted that he read that the intent was to work toward developing the forms.

MS. HENRIKSEN agreed.

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Section 26 adds an attorney-in-fact, trustee, or surrogate for health care decisions as persons who may serve as a surrogate decision maker for the purpose of consenting to the receipt of protective services for a vulnerable adult. This updates existing statutory language under Title 47. [This section also deletes the requirement that in order for a spouse to be a surrogate decision maker, the spouse and vulnerable adult may not be living in separate domiciles.]

SENATOR COGHILL asked if a surrogate is someone like himself who acts on his dad's behalf without having power of attorney.

MS. HENRIKSEN said yes; it's someone who is acting for another person without having signed an official document. A health care power of attorney includes that same kind of provision where you can give somebody your health care power of attorney but you can also appoint somebody to be your surrogate decision maker for health care decisions.

SENATOR COGHILL asked for confirmation that it's not something that's generally assumed, for example next of kin.

MS. HENRIKSEN said correct; Title 47 has a list of who may be a surrogate and this expands that list a little. An APS social worker is limited to using that list when appointing a surrogate.

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Section 27 adds an allegation of "undue influence" to the allegations that would disqualify an individual from being selected as a surrogate decision maker.

Section 28 adds "health care surrogate" to the provision that requires the department to discontinue protective services if the vulnerable adult refuses services after he or she regained the cognitive ability to make his or her own decisions.

Section 29 adds attorney-in-fact, surrogate for health care decisions, and trustee as individuals who may consent to the provision of protective services to a vulnerable adult in the existing provision that requires APS to provide those services within 10 days. [It also adds "undue influence" to the list of potential reports of harm.]

Section 30 adds family members, trustees, and conservators to the list of individuals who may be restrained by a court injunction from interfering with the provision of protective services to a vulnerable adult.

Section 31 adds "undue influence" to the types of harm contained in confidential reports and adds trustee to the list of individuals who may consent to release a confidential report.

Section 32 clarifies that a person is not considered unduly influenced if they choose to consent to treatment by spiritual means only.

Section 33 redefines "abuse" to include the infliction of emotional distress or fear, including coercion and intimidation.

Section 34 redefines "caregiver" to include someone who is an employee of a business that provides personal care assistance in an adult's home.

SENATOR PASKVAN returned to Section 32 to ask if that provision is for purposes of medical treatment as opposed to financial loss.

MS. HENRIKSEN said she's always thought of it in terms of medical care, but she's actually never used the provision in any of her cases.

SENATOR PASKVAN pointed out that somebody could promise to pray for you in return for \$1,000 and guarantee that you'd be healed.

MS. HENRIKSEN said that is something they'd want to target and she didn't know why that couldn't be included within this provision.

SENATOR COGHILL said when he read it he was thinking about health issues but if it could be financial issues he needs to know.

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CHAIR FRENCH set the issue aside to puzzle over until the next hearing.

MS. HENRIKSEN said she'd give it further thought.

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Section 35 defines "informed decision" as a decision made free from undue influence.

Section 36 redefines "exploitation" to include acts by a person in a position of trust with a vulnerable adult who obtains profit or advantage through undue influence, deception, intimidation or breach of fiduciary duty with or without their consent.

Section 37 redefines neglect to include the willful or reckless failure by a caregiver to provide access to services or to carry out a treatment plan necessary to the health of a recipient. "Reckless" is new language and "essential care services" is defined as food, clothing, shelter, medical care, and supervision.

Section 38 expands the definition of protective services to include services that obtain basic health care needs, financial assistance services, and protection from abuse, obtaining basic food, shelter and clothing, among others. Undue influence is added to the list of types of harm that these services are intended to alleviate.

Section 39 amends the definition of "unable to consent" by adding the concept of "undue influence" and that the inability to consent includes a person's inability to perceive a loss of income or assets, eviction, and physical or mental harm.

Section 40 amends the definition of a vulnerable adult by more clearly defining what constitutes a physical or mental impairment.

Section 41 adds definitions for the following terms:

- Deception
- Fiduciary duty
- Financial institution
- Person who stands in a position of trust or confidence
- Undue influence

Sections 42 through 47 deal with changes to the uncodified law.

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SENATOR COGHILL expressed interest in a further discussion on the definition of "undue influence."

CHAIR FRENCH posed a hypothetical situation where one family member counsels another to go to Mexico to get scientifically questionable laetrile treatments and asked whether that would fall under this definition of "undue influence." While that family dynamic may not be widely embraced and could be total scientific quackery, he has questions about suddenly giving the department the power to intercede.

MS. HENRIKSEN said it reads broadly, but in practice it's very narrow. She welcomed suggestions to make the definition more precise and targeted and assured the committee that Adult Protective Services wouldn't step in unless there was actual harm and she wouldn't take a case to court if it didn't pass the legal standard.

