

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 17, 2014

1:20 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 18

Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

- MOVED HJR 18 OUT OF COMMITTEE

HOUSE BILL NO. 366

"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

- MOVED CSHB 366(STA) OUT OF COMMITTEE

HOUSE BILL NO. 369

"An Act relating to limited immunity from criminal prosecution for a person who seeks medical assistance for a person experiencing a drug overdose."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 18

SHORT TITLE: CONST. AM: ELECTED ATTORNEY GENERAL

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) STA, JUD, FIN
02/04/14 (H) STA AT 8:00 AM CAPITOL 106
02/04/14 (H) Heard & Held
02/04/14 (H) MINUTE(STA)
02/11/14 (H) STA AT 8:00 AM CAPITOL 106
02/11/14 (H) Moved Out of Committee
02/11/14 (H) MINUTE(STA)
02/12/14 (H) STA RPT 2DP 2NR 2AM
02/12/14 (H) DP: GATTIS, KELLER
02/12/14 (H) NR: KREISS-TOMKINS, LYNN
02/12/14 (H) AM: ISAACSON, HUGHES
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120
02/19/14 (H) Heard & Held
02/19/14 (H) MINUTE(JUD)
02/28/14 (H) JUD AT 1:00 PM CAPITOL 120
02/28/14 (H) Heard & Held
02/28/14 (H) MINUTE(JUD)
03/03/14 (H) JUD AT 1:00 PM CAPITOL 120
03/03/14 (H) Heard & Held
03/03/14 (H) MINUTE(JUD)
03/12/14 (H) JUD AT 1:00 PM CAPITOL 120
03/12/14 (H) -- MEETING CANCELED --
03/14/14 (H) JUD AT 1:00 PM CAPITOL 120
03/14/14 (H) Heard & Held
03/14/14 (H) MINUTE(JUD)
03/17/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 366

SHORT TITLE: INVOLUNTARY COMMITMENT

SPONSOR(S): REPRESENTATIVE(S) PRUITT

02/26/14 (H) READ THE FIRST TIME - REFERRALS

02/26/14 (H) STA, JUD
 03/11/14 (H) STA AT 8:00 AM CAPITOL 106
 03/11/14 (H) Moved CSHB 366(STA) Out of Committee
 03/11/14 (H) MINUTE(STA)
 03/12/14 (H) STA RPT CS(STA) NT 2DP 3NR 1AM
 03/12/14 (H) DP: KELLER, KREISS-TOMKINS
 03/12/14 (H) NR: GATTIS, HUGHES, LYNN
 03/12/14 (H) AM: ISAACSON
 03/17/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 369

SHORT TITLE: IMMUNITY FOR DRUG RELATED OFFENSE
 SPONSOR(s): REPRESENTATIVE(s) PRUITT

02/26/14 (H) READ THE FIRST TIME - REFERRALS
 02/26/14 (H) JUD
 03/17/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MORGAN HOPSON, Staff
 Representative Lance Pruitt
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: On behalf of the prime sponsor, Representative Lance Pruitt, presented a technical overview of HB 366.

NANCY MEADE, General Counsel
 Administrative Staff
 Office of the Administrative Director
 Alaska Court System (ACS)
 Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 366.

JAKE McGUIGAN, Director
 Government Relations and State Affairs
 National Shooting Sports Foundation (NSSF), Inc.
 Newtown, Connecticut

POSITION STATEMENT: Testified in support of HB 366.

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 366.

MIKE COONS
Palmer, Alaska

POSITION STATEMENT: Requested clarification of veterans' issues regarding HB 366.

DARYL NELSON
MindFreedom Alaska, Affiliate
MindFreedom International
Chugiak, Alaska

POSITION STATEMENT: Testified in opposition to HB 366.

BONNIE NELSON
MindFreedom Alaska, Affiliate
MindFreedom International
Chugiak, Alaska

POSITION STATEMENT: Testified in opposition to HB 366.

MORGAN HOPSON, Staff
Representative Lance Pruitt
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the prime sponsor, Representative Lance Pruitt, presented an overview of HB 369.

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 369.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division

Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 369.

ACTION NARRATIVE

[1:20:16 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:20 p.m. Representatives Millett, Pruitt, Gruenberg and Keller were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HJR 18-CONST. AM: ELECTED ATTORNEY GENERAL

[1:21:10 PM](#)

CHAIR KELLER announced that the first order of business would be HJR 18, Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

[1:22:02 PM](#)

REPRESENTATIVE PRUITT moved to report HJR 18 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected and then removed his objection.

[1:22:46 PM](#)

There being no further objection, HJR 18 was reported from the House Judiciary Standing Committee.

