

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 8, 2013

1:12 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Lindsey Holmes
Representative Doug Isaacson

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 56(JUD)

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

- HEARD & HELD

HOUSE BILL NO. 57

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 57(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

- MOVED CSHB 140(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

"An Act relating to the identification, location, and notification of specified family members and family friends of a child who is in state custody."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 56

SHORT TITLE: RECLASSIFYING CERTAIN DRUG OFFENSES

SPONSOR(s): SENATOR(s) DYSON

02/15/13 (S) READ THE FIRST TIME - REFERRALS
02/15/13 (S) JUD, FIN
03/04/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/13 (S) Heard & Held
03/04/13 (S) MINUTE(JUD)
03/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/05/13 (S) Moved CSSB 56(JUD) Out of Committee
03/05/13 (S) MINUTE(JUD)
03/11/13 (S) JUD CS RPT 3DP SAME TITLE
03/11/13 (S) DP: COGHILL, MCGUIRE, DYSON
03/18/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/18/13 (S) Heard & Held
03/18/13 (S) MINUTE(FIN)
03/27/13 (S) FIN RPT CS(JUD) 3DP 3NR 1AM
03/27/13 (S) DP: KELLY, MEYER, HOFFMAN
03/27/13 (S) NR: FAIRCLOUGH, BISHOP, DUNLEAVY
03/27/13 (S) AM: OLSON
03/27/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/27/13 (S) Moved CSSB 56(JUD) Out of Committee
03/27/13 (S) MINUTE(FIN)
04/04/13 (S) TRANSMITTED TO (H)
04/04/13 (S) VERSION: CSSB 56(JUD)
04/05/13 (H) READ THE FIRST TIME - REFERRALS
04/05/13 (H) JUD, FIN
04/06/13 (H) JUD AT 1:00 PM CAPITOL 120
04/06/13 (H) -- MEETING CANCELED --
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 57

SHORT TITLE: ENTITY TRANSACTIONS ACT

SPONSOR(s): REPRESENTATIVE(s) HOLMES, OLSON

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD
03/13/13 (H) JUD AT 1:00 PM CAPITOL 120
03/13/13 (H) Heard & Held
03/13/13 (H) MINUTE(JUD)
03/18/13 (H) JUD AT 1:00 PM CAPITOL 120
03/18/13 (H) Scheduled But Not Heard
04/06/13 (H) JUD AT 1:00 PM CAPITOL 120
04/06/13 (H) -- MEETING CANCELED --
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 140

SHORT TITLE: NOTICE FOR REGULATION ADOPTION
SPONSOR(s): REPRESENTATIVE(s) REINBOLD

02/22/13 (H) READ THE FIRST TIME - REFERRALS
02/22/13 (H) JUD
03/18/13 (H) JUD AT 1:00 PM CAPITOL 120
03/18/13 (H) Heard & Held
03/18/13 (H) MINUTE(JUD)
03/25/13 (H) JUD AT 1:00 PM CAPITOL 120
03/25/13 (H) Scheduled But Not Heard
03/27/13 (H) JUD AT 1:00 PM CAPITOL 120
03/27/13 (H) Scheduled But Not Heard
03/29/13 (H) JUD AT 1:00 PM CAPITOL 120
03/29/13 (H) <Bill Hearing Canceled>
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 54

SHORT TITLE: PLACEMENT OF A CHILD IN NEED OF AID
SPONSOR(s): REPRESENTATIVE(s) GARA, THOMPSON

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) HSS, JUD
01/24/13 (H) SPONSOR SUBSTITUTE INTRODUCED
01/24/13 (H) READ THE FIRST TIME - REFERRALS
01/24/13 (H) HSS, JUD
02/07/13 (H) HSS AT 3:00 PM CAPITOL 106
02/07/13 (H) Scheduled But Not Heard
02/26/13 (H) HSS AT 3:00 PM CAPITOL 106
02/26/13 (H) Heard & Held
02/26/13 (H) MINUTE(HSS)
04/02/13 (H) HSS AT 3:00 PM CAPITOL 106
04/02/13 (H) Moved CSSSHB 54(HSS) Out of Committee
04/02/13 (H) MINUTE(HSS)

04/04/13 (H) HSS RPT CS(HSS) NT 3DP 4NR
04/04/13 (H) DP: TARR, NAGEAK, SEATON
04/04/13 (H) NR: KELLER, PRUITT, REINBOLD, HIGGINS
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CHUCK KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Senator Dyson, sponsor, presented CSSB 56(JUD).

RICK ALLEN, Director
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: During hearing of CSSB 56(JUD), answered questions.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: During hearing of CSSB 56(JUD), answered questions.

PEGGY BROWN, Executive Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Juneau, Alaska
POSITION STATEMENT: Encouraged the committee to ensure CSSB 56(JUD) doesn't declassify certain drugs that are predator drug components.

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

POSITION STATEMENT: During hearing of CSSB 56(JUD), answered questions.

JAMES R. WALDO, Staff
Representative Lindsey Holmes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Representative Holmes, a joint prime sponsor of HB 57, explained the changes in proposed Version O.

GRANT CALLOW, Attorney
Law Offices of Wm. Grant Callow;
Member, Alaska Delegation of the Uniform Law Commission
National Conference of Commissioners on Uniform State Law
(NCCUSL)
Anchorage, Alaska

POSITION STATEMENT: Characterized HB 57 and amendments to be valuable to the state.

