

HOUSE FINANCE COMMITTEE

April 10, 2014

8:37 a.m.

8:37:30 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 8:37 a.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Lindsey Holmes
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Michael Paschall, Staff, Representative Feige; Senator Fred Dyson, Sponsor; Chuck Kopp, Staff, Senator Dyson; Kris Sell, Vice President, Alaska Peace Officers Association; Gary Folger, Commissioner, Department of Public Safety; Kelly Howell, Special Assistant, Department of Public Safety; Terry Vrabec, Deputy Commissioner, Department of Public Safety; Ron Taylor, Deputy Commissioner, Department of Corrections; Annie Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Richard Svobodny, Deputy Attorney General, Criminal Division, Department of Law; Brodie Anderson, Staff, Representative Steve Thompson; Sara Chambers, Director, Department of Commerce, Community and Economic Development; Lynne Young, Secretary/Treasurer, Alaska Athletic Trainers Association.

PRESENT VIA TELECONFERENCE

Lela Klingert, Commercial Fishing and Agriculture Bank, Anchorage; Dr. Jill Valerius, Physician, Wasilla.

SUMMARY

HB 121 COMMERCIAL FISHING & AGRICULTURE BANK

CSHB 121 (FIN) was REPORTED out of committee with no recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development.

HB 160 LICENSING OF ATHLETIC TRAINERS

HB 160 was HEARD and HELD in committee for further consideration.

HCS CSSB 56(JUD)

RECLASSIFYING CERTAIN DRUG OFFENSES

HCS CSSB 56(JUD) was HEARD and HELD in committee for further consideration.

CSSB 64(FIN)

OMNIBUS CRIME/CORRECTIONS/RECIDIVISM BILL

CSSB 64(FIN) was SCHEDULED but not HEARD.

CSSB 173(JUD)

SYNTHETIC DRUGS

CSSB 173(JUD) was SCHEDULED but not HEARD.

#hb121

HOUSE BILL NO. 121

"An Act relating to the examinations, board, loans, records, and lobbying contracts of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

[8:38:09 AM](#)

Co-Chair Stoltze discussed the CS before the committee. He reported one minor change replacing language regarding loan

qualifications. The language was much softer than the earlier version and mirrored language from the Alaska State Constitution regarding sustainability.

Vice-Chair Neuman MOVED to ADOPT the proposed committee substitute for HB 121(FIN), Work Draft (28-LS0491\0). There being NO OBJECTION, it was so ordered.

Representative Gara MOVED to ADOPT Amendment 1.

Page 5, following line 10:

Insert a new bill section to read:

"* Sec. 2. AS 44.81.215 is amended by adding a new subsection to read:

(b) Before making a loan under this section, the board must find that the loan will not result in the displacement of an existing or planned Alaskan-owned business."

Renumber the following bill sections accordingly.

Page 7, line 26:

Delete "sec. 7"

Insert "sec. 8"

Page 7, line 28:

Delete "sec. 7"

Insert "sec. 8"

Representative Wilson OBJECTED for discussion.

Representative Gara explained that HB 121 expanded Commercial Fishing and Agricultural Bank's (CFAB) ability to loan to businesses owned by persons and corporations outside of Alaska. Much of CFAB's activity was related to Alaskan-owned businesses. He stressed the importance of Amendment 1 which would require the CFAB board to determine whether or not a loan would displace an existing or planned Alaskan-owned businesses prior to making a loan.

[8:42:08 AM](#)

LELA KLINGERT, COMMERCIAL FISHING AND AGRICULTURE BANK (CFAB), ANCHORAGE (via teleconference), asked for clarification about the amendment.

Representative Gara read his amendment and indicated that it addressed the new sections on non-Alaskan businesses.

Ms. Klingert replied that the board was not typically involved in the credit process. She expressed logistic concerns reporting that the board only met about five times a year. She also stated her uncertainty about how the board would make appropriate determinations.

[8:43:57 AM](#)

Representative Holmes commented that although she liked the intent of the amendment she did not think it set forth a feasible standard from which a bank could make a determination. She opposed the amendment.

Vice-Chair Neuman stated that many lodges up and down the Susitna River were owned by out-of-state and out-of-country owners. He liked the amendment and believed CFAB was supported under Alaska Statute as the original intent.

Representative Thompson liked the intent of the amendment, but did not understand how to define "planned" and apply it in the loan approval process.

[8:45:40 AM](#)

Representative Gara MOVED to AMEND Amendment 1. He wanted to remove the words "or planned" from line 5. There being NO OBJECTION, it was so ordered.

A roll call vote was taken on the motion to adopt Amendment 1 as amended.

IN FAVOR: Wilson, Costello, Edgmon, Gara, Guttenberg, Neuman, Thompson, Austerman, Stoltze
OPPOSED: Holmes, Munoz

The MOTION PASSED (9/2). Amendment 1 as AMENDED was ADOPTED.

[8:47:44 AM](#)

Representative Gara MOVED to ADOPT Amendment 2.

Page 1, following line 4:
Insert a new bill section to read:

"* Section 1. AS 44.81.020(a) is amended to read:
(a) The bank shall be governed by a board of directors consisting of seven to nine natural persons. The number is determined by the bank's bylaws. Two board members shall be appointed by the governor of the state. The other board members shall be elected by the members of the bank as provided in the bank's bylaws, except that at least one of the elected board members must be a resident farmer. The board members appointed under this section must be residents of the state and meet the requirements of AS 39.05.100."

Page 1, line 5:
Delete "Section 1"
Insert "Sec. 2"

Re-number the following bill sections accordingly.

Page 7, line 26:
Delete "sec. 7"
Insert "sec. 8"

Page 7, line 28:
Delete "sec. 7"
Insert "sec. 8"

Representative Wilson OBJECTED.

Representative Gara reported that there was a statute on the books that required board members on state boards to be Alaska residents. He furthered that there was ambiguity whether or not CFAB was a state bank. He explained that the purpose of the amendment was to clarify that CFAB board members were required to be residents of Alaska.