[1:22:55 PM](#)

The committee took an at-ease from 1:22 p.m. to 1:25 p.m.

HB 366-INVOLUNTARY COMMITMENT

1:25:05 PM

CHAIR KELLER announced that the next order of business would be HB 366, "An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

1:25:10 PM

REPRESENTATIVE MILLETT moved to adopt [CSHB 366(STA)] as the working document.

CHAIR KELLER objected.

1:25:45 PM

REPRESENTATIVE PRUITT, speaking as the prime sponsor, advised that HB 366 was requested by the National Shooting Sports Foundation (NSSF), which includes entities such as Smith & Wesson, Ruger, and other gun manufacturers typically identified with guns. House Bill 366 communicates information of an individual who has been adjudicated with a 30-day involuntary commitment to the National Instant Criminal Background Check System (NICS) database. The database is used by a Federal Firearms Licensee (FFL) when performing background checks. He explained that the database informs the FFL of three things: yes, no, or need more time of which is the 3-day waiting period when further investigation is required. He further explained that the information passed on to the database is very minimal and does not include [diagnostic or clinical treatment information] regarding the 30-day involuntary commitment, but does offer the individual's name, date of birth, and social security number, if the information is available. He said there is a provision for [relief from legal disability], which offers the individual the ability to remove his/her name from the [NICS] database after a period of time, several considerations, and a judge's determination. He stated that HB 366 is not anti-gun legislation nor targeted against individuals with mental health concerns: It is a pragmatic approach to concerns people

have related to gun sales. The National Rifle Association of America (NRA) and President [Barack Obama] indicated, after the recent event at Sandy Hook, that [legislatures] should put additional effort into determining which individuals have mental challenges and offering individuals with mental challenges the services they need. Therefore, additional checks are necessary to establish that gun ownership is placed in the right hands, he opined.

[1:29:56 PM](#)

MORGAN HOPSON, Staff, Representative Lance Pruitt, Alaska State Legislature, informed the committee that in 2013 the FFL made over 90,000 inquiries to the database. She explained that an inquiry is noted each time an individual attempts to purchase a firearm; the FFL's check the NICS database to determine if there is a reason to deny, proceed, or delay the decision to sell a firearm to that individual. Alaska has the second highest amount of inquiries in the nation, in the amount of approximately 127 inquiries per 1,000 Alaskans each year. However, currently, there is only one Alaskan name in the NICS database that is precluded from gun [ownership] under federal law for mental health reasons. In comparison, Texas has several hundred thousand people in the NICS database. Ms. Hopson conveyed that each member's packet contains a map entitled "Where Does Your State Stand" which depicts the number of mental health records provided to NICS from each state. She explained that although it is federal law, Alaska is one of very few states that does not report certain persons for mental health reason. When an individual is adjudicated in the courts their name, date of birth, social security number, and state driver's license, if known, is reported to the courts, she explained.

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MS. HOPSON noted that she and Nancy Meade, Alaska Court System, worked together in determining that it would be an easy process for [the court] reporting and ensuring that all of the aforementioned information, if known, was critical because in many of these cases the information is not available. Under HB 366, subsequent to an individual being adjudicated for mental

health reasons, he/she is involuntarily committed and at that point the courts transfer these records "immediately." She opined that due to the essence of the issue, the sponsor specifically included the word "immediately." She noted that other states have "looser" reporting requirements than Alaska. For instance, Minnesota has a 3-business day reporting requirement, while others require reporting within 30 days. The federal term is different and probably not as up-to-date as the terms used in the Alaska State Statute for persons with mental health issues. Individuals who are precluded are already precluded under federal law, Alaska has not set up a reporting system for that to take place. Within the 90,000 inquiries a year, there are persons with very serious mental health issues to whom FFLs should not be selling firearms as it is an increased liability to the FFLs and to Alaskans as well. There is a very strict process within which an individual's name could be removed from the list. Ms. Hopson stated they had reviewed other states with an appeal process and spoke with NRA people who had reviewed this process in other states, in order to determine that the appeal process is very accessible to people while offering a very high level of scrutiny to their mental health at that time.

[1:33:49 PM](#)

REPRESENTATIVE MILLETT surmised that information is precluded for individuals who have not committed a crime but have been adjudicated to a mental health facility for 30 days by a parent and/or guardian ad litem.

MS. HOPSON responded that if a family member or someone brought to the attention of the court system that an individual should be evaluated, subsequent to the judge adjudicating [an involuntary commitment], the person's name would be forwarded.

REPRESENTATIVE MILLETT further surmised that an individual who is picked up, taken to Providence for a mental health screening, and is held for 24 hours are not included in HB 366.

MS. HOPSON responded, "That is correct."