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SENATOR COGHILL said his concerns were allayed somewhat when he realized that the person of trust had to act deceptively.

SENATOR PASKVAN said it's one thing if someone receives no financial benefit for trying to get a family member to undertake laetrile treatment, but it's another if the person receives a kick back. It crosses a line when the person advancing the argument is in a position to gain.

MS. HENRIKSEN said this simply gives APS the ability to look into a situation.

SENATOR COGHILL asked if "undue influence" under Title 47 relates to a civil action item.

MS. HENRIKSEN answered yes; this is about APS investigations under Title 47.

CHAIR FRENCH added that at most this relates to establishing a conservatorship or getting an ex parte order to establish separation between the "victim" and the perpetrator.

MS. HENRIKSEN agreed and reiterated that the legislation deals with Title 13 and Title 47. APS only investigates and a judge makes it happen. The impetus for the bill is that many cases now relate to one family member using their trust and inherent authority to take control of finances and sometimes decision making of another family member. These changes give the department another chance to look at the situation and if need be get an emergency stop on the draining of the finances.

[2:28:34 PM](#)

SCOTT STERLING, Supervising Attorney, Elder Fraud and Assistance, Office of Public Advocacy (OPA), Department of Administration (DOA) said his expertise is on the sections dealing with temporary conservatorships and the ex parte emergency financial orders.

CHAIR FRENCH asked how his office and APS are related.

MR. STERLING explained that OPA and APS are in different departments, but they have a memorandum of agreement and cooperate closely. OPA also works closely with the Office of the Long Term Care Ombudsman. The mission of OPA is to investigate claims regarding the financial exploitation of Alaskans age 60 and older, and to seek civil remedies on behalf of elders unable to bring a complaint without assistance. Another part of their authorizing statute has them provide assistance to agencies and people that are concerned for elder well being in the financial area.

CHAIR FRENCH asked if OPA supports SB 86.

MR. STERLING answered absolutely; this legislation will place Alaska ahead of many other states even though it already has well-run and active adult protective service. The measures in SB 86 attempt to target the fact that technology is outpacing law enforcement's ability to protect people. Scammers use computerized programs, mass data research, and census data; their technology is on par with what is available to law enforcement agencies. Currently a scam lottery is targeting zip codes in Alaska combined with census information about income above a certain level. This bill will help law enforcement and civil agencies combat these scams, he stated.

SENATOR PASKVAN asked if there's a readily available list of attorneys that work in this area of law.

MR. STERLING replied there is an elder law section of the Alaska Bar and it maintains a list on the lawyer referral service. OPA attorneys are members.

SENATOR COGHILL asked if this bill will help with policing or just the defense.

MR. STERLING replied he believes it will help with prevention as well as cure. The ex parte procedures have helped to address domestic violence and this will probably do the same. These

crimes operate in the shadows and are underreported so they're difficult to track, but a 2009 study by the MetLife Foundation indicated that financial exploitation is the single largest cause of elder abuse. This will help.

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SENATOR WIELECHOWSKI joined the committee.

SENATOR PASKVAN mentioned the Burnie Madoff scam and commented that scammers are hitting the population hard.

MR. STERLING responded nominally legal activity goes on that conceals exploitation.

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CHAIR FRENCH closed public testimony and announced he would hold SB 86 in committee.

SB 17-SYNTHETIC CANNABINOIDS

[2:38:28 PM](#)

CHAIR FRENCH announced the consideration of SB 17.

SENATOR KEVIN MEYER, sponsor of SB 17, introduced the bill paraphrasing the following sponsor statement :

SB 17 would classify certain synthetic cannabinoids, commonly known as K2 or Spice as a schedule IIA controlled substance.

This new drug is dangerous, cheap and legally available. Sold in smoke shops and gas stations as incense, it is marketed to people who are interested in herbal alternatives to cannabis. Synthetic cannabinoids are inexpensive, accessible and undetectable in drug tests. Here in Alaska, the drug enjoys some popularity amongst North Slope workers, U.S. Military members and students. The U.S. Drug Enforcement Administration, Municipality of Anchorage and the U.S. Military have all taken action to control and prohibit use of this drug.

Synthetic cannabinoid is abused mainly by smoking or prepared as drink. Users experience severe adverse reactions including hallucinations, nausea, vomiting, agitation, and panic attacks. The chemical composition of synthetic cannabinoids is considerably more potent

to tetrahydrocannabinol or THC, the active ingredient in marijuana).

Eleven states have passed legislation classifying synthetic marijuana as a controlled Substance. Twenty one states, including Alaska, have introduced similar legislation. Should SB 17 pass, it will be unlawful to sell, use, purchase, possess, manufacture, transport or deliver synthetic cannabinoids.

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SENATOR MEYER noted the letters of support from the City of Anchorage, the Mental Health Board, and numerous public safety groups.

SENATOR WIELECHOWSKI asked for his thought process in classifying this as a schedule IIA controlled substance.