[8:48:39 AM](#)

Ms. Klingert stated that she did not see an issue with the amendment. She reported that when CFAB made a loan it adhered to the statutes by lending only to Alaska residents. She indicated that members who moved out of the state after the fact maintained their membership. Given that CFAB was a cooperative she suggested that it was appropriate for members to be able to elect who they wanted to represent them and that they would potentially be impaired to do so by having less of a selection to choose from with the amendment.

Co-Chair Austerman suggested that if the amendment was incorporated into the Alaska Statutes it would be clear that only Alaska residents would be eligible for election to CFAB's board of directors. He asserted that the issue was not complicated.

Co-Chair Stoltze remarked that fishermen who had moved to Seattle rationalized the expansion in the bill by expressing that they were still Alaskans in their hearts. He noted approval from other committee members. He asked Ms. Klingert whether or not she was advocating moving out of state.

[8:51:32 AM](#)

Ms. Klingert replied that other permit holders resided outside of Alaska. She agreed with the statement.

Representative Guttenberg clarified that a board member had to be an Alaska resident at the time of their appointment. He remarked that it was pretty clear and simple.

Co-Chair Stoltze stated that he initially thought he was going to vote against the bill but after talking with commercial fishermen he did not see it as deleterious.

Co-Chair Austerman interjected that the bill did not just apply to commercial fishermen. He stressed that it pertained to all people making applications with CFAB.

Co-Chair Stoltze acknowledged Representative Austerman's point.

[8:53:21 AM](#)

Vice-Chair Neuman asked if the intent was for board members to be Alaska residents. He further inquired whether or not members who moved out of state would remain eligible for reappointment.

Ms. Klingert replied that the terms were three years for both the board members elected by the membership and two governor-appointed delegates.

[8:54:16 AM](#)

Vice-Chair Neuman asked whether or not board members were subject to legislative approval. Ms. Klingert replied in the negative.

Vice-Chair Neuman assumed that board members who moved out of state would not be eligible for reappointment.

Representative Munoz asked about the current requirements for board membership and about how many were Alaska residents.

Ms. Klingert replied that aside from the governor-appointed seats, one board seat had to be filled by a farmer, the other two seats had to be filled with bank members who were not involved in litigation with the bank.

Representative Munoz asked whether or not there were any non-residents on the board currently.

Ms. Klingert stated that to her knowledge the board only consisted of Alaska residents.

[8:55:56 AM](#)

Representative Gara remarked that the law would not be interpreted any differently from the law that already existed for all other boards. He believed that the current law was interpreted to mean that board members had to be Alaska residents and if their status changed they would lose their eligibility. He reiterated that the amendment guaranteed clarity that the law applied to CFAB board members.

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 2 was ADOPTED.

Representative Costello pointed to the fiscal impact note from Department of Commerce, Community and Economic Development including \$5.7 thousand in FY 16 and FY 19 for travel and a change in revenue of \$23.5 thousand in FY 15 and FY 19.

[8:57:59 AM](#)

Vice-Chair Neuman MOVED to REPORT CSHB 121(FIN) out of committee with individual recommendations and the

accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 121(FIN) was REPORTED out of committee with "no recommendation" and with one new fiscal impact note from the Department of Commerce, Community and Economic Development.

[8:58:29 AM](#)

AT EASE

[8:59:10 AM](#)

RECONVENED

#sb56

CS FOR SENATE BILL NO. 56(JUD)

"An Act relating to certain crimes involving controlled substances; and providing for an effective date."

[8:59:38 AM](#)

SENATOR FRED DYSON, Sponsor, discussed the legislation noting that the bill was driven by two or three factors. He pointed out to the committee that the majority of the state's drug laws were put into place in 1982 and were seldom revised. He reported that, in much of the nation, states were now reevaluating classification and sentencing criteria due to incarceration costs. He furthered that Alaska had one of the highest incarceration rates in the United States. He opined that if the state continued on its current trend additional facilities would be needed within four to five years even though the state recently spent \$250 million on a new prison. He also pointed out that prisoner reentry remained a challenge. He hoped the legislation would help to remove some of the obstacles inmates face upon release. He explained that certain opportunities were not available to anyone with a felony conviction. He cited that approximately 1,500 jobs and benefits were not accessible to felons. He detailed that Alaska's drug treatment programs were quite effective in the state's system. He mentioned that he took a very high view of the law and that legislators created statute law through being elected by the people. He wanted the laws to state his values and that they be proportional. He reemphasized that drug laws needed revamping. He deferred

to Chuck Kopp to review a slide presentation with the committee.

9:02:30 AM

CHUCK KOPP, STAFF, SENATOR DYSON, discussed the PowerPoint Presentation "SB 56 - Reclassifying Small Quantity Drug Possession" (copy on file). He began with slide 2 through slide 5: "A Balance of Justice and Proportionality in the Law," which provided a list of 12 examples of class "C" felonies to be used for a comparison basis.

- Misc. Involving Controlled Substance 4th Degree (MICS 4) AS 11.71.040(a)(3)(a) C Felony
A person possesses any amount of a schedule IA or IIA drug.
 - Example: Possession of one grain of a pain killer like hydrocodone without a prescription. The law currently has no dosage matrix to discriminate between trafficking, peddling, and simple possession. It is no defense that the amount of drug was not a useable quantity, only that the substance be positively identified in a narcotics test.
- Assault 3rd Degree - AS 11.41.220(a)(1)(a) C Felony
A person causes fear of imminent serious physical injury by means of a dangerous instrument.
 - Example: A person points a firearm at the head of another person and threatens to kill them.
- Stalking 1st Degree AS 11.41.260 C Felony
 - Example: A person engages in a "course of conduct" with a victim (i.e. following them, entering their property, contacting by phone, delivering items to victim) and places victim in fear of death or physical injury and the person possesses a deadly weapon.
- Sexual Assault 3rd Degree AS 11.41.425(a)(1)(2) C Felony
 - Example: A person engages in sexual contact with a person who he knows is mentally incapable, incapacitated or otherwise unaware and unable to consent to the sex act. Or, a prison guard engaging in sexual penetration with a prisoner.
- Indecent Exposure 1st Degree AS 11.41.458(a) C Felony
 - Example: A person knowingly exposes his genitals to a child while masturbating.
- Vehicle Theft 1st Degree AS 11.46.360 C Felony