REPRESENTATIVE LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 140.

KRISTA VONBERGEN, Staff
Representative Lora Reinbold
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented proposed CSHB 140, Version C, on behalf of the sponsor, Representative Reinbold.

STEVE WEAVER, Assistant Attorney General
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 140, answered questions.

ARNOLD LEIBELT, Policy Analyst
Office of the Management & Budget (OMB)
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 140, answered questions.

TOBY SMITH, Staff
Representative Les Gara
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an overview of SSHB 54.

CHRISTY LAWTON, Director

Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Fairbanks, Alaska

POSITION STATEMENT: During hearing of SSHB 54, answered questions.

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As staff to a joint prime sponsor, provided information on SSHB 54.

AMANDA METIVIER
Facing Foster Care in Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHB 54.

ACTION NARRATIVE

[1:12:00 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Keller, LeDoux, Gruenberg, and Foster were present at the call to order. Representatives Lynn, Millett, and Pruitt arrived as the meeting was in progress. Representatives Holmes and Isaacson were also present.

The committee took a brief at-ease.

SB 56-RECLASSIFYING CERTAIN DRUG OFFENSES

[1:12:42 PM](#)

CHAIR KELLER announced that the first order of business would be CS FOR SENATE BILL NO. 56(JUD), "An Act relating to certain crimes involving controlled substances; and providing for an effective date."

CHAIR KELLER noted that SB 56 is the companion legislation to HB 178, which has already been heard in the House Judiciary Standing Committee. He related his desire to move SB 56.

[1:14:18 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, speaking on behalf of the sponsor of CSSB 56(JUD), informed the committee that the Department of Law (DOL) had expressed concern that the five-year look-back period for a person found in possession of a drug was too short for those with two strikes prior to a felony charge. Therefore, [the amendment labeled 28-LS0355\C.6, Strasbaugh, 4/5/13] would lengthen the period to seven years. He related that the return to seven years complies with the intent of the sponsor and provides more time for a defendant to seek treatment and rehabilitation. The amendment labeled 28-LS0355\C.6, Strasbaugh, 4/5/13, read:

Page 2, line 2:

Delete "five"

Insert "seven"

MR. KOPP then explained that the amendment [labeled 28-LS0355\C.7, Strasbaugh, 4/5/13] would require screening, evaluation, and treatment - if necessary - for a defendant convicted of misconduct involving a controlled substance in the fifth degree. The sponsor believes the aforementioned would comport with the intention of CSSB 56(JUD), which is to refer those with a drug addiction to treatment. The proposed amendment, he opined, clearly provides direction to the court that anyone picked up for drug possession, as CSSB 56(JUD) addresses, will be referred to treatment. Furthermore, if it's determined after the initial screening that the treatment is necessary, then treatment will follow. The amendment labeled 28-LS0355\C.7, Strasbaugh, 4/5/13, read:

Page 5, following line 15:

Insert a new bill section to read:

"* **Sec. 3.** AS 12.55.135 is amended by adding a new subsection to read:

(1) A defendant convicted of misconduct involving a controlled substance in the fifth degree shall be ordered to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action or drug abuse evaluation program, if an alcohol safety action or drug abuse evaluation program is available in the community where the person resides, or of a private or public treatment facility approved by the Department of Health and Social Services under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment."

Renumber the following bill sections accordingly.

1:19:09 PM

REPRESENTATIVE MILLETT inquired as to whether these changes would lower the tolerance for date rape drugs. She stated that she didn't want to create a situation that would make it easier to rape women and not be prosecuted when the drugs are in their possession.

MR. KOPP clarified that CSSB 56(JUD) does not address the date rape drug, Rohypnol, which is a schedule IV drug. He pointed out that there are hundreds of drugs that can be used for nefarious reasons and the number one date rape drug in the world is alcohol. However, he related that during his 23 years of law enforcement experience, he saw only alcohol and Rohypnol once being used to commit [rape].

REPRESENTATIVE MILLETT, drawing from experiences her children related to her regarding Rohypnol use to commit nefarious acts, maintained concern that the legislation would lower the standards. With regard to alcohol being the number one date rape drug, she highlighted that it's someone's choice to drink.

MR. KOPP assured the committee that [even with CSSB 56(JUD)] when one is charged with sexual assault in the first degree, whether or not the defendant caught with the first possession of this drug would be a misdemeanor or not has nothing to do with the unclassified felony with which the defendant will be charged. Furthermore, most of the drugs listed in this legislation have legitimate uses, although they can be misused. He noted that the public defender and the director of the Office of Public Advocacy (OPA) could speak more on this issue as they have dealt with thousands charged with these types of acts.

1:23:43 PM

REPRESENTATIVE MILLETT then inquired as to whether possession [of the controlled substances listed in CSSB 56(JUD)] by [a defendant] in a rape case would be considered a mitigating factor if convicted.

MR. KOPP deferred to the public defender and the director of OPA.

1:24:21 PM

REPRESENTATIVE LEDOUX said that her concern isn't regarding the defendant in a rape case rather her concern is regarding a situation in which someone has the [date rape] drug in their possession because they are thinking of using it.