[1:35:28 PM](#)

REPRESENTATIVE MILLETT remarked that she understands the liability for gun manufacturers. With regard to the mass shootings that have happened, she inquired as to how many [of the perpetrators/shooters in the mass shootings] had been adjudicated and should have been on NICS database. She recalled that most of the shooters [in the mass shootings] shouldn't have owned guns as they were under the age of 18 and had stolen the guns. She queried whether HB 366 is fixing a problem. She also queried whether there is any other reason than the gun manufacturers that would support the adoption of HB 366.

MS. HOPSON responded that according to Legislative Legal and Research Services, HB 366 would not have prevented Sandy Hook as the individual did not go through an FFL to purchase weapons. However, HB 366 would have prevented the shooting at Virginia Tech wherein the individual should have been in the database. This proposed legislation would have prevented the 2004 shooting of two Alabama police officers by Farron Barksdale who passed a background check and purchased a rifle even though he had been involuntarily committed multiple times. This legislation, HB 366, would have also prevented the 1998 killing of two police officers at the U.S. Capitol by Russell Eugene Weston Jr. who had passed a background check, but should have been flagged. Another incident that could've been prevented by HB 366 is the 2011 shooting spree in which Jared Lee Loughner killed 6 and wounded 13, including Congresswoman Gabrielle "Gabby" Giffords. She opined that there are multiple shooting incidents HB 366 would have prevented.

[1:38:01 PM](#)

CHAIR KELLER referring to Section 3, page 3, [lines 9-18] and questioned if the terms "sealing" and "expunging" are used in Sections 4 and 5.

MS. HOPSON responded she does not believe Sections 4 and 5 address sealing or expunging.

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CHAIR KELLER clarified that Section 3 is similar to a reviser's bill as it could be taken out and it would make no difference to HB 366. He recalled that [AS 47.30.851] Relief from legal disability or record was discussed in the House State Affairs Standing Committee and Ms. Hopson and the court agreed to provide information for changing Section 3 to be consistent with existing law. Although it's an option for the courts to expunge or seal records, currently the courts do not expunge records. He explained that the driver in HB 366 is that records definitely cannot be expunged from NICS as it is a federal database and Alaska does not have control over federal information. He related his understanding that the Alaska State Legislature could require expungement of Alaska's court files as the legislature gave [the court] the option in the past; HB 366 removes expungement and goes to the sealing of records.

[1:41:55 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to Representative Gruenberg, explained the court has two levels of privacy for court records: expunging and sealing. One is confidential records and the other is sealing, which is much more restrictive, she explained. The court does not have a means of expunging. Although the court would expunge records if the legislature told it to do so, the definition of expunge is not in the Alaska Rules of Court, she noted. She concluded that expunge would mean the absolute destruction of the record whether by burning or shredding. In further response to Representative Gruenberg, Ms. Meade reiterated that the court system does not expunge records.

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REPRESENTATIVE GRUENBERG surmised then that someone could review a record marked confidential.

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MS. MEADE responded that the court has very distinct definitions of sealed versus confidential. She explained that confidential records are accessible by the judge, parties to the case, attorneys to the case, and court personnel for case processing purposes only. They are kept in a florescent envelope and are never handed across the counter to someone and are kept off of CourtView. She further explained that sealed records are more restrictive as they are only accessible to the judge and to an individual with a written court order, not to the judge's administrative assistant, not to court clerks, no one can touch those.

1:45:01 PM

CHAIR KELLER opened public testimony.

1:45:10 PM

JAKE MCGUIGAN, Director, Government Relations and State Affairs, National Shooting Sports Foundation (NSSF), Inc., advised that the National Shooting Sports Foundation (NSSF) is the trade association for the firearms industry and represent over 10,000 manufacturers, retailers, and distributors nationwide and over 50 members are based in Alaska. He explained that the FixNICS initiative is a nationwide campaign by NSSF to ensure that mental health records are utilized in the National Instant Criminal Background Check System (NICS). He related that the intention is not to expand categories of prohibited individuals but rather to include in NICS individuals who have been involuntarily committed. He submitted that under federal law, involuntarily committed individuals are prohibited from owning a firearm. With regard to events that could have been prevented, Virginia Tech is one of the highest profile events in which the individual [shooter] would have been in system and unable to purchase a firearm. In a more recent incident, the Navy yard shooter had some "situations" in Rhode Island, which is a state that does not share mental health records with NICS. He related that the National Shooting Sports Foundation's lobbyists and consultants, in roughly 12 states, have had a great amount of success in both the last and this legislative session. Most recently, the South Dakota governor signed the FixNICS bill into