- o Example: A person, having no right to do so, steals a car, truck, motorcycle, motorhome, airplane, or boat of another person. Or, a person steals a police car.
- Endangering the Welfare of a Vulnerable Adult 1st Degree AS 11.51.200 C Felony
 - o Example: A person fails, without lawful excuse, to provide support for a vulnerable adult and the vulnerable adult is in the person's care by authority of law and the vulnerable adult suffers serious physical injury.
- Promoting Contraband 1st Degree AS 11.56.375(a) C Felony
 - o A person illegally brings a firearm or drugs into a prison.
- Possession of Child Pornography AS 11.61.127 C Felony
 - o A person knowingly possesses child pornography.
- Unlawful Furnishing of Explosives AS 11.61.250(a) C Felony
 - o A person gives explosives to another knowing that the person intends to use them to commit a crime.
- Sex Trafficking 3rd Degree AS 11.66.130(a) C Felony
 - o A person, with intent to promote prostitution, manages, supervises, controls or owns a place of prostitution.
- Cruelty to Animals AS 11.61.140(a) C Felony
 - o A person intentionally inflicts severe physical pain or prolonged suffering on an animal. Or, a person knowingly kills an animal with intent to intimidate or threaten another person.

Mr. Kopp reported that the felonies listed were proportionally treated in Alaska's law. The purpose in providing the information was to discuss whether or not the state properly equated the offenses or if it over criminalized simple possession. He informed the committee that SB 56 reclassified small quantity possession for first time offenders to a class A misdemeanor.

He turned to slide 6: "Class A Misdemeanor Offense":

- Class A Misdemeanor Offense Penalty - Up to 1 year in prison, \$10,000 fine - *A serious charge and penalty*
- Assault in the Fourth Degree AS 11.41.230
 - o A person "recklessly causes physical injury to another person" or "with criminal negligence..."

causes physical injury to another person by means of a dangerous instrument." This can include domestic violence, as defined in AS 18.66.990.

- Driving Under the Influence (DUI/DWI) AS 28.35.030
 - A first and second Driving Under the Influence (DUI) charge
- Resisting or Interfering with Arrest AS 11.56.700(a)
 - A person knowing a peace officer is making an arrest, and with intent to prevent the arrest, resists the arrest of himself or interferes with the arrest of another by force.
- Official Misconduct AS 11.56.850(a)
 - A public servant knowingly, and with intent to obtain a benefit or to injure or deprive another of a benefit, performs an unauthorized exercise of his official function; or refrains from performing a duty of his office.

[9:07:05 AM](#)

Mr. Kopp continued to slide 7: "SB 56 - Distinguishing between traffickers, peddlers, and addicts":

- SB 56 creates an "Escalating Punishment" system, similar to the State's approach to DUI's, Theft, Criminally Negligent Burning and Assault. Key features:
 - Reclassification of small quantity possession to a Class A misdemeanor
 - "3-strikes" Rule. Gives person a chance for meaningful reform, if they screw up twice, and fail to participate in their own rehabilitation, the next offense results in a felony charge.
 - Strict quantity limits; over the limit = implied distribution = felony.
 - No restrictions placed on law enforcement or prosecutors to pursue drug manufacturers and dealers, regardless of quantity (i.e., evidence of manufacturing or selling drugs = felony).
- This should lead to reductions in:
 - Prison incarceration costs
 - Legal and adjudication costs
 - Low-risk offenders being placed on felony probation
 - Re-entry barriers for simple possession offenders getting out of prison

- o Reduction in indirect costs, such as public assistance for med., housing & food
- Significant cost savings while maintaining public safety.

Mr. Kopp stated that SB 56 introduced a new dosage matrix into the law to help the state differentiate between traffickers, peddlers, and addicts or people simply caught for possession. He acknowledged that not all people caught for possession were addicts. He informed the committee that the drug data showed that only a third of the people caught for first-time possession were actually addicts. He remarked that strict quantity limits, the third item listed under escalating punishment on the slide, were modeled after Wyoming's law.

9:09:16 AM

Mr. Kopp advanced to slide 8: "Alaska's Prison Population Growth." He stated that the red line signified the increase in the number of beds with the addition of Alaska's Goose Creek Correctional Center. The blue line indicated the projection of the growing prisoner population. He specifically directed the committee's attention to where the two lines crossed - when the state would be at capacity again. He anticipated that it would cost the state another \$250 million or more for an additional prison.

Mr. Kopp referred to slide 9: "Drivers of Alaska's Prison Population Growth":

1. Increased admission for Felony Theft in the Second Degree—theft of property valued over \$500—and increased sentence lengths associated with these offenses.
 2. A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses. >>Addressed by SB 56
 3. Increase in Petitions to Revoke Probation (PTRP's) and probation violations. >>Connected to number of offenders on felony probation; greatly impacted by SB 56.
- Source: DOC Memo, Factors Driving Alaska's Prison Population Growth, at 1 (August 24, 2012).

9:10:19 AM

Mr. Kopp discussed slide 10: "Alaska Court Cases File with MICS4 Charge." He elaborated that the slide showed the number of misconduct cases involving controlled substance fourth degree charges. In 2008 there were over 600 charges filed and in 2013 about 1,100 were recorded. He emphasized that the number of charges almost doubled in the time period. Not all of the charges were possession offenses, but one-third to one-half were misconduct involving a controlled substance fourth-degree involving several subsets of charges.