MR. KOPP emphasized that there are a number of chemicals that can be misused for the purpose [of rape], which is why the focus is only on criminal acts and behaviors.

[1:25:24 PM](#)

RICK ALLEN, Director, Office of Public Advocacy (OPA), Department of Administration (DOA), began by informing the committee that he can speak from experience as a prosecutor in Palmer for almost eight years, during which time he prosecuted hundreds of felony cases, after which he became a public advocate. With regard to Rohypnol, he told the committee that although it's illegal in the United States it's still prescribed in locations in Latin America, such as Mexico, and Europe. Although it sometimes is found in the U.S., he couldn't recall a single Rohypnol case that was ever prosecuted in the Matanuska-Susitna Valley. Furthermore, he couldn't even remember hearing of any such cases in Alaska. The drug Rohypnol is similar to valium in that it's an anti-anxiety drug. Rohypnol is a schedule IV drug. He reiterated earlier testimony that SB 56 and HB 178 don't address schedule IV drugs.

[1:27:02 PM](#)

REPRESENTATIVE PRUITT expressed concern with anyone having any amount of the types of drugs typically used [in nefarious situations such as rape]. Therefore, he indicated hesitation moving forward [with the legislation]. He said he's not yet comfortable with the legislation's proposed changes. Although he wasn't comfortable with allowing individuals to possess small amounts of controlled substances as addictive as methamphetamines and other drugs in the categories in the legislation, he wasn't "a fan" of such an individual being a felon for 10 years. Representative Pruitt inquired as to whether the [legislation] is headed in the appropriate direction or is it part of a larger discussion that should be held regarding overall sentencing and existing mechanisms.

[1:30:13 PM](#)

MR. KOPP reiterated that this legislation has nothing to do with date rape drugs. "That is a red herring," he stressed. He

further stressed that nothing in the legislation makes a drug legal. Furthermore, the legislation doesn't decriminalize anything. The legislation recognizes that current law doesn't provide an individual caught for simple drug possession an opportunity to participate in reform - as is provided for those convicted with driving under the influence (DUI), misdemeanor assault, and misdemeanor theft - rather than house them for \$54,000 per year and have the felony label keep the offender on public assistance for 10 years after release. He highlighted that domestic violence, alcoholism, and recidivism rates decrease for those who can obtain a job. Therefore, family units have a much better chance of staying together. Mr. Kopp then directed attention to a Pew Center report that relates the vast majority of the nation, including conservatives, [agree] with the approach proposed by the legislation. The Pew Center has authored several prominent studies that have confirmed that the states experiencing progress that is actual reductions in recidivism are states that are going in the direction [proposed by SB 56].

[1:35:09 PM](#)

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration, regarding date rape drugs, related that in the last 15 years he didn't recall any prosecutions for drugs used in date rape situations. He offered his understanding that the core of CSSB 56(JUD) addresses simple possession of recreational drugs and drug use and places the penalty at a misdemeanor, which is a significant penalty. For a misdemeanor one faces up to a year in jail and up to a \$10,000 fine. [The changes embodied in CSSB 56(JUD)] are important because they allow for the Alcohol Safety Awareness Program (ASAP) screening, which allows a neutral individual to evaluate whether an individual has an addiction or has made an error in judgment in terms of determining what is necessary to divert them. Therefore, the proposed change in statute allows individuals to take personal responsibility for their decisions and actions, which could've been a youthful indiscretion. The change, he opined, will have a profound impact on juvenile, younger offenders. A felony for life has a tremendous impact on one's ability to attend college and obtain work in many different fields, whereas a misdemeanor will allow the offender to take responsibility and divert their path. For instance, the vast majority of individuals who receive a DUI never receive a second DUI, and an even smaller amount receive a third DUI. Those receiving a third DUI tend to repeat, which is the point at which the felony conviction, increased supervision, and penalties is directed. With

recreational drugs, one can assume that a third-time offender is dealing with a significant problem requiring more supervision.

[1:38:29 PM](#)

REPRESENTATIVE PRUITT asked whether the [public defender's office] has the ability to select with what an individual is going to be charged.

MR. STEINER explained that the prosecution is the entity that determines what charge with which to proceed. If an individual is in possession of a controlled substance set at a felony level, the prosecution proceeds on a felony. With regard to entering into a plea bargain and reducing the charge, it's up to the state to reduce a charge in exchange for a plea with jail time and other conditions and the client would have to agree to it. With plea bargaining in these simple possession cases, one of the problems is disparity in jurisdictions and prosecutors. This legislation would level the playing field since individuals with one or two simple possessions would have the opportunity to take responsibility and correct their behavior prior to being supervised under felony probation.

[1:41:57 PM](#)

REPRESENTATIVE LYNN mentioned that he has reservations about CSSB 56(JUD), although the goals of it are good. He asked whether the legislation achieves the goal of decreasing prison populations. He then questioned whether it would be appropriate to include a 10-year sunset to ensure that the legislation accomplishes the goals.

MR. KOPP reiterated that other states have implemented [similar changes]. In fact, the conservative State of Wyoming, after which Alaska's law is modeled, has a lower violent crime and property crime rate than Alaska. Furthermore, Alaska's as well as the nation's current approach [for simple possession of controlled substances] illustrates that incarceration is not the way out of the drug problem. He recalled that Alaska's attorney general, speaking before the Senate Finance Committee, said the state's laws aren't working that is the current policy and approach isn't resolving the issues.