law. He described programs offered by NSSF, such as Project Child Safe that focuses on the safe storage of firearms; Don't Lie for the Other Guy that attempts to stop store purchases of firearms by prohibited individuals; and the FixNICS campaign unveiled last year. To be clear, he said, NSSF does not want to discourage anyone from seeking treatment for any mental health issues, from seeing a psychiatrist, or actually seeking mental health assistance. The focus of NSSF is solely to include individuals that have gone through the process of being involuntarily committed in the NICS system. Another important part for NSSF, as well as the National Rifle Association (NRA), is that an individual's rights are appropriately restored, which Representative Pruitt and the Alaska Court System made clear in HB 366, he noted. He emphasized that NSSF does not intend to thwart an individual who has obtained the appropriate treatment and gone through the process from having their rights restored.

[1:50:12 PM](#)

REPRESENTATIVE GRUENBERG asked whether Mr. McGuigan is an attorney. He then asked if HB 366 is based upon other state laws, model acts, or uniform acts.

MR. MCGUIGAN responded that he is not an attorney. In further response to Representative Gruenberg, he explained that HB 366 has been used in other states and each piece is crafted for the specific state. The NSSF usually uses the legislation that passed in Mississippi and Louisiana. [The proposed legislation, HB 366, in Alaska does not contain all of the categories the NSSF would have liked to be included as it only includes involuntarily commitment; there are other prohibitive categories that could be included in the legislation.

[1:51:48 PM](#)

REPRESENTATIVE GRUENBERG asked whether there are significant differences in the legislation that passed in Mississippi and Louisiana. He also asked about [the basis of] South Dakota's legislation.

REPRESENTATIVE PRUITT advised that South Dakota's legislation, which passed last weekend, was based on other examples.

MS. HOPSON responded that the sponsor reviewed several different states, including Hawaii which passed more recently and more closely mirrors Alaska Statutes and the manner in which Alaska drafts legislation. The sponsor also looked at Colorado, she noted.

[1:53:20 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 4, AS 47.30.851(d), page 4, lines [16-18], which read:

A decision to grant or deny relief under this section may be appealed as provided in AS 22.05.010. In reviewing the decision of the superior court, the standard of review may be de novo.

REPRESENTATIVE GRUENBERG stated the aforementioned language is not in any other statute in Alaska and further stated that the Supreme Court does not take evidence and does not do de novo. Therefore, the use of the term "may" is ambiguous so he is inclined to strike that sentence, he opined.

MS. HOPSON related that the language was included per the suggestion of other states that had implemented this legislation. However, Legislative Legal Counsel, Kathleen Strasbaugh, mentioned that it is not a practice in Alaska, which is explained in her memorandum dated February 24, 2014.

MS. MEADE specified that she did not have an opinion regarding the sentence as she understood from Ms. Hopson that it was necessary to meet federal requirements and was included for other reasons. Ms. Meade did not object or ask for a change to the sentence and does not have any particular insight with regard to it, she opined.

[1:58:16 PM](#)

REPRESENTATIVE MILLETT, in response to Chair Keller, read from page 3 of Ms. Strasbaugh's, 2/24/14 memorandum:

7. **De Novo Judicial Review of a Denial**: The State provides for de novo judicial review of relief application denials that includes the following principals:

a. If relief is denied, the applicant may petition the State court of appropriate jurisdiction to review the denial, *including the record of the denying court, board, commission or other lawful authority.*

b. *In cases of denial by a lawful authority other than a State court the reviewing court has discretion to receive additional evidence necessary to conduct an adequate review.*

c. *Judicial review is de novo in that the reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.*

[1:59:12 PM](#)

REPRESENTATIVE GRUENBERG stated he would like to review any federal requirements because the word "may" is ambiguous as it could be directory or discretionary.

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The committee took a brief at-ease.

[1:59:47 PM](#)

CHAIR KELLER related that Representative Gruenberg has indicated that the language in Section 4 on page 4, lines 18-19, may require a court rule change. He further related that Representative Gruenberg questions of whether the standard of review may be de novo. He recalled that Representative Gruenberg also inquired as to the federal requirements [the issue] addresses.

2:01:33 PM

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, referring to her 2/14/14 memorandum, related her understanding, after reviewing the federal statute, that a full hearing would be required at some point. She acknowledged there are those who do not agree, but the legislation is drafted so that it does not order the court to apply a particular standard of review, and thus the court "may" apply that standard of review. She noted that from time to time the court does use that terminology to address legal matters and occasionally takes a closer look at the factual determinations of the lower court than it might otherwise. The legislation, she said, was not designed to force the court to apply a particular standard of review, and therefore she does not believe it requires a court rule change. Furthermore, she opined she was not certain a court rule would be effective to do that.