Mr. Kopp turned to slide 11: "Collateral Consequences from Small-Quantity Drug Possession Felonies":

- "Our legal system has created barriers to work, education, business opportunities, volunteerism, and housing – the very things that are necessary to prevent recidivism." – Senator John Coghill
- Alaska ranks number one in the nation for state-created legislative and regulatory barriers to successful reentry for individuals with a criminal record, according to the national Legal Action Center (LAC). –Deborah Periman, Alaska Justice Forum 30 (3-4), UAA Justice Center
- Offenders who complete their sentences seldom, if ever, stop paying for their crimes
- Barriers to reentry into society after prison effect 1 of 31 Alaskans.
 - o Medicare/Medicaid facilities - federal law
 - o Anchorage School District - district policy
 - o North Slope - Private HR decision
- Difficulty to find housing
- Restrictions on ability to adopt, or receive placement of foster children
- Inability to qualify for public assistance benefits on release from prison
- Ineligible to become a Village Public Safety Officer
- SB 56 allows Alaskans to avoid many of these consequences, if they are not repeat offenders.

Mr. Kopp mentioned an amendment that went before the House Judiciary Committee in which someone was referred to treatment if they were charged as a first-time offender. The treatment amendment was in Section 3 of SB 56 where they were required to satisfy the screening, evaluation,

referral, and program requirements of a drug abuse evaluation program.

[9:12:38 AM](#)

Mr. Kopp moved on to slide 12: "Reduced Legal and Adjudication Costs." He indicated the slide showed the reduced legal and adjudication costs between felony and misdemeanor cases in district and superior courts. It also showed the mean and median number of days to disposition for a felon and misdemeanant. The court system stated in its fiscal note that the new system would save the state money but noted a zero fiscal note and remarked on the difficulty in quantifying a specific amount of savings. He went on to explain that superior court judges cost more, empaneling grand juries was costly, witness testimony was costly, and that a person tried with a felony was afforded a higher level of legal counsel.

[9:13:32 AM](#)

Mr. Kopp discussed slides 13 and 14: "SB 56 - "A Fiscally Conservative Policy":

- Legislative Research Service identified approximately \$14M in annual cost savings, the majority of which came from DOC
- Office of Public Advocacy Fiscal Note - There will likely be a decrease for OPA in the cost of providing contract attorney defense services. Estimate \$250,000.00 savings in FY 2013. Savings of \$1,100/case @ 255 cases. Indeterminate note.
- Public Defender Agency Fiscal Note - Will reduce the cost of processing individual cases...will reduce the overall cost growth rate of the Agency's budget. Zero fiscal note.
- Dept. of Corrections Fiscal Note - In 2012, there were 427 MICS 4 convictions which carried an average length of stay of 188.1 days...the department could see a potential reduction in man days of 54,186.3 days. Indeterminate fiscal note. If only half these convictions were impacted by this bill, it would save over \$4M each year.
- Department of Law Fiscal Note - The fiscal note is indeterminate. Generally, reducing an offense from a

felony to a misdemeanor creates a savings in the criminal justice system.

- DPS, Alaska State Troopers Fiscal Note - Passage of this bill would not change the investigative process regarding these offenses and will have no fiscal impact on the Division of Alaska State Troopers...a zero fiscal note is being submitted.
- DPS, Laboratory Services Fiscal Note - A zero fiscal note.

[9:14:57 AM](#)

Mr. Kopp highlighted slide 15: "Public Safety Impacts":

- 13 States have reclassified some Schedule I and IIA drugs from felony to misdemeanor possession based on a dosage matrix include Wyoming, Wisconsin, Iowa, Kentucky, Tennessee, Mississippi, South Carolina, West Virginia, Pennsylvania, Delaware, Vermont, Massachusetts and Maine.
- Alaska's adult incarceration rate is 537 per 100,000 - BJS Prisoners in 2012 Report
- Average adult incarceration rate of these 13 states is 490 per 100,000.
- Five (5) of these states have a higher adult incarceration rate per 100,000 (665 avg) - Delaware, Kentucky, Mississippi, South Carolina & Tennessee.
- Eight (8) states have a lower adult incarceration rate per 100,000 (381 avg) - Iowa, Maine, Massachusetts, Pennsylvania, Vermont, West Virginia, Wisconsin, and Wyoming.

Mr. Kopp cited that there were 10 states that reclassified possession of small quantities of heroin, methamphetamines, and cocaine to a misdemeanor charge for a first-time offender. Three states reclassified cocaine possession including Maine, Mississippi, and Wisconsin. Mississippi was prosecutorial discretion only whether a person was charged with a felon or a misdemeanor. Mississippi was an outlier because its incarceration rate was so high that it pulled up the average. It had the second highest incarceration rate in the nation coming in at just under 1 thousand per 100 thousand.

[9:16:43 AM](#)

Mr. Kopp continued to slide 16: "Public Safety: 2012 Statistical Comparison." He noted that the chart showed where Alaska was at in terms of crimes and incarceration rates in comparison to other states and the nation. He reported that Alaska, compared to the reclassification states grouped together, had significantly higher violent crime rate, similar property crime rate, and a similar incarceration rate. Alaska, compared to all of the states, had a significantly greater violent crime rate, a somewhat lower property crime rate, and a parallel incarceration rate. Alaska, measured alongside the 10 states that reclassified only heroin, methamphetamines, and cocaine to first-time small-quantity possession misdemeanor, had an elevated violent crime rate, a comparable property crime rate, and a slightly higher incarceration rate. He surmised that it was difficult to draw a causal relationship between crime reclassification and an impact to public safety.

Mr. Kopp presented slide 17 "Kleiman, Mark (2012, Apr 22) Rethinking the War on Drugs, *Wall Street Journal*":

- The U.S. has reached a dead end in trying to fight drug use by treating every offender as a serious criminal. Blanket drug legalization has some superficial charm—it fits nicely into a sound-bite or tweet—but it can't stand up to serious analysis. The real prospects for reform involve policies rather than slogans. It remains to be seen whether our political process—and the media circus that often shapes it—can tolerate the necessary complexity.
- "For every complex problem," H.L. Mencken wrote, "there is an answer that is clear, simple and wrong."

Mr. Kopp advanced to slide 18: "Probable Outcomes of SB 56":

- Balance of justice and proportionality in our laws
- Large reduction in barriers to reentry for offenders, improvement in employability
- More persons successfully restored to a healthy lifestyle
- Minimal impact on public safety
- Significant fiscal savings
- The proposed bill language is more conservative than that of Wyoming, a state that is not a bastion of liberalism, and has had good results.

