

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 21, 2014

1:08 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Wes Keller, Chair

COMMITTEE CALENDAR

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."

- MOVED CSHB 369(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 235

"An Act requiring the Alaska Public Offices Commission to maintain the confidentiality of certain proceedings, documents, and information."

- HEARD & HELD

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(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
03/17/14 (H) Heard & Held
03/17/14 (H) MINUTE(JUD)
03/21/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 235

SHORT TITLE: CONFIDENTIALITY OF APOC COMPLAINTS

SPONSOR(s): REPRESENTATIVE(s) HIGGINS

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) STA, JUD
03/11/14 (H) STA AT 8:00 AM CAPITOL 106
03/11/14 (H) Moved CSHB 235(STA) Out of Committee
03/11/14 (H) MINUTE(STA)
03/12/14 (H) STA RPT CS(STA) NT 4DP 2NR
03/12/14 (H) DP: GATTIS, KELLER, ISAACSON, HUGHES
03/12/14 (H) NR: KREISS-TOMKINS, LYNN
03/21/14 (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
03/17/14 (H) Moved CSHB 366(STA) Out of Committee
03/17/14 (H) MINUTE(JUD)
03/19/14 (H) JUD AT 1:00 PM CAPITOL 120
03/19/14 (H) Heard & Held
03/19/14 (H) MINUTE(JUD)
03/21/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: Reviewed the changes to CSHB 369 embodied in Version C on behalf of Representative Pruitt.

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

POSITION STATEMENT: Answered questions regarding CSHB 369 and testified in support of the new language.

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

POSITION STATEMENT: Answered questions and testified against the language in CSHB 369, expressing DOL's preference for an affirmative defense as opposed to a restriction on prosecution.

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

POSITION STATEMENT: Provided information on CSHB 369.

THOMAS STUDLER, Staff
Representative Pete Higgins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 235 on behalf of Representative Higgins.

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

POSITION STATEMENT: Answered questions regarding her research into CSHB 369.

KATHLEEN STRASBAUGH, Attorney
Legislative Legal Counsel

Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Provided information on CSHB 235.

ACTION NARRATIVE

[1:08:39 PM](#)

VICE CHAIR BOB LYNN called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Gruenberg, Foster, LeDoux, Millett, Pruitt and Lynn were present at the call to order.

[1:09:27 PM](#)

VICE CHAIR LYNN announced that the first order of business would be an unnumbered bill, entitled "An Act relating to the crime of unlawful evasion." He said that Chair Wes Keller will make a decision on introducing the bill when he returns next week. [The bill was later introduced as HB 381.]

REPRESENTATIVE GRUENBERG explained that the bill relates to the crime of unlawful evasion, and it cures a problems resulting from a particular lawsuit. Regarding that case, the Court of Appeals held that an individual could not be prosecuted under Alaska escape statutes when the defendant, confined to half-way house, was transported to another facility and walked away from the [police] van. The facts in this case "fell between the cracks," he noted. The individual was charged with parole violation and escape in the second degree; however, since he was not in detention he could not be prosecuted under the [escape] statute. Legislative Legal and Research Services worked with the Department of Law and drafted the proposed bill, and it adds the provision of unlawful evasion in the second degree, so now an individual can be prosecuted in a similar situation. "They shouldn't be able to walk away from a van that's transporting them from one institution to another," he opined.

VICE CHAIR LYNN said he is just the acting chair, and Chair Keller will decide what to do with it.

HB 369-IMMUNITY FOR DRUG RELATED OFFENSE

[1:12:49 PM](#)

VICE CHAIR LYNN announced that the next 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."

[1:13:51 PM](#)

REPRESENTATIVE LANCE PRUITT moved to adopt the proposed CS for HB 369, Version 28-LS1515\C, Strasbaugh, 3/20/14, as the working document.

REPRESENTATIVE CHARISSE MILLETT objected.

[1:14:15 PM](#)

REPRESENTATIVE PRUITT said that there was concern from the Department of Law (DOL) regarding broad immunity in that individuals could call 911 or be dropped off [at emergency facilities], and from that point they would be immune from prosecution. That is not the intent of HB 369, he expressed. He said he worked with the DOL and changed the provision to a "restriction on prosecution," which relates only to personal [drug] possession and would not include an individual with an amount of substances whereby there is intent to distribute. "They can still prosecute that intent to distribute," he explained.