2:02:47 PM

REPRESENTATIVE MILLETT surmised that language used, "may" is used rather than "shall," provides the court an option and does not require a rule change.

MS. STRASBAUGH noted her agreement with Representative Millett's understanding.

2:03:12 PM

REPRESENTATIVE GRUENBERG related his understanding that in a de novo situation there would be a complete new hearing in front of either the Supreme Court or a special master. He said he would be surprised if federal or state law would require the Supreme Court to conduct any kind of a hearing as that would be "totally" unique, except for cases before the U.S. Supreme Court in disputes between states, mainly boundary disputes, for which the Supreme Court appoints a special master. He recalled that occasionally an election dispute in this state [goes before the Supreme Court].

MS. MEADE clarified that there is a standard of review of de novo review and the Supreme Court does not conduct a full new trial with witnesses taking oaths and testimony. She noted that it exists as a way for an appellate court to review the record of the lower court without giving deference to the lower court's opinion. She advised that after reading [the language] she thought the Supreme Court could then review it without giving deference to the judge's determinations of fact and make their own decision in that regard. In echoing Representative Millett, she said she read it as discretionary due to the use of the term "may" and did not view it as anything that would require a change to practices.

[2:05:00 PM](#)

REPRESENTATIVE GRUENBERG stated he had not read it as Ms. Meade presented it, although that is probably the way it was intended. Usually when requesting an appellate court to review something without deference to the lower court, the appellate court would be provided more direction. He said he could see why a federal law advising a state that it may provide either way, but when Alaska provides new law at the state level it should be more specific.

[2:06:19 PM](#)

MIKE COONS, speaking for himself, related his understanding that the NICS check is performed through Alaska NICS and not through the federal system. He then questioned how an individual's name would be removed from the NICS [database] when the individual is no longer a threat to themselves, others, or the public interest. Turning to another issue, he noted that the Veteran's Affairs (VA) is currently putting people's names into NICS because they are being treated for post-traumatic stress disorder (PTSD), a brain injury sustained in combat, or have been prescribed antidepressants, yet they have never been committed or adjudicated. He asked whether HB 366 could put a stop to the VA's actions for veterans in Alaska.

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REPRESENTATIVE PRUITT responded "No," Alaska is not set up to do its own reporting. Although some states do have their own system, Alaska uses the Federal Bureau of Investigation (FBI), he noted. In response to the second issue, the district attorney (DA) does not randomly place information into the NICS database. As a matter of fact there is only one record from Alaska and no one knows how it got there, he opined. He then reiterated that the only way for information to be communicated to the NICS database is through an adjudication of a 30-day involuntary commitment and the process includes a high threshold of time in front of a judge and a specific process.

[2:10:46 PM](#)

DARYL NELSON, MindFreedom Alaska, MindFreedom International, related his opposition to HB 366 and any background checks or approval for people who are disabled or mentally ill of any kind. He commended Representative Millett for HB 69, last year, and stated he supports that bill. He said he is against Representative Kerttula wherein the government can dictate what is best for an individual. He opined that individuals with disabilities are in danger of losing their civil rights because they may decide to live on the street, they may not want to be in a nursing home or assisted living home. The judge's decisions in the mental health court system are based upon psychiatric doctor's [evaluations] and medications, he opined. He further opined that judges listen to the psychiatric doctors, who, in most cases, are listening to and driven by the drug companies. He remarked that psychiatric doctors are "being bought off by the drug companies and that is dangerous." He related that he has cerebral palsy and suffered a brain injury, which affects the motor functions of his body, and therefore he is considered a possible a danger to himself. In that regard, he said he has always been afraid of losing his civil rights as it wouldn't take much if it wasn't for the support he receives from his family. Mr. Nelson related his belief that HB 366 is moving in the wrong direction and he is [not] against federal banning of mental health laws, he said. He advised that he is a member of the Repeal all Mental Health Laws and that there are a number of members of MindFreedom Alaska all over the state and nation.

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CHAIR KELLER clarified that HB 366 does not restrict firearms.

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REPRESENTATIVE MILLETT responded that she had some of the same concerns as Mr. Nelson, but after reading through the bill and the legal opinion she understood that only if Mr. Nelson is committed to some type of psychiatric facility with a 30-day involuntary commitment would he fall under HB 366 as individuals with disabilities would not fall under this category. She reiterated that an individual with a traumatic brain injury, mental or physical disability would not fall under HB 366 and their civil liberties would not be taken away. House Bill 366 protects individuals that are not disabled, but suffer from psychiatric problems, she opined.