Mr. Kopp disclosed slide 19: "Support":

- Alaska Native Justice Center
- Alaska Mental Health Board
- Advisory Board on Alcoholism and Drug Abuse
- Central Peninsula Hospital
- CPH Behavioral Health Associates
- Walt Monegan, APD Chief, Retired
- Carmen Gutierrez, Recent DoC Deputy Commissioner
- Niesje Steinkruger, Superior Court Judge, Retired

Mr. Kopp supplied a list of entities that supported the legislation.

[9:19:35 AM](#)

Senator Dyson pulled out an expired bottle of Oxycodone acetaminophen which did not contain any medicine. However, he contended that if it did he could be arrested for possession under current law. He also surmised that if the bottle were tested and residue of a drug was found he could be subject to being arrested. He referred to an article in members' packets regarding a professional person who had been charged with possession for having an expired prescription bottle containing drug residue in his custody. His life was ruined as a result. He emphasized that the intent of the bill was not to be soft on crime but to get proportionality in the law. He was impressed with the list of all the class C felonies that were equivalent to his example in the law.

[9:21:06 AM](#)

Co-Chair Stoltze asked the senator to provide the committee with a copy of the case so that it could be evaluated by Anne Carpeneti an Assistant Attorney General with the Department of Law.

Senator Dyson agreed.

[9:21:43 AM](#)

KRIS SELL, VICE PRESIDENT, ALASKA PEACE OFFICERS ASSOCIATION, represented 900 current and retired police officers from the State of Alaska. The association did not

support the bill. She contended that the bill was not on the right track and, based on real life experience, small quantities were dealer quantities. Dealers typically carried "points" which were equal to a tenth of a gram. The bill would provide dealers with more opportunities to involve people in the drug world. She understood the intent of the bill was to avoid having to give harsh punishments to people acting out of curiosity or who made a mistake. She emphasized that the offenders she was concerned with were drug dealers. She admitted that the current system had problems, and that treatment and accountability were large components of helping people to conquer their addictions. She concurred with some things she had heard from the Department of Law about its position on the issue. Some of the pleas that could come from post-victim relief from professional drug dealers who had pled out to charges would want a misdemeanor rather than a felony charge. On behalf of the Alaska Peace Officers Association she asked the committee not to be among the states that went softest on hard drugs and to oppose the legislation.

[9:25:37 AM](#)

Co-Chair Stoltze asked for a written position statement. Ms. Sell stated that there was a copy of a letter in the committee packet sent to the sponsor of the bill.

Representative Gara asked if there would be an opportunity to direct a question to the Department of Law.

Co-Chair Stoltze said there would be time later in the meeting for Representative Gara to ask his question.

GARY FOLGER, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY (DPS), referred to potential foreseen and unforeseen consequences of the bill. He deferred to his special assistant to provide the department's assessment.

[9:28:00 AM](#)

KELLY HOWELL, SPECIAL ASSISTANT, DEPARTMENT OF PUBLIC SAFETY, read the DPS prepared testimony:

There is no doubt that substance abuse is a significant contributor to crime in Alaska. Yet even given this statement, we acknowledge that possession

of small quantities of certain schedule IA or IIA substances for a first-time offender is more proportional to misdemeanor rather than felony behavior. The expectation is that a misdemeanor penalty for a first offense can serve as a wakeup call and potentially deter offenders from future drug offenses or other crimes. Whether this same philosophy should apply to a second-time offender is a matter we ask the legislature to take under further consideration.

Subsequently, we also encourage additional deliberation on the quantities identified as "non-distributive" or "small amounts" as proposed in Senate Bill 56. The Alaska State Troopers' Statewide Drug Enforcement Unit (SDEU) reports that an average per use of heroin is approximately 0.1 grams (100 milligrams) and an average per use of methamphetamine is 0.75 - 1.0 grams. In essence, just less than 500 milligrams of heroin would equate to about five uses and just less than 3 grams of methamphetamine would be about three to four uses. Though these could be considered user-level quantities, we urge closer scrutiny of these levels to avoid a potential unintended consequence of empowering street-level distributors.

Another issue relates to the 300 milligram threshold established for LSD. The SDEU reports they rarely encounter LSD in a measurable form. It is usually found in dosage units, with some of the liquid having been absorbed into a more solid form such as blotter paper, sugar cubes, or gelatin. The actual potency levels of each dosage unit can range from 30 to 100 micrograms (1/1,000,000 of a gram). Therefore, the threshold amount currently proposed equals approximately 300 doses.

There will also be impacts to the Scientific Crime Detection Laboratory (crime lab) within DPS. The minimum thresholds established by this bill will require testing of enough of the substance to meet the threshold.

For example, whereas now the crime lab may need to positively identify only one tablet to determine whether it was a prohibited substance, analysis of at

least 15 tablets (if present) may now need to be analyzed to meet the threshold and burden of proof. This will impact the workload, but the crime lab will attempt to manage it within its current staffing.

In closing, we must be careful and thoughtful to ensure a balanced approach to protect the public from dangerous offenders while holding offenders accountable at the appropriate levels, whether it's a felony or misdemeanor. This is a worthy effort that DPS will continue to work with the legislature on this issue.

Co-Chair Stoltze asked if DPS would characterize its position as a flashing amber light rather than a green or red light. Ms. Howell replied in the affirmative.

Representative Guttenberg asked if the discussion was about an aggregate dosage amount.

TERRY VRABEC, DEPUTY COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, answered that under current law if someone was caught for possession of a substance a small portion of it would be taken for testing. The legislation would raise the testing portion to five doses requiring more time and effort on the part of the crime lab.

[9:34:17 AM](#)

Vice-Chair Neuman asked Deputy Commissioner Vrabec for clarity about measuring drug quantities at the time of prosecution.

Mr. Vrabec replied that a weight would be taken and included in evidence. However, the department did not test the entire confiscated amount. He gave the example of a pound of cocaine. The department would not test the whole pound, just a portion of it. Vice-Chair Neuman referred to the cocaine example wanting additional clarity.