[1:44:35 PM](#)

PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), expressed concern that

CSSB 56(JUD) would indeed lower the standard for [date rape drugs]. She related that the National Drug Intelligence Center (NDIC) reports that in the U.S. gamma-hydroxybutanoic acid (GHB) has now surpassed Rohypnol as the substance most commonly used in drug facilitated sexual assault. The NDIC report attributes the aforementioned to the likelihood that GHB is much more easily available, cheaper, and leaves the body more quickly. Ms. Brown highlighted that Alaska is a state that has two and a half times the national average in child sexual assault. These are drugs, more appropriately referred to as "predator" drugs, which can be used in various degrees to incapacitate and paralyze people. She then requested that the committee closely review CSSB 56(JUD) in order to ensure that it isn't declassifying certain drugs that are predator drug components and maintain that while reducing the costs of prison and incarcerations. Noting that her brother is a former warden for a prison in Louisiana, she said she understands the concern [of the cost of prison and incarceration]. Ms. Brown acknowledged that she didn't have any answers for the committee, but offered that a larger discussion, particularly regarding date rape/predator drugs, [may be necessary].

[1:48:39 PM](#)

CHAIR KELLER, upon determining no one else wished to testify, closed public testimony on CSSB 56(JUD). He then requested that the committee address the two amendments provided to it.

[1:49:46 PM](#)

REPRESENTATIVE PRUITT asked whether the proposal in this legislation removes a tool from prosecutors.

[1:50:16 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to questions, echoed earlier testimony that in Anchorage first offense possession of schedule I or IIA drugs are routinely reduced to misdemeanors. Therefore, that's definitely a tool. She then informed the committee that GHB is a schedule IA controlled substance.

[1:51:04 PM](#)

REPRESENTATIVE LEDOUX asked whether any of the drugs referred to in CSSB 56(JUD) would be referred to as date rape/predator drugs.

MS. CARPENETI offered her understanding from Ms. Brown and a sexual assault nurse that GHB, gamma-valerolactone 4-pentanolide (GVL), and 1,4 butanediol (BD) are all being used as date rape drugs. However, the nurse wasn't familiar with gamma hydroxyvalerate (GHV). She opined that the difficulty with these date rape drugs is that they leave the body very quickly, which she attributed to the lack of cases being brought forth. This legislation would reduce possession of date rape/predator drugs from a felony to a misdemeanor.

[1:52:52 PM](#)

REPRESENTATIVE PRUITT inquired as to the result of removing schedule IA, which includes the date rape drug, from the legislation. He then requested an estimation of how many cases involve [controlled substances] in schedule IA and schedule IIA. He questioned whether it's appropriate to include some of the worst controlled substances in schedule IA or [controlled substances] in a lesser category.

MS. CARPENETI answered that these are policy decisions for the committee to make. Although the sponsor of the legislation has great intentions, there may be unintended consequences of a blanket change that makes possession of schedule IA controlled substances for the first and second offense a class A misdemeanor. One of the concerns is with the date rape drug, which she didn't view as a red herring. In fact, she stated that the concern with the date rape drug should be considered.

REPRESENTATIVE PRUITT inquired as to how many cases there have been [in which a first offense of a class A] felony was [not prosecuted as a felony].

MS. CARPENETI responded that she didn't know and would have to determine whether such information is available. She then related that the information available in this realm is fairly archaic.

REPRESENTATIVE LEDOUX questioned whether the legislation could be changed such that it could refer to schedule I controlled substances except any predator controlled substances without specifically naming them.

MS. CARPENETI stated that an exception could be included for this category of controlled substances that are generally considered to be date rape drugs.

[1:56:33 PM](#)

CHAIR KELLER surmised that there is no legal definition of a date rape drug.

MS. CARPENETI related her belief that's correct, but pointed out that what are considered to be date rape drugs are specified in AS 11.71.140(e)(1)-(2)(A)-(D).

[1:57:19 PM](#)

The committee took a brief at-ease.

[1:58:22 PM](#)

REPRESENTATIVE MILLETT related her support for the concept of CSSB 56(JUD), but maintained concern that the proposed change includes date rape drugs.

MR. KOPP offered that the legislation could be amended to not apply to date rape drugs. However, he pointed out that Rohypnol, the date rape drug, is already a misdemeanor in Alaska statute. This legislation would maintain Rohypnol as a misdemeanor for initial possession, but the third offense would become a felony. He noted that it was news to him that use of GHB has surpassed Rohypnol as a date rape drug. He also highlighted the testimony of Alaska's public defender and director of OPA, who between the two of them have many decades of prosecution and defense experience and who have not dealt with a date rape drug case. Therefore, he said it's not an issue.

REPRESENTATIVE MILLETT highlighted that since the date rape drugs are fast acting that might be why there aren't prosecutions involving those drugs. Though she supported the legislation, she maintained concern with the impact in relation to the date rape drugs. She thanked Mr. Kopp for his willingness to amend CSSB 56(JUD) in regard to date rape drugs.

MR. KOPP characterized such an amendment as a friendly amendment.