[1:15:50 PM](#)

MORGAN HOPSON, Staff, Representative Lance Pruitt, Alaska State Legislature, stated that in Alaska, immunity may lead to transactional immunity which would make it more difficult to prosecute for any other charges other than possession.

VICE CHAIR LYNN clarified that "immunity" was too broad and the scope has been narrowed.

MS. HOPSON responded, "Yes, that is correct."

[1:17:11 PM](#)

RODNEY DIAL, LIEUTENANT, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said the DPS understands the importance of creating an environment that supports reporting a medical emergency due to drug overdoses. He said the DPS has reviewed the committee substitute and had initial concerns, which it addressed with the

Department of Law and is now awaiting clarification. He noted that, in order to obtain a search warrant for medical records to prove that an overdose actually did not exist, CSHB 369 might require law enforcement to present evidence to a judicial officer that there is evidence of a particular crime or tends to show that a certain person has committed a crime. The concern is if the judicial officer believes the person had immunity and no crime was committed it may be difficult for law enforcement to obtain a warrant in order to determine whether the immunity was initially justified. The DPS believes that the committee substitute addresses the initial concern that an astute drug dealer--fearing a potential drug raid--could use an acquaintance to feign an overdose and report [the alleged overdose] prior to the raid and thereby obtain immunity from drug prosecution. The new bill probably addresses that, he stated. He understands that the bill does not prevent law enforcement from charging other crimes that could be applicable, such as manslaughter, criminally negligent homicide, assault, reckless endangerment, and so forth.

LIEUTENANT DIAL responded to Vice Chair Lynn that DPS is happy with the changes made in the committee substitute.

[1:19:24 PM](#)

REPRESENTATIVE MILLETT questioned if someone reports a person overdosing and is offered immunity, what would indicate to law enforcement that the individual may have large quantities of drugs and that a search would be warranted. If 911 is called for an overdose and medical people arrive, would that give law enforcement access to the residence?

[1:20:08 PM](#)

LIEUTENANT DIAL responded that it would be a case-by-case situation, but generally when an individual reports an overdose, the last thing on law enforcement's mind is making an arrest; the medical issue is dealt with first. Law enforcement then contacts the individuals in the house and begins an investigation into how the drugs were obtained or ingested and determines if any other laws have been violated. In the event law enforcement suspects the individual calling in the overdose is just a user or has simple possession, it may not do anything with the individual—at least initially. There could be instances where law enforcement discovers drugs on the person during a safety pat-down search, but it is difficult to speculate on how law enforcement would proceed.

[1:21:18 PM](#)

REPRESENTATIVE MILLETT questioned if law enforcement would have the right to search the premises once an individual allows access to his or her house to respond to a medical situation.

LIEUTENANT DIAL responded that generally they do not unless something was in plain view. However, if law enforcement believed there may be a large quantity of drugs in the back bedroom, its only options would be to ask for permission to go look or to go before a court and seek a warrant.

[1:22:14 PM](#)

REPRESENTATIVE MILLETT posed the scenario of law enforcement responding to a call of an individual overdosing on meth and they discover a meth lab. Will the person who called 911 and saved someone's life--but who has that meth lab--get immunity?

[1:22:41 PM](#)

LIEUTENANT DIAL noted that scenario could potentially happen and law enforcement would have to consult with the Department of Law and the District Attorney on what steps could be taken at that point. Currently, when law enforcement responds to a residence and notices evidence of a meth lab in plain view, it would process the medical emergency and, in consultation with the District Attorney, probably get a warrant anyway to be on the safe side and then process the scene for the meth lab.

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REPRESENTATIVE MILLETT surmised that the immunity would not be extended to the individual who reported the victim.

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LIEUTENANT DIAL reiterated that currently there would be no immunity, but under [CSHB 369] that would be a decision to be addressed with the Department of Law and the District Attorney's Office as to whether or not that would exceed some threshold of personal possession, and personal possession would be immune under CSHB 369.

[1:23:55 PM](#)

REPRESENTATIVE MILLETT stated that there is no personal possession of meth allowed by law. She questioned how long it would take to obtain a warrant to search the premises if a meth lab is suspected but not in plain view.

[1:24:28 PM](#)

LIETENANT DIAL advised that law enforcement can obtain a warrant telephonically if necessary; if not, law enforcement will tell everyone to vacate the residence and secure the house while officers go before a judge to obtain a warrant.