Ms. Howell pointed to page 3, line 2 of the legislation. She explained that the threshold was 15 or more tablets. For example, a person could be under the threshold if they had three tablets and one was determined to be a prohibited substance. However, if the person had 15 or more tablets then each tablet would be tested to verify the substance.

Vice-Chair Neuman wondered how the lab would know if all of the tablets were a prohibited substance unless they were all tested.

[9:36:57 AM](#)

Mr. Vrabec suggested that the Department of Law answer Representative Neuman's question further.

Representative Munoz asked about how many people were currently serving under a class C felony conviction in Alaska for drug possession.

Co-Chair Stoltze asked Representative Munoz for clarity on whether or not she was asking about possession only or possession in other activities. Representative Munoz replied that she was asking about possession only.

Mr. Vrabec deferred the question to the Department of Corrections.

RON TAYLOR, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, answered that the number was approximately 427 people. However, some of the 427 people were charged with additional offenses.

Co-Chair Stoltze asked if the number was under 100. Mr. Taylor replied that the number of people convicted exclusively for possession was under 100.

Representative Munoz asked about the average sentence for the approximate 100 offenders.

Mr. Taylor answered that the only number he could provide was the average length of stay for the 427, which was 188 [days].

Co-Chair Stoltze commented on the war-on-drugs warehousing, stating that the high end was 93 late in the fall of the prior year. He opined that there were probably extenuating circumstances because the state's system did not have the capacity for people arrested for simple possession.

[9:38:50 AM](#)

RICHARD SVOBODNY, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, made general comments.

ANNIE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated that the Department of Law (DOL) did not oppose the bill but specified three concerns. The department's first concern was sending the wrong message to Alaska's youth that, by reducing possession of some of the really serious drugs, they would not consider them as dangerous to use as they really were. The department's second concern was that the state did not have probation supervision for misdemeanants like it did for felons. A provision was added to SB 56 allowing for supervision by Alaska's Alcohol Safety Action Program (ASAP) for people convicted of fifth degree possession. However, ASAP supervision was not like Department of Corrections supervision for probationers. She continued to explain that ASAP was an office-based program; ASAP's probation officers sent a letter to a judge if they became aware of a probation violation. Whereas, DOC probation officers had a very different protocol; they had a much more active hands-on approach to supervision. She emphasized that people with addictions needed serious supervision in order to overcome their dependencies.

[9:43:02 AM](#)

Ms. Carpeneti communicated the department's third concern; the bill, in its current form, did not increase treatment opportunities. People released under the circumstances required help such as housing and rehabilitation to avoid reentering the life that led to their initial conviction.

Mr. Svobodny expressed his doubts that the bill would help to reduce crime numbers. He stated that untreated drug users of the category of drugs covered in the bill (i.e. methamphetamine, heroin, and LSD) were a danger to themselves and their families. He furthered that they presented a public safety danger to the rest of society. He detailed a survey he completed of the District Attorney (DA) offices across the state regarding trends in drug use in urban areas. He began his survey in Bethel to get a base by going outside the urban areas. He reported that heroin was a large problem in the bush. In interviewing every other DA office he discovered that black tar heroin was widely used in Alaskan communities. All urban areas saw a decrease in the use of cocaine and prescription medication and an increase in the use of cheaper heroin. He opined that heroin was a large problem in the State of Alaska and

in the country. He pointed out that the governor of Vermont, in his state-of-the-state address, spoke exclusively about the state's existing heroin problem.

Mr. Svobodny agreed that the heroin problem in Alaska needed to be dealt with and applauded Senator Dyson for attempting to address the issue. However, he expressed his concerns with reducing drug possession crimes to misdemeanors and did not believe that SB 56 would address the ancillary crimes committed by drug users. He reported asking the Anchorage DA office about other problems with drugs. The DA responded that burglary and check fraud were the most common crimes associated with drug use. Both crimes provided a means to fund further drug use. He elaborated that other consequences accompanied drug abuse as well.

[9:49:46 AM](#)

Mr. Svobodny addressed Representative Munoz's question by entertaining another question. He asked how many people were incarcerated for misconduct involving a controlled substance in the fourth-degree, a class C felony possession charge. He revealed the answer was a range of 44 to 124 people as of October 1, 2013. The reason for the range was because at least half of the people were charged for other offenses including felony assault level crimes, theft in the second-degree, and probation revocation. He asserted that the police were not performing reverse buys where a policeman sold drugs to a person then turned around and charged them with possession.

[9:52:34 AM](#)

Mr. Svobodny addressed the fact that people were getting arrested for possession offenses because of other criminal activity. He cited that over a period of ten years a sheriff in San Diego County tested everyone that came into the jail on a specific day once a quarter for controlled substances. The sheriff indicated that 90 percent ingested some type of controlled substances on the day they were tested.

Mr. Svobodny believed that it was critical to deal with the people who were committing the auxiliary crimes by housing them in jail. Although the bill required an assessment by the Department of Health and Social Services, it did not

fund assessments, drug testing, or residential treatment programs. He contended that it would be more likely for felons to receive a felony probation officer who would require reporting, look for symptoms of drug use, do random searches, and perform drug testing than for a misdemeanant to receive equitable services.

[9:56:15 AM](#)

Co-Chair Stoltze asked whether Mr. Svobodny would support a reduced sanction for first-time possession offenders as proposed by DPS.

Mr. Svobodny responded affirmatively with hesitation. He noted that the system would deal with the changes presented in the bill.

Representative Stoltze wondered whether Mr. Svobodny would throw a case out if the police initiated a sale and subsequently arrested the buyer for possession.

Mr. Svobodny confirmed that he would throw the case out.

[9:58:11 AM](#)

Representative Guttenberg told of his experience growing up and the drug availability he witnessed in New York City and Fairbanks. He opined that drug problems had only worsened in the past 50 years. He suggested that the continued crack down on the use of drugs was an ineffective deterrent. He acknowledged Senator Dyson bringing forth new legislation on the issue. He surmised that increasing penalties and fines did not help in reducing the problem. He discerned that part of the reason for the legislation was to avoid having to build more prisons and referenced a representative from Texas. He inquired about what worked in past years.