[2:02:44 PM](#)

REPRESENTATIVE GRUENBERG asked whether the word, "shall" on line 5 of the amendment labeled 28-LS0355\C.7, Strasbaugh, 4/5/13, should instead be changed to "may" and leave it to the discretion of the court. Drawing from a situation in another state in which the [requirement to participate in an alcohol safety action or drug abuse evaluation program] was abused; he asked whether there has been any abuse of it in Alaska.

MR. ALLEN related that much of the latest literature and best practices trend toward ordering rehabilitative treatment for simple possession regardless of whether it's appropriate in a given case. He confirmed that sending individuals who aren't addicts to rehabilitative facilities in which they are surrounded by addicts can do more damage than good. However, the way this legislation is drafted and the way it works with the DUI context is that there is an initial screening process. He said he is very comfortable with the way the aforementioned process works in Alaska. For example, in the DUI context an individual with a blood alcohol content (BAC) of 0.085 who has never been in trouble before and the facts of the case are clear that the individual had a couple too many glasses of wine with dinner and shouldn't have driven, the individual will [be required] to sit through a video and a course on alcohol safety. In his view, a similar scenario will be followed in the drug context. While he shared Representative Gruenberg's concern on a national level, he opined that the ASAP does a fairly good job of those evaluations.

[2:07:07 PM](#)

MR. STEINER noted his concurrence with much of Mr. Allen's response. However, he highlighted that independence is one of the keys to the success of the screening approach. Therefore, the screeners need to be professionals who aren't associated with particular programs in order to make an independent recommendation. In Anchorage, there is a good reputation for the independent screening process such that the recommendations are consistent with the facts of the case and the individuals. He remarked that compulsory language is helpful if there isn't independence or to ensure against the possibility of abuse.

MS. CARPENETI clarified that the mandatory language, the "shall", only pertains to evaluations not treatment. Without the evaluation of those convicted of possession of serious drugs covered by CSSB 56(JUD), it potentially leaves these individuals

without supervision. Therefore, the mandatory evaluation is appropriate, she posited.

CHAIR KELLER announced that CSSB 56(JUD) would be set aside in order to allow the sponsor time to address members' concerns.

HB 57-ENTITY TRANSACTIONS ACT

[2:11:14 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 57, "An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date." [Before the committee is proposed committee substitute (CS) labeled 28-LS0255\O, Kirsch/Bannister, 3/12/13, adopted 3/13/13.]

[2:11:54 PM](#)

JAMES R. WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, reminded the committee that HB 57 implements the Model Entity Transaction Act (META) in Alaska statute, which means that it provides an avenue for the various corporate entities within the state to interact with other entities of a different variety. This ability for various entities to communicate on a level and uniform playing field will be advantageous for businesses in the state and will facilitate commerce. He then directed attention to an amendment labeled 28-LS0255\O.1, Bannister, 4/5/13, which would remove from Section 30 of CSHB 57, Version O, the repeal of AS 06.260.670 and thus AS 06.26.670 would remain in existing law. This statute, AS 06.26.670, deals with trust companies. The impetus for the amendment, he related, was from Dan Branch, Senior Assistant Attorney General, Commercial and Fair Business Practices Section, Civil Division (Juneau), DOL. Mr. Branch found that if CSSB 56(JUD) was to repeal AS 06.26.670, it would limit dissenters' rights within trust companies that engaged in a conversion. Dissenters' rights are the right of folks with an interest in a company/entity to have an easy way out if they are unhappy with a conversion, merger, or form of transaction with which the company/entity is engaged. Effectively, dissenters' rights means that folks can be quickly bought out of the company/entity if it engages in a transaction from which they

want to dissent. He related that leaving AS 06.26.670 in law will preserve dissenters' rights for trust companies and won't impair any other mechanism in the legislation.

[2:15:45 PM](#)

REPRESENTATIVE GRUENBERG characterized the aforementioned as a good amendment that he would offer at the appropriate time. He then asked whether the legislation includes any other statute similar to AS 06.26.670.

MR. WALDO directed attention to the proposed new section, the Alaska Entity Transactions Act, AS 10.55, which would apply to almost every form of entity in the state. However, page 5, line 26 through page 6, line 7, specifies a number entities that are excluded from participating in the act. That list of entities includes financial institutions as defined in Title 6, which includes trust companies. Therefore, trust companies are exempt from participating in the new act. Any entities not exempt from participating in the new act are afforded dissenters' rights, according to AS 10.55. With regard to the entities that can't participate in the act, he related his understanding that the only statute repealed in Section 30 that applies to an excluded entity is AS 06.26.670; the others are in AS 10.06.1050 or Title 32, which would be partnerships, limited partnerships, corporations, and limited liability companies (LLC). All of the aforementioned will be able to participate under the new act, and thus won't be excluded and will have dissenters' rights according to the new act. In further response to Representative Gruenberg, Mr. Waldo confirmed that the sponsor is very satisfied with the legislation and believes the amendment will improve it significantly.

CHAIR KELLER, after determining no one else wished to testify, closed public testimony.

[2:19:48 PM](#)

GRANT CALLOW, Attorney, Law Offices of Wm. Grant Callow; Member, Alaska Delegation of the Uniform Law Commission, National Conference of Commissioners on Uniform State Law (NCCUSL), in response to Representative Gruenberg, characterized the legislation as good and to his understanding the amendments make sense. Therefore, he opined that the legislation and the amendments will be of value to Alaska.