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BONNIE NELSON, MindFreedom Alaska, MindFreedom International, stated she is Darryl Nelson's mother and they have worked extensively with The Law Project for Psychiatric Rights (PsychRights) as well as other international organizations and protection and advocacy centers, such as the Disability Law Center (DLC), and in other states as well. She voiced her disagreement with Representative Millett's comment. She said she has been advocating for approximately 33 years due to her son's brain injury and due to the stigma, discrimination, and labels he has not deserved. She noted that she suffers from multiple disabilities and has also been discriminated against. She related that her son now has a college degree, has worked as an advocate for five years with the Alaska Public Interest Research Group (AKPIRG), and has worked as a coordinator for several years with Access Alaska. She opined that brain injuries are defined as a mental defect in some of the laws, such as the Alaska Mental Health Trust [Authority]. Many individuals want to live on the street, but individuals who are blind, deaf, own a service animal, or are in a wheelchair are forced into nursing homes or assisted living homes and told they

are a danger to themselves. She opined there is a separate tracking system in civil and mental health courts as individuals do not have the same due process rights criminals are afforded in criminal court. She further opined that judges only listen to the expert testimony of a doctor and do not listen to family members. Furthermore, she said that individuals cannot choose their advocate or doctor who will be called before the judge to offer expert testimony. She expressed that when an individual is adjudicated for an evaluation of 30-days, that individual can lose his/her right to own a gun. She remarked that James B. Gottstein, President, PsychRights, told her that even though his 30-day commitment was 30 years ago he still thinks he cannot own a gun. She related that she and Mr. Nelson, who has never been a psychiatric patient or in the mental health system but has a brain injury, attempted to buy a gun and [the form] asks if the individual has ever been committed and have to answer "yes" or "no," which determines whether or not one can buy a gun. She pointed out that the word "criminal" is in the title of the National Instant Criminal Background Check System database and there are individuals who are determined to be a danger to themselves that have never broken the law or done anything criminal, and are usually the victims. She opined that individuals want to live on the street because there is a long waiting period for public housing and, she noted, if they live with someone the individual's name is removed from the list. She remarked that when an individual is committed they are put on Medicaid because the system wants to get paid, nursing homes and even community-based care wants to get paid on the waiver system. "Follow the money," she urged. She stated that she and Mr. Nelson are opposed to the United States federal law, and suggested the Alaska State Legislature should rethink HB 366. She remarked that the 33 states not imposing this legislation are doing a very good thing by saying this is a state's rights issue. She expressed that [18] U.S.C. § 922(g)(4) should be changed because it is wrong to say someone does not have rights, particularly since people with disabilities are the most in danger of being a victim, not a criminal. Rather, the legislature should be encouraging people with disabilities to protect themselves from criminals, she opined

[2:22:26 PM](#)

MS. NELSON stated there is no statistical reporting that people diagnosed with mental illness are any more violent or criminal than the average population as evidenced from the Bazelon Center for Mental Health Law, which works on behalf of people with mental illness. She reiterated previous testimony and opined that [the discussion is] state's rights, civil liberties, right to live, and right to protect yourself issues. Veterans with post-traumatic stress disorder (PTSD) who receive a 30-day commitment should not receive a lifetime sentence of never owning a gun, and also lose their Second Amendment rights, she opined.

[2:24:07 PM](#)

The committee took a brief at-ease.

[2:26:04 PM](#)

CHAIR KELLER closed public testimony.

[2:26:23 PM](#)

REPRESENTATIVE GRUENBERG questioned why HB 366 language is limited to involuntary mental health commitments. He posed a scenario wherein an individual concerned about the involuntary commitment issue decides to commit themselves so they cannot be reported. On the other hand, he said, it could be a pressure for an individual to commit themselves voluntarily in order to not be in the data base. He inquired as to why the involuntary aspect of the commitment is a determining factor.

REPRESENTATIVE PRUITT pointed out that the authority regarding a 30-day [involuntary] commitment can be found in AS 47.30.730, Procedure For 30-Day Commitment; Petition For Commitment, and AS 47.30.735 is the 30-day Commitment hearing. He responded that if an individual voluntarily decides to commit themselves and the state placed their information [on NICS], the individual would not have been given the opportunity to move through the judicial process. Involuntary commitment requires the involvement of the judicial process and seven different pieces

must be addressed in the petition [before the matter] moves to hearing. He relayed that he would be uncomfortable with a process in which an individual does not go through the judicial process and the individual's name is sent to NICS. Although he acknowledged it was possible for an individual to go around the system, he said he felt more comfortable with language requiring the judicial process. He then explained that the petition must be signed by two mental health professionals, one of which must be a physician, who have examined the respondent. The petition must allege that the respondent is mentally ill and is likely to cause harm to self or to others. There are six additional pieces required in the petition and the involuntary commitment aspect of HB 366 is not addressing an individual who may have some challenges, a brain injury, or someone on the streets with mental concerns. He opined that the petition is very detailed and it must be shown to the judge that the individual can either harm themselves, or harm others. He described the seven requirements as high thresholds for sending the matter forward to the judge. He acknowledged that the National Instant Criminal Background Check System includes the term "Criminal," but pointed out this is a federal law that was written over 20 years ago and it would literally take an act of Congress to change the name of the system, he opined.