[1:24:52 PM](#)

VICE CHAIR LYNN questioned if "in plain sight" included smelling the meth lab.

[1:25:06 PM](#)

REPRESENTATIVE PRUITT noted that [CSHB 369] does not change law enforcement's ability to investigate the meth lab itself, as under the committee substitute, immunity is no longer transactional, and it does not make the entire incident immune.

[1:25:35 PM](#)

REPRESENTATIVE MILLETT related that she is concerned about unlawful search and seizure, because the individual allowed law enforcement to come into the house to respond to a medical emergency and then the issue of the meth lab would not be allowed in the court proceeding. "You came in for a medical reason and then you did an illegal search and seizure in the house; ... that would be deleted from prosecution."

[1:26:13 PM](#)

MS. HOPSON advised that within the committee substitute, immunity is deleted and in its place is "restriction from prosecution." She noted that the only offense CSHB 369 protects against is possession, and should law enforcement enter the premises and have an inclination there was more, they would be able to prosecute. If there was no indication that there may be something else going on, law enforcement would not have the ability to "go after that," she explained.

[1:27:01 PM](#)

REPRESENTATIVE NEAL FOSTER offered a scenario including "Person A" and "Person B." Person A calls for medical assistance because Person B is overdosing. In the event Person A gave Person B the drugs and provided the paraphernalia, could Person A be charged with reckless endangerment?

[1:27:42 PM](#)

LIEUTENANT DIAL responded that prosecution was possible as law enforcement would look at a number of charges, such as reckless endangerment, assault, and potentially criminally negligent homicide.

[1:28:06 PM](#)

REPRESENTATIVE GRUENBERG asked about any legal opinions or memoranda regarding CSHB 369.

[1:28:22 PM](#)

MS. HOPSON noted that for this particular change they did not have legal memoranda yet, as the change was received by the sponsor this morning. The drafter is on line and available to answer questions, she stated.

[1:28:50 PM](#)

REPRESENTATIVE GRUENBERG asked about any [legal opinions] for previous versions of HB 369.

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MS. HOPSON responded that she would have to check her files.

[1:29:06 PM](#)

REPRESENTATIVE GRUENBERG expressed his belief that CSHB 369 is "unusually drafted" because it is a restriction on prosecutorial discretion. It basically reads that the prosecutor may not exercise discretion on whether or not to prosecute for several crimes. "We haven't seen that," he stated. Under Alaska Public Defender Agcy. v. Superior Court, 584 P.2d 1106 (1978), the court does not have the power to control the exercise of the Attorney General's discretion as to whether to take action on any particular case. He opined that it is a separation of powers issue and noted that CSHB 369 may get into the same problem. He questioned why this kind of language was chosen

when it could have been drafted to provide that this would be a defense to the crime. "Clearly we can do that," he stated, and it may make it constitutionally clear. If the bill was written that way, should it be an affirmative defense with the burden of proof on the prosecution? He asked why the bill was drafted the way it was. He said he litigated a similar case where the defense to the possession of heroin was "I took the heroin to flush it down the toilet."

[1:32:06 PM](#)

REPRESENTATIVE PRUITT answered that the affirmative defense was suggested by the Department of Law, and he pushed back against that idea because it is his intention to allow those assisting a friend who is overdosing to not have to consider that if they help their friend they will automatically have to hire a lawyer. "I don't want that person to have to think in their mind, do I help my friend or do I leave them in the gutter because I don't want to deal with a legal mess?" He had requested the drafter find another manner of addressing the issue of not offering broad immunity but still allowing [immunity] for possession. He acknowledged that the drafting is unique, but within Section 1, "Restriction of prosecution for certain persons connected with the overdose," the violations are drug related and there are no restrictions regarding prosecution for assault or other [crimes] that take place. Basically, CSHB 369 allows persons who may have a small bit of drugs or paraphernalia on them to save their friend's life, he opined.

[1:34:24 PM](#)

REPRESENTATIVE GRUENBERG stated his concern of whether the way CSHB 369 is phrased is constitutional, but he had no problem with the intent.

[1:35:12 PM](#)

REPRESENTATIVE GABRIELLE LEDOUX asked if police generally respond [to the scene] when an individual calls 911 about an overdose.