[2:21:03 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 28-LS0255\0.1, Bannister, 4/5/13, which read:

Page 1, line 7, through page 2, line 1:
Delete all material.

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

Renumber the following bill sections accordingly.

Page 49, line 16:
Delete "AS 06.26.670;"

Page 49, line 20:
Delete "sec. 11"
Insert "sec. 10"

Page 49, line 24:
Delete "sec. 11"
Insert "sec. 10"

Page 49, line 27:
Delete "sec. 11"
Insert "sec. 10"

Page 49, line 31:
Delete "sec. 11"
Insert "sec. 10"

Page 50, line 13:
Delete "Section 32"
Insert "Section 31"

Page 50, line 14:
Delete "sec. 34"
Insert "sec. 33"

There being no objection, Amendment 1 was adopted.

[2:21:54 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 57, Version 28-LS0255\0.1, Bannister, 4/5/13, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, CSHB 57(JUD) was reported from the House Judiciary Standing Committee.

[2:22:33 PM](#)

The committee took an at-ease from 2:22 p.m. to 2:24 p.m.

HB 140-NOTICE FOR REGULATION ADOPTION

[2:24:14 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 140, "An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

[2:24:33 PM](#)

REPRESENTATIVE LYNN moved to adopt proposed committee substitute (CS) for HB 140, Version 28-LS0478\C, Bannister, 3/26/13, as the work draft.

CHAIR KELLER objected for discussion purposes.

[2:25:18 PM](#)

REPRESENTATIVE LORA REINBOLD, Alaska State Legislature, speaking as the sponsor of HB 140, began by noting that the legislation had been changed in response to members' concerns. She then reminded the committee that the current law specifies that the agency promulgating a regulation has to specify the impacts of that regulation on the agency. However, the agency promulgating the regulation doesn't have to access the impacts to other state agencies, municipalities, or the private sector. Representative Reinbold then turned over the presentation of Version C to staff.

[2:27:23 PM](#)

KRISTA VONBERGEN, Staff, Representative Lora Reinbold, Alaska State Legislature, reviewing Version C, explained that Section 1 is unchanged as is the language on page 1, line 6 through page 2, line 1. However, language in Section 2 has been changed to include a new notice requirement with which agencies will have to comply when announcing regulations. The requirement will require agencies, in a sentence or two, to identify which regulations in a package are required/mandated by federal law.

She ventured that compliance with the aforementioned requirement should be easy for the agencies to meet since they already have to know whether a federal regulation/law requires them to take action before they even begin drafting the regulation. At the beginning of the regulatory process, agencies know whether and which regulations in their packages are required or mandated in federal law. Section 2 merely requests they share that already compiled information with Alaskans. Section 2 also adds language requiring state agencies to include notice to the public of the good faith estimate of the costs imposed by the new regulations on private individuals, businesses, state agencies, and municipalities. Ms. Vonbergen highlighted that the aforementioned is an important part of the legislation because existing law only requires state agencies promulgating regulations to review the impacts and costs to that agency. She clarified that this review isn't intended to be a detailed McDowell Group level analysis of the estimated costs of regulations. Instead, the language simply requires a good faith effort by the agency to estimate the costs in the aggregate. Version 0, she pointed out, includes a new section, Section 3, which clarifies that there is no right to sue based on the agency's duties to prepare an estimate. Therefore, Section 3 clarifies that it's an informational effort for the benefit of Alaskans and not for the litigation battlefield. Section 4 was Section 3 in the original legislation and makes it clear that the notice for requirements in the legislation only apply to regulations announced after the effective date of the legislation.

[2:31:48 PM](#)

REPRESENTATIVE GRUENBERG asked whether the current effective date is adequate for purposes of the state complying with the requirements in HB 140.

[2:32:50 PM](#)

STEVE WEAVER, Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law, said he isn't in a position to speak to particular state agencies regarding whether they would be able to get up to speed on this proposal or not. Although a delayed effective date certainly might be helpful, it would be partially dependent upon the information each state agency has on hand.

[2:34:10 PM](#)

ARNOLD LEIBELT, Policy Analyst, Office of the Management & Budget (OMB), Office of the Governor, regarding whether the effective date of the legislation should be delayed, answered that it depends upon the type of legislation [from which regulations would be promulgated], which is why the OMB fiscal note is indeterminate. He opined that the legislation adds another level of complexity that is responsibilities for agencies, particularly those departments that tend to have more regulations than others. For example, the Board of Game and the Board of Fisheries receive up to 400 proposals per year, so the proposal in this legislation would be more difficult to implement than others. Therefore, it's difficult to speculate.

[2:35:32 PM](#)

CHAIR KELLER questioned whether that means OMB isn't concerned with the potential costs.

MR. LIEBELT replied no, OMB is concerned with the costs. In fact, the notice requirements for the regulations specify that agencies and departments must pay particular attention to the costs of regulations. Currently, state agencies are responsible for identifying the cost impact of the regulations to the impacted state agency alone. Through the public hearing process the cost is revealed from municipalities, industry, and individuals. That cost information provided during the public hearing process is taken into consideration when the regulations are drafted.