[2:31:42 PM](#)

REPRESENTATIVE MILLETT inquired as to how many involuntary commitments have taken place for Alaskans over the age of 18 during the last 10 years.

MS. MEADE responded there are a fairly high number of 3-day evaluations which are specifically excluded by HB 366. The 30-day involuntary commitment petitions filed per year total approximately 200-250 and a little under half of those petitions are granted. Ms. Meade emphasized there is a strict process that judges go through in following certain requirements that must be met before petitions are granted.

[2:33:38 PM](#)

REPRESENTATIVE GRUENBERG referred to the language on page 4, line 11, which requires the court to find the relevant facts by a preponderance of the evidence. The language is written in the passive tense rather than the active tense, which is normally used. Furthermore, the language does not specifically indicate who has the burden of proof, although he assumed the state would bring these actions and would have the burden of proof.

REPRESENTATIVE PRUITT responded that Representative Gruenberg was referring to Section 4, AS 47.30.851, Relief from legal disability, wherein the burden of proof would be on the defendant and further responded that Section 4 is the [remedy] aspect of HB 366.

[2:35:11 PM](#)

REPRESENTATIVE GRUENBERG asked whether there was similar language in the initial petition or in the law regarding who has the burden of proof initially.

MS. MEADE responded she is not certain whether the statute specifies what the burden of proof is, although it does specify all the findings the court must make.

[2:36:02 PM](#)

REPRESENTATIVE MILLETT moved to report CSHB 366(STA) out of committee with individual recommendations and the accompanying fiscal notes.

[2:36:15 PM](#)

REPRESENTATIVE GRUENBERG objected, noting he had asked for a reasonable amount of time to review issues.

CHAIR KELLER related his understanding that the questions Representative Gruenberg raised have been answered.

[2:36:57 PM](#)

REPRESENTATIVE GRUENBERG noted the first issue he raised was on page 4, lines 18-19, regarding the drafting and stated that he may be the only person on his side of the aisle to look at these issues.

CHAIR KELLER expressed that he had given Representative Gruenberg more than ample and equal time today and his questions had been thoroughly answered. Chair Keller then asked Representative Gruenberg to withdraw his objection.

REPRESENTATIVE GRUENBERG responded that he has asked for the courtesy and did not see any prejudice; HB 366 could be taken up on Wednesday.

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REPRESENTATIVE LYNN conveyed that it does not make a difference if a member is in the majority or the minority as the members leave their party affiliation at the door. He noted that Representative Gruenberg had stated several times that he is the only member of the minority and Representative Lynn did not feel those comments were appropriate to the committee's actions.

CHAIR KELLER noted that the committee is run so there is ample time for discussion and debate. He then stated that there are the votes to move the bill. Furthermore, in light of the fact there are other bills pending, he requested the roll be called.

[2:38:57 PM](#)

REPRESENTATIVE GRUENBERG removed his objection. There being no further objection, CSHB 366(STA) was reported from the House Judiciary Standing Committee.

[2:39:16 PM](#)

The committee took a brief at-ease.

HB 369-IMMUNITY FOR DRUG RELATED OFFENSE

[2:41:00 PM](#)

CHAIR KELLER announced that the last order of business would be HB 369, "An Act relating to limited immunity from criminal prosecution for a person who seeks medical assistance for a person experiencing a drug overdose."

[2:41:07 PM](#)

REPRESENTATIVE PRUITT, speaking as prime sponsor, stated that HB 369 is a form of limited criminal immunity for a person seeking medical assistance for an individual experiencing a drug overdose. Fourteen states have implemented a form of limited immunity. Legislative Legal and Research Services has offered an analysis that was performed in Washington that indicates what could come about from HB 369. He opined that this legislation focuses on public health rather than whether an individual suffering from an overdose should go jail. As an example, he related a situation in Washington in which two friends drove around with another friend in the backseat who had overdosed on an opiate. The two friends, who were fearful of legal repercussions, were hoping their friend who overdosed would just come out of it, but the friend ended up dying while in a very close proximity to a hospital. Representative Pruitt noted that in Washington during an overdose scenario police officers are unlikely to actually arrest the individual or his/her friends. However, he contended, most people in that situation are concerned about the legal aspects of such a situation. The intent of HB 369 is to create a situation in which an individual does not have to decide between whether or not he/she will go to jail by helping someone who is overdosing, but rather allows the individual to make a good faith effort to assist the individual who is overdosing. To be clear, he said, HB 369 does not mean a drug dealer/trafficker receives a "get out of jail free" card as that will not happen. Also, the legislation does not allow an individual to use this immunity multiple times as the goal is to help people get their lives back on track without being worried they have to make the choice between their friend dying or going to jail.