[9:59:54 AM](#)

Mr. Svobodny relayed that Jerry Madden, a representative from Texas, suggested that rather than putting drug abusers behind bars they should be placed in treatment. He asserted that treatment worked.

Mr. Svobodny pointed out that DOC had the ability to have prisoners serve jail time at home or with electronic

monitoring. He furthered that the bill before the committee only partially addressed the problem.

Co-Chair Stoltze opined that the Madden example did not translate to Alaska.

Vice-Chair Neuman agreed with Mr. Svobodny about the effectiveness of drug treatment programs for offenders. He noted that drug abuse was an addiction. He inferred that low-level sentencing did not allow enough time for offenders to be placed into treatment prior to their release. He stated that often treatment was a condition of parole. One of the challenges for felons was to find work to help to pay for their treatment. He suggested offenders would potentially rob from others to pay for treatment in order to meet the conditions of their parole. He asked if it was a trend.

[10:02:50 AM](#)

Mr. Svobodny replied in the negative. He did not want to suggest that longer jail sentences were a way to deal with getting offenders treatment. He commented that in dealing with a person with an addiction it would be better to treat them for addiction rather than putting them in jail. He suggested that the problem was people were burglarizing to pay for their addiction. He opined that many of the addicted resorted to being small distributors in order to maintain their habit. He believed that the state needed a program in place where people addicted to drugs were supervised. He emphasized that treatment should come before jail time.

Co-Chair Stoltze suggested that the bill would be heard again before the committee at a later date.

[10:05:18 AM](#)

Representative Wilson asked about the number of people in jail with misdemeanor charges and the length of their sentences. She also asked if jail time for misdemeanants was affected by the court system being bottlenecked with cases. She wondered if the problem pertained to a backup in Alaska's court system or whether felony and misdemeanor charges needed to be changed. She wanted DOL to come back to the committee with the answers to her questions at another time.

Co-Chair Stoltze suggested Representative Wilson meet with Ms. Mead to get the answers to her questions.

HCS CSSB 56(JUD) was HEARD and HELD in committee for further consideration.

#hb160

HOUSE BILL NO. 160

"An Act relating to the licensing and regulation of athletic trainers."

[10:06:15 AM](#)

Representative Thompson read his sponsor statement to the committee (copy on file):

House Bill (HB) 160 would amend current statutes to establish licensing and regulation of athletic trainers in the State of Alaska.

Athletic Trainers are health care professionals who collaborate with physicians to enhance the practice of sports medicine for patients and clients. This profession plays a significant role in the management, prevention, recognition and rehabilitation of injured athletes under the supervision of a licensed physician. Athletic trainers are a vital resource in administering injury prevention and treatment programs, as well as immediate emergency care for the sport and athletic community.

Alaska is one of the final two states that doesn't currently license athletic trainers. HB 160 will require athletic trainers to have a license to practice in the State of Alaska. HB 160 will hold athletic trainers accountable to the rigorous standards of the Board of Certification, INC; a national agency created to certify healthcare professions and assure the protection of the public. As Alaskans become increasingly more active the need for properly trained and licensed athletic trainers becomes imperative. Please support the passage of HB 160.

Representative Thompson asked his staff to explain the bill in more detail.

BRODIE ANDERSON, STAFF, REPRESENTATIVE THOMPSON, reviewed the sectional analysis. He reported that Section 1 added a new chapter for athletic trainers. Section AS 08.07.010 outlined the license requirements and Section AS 08.07.020 identified the qualifications, fee, and renewal. The scope of practice of an athletic trainer was referenced in Section AS 08.07.030. A new section was added Section AS 08.07.040 which defined the regulations and how they would be drafted as well as definitions. Athletic trainer was added to the list of "health care provider" in Section 3 AS 09.65.300 in which immunity was given for providing free health care services. Section 4 AS 47.17.290 was amended to add athletic trainer to the list of "practitioner of the healing arts." Finally, in Section 5 Uncodified Law, the applicability of the bill, was added.

[10:10:22 AM](#)

Representative Holmes wanted to have a discussion on the record with the sponsor regarding concerns she heard from people that were not athletic trainers but coaches, fitness consultants, or personal trainers. They were concerned that the bill would somehow make their jobs illegal. She asked the representative to clarify that it was not the case and to address the concerns that were brought up.

[10:11:15 AM](#)

Representative Thompson referenced a memo in the committee packet dated April 9, 2014 from Sara Chambers of Business and Professional Licensing, the director of the Division of Corporations. The memo explained that there were professions not currently licensed in the title that performed functions that were defined as athletic training and were in the scope of the professional training duties (i.e. physical trainers and coaches). He asked if the committee wanted him to read the letter.

Co-Chair Stoltze verified with Representative Holmes that she wanted Representative Thompson to place the information on record. Representative Holmes responded affirmatively.

Co-Chair Stoltze also wanted to make sure a letter from Peak Fitness in Palmer expressing similar concerns was

included in the committee packet. He had received it the previous evening.

10:12:14 AM

Mr. Anderson stated that Sara Chambers was in the audience. He identified the items that most significantly defined the differences between coaches and fitness trainers and the responsibilities of athletic trainers in the answers provided in questions two and three. He informed the committee that a person had to be acting under the direction of a physician or had to be using the title of "Athletic Trainer." If either criteria was applicable a person fell under the classification of "Athletic Trainer," and would be required by law to be licensed.

10:13:22 AM

Representative Holmes expressed satisfaction with the answers. She stated that personal trainers and team coaches obviously tried to help prevent injury, to help encourage safety, and to refer people to healthcare providers when necessary. She wanted to clarify, that by doing the things she described, coaches and personal trainers would not be placed in a vulnerable position as a result of the legislation before the committee.

10:14:09 AM

SARA CHAMBERS, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT testified that the department's interpretation of the bill was that if one of the two criteria was met, licensure would be required. If a person worked under the scope of athletic training as defined, acted under the direction of a physician, or referred to themselves as an "athletic trainer," then they would be required to be licensed; referred to as title protection. Only people licensed would be able to use the title. A coach using the title "coach" or a personal trainer using the title "personal trainer" who did not work in a medical capacity under a physician who simply rendered first responder type of first aid, would not be required to have an athletic trainer license.