[2:36:45 PM](#)

REPRESENTATIVE GRUENBERG pointed out the language in Section 2(d)(1) only refers to the federal court as one that might impose a regulatory requirement. He questioned whether a state court should also be included in the ambit of the legislation. The state would know if it was something imposed by the legislature. However, the state might not know for a period of time whether a state court might have imposed that. He reminded the committee that the annual book members receive includes briefs for which legislative action may be required by a court decision. He opined that [HB 140] is doing the same thing to administrative agencies, and thus it may be a number of months until the annual report is available before the legislature knows what the Superior Court in Anchorage had done. Representative Gruenberg suggested that adding state courts to the legislation may be something to consider.

REPRESENTATIVE REINBOLD said she would accept such an amendment.

[2:39:23 PM](#)

REPRESENTATIVE GRUENBERG noted that typically a short title isn't given to legislation that simply amends other legislation. Therefore, he inquired as to whether the sponsor is wedded to having the proposed short title for HB 140.

REPRESENTATIVE REINBOLD replied yes as she believes the proposed short title is important to have.

[2:40:03 PM](#)

REPRESENTATIVE REINBOLD then offered her understanding that federal agencies [already have to do what HB 140 proposes]. For example, the federal agencies have to determine whether proposed regulations impose an information collection burden. Therefore, the proposal in HB 140 merely shadows what is already in place at the federal level. She then highlighted letters of support for HB 140, including letters from the Wasilla Area Seniors, Inc., the National Federation of Independent Business - Alaska, and the Alaska State Chamber of Commerce. Representative Reinbold emphasized her desire to avoid the "little guy" getting overwhelmed by the process due to oversight or unintended consequences. The legislation, she pointed out, includes a no harm clause as well as an aggregate [of the impacts]. She also highlighted that the Alaska Municipal League (AML) is very supportive of HB 140.

[2:41:52 PM](#)

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

Page 1, line 12, following "federal"
Insert "or state"

REPRESENTATIVE LEDOUX objected for purposes of discussion.

REPRESENTATIVE GRUENBERG explained that the legislation should also apply to state courts.

REPRESENTATIVE LEDOUX removed her objection. There being no further objection, Conceptual Amendment 1 was adopted.

[2:43:30 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 140, Version 28-LS0478\C, Bannister, 3/26/13, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 140(JUD) was reported from the House Judiciary Standing Committee.

HB 54-PLACEMENT OF A CHILD IN NEED OF AID

[2:43:56 PM](#)

CHAIR KELLER announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54, "An Act relating to the identification, location, and notification of specified family members and family friends of a child who is in state custody." [Before the committee was CSSSHB 54(HSS).]

[2:44:19 PM](#)

TOBY SMITH, Staff, Representative Les Gara, Alaska State Legislature, speaking on behalf of Representative Gara, a joint prime sponsor, paraphrased from the following sectional analysis provided in committee members' packets:

Section 1.

This section adds a new section to AS 47.10, requiring that a supervisor in the Office of Children's Services (OCS) certify in writing that a search for noncustodial parents, adult family members, and appropriate adult family friends of the child has been conducted. OCS must notify these adults of the child's removal within 30 days, unless there are extenuating circumstances. This section codifies existing OCS policy related to extended family searches, and adds the requirement of supervisor certification.

Section 2.

This section adds a reference to the new section of statute established in Section 1. It requires that due diligence be conducted to locate extended family members before the child is placed in a foster home.

Section 3.

This section allows the department to provide for emergency placement of a child while conducting due diligence.

MR. SMITH summarized that the legislation has no fiscal impact and would ensure that front-line caseworkers perform all that is required and can be done for the best interest of foster youth. He clarified that the legislation doesn't change any standards but rather ensures that proper policies are being performed by requiring that a supervisor sign-off when a caseworker has performed a due diligence search in placement of foster youth.

[2:46:35 PM](#)

REPRESENTATIVE GRUENBERG inquired as to the difference between SSHB 54 and CSSSHB 54(HSS).

The committee took an at-ease from 2:50 p.m. to 2:51 p.m.

[2:51:32 PM](#)

MR. SMITH reviewed the changes from SSHB 54 to CSSSHB 54(HSS), as follows:

Page 1, line 2:
Deletes "and family friends"

This change was made at the request of the Office of Children's Services (OCS). The inclusion of family friends in AS 47.10.035 created a new requirement that family friends be notified when a child is removed from their home. Determining which family friends were required to be notified of the removal of the child would be difficult to determine, and would create an onerous requirement for OCS to comply with. Family friends will still be considered as potential foster parents.

Page 1, lines 6:
Deletes "or adult family friend" for the reasons stated above.

Page 1, line 10:
Deletes "and appropriate adult family friends" for the reasons state above.

Page 1, line 14:

Changes "certify" to "verify".

This change was made at the request of OCS. OCS feels that a verification of a family member search can be done using current documentation methods, while a certification may have required additional documentation.

Page 2, lines 1-3:

Deletes "The information provided under this subsection shall be submitted to the court for consideration before the next scheduled hearing after the due diligence period specified in (a) of this section."

This change was made at the request of OCS. Submitting this information to the court was a redundant requirement, as all the information is made available to all parties as part of the discovery process.