[1:35:40 PM](#)

REPRESENTATIVE PRUITT responded that Legislative Legal and Research Services reviewed that issue and said that the State of Washington has something similar to this bill where, in almost every overdosing incident, the police arrived along with the

Emergency Medical Service (EMS). He highlighted that of the Washington police officers responding with EMS, approximately 60 percent said they would not prosecute the individual who was not dealing drugs, even when law enforcement had the discretion to prosecute. Washington determined that 50 percent of drug users said they would call for help if their friend was overdosing, no matter what, but the number increased to 88 percent when drug users realized that they would not find themselves in a legal bind. "You actually had an increase in people who were willing to make that call and try to save their friend." He described it as taking street law and making actual law.

[1:37:23 PM](#)

REPRESENTATIVE LEDOUX asked if when calling EMS to report a friend dying of a heart attack, only EMS shows up, but if the individual reports the friend is overdosing [the police will respond]. She noted that she very much likes CSHB 369 and wants to get the language right. She suggested that [under Section 1, AS 11.71.311] "a person may not be prosecuted" could be changed to "a person is not guilty of an offense."

[1:38:19 PM](#)

VICE CHAIR LYNN remarked that a person is not guilty or innocent until after a court comes to a decision.

[1:38:31 PM](#)

REPRESENTATIVE GRUENBERG related that he supports the idea that a person should not have to fear an unjust prosecution, but from the point of view of the prosecutor and the police, in the beginning they will only have the person's statement of innocence. They would probably still investigate and possibly prosecute until they learned the truth. It is unlikely that, unless there was no clear involvement, the police would not do something, as they are unlikely to take a person's assertion at their word.

[1:39:24 PM](#)

REPRESENTATIVE PRUITT agreed with Representative Gruenberg in that responding officers would continue to investigate to figure out if there was more at play.

[1:39:47 PM](#)

VICE CHAIR LYNN said, "The greatest quality of a police officer is not a score on their pistol ring; it's common sense."

1:40:01 PM

REPRESENTATIVE LEDOUX suggested that rather than "[a person] is not guilty of," the language could read "a person has not committed the crime of ..." or something to that effect.

1:40:48 PM

MS. HOPSON explained that the bill is a balance of how to prosecute the event and how individuals will perceive CSHB 369 as far as protecting themselves if they call in. The sponsor chose not to include an affirmative defense as people would assume they would have to go to court to defend themselves if called in. By drafting CSHB 369 in the manner it was drafted the hope is that the immediate reaction would be that they could call in because they are safe from a possession charge.

1:41:48 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), said it is the Department of Law's preference that the language be an affirmative defense rather than a bar to prosecution. She expressed concern about an incident being a real overdose and not something that was manufactured to avoid prosecution of a drug dealer. The various pieces of information are in the hands of the person being charged, as they have their medical records and know whether they are acting in good faith, she explained. She noted that DOL appreciates that the language is no longer immunity, which is a huge improvement. Immunity means some things to judges, prosecutors, and defendants that is not necessary to address here. She explained that the person claiming the affirmative defense would have the burden by a preponderance of the evidence--which is the lowest burden in Alaska law--to prove that these various factors [existed] in that he or she was acting in good faith to obtain assistance for the person experiencing an overdose.

MS. CARPENETI said that the way CSHB 369 is drafted, the prosecution would have to disprove beyond a reasonable doubt that these facts existed, which would be difficult under the circumstances. She said she has not read the decision that Representative Gruenberg described whereby "the court does not have the power to limit the attorney general's discretion," but

the legislature would be remedying the attorney general's discretion, and that is what the legislature does all the time: it decides what is against the law and what is not. She said that she would like to read the aforementioned decision.

[1:44:31 PM](#)

REPRESENTATIVE GRUENBERG agreed that the legislature makes law, but each time the legislature says something is not a crime, that is a bar, but it is not termed in the way it is done in this bill. This may cause needless confrontations, which he would like to avoid.

MS. CARPENETI maintained that DOL would like the language to read in an affirmative defense to avoid some of the concerns.

[1:45:26 PM](#)

MS. CARPENETI responded to Representative Gruenberg that within an affirmative defense there must be some evidence supporting the defense. The person claiming the affirmative defense, which is the defendant in a criminal prosecution, has the burden of proof by a preponderance of evidence as to whether or not he or she has established that affirmative defense.

REPRESENTATIVE GRUENBERG asked if the issue goes to the jury first.

MS. CARPENETI responded in the affirmative and stated that when district attorneys are screening cases, if they are aware that the person called and reported the [overdosing friend] to medical authorities, they would take it into account before even charging.