10:15:27 AM

Representative Wilson asked about an injury treated in Fairbanks.

Ms. Chambers replied that if a person that held a medical license acted within the scope of their license to treat a patient, then they would not be required to hold an additional license.

Representative Wilson gave the example of a basketball coach helping to administer care to a player under the direction of a physician. She asked whether or not a coach would be required to have a license.

Ms. Chambers replied that if the coach worked under the supervision of a medical doctor, they would be required to have an athletic trainer license. However, if the patient received care and the coach was not working under medical supervision, then seeking proper medical care was the responsibility of the patient rather than the coach.

Representative Holmes asked what it meant to be working under the supervision of a medical physician. Mr. Anderson replied that testifiers were available.

[10:19:49 AM](#)

Representative Gara pointed out that an "and" or an "or" needed to be included in the following section of the bill starting on page 1, line 10 through page 2 line 4:

(1) is a student in an accredited athletic trainer program who is practicing athletic training under the supervision of an athletic trainer or a person licensed to practice medicine or osteopathy under AS 08.64;12

(2) is licensed, certified, or registered as an athletic trainer in another state and is present in the state for not more than 90 days in a calendar year for a specific athletic event or series of athletic events with an individual or group not based in the state;

(3) is in the military service of the United States or as an employee of the federal government performing athletic training services within the scope of the individual's official duties.

Representative Gara wanted clarification whether all three or only one of the conditions needed to be met.

Mr. Anderson suggested that the word "or" needed to be inserted. However, he would get back to the committee with a definite answer.

[10:20:43 AM](#)

Co-Chair Austerman discussed the fiscal note. He surmised that the \$48 thousand was to establish the program. He wanted to know the cost for an ongoing program and the cost of the licensing fee.

Ms. Chambers replied that the department was working on clarifying costs. She suggested that based on 60 licensees and another \$26 thousand in costs to the state, licensing fees were estimated between \$110 and \$180. The higher end of licensing fees would be used to cover larger initial set-up costs. As the costs decreased and the expenses lowered the licensing fees would be adjusted downward. The figures were estimates. The actual activity of the program would dictate the fee. The estimate was based on the naturopath licensing program which had a similar amount of licensees.

[10:23:17 AM](#)

LYNNE YOUNG, SECRETARY/TREASURER, ALASKA ATHLETIC TRAINERS ASSOCIATION (AATA), spoke in favor of HB 160. She informed the committee that athletic trainers were highly qualified healthcare professionals who collaborated and worked under the direction of physicians. She described some of the care provided by athletic trainers including prevention, emergency care, clinical assessment, therapeutic intervention, and rehabilitation of injuries and medical conditions. She clarified that simply working under the direction of a physician and using the title of athletic trainer did not require a license. She furthered that to become an athletic trainer a person had to attend an accredited athletic training curriculum and pass a board of certification national exam. Athletic trainers had one nationally recognized board of certification called BOC, Inc. She asserted that the state did not need a separate board; BOC, Inc. governed practical standards, professional requirements, and continuing education for athletic

trainers. She conveyed that athletic trainers were required to maintain continuing education units; a minimum of 50 hours every two years, 10 hours of which had to be evidence based. In addition, trainers had to maintain currency in emergency cardiac care at the professional medical rescuer level or above.

Ms. Young reported that Alaska was one of two states that did not regulate athletic training. She stressed that AATA was proactive in ensuring that individuals taking care of the public were athletic trainers that met the minimum standards set forth by its board of certification. She pointed out that HB 160 did not prevent a person from working in the capacity that they were trained. She cited the example of a physician assistant working under the direction and supervision of a physician. She reported that they did not attend a four-year athletic training curriculum even though they provided similar services as delivered by athletic trainers. However, they did not call themselves athletic trainers. She referenced other examples. The Alaska State Activities Association required coaches to take a fundamental coaching class, a sports injury course, and a free 20-minute concussion course. She reiterated that HB 160 regulated individuals in the state that called themselves as athletic trainers. She closed by urging the committee to support HB 160.

Co-Chair Stoltze commented that he planned to hear HB 160 again on the same day at 6:00 PM.

[10:29:07 AM](#)

DR. JILL VALERIUS, PHYSICIAN, WASILLA (via teleconference), testified as an athletic trainer and physician. She stated her support for the legislation. She asserted that HB 160 protected the public by ensuring that those who called themselves athletic trainers were trained, certified and worked under a collaborative agreement with a physician. She relayed her concern for people getting the quality of care they deserved. She attested that certified athletic trainers worked diligently to become certified. She stated the importance of practicing within the scope of a person's training and how that applies to all of the many different types of providers. She reiterated her support of HB 160.

#sb64

CS FOR SENATE BILL NO. 64(FIN)

"An Act relating to theft and property offenses; relating to the definition of 'prior convictions' for certain theft offenses; establishing the Alaska Criminal Justice Commission and providing an expiration date; relating to the crime of custodial interference; relating to the duties of the Alaska Judicial Council; relating to jail-time credit for offenders in court-ordered treatment programs; relating to conditions of release, probation, and parole; relating to duties of the commissioner of corrections and board of parole; establishing a fund for reducing recidivism in the Department of Health and Social Services; requiring the commissioner of health and social services to establish programs for persons on conditions of release or probation that require testing for controlled substances and alcoholic beverages; requiring the board of parole to establish programs for persons on parole that require testing for controlled substances and alcoholic beverages; relating to the duties of the Department of Health and Social Services; and providing for an effective date."

CSSB 64(FIN) was SCHEDULED but not HEARD.

#sb173

CS FOR SENATE BILL NO. 173(JUD)

"An Act relating to a prohibition on the possession, offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs."

CSSB 173(JUD) was SCHEDULED but not HEARD.

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ADJOURNMENT

10:33:48 AM

The meeting was adjourned at 10:34 a.m.