Page 2, following line 19:

Inserts a new section to read: "Sec. 3. AS 47.14.100 is amended by adding a new subsection to read: (u) The department may provide for emergency placement of a child while conducting due diligence under AS 47.10.035 and (e) of this section."

This change was made at the request of OCS and the Department of Law. There was some concern that Sec. 2 (e) of the bill could prohibit OCS from making an emergency placement for a child the day they are removed from their home. This change clarifies that a child may be placed in an emergency or temporary foster home until a family search has been conducted and a permanent placement has been approved.

[2:54:30 PM](#)

REPRESENTATIVE GRUENBERG asked why the term "certify" was changed to "verify". He also asked whether "verify" is being used in the technical sense of AS 09.63, which is a verification that has to be underwrote. The use of "verify" per AS 09.63 seems unnecessarily formalistic, he opined.

[2:55:35 PM](#)

CHRISTY LAWTON, Director, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), clarified that

there was no intent for the term "verify" to be defined [as under AS 09.63]. The change was simply a less formal description of a supervisor consulting with his/her staff and using that consultation to affirm compliance with policy.

CHAIR KELLER announced that SSHB 54 would be held over so that the drafter could answer this question.

REPRESENTATIVE GRUENBERG suggested that another term besides "verify" be utilized otherwise there will be legal questions.

[2:57:21 PM](#)

CHAIR KELLER requested confirmation that the term "noncustodial" on page 1, line 9, doesn't include those parents whose parental rights have been terminated.

MS. LAWTON confirmed that would be the case.

CHAIR KELLER inquired as to whether CSSSHB 54(HSS) restricts OCS's discretion in any way in terms of [notifying a noncustodial parent of information about the foster child].

MS. LAWTON replied no.

[2:58:31 PM](#)

REPRESENTATIVE LEDOUX inquired as to how OCS finds these adult family friends.

REPRESENTATIVE GRUENBERG pointed out that CSSSHB 54(HSS) doesn't include the reference to "adult family friends". However, CSSSHB 54(HSS) does use the term "adult family members" although it isn't defined.

[2:59:20 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, noted that this question arose in the House Health and Social Services Standing Committee and it was discovered that these are close family friends that aren't blood relations. Ms. Pierson surmised that these are situations in which the family friends would likely come forward and express interest.

REPRESENTATIVE LEDOUX surmised, in terms of the due diligence aspect, that OCS doesn't have an obligation to search for the adult family friends of the child. If the family friends come

forward, then they have standing in regard to placement of the child, she surmised.

MS. PIERSON related that's her understanding as well.

MS. LAWTON clarified that this proposed language wouldn't require OCS to provide formal notification to adult family friends, but OCS's policy for a due diligence search means that the agency identifies as it is able family friends for potential placement. This identification, she noted, is largely based upon information from the family and the children. The proposed new language in [CSSSHB 54(HSS)] doesn't require that OCS provide official/formal notification, in terms of a specific timeframe.

[3:02:40 PM](#)

REPRESENTATIVE GRUENBERG asked if this is the latest version of what was originally referred to as the blood relative statute.

MS. LAWTON said she is unfamiliar with that prior proposed legislation, and thus is unable to answer that question.

[3:03:31 PM](#)

AMANDA METIVIER, Facing Foster Care in Alaska, related support for SSHB 54, which creates accountability on behalf of OCS staff to ensure compliance to perform relative searches early. The state spends millions to house children in foster care with strangers who are licensed caregivers. She opined that the best thing is to search for family members first, place them with family, and keep children out of the system and into timely permanence with their families. In response to Representative Gruenberg's question, Ms. Metivier said she didn't believe this legislation is a result of the blood relative law, but she wasn't sure.

REPRESENTATIVE GRUENBERG informed the committee that the blood relative statute was enacted in the 1970s as a result of requests from Bush legislators. At one time, children were taken from village homes rather than keeping them in the village while the litigation occurred.

CHAIR KELLER closed public testimony on SSHB 54.

[3:06:08 PM](#)

REPRESENTATIVE GRUENBERG, recalling a situation with which he was involved, questioned whether SSHB 54 should include language that prevents the noncustodial parent whose rights aren't terminated from having custody/contact in certain dangerous situations.

[3:08:53 PM](#)

MS. LAWTON clarified that SSHB 54 addresses initial contact/notification within the first 30 days that the child or relative [of a noncustodial parents] has come into care and that they have a potential legal right to ask for placement. Regardless of the circumstances, in terms of past bad acts, OCS would still be required to notify the noncustodial parent if their rights had not been terminated before. However, OCS isn't required to make placements, which is something that if in dispute would be addressed in the court. The OCS is required to provide notification and [the noncustodial parent] is allowed to have rights in terms of hearing and potential representation from the public defender's office. Ms. Lawton specified that OCS has discretion with regard to appropriateness of placement.

[3:10:15 PM](#)

REPRESENTATIVE LEDOUX emphasized her belief that [a noncustodial parent] who has committed horrendous bad acts should have his/her [parental] rights terminated. If [the noncustodial parent's] rights aren't terminated, then it's simply an allegation of bad acts.

REPRESENTATIVE GRUENBERG maintained that the legislation should include language allowing OCS to seek permission from the court in an extraordinary circumstance not to notify the rapist.

[CSSSHB 54(HSS) was held over.]

[3:11:47 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:11 p.m.