[2:46:53 PM](#)

MORGAN HOPSON, Staff, Representative Lance Pruitt, Alaska State Legislature, clarified the sponsor's intent with CSHB 369, Version 28-LS1515\N, Strausbaugh, 3/14/14, is not to grant immunity to persons who have the intention to distribute or manufacture. The committee substitute specifically lists immunity against certain possession charges. She highlighted that prior to the State of Washington's law going into effect, drug users were polled and approximately 50 percent said they would call in regardless of their fear of legal ramifications. After the law was passed, 88 percent of drug users said they would call in. In the State of Washington, the idea was to create assurances to drug users that they could call in. The main focuses of HB 366 are saving the life of the individual overdosing, treating the individual at the hospital, and referring them for treatment. She explained that the sponsor would like a good consensus on the appropriate threshold as far as using HB 369 for immunity for persons who have possession, but are not distributing or manufacturing.

[2:49:23 PM](#)

REPRESENTATIVE MILLETT recalled that during police ride alongs she observed individuals who were left alone after a drug overdose by other individuals were also using or had possession of a small quantity of drugs and did not want a legal problem from helping the individual overdosing. Drawing from conversations with users, she surmised that an overdose that is rock bottom and they turn their lives around as it is not something that is pleasant to go through. She characterized HB 369 as a safety net for people addicted to drugs as it may keep them from dying. She noted her appreciation for HB 369, particularly since the bill as the drug culture in Alaska is changing to a young person's game and the legislation may save lives.

[2:52:00 PM](#)

REPRESENTATIVE LYNN remarked that he has no patience with drug abuse in all varieties and would prefer to see stronger [drug] laws rather than weaker. Having said that, he related that he is pro-life and the state cannot allow someone to not be

admitted for treatment for fear of being prosecuted. He related his understanding that HB 369 is a one-time "get out of jail free" card before an individual goes to jail. He then emphasized that first it is important to save their lives and HB 369 is a step in the right direction.

[2:53:37 PM](#)

REPRESENTATIVE PRUITT, in response to Chair Keller, confirmed that the committee substitute is a work in progress in order to ascertain that HB 369 is tight enough that individuals cannot take advantage of it. Version N is the version Kathleen Strasbaugh, Legislative Legal and Research Services, and Anne Carpeneti, Department of Law (DOL), agreed upon, he related.

[2:54:29 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, deferred to the sponsor as to whether the draft achieves the sponsor's objectives. She noted that she worked with the Department of Law and does not know if other issues need to be discussed.

[2:54:55 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that Section 2 of most legislation involving criminal laws is regarding applicability as it applies to offenses occurring before, on, or after the effective date of the act. He requested clarification on the matter.

MS. STRASBAUGH responded there is language in HB 369 specifying an immunity rather than a defense. Section 2 is a general formulation that Legislative Legal Services placed in the bill itself to show how it applies, she explained.

[2:56:05 PM](#)

REPRESENTATIVE GRUENBERG suggested that rather than having a "general" paragraph in most of the criminal laws, there should

be language in Title 12 that specifies unless a bill reads otherwise, the change occurs on or after the effective date of the act. He pondered whether the committee should explore including that language in a general section in the Code of Criminal Procedure as it appears regularly in most of these criminal [bills].

[2:57:35 PM](#)

The committee took an at-ease from 2:57 p.m. to 3:00 p.m.

[3:01:09 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), responding to Representative Gruenberg's suggestion, stated that it is currently contained in Title 1. She explained that generally, unless there is an effective date and a clear indication of legislative intent to have a law be retrospective, that new bills are already prospective. She offered to locate the statute and provide it to the committee.

[3:01:56 PM](#)

REPRESENTATIVE GRUENBERG noted that it appears to be the current practice, and if that is answered by the general retrospective statute then the committee should be striking Section 2 and not including Section 2 in the bills at all.

MS. CARPENETI responded that it could be the Department of Law's legislative section that is looking to include Section 2 in bills, especially in criminal law to clarify the legislature's intent regarding whether or not something should be prospective or retrospective.

[3:03:34 PM](#)

CHAIR KELLER announced that HB 369 would be set aside.

[3:04:17 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.