SENATOR MEYER said the Anchorage municipal prosecutor recognizes that a Schedule III classification might be more in line with the substance itself and therefore more likely to be enforced and prosecuted, but he favors the tougher felony sentencing under Schedule II. He deferred to the committee to decide which classification would be most appropriate.

CHAIR FRENCH asked if the Municipality of Anchorage classifies drugs or prescribes either an A or B misdemeanor.

SENATOR MEYER replied there's a \$50 fine for the first violation and \$300 for the second.

CHAIR FRENCH pointed out that the options range from a traffic ticket sort of penalty to a serious felony.

SENATOR WIELECHOWSKI asked if there's a way to test that someone was driving under the influence of a synthetic cannabinoid; and could a person be arrested for driving under the influence of this substance given the current DUI laws.

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SENATOR MEYER said that's part of the current frustration. Officers know that these drivers are impaired, but they aren't intoxicated so proof is difficult. He noted that the crime lab submitted a fiscal note asking for one additional position and some money to begin testing for synthetic cannabinoids.

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CHRISTINE MARASIGAN, staff to Senator Meyer, added that the municipal prosecutor has said that synthetic cannabinoids don't show up on the normal drug panel, but there are ways to test for it. The real frustration for law enforcement is that this isn't a controlled substance so there is no recourse for follow-up when a driver is obviously impaired.

CHAIR FRENCH recalled reading about cases involving bad driving near the entrance to the military base in Anchorage.

MS. MARASIGAN confirmed that there were several highly publicized instances of people in Anchorage driving under the influence of synthetic cannabinoids. These cases spurred the municipality to pass an ordinance banning it.

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ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL), said DOL believes it's a good idea to schedule this drug, but it does have concern that it get into the right schedule. Generally, the Legislature uses scientific rather than anecdotal evidence to schedule a drug according to the harm it does to the individual and the public. But DOL hasn't heard any scientific evidence to indicate one particular schedule over another, and it would be up to the department to defend the classification on a Raven type challenge because these are cannabinoids. While there's been testimony that it is more potent than marijuana, that's anecdotal at this point. She suggested the committee consider that marijuana is currently a schedule VIA drug and that schedule III currently has a couple of other similar synthetic cannabinoids. Right now, it's not illegal to use these substances; if they're put in schedule II, possession of any amount would be a felony. Scientific justification should be in the legislative record.

SENATOR PASKVAN asked if it would be a violation of the DUI statute if someone were to consume synthetic alcohol. He added that it's in powdered form.

MS. CARPENETI said she had never heard of synthetic alcohol, but she did know that the ABC Board doesn't control powdered alcohol.

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SENATOR WIELECHOWSKI asked why she thinks the supreme court would say that Raven would not apply to this substance.

MS. CARPENETI said DOL's concern is that the court would question why it's in schedule II if it's a synthetic form of marijuana.

CHAIR FRENCH said even if it's Raven qualified a person could only use small amounts at home; someone who drives after using marijuana is guilty of DWI.

MS. CARPENETI agreed.

SENATOR WIELECHOWSKI asked where DOL believes this belongs in the schedule.

MS. CARPENETI replied it would be more logical if it were in schedule III because the synthetic cannabinoids nabilone and marinol, as well as hash, hashish oil and tetrahydrocannabinols are already in Schedule IIIA.

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SENATOR WIELECHOWSKI asked if every year the Legislature could expect to add to the schedules as new compounds are developed.

CHAIR FRENCH asked how quickly these sorts of compounds evolve. If these are outlawed will there be a new formulation of K2 on the market in six months?

MS. CARPENETI replied she wouldn't be surprised if that were to happen.

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QUINLAN STEINER, Public Defender, Public Defender Agency, stated that he too is concerned about the proposed schedule IIA classification because the very lowest level of possession would be a class C felony. He pointed out that there doesn't appear to be any record establishing departure from marijuana as schedule VIA or synthetic cannabinoids as schedule IIA, and departing without an adequate record ultimately compromises the credibility of the system. He noted that previous testimony indicated that this particular substance is a problem because it's legal to sell in shops and that making it illegal would likely solve the problem. Whoever makes this material will move on to make another substance. He again cautioned against departing from what is currently a VIA of IIIA controlled substance.

CHAIR FRENCH said he gets the point; it will disappear once merchants stop carrying it.

SENATOR WIELECHOWSKI asked if the public defender office sees many cases involving these substances.

MR. STEINER answered no; he only heard about it three or four months ago.

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CHAIR FRENCH announced that he would hold public testimony open.

SENATOR WIELECHOWSKI said he'd like to have a policy discussion on the record about where the state is headed with regard to the control of these sorts of substances.

CHAIR FRENCH announced he would hold SB 17 in committee.

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There being no further business to come before the committee, Chair French adjourned the meeting at 3:02 p.m.