[1:46:17 PM](#)

REPRESENTATIVE GRUENBERG questioned if there is a constitutional problem with establishing an affirmative defense that flips the burden from the prosecution, beyond a reasonable doubt, to the defendant to prove by a preponderance of the evidence.

MS. CARPENETI responded that there are several affirmative defenses in Alaska laws that have been upheld and she believes it is constitutional.

[1:46:53 PM](#)

REPRESENTATIVE MILLETT referred to her aforementioned scenario and questioned the search and seizure laws.

MS. CARPENETI expanded on Lieutenant Dial's testimony in that if medical personnel and a law enforcement officer go into a house to assist the overdosing individual and, for example, on the living room table are scales and large amounts of controlled substances in plain view, police officers would be, she believes, allowed to seize it to use as evidence. If the evidence is in the back bedroom, it depends upon the circumstances. Officers can obtain search warrants over the telephone, so they can call a judge and explain what they see as probably cause and have the judge make a determination. As Lieutenant Dial testified, in the event the evidence is compelling, police officers could secure the scene and wait for the search warrant to be granted.

[1:48:47 PM](#)

REPRESENTATIVE MILLETT surmised that as long as police officers obtain a search warrant the evidence would be admissible in court. Her concern is violating a search and seizure law to obtain evidence and it being disallowed in court.

MS. CARPENETI related that if the drugs were in a back bedroom and there was sufficient probable cause for the officers to obtain a search warrant and to search the room pursuant to the warrant, she could not see a reason that evidence could not be used in a prosecution for a meth lab "or something like that."

[1:49:38 PM](#)

REPRESENTATIVE LEDOUX offered a scenario where a resident of an apartment had a meth lab; police officers are in the house and do not have probable cause to go into the back bedroom or obtain a search warrant. She questioned if the resident could tell the police to leave so everything could be flushed down the toilet while the officers were trying to obtain the warrant.

MS. CARPENETI responded that "You could tell them that they wouldn't have to do that." She then said that the police officers had probable cause to get into the house because they were invited.

REPRESENTATIVE LEDOUX questioned if the police could be uninvited and told their permission is terminated.

MS. CARPENETI remarked that a person could say that, but depending upon the circumstances, the officers could determine they have reason to believe that there is illegal activity on the premises and then consult judicial authority. It is her belief that the police officers would be able to stay in the residence and secure the premises as Lieutenant Dial suggested.

[1:51:12 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that the State of Washington's law is as follows: "A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession." Another option sometimes used in Alaska Statute is a non-applicability provision. She agreed with Ms. Carpeneti. "Because the legislature makes laws with respect to what may or may not be prosecuted that there's not a constitutional interference in the manner of the case described by Representative Gruenberg in which the court took it upon itself to tell the prosecutor whether or not they would bring a case--wanted to force them, essentially, to bring a case--and the court did not have a role in making that decision. But it wasn't really quite the same, and I have to agree with Ms. Carpeneti on that issue."

[1:53:28 PM](#)

REPRESENTATIVE MILLETT assumed that as Alaskans can legally possess marijuana in their house in an amount for personal use, marijuana that was in clear sight would not be seized.

MS. CARPENETI responded that all situations depend upon circumstances, but with no other facts there would be no grounds for arrest because no one was violating the law with marijuana. She did not believe that the marijuana would be seized.

VICE CHAIR LYNN advised that under Ravin v. State, 537 P.2d 494, (Alaska 1975), four ounces of marijuana is legal.

REPRESENTATIVE LEDOUX recalled that marijuana was made illegal back in 2005 or 2006.

MS. CARPENETI said that sounds familiar, but she was not involved in that issue.

[1:56:53 PM](#)

VICE CHAIR LYNN closed public testimony.

[1:57:04 PM](#)

REPRESENTATIVE MILLETT removed her objection in adopting the CS to HB 369. She moved to report CSHB 369, labeled 28-LS1515\C, Strasbaugh, 3/20/14, out of committee with individual recommendations and the accompanying fiscal notes.

[1:57:52 PM](#)

REPRESENTATIVE GRUENBERG objected. He stated [the proposal] probably is not a restriction on prosecution, but the style is different in HB CSHB 369 than Alaska normally uses. "I think it is important to stick with the kinds of style that prosecutors and police are used to in this state." The State of Washington's drafting style may be different, he opined. He said he believes it would be clearer to style the provision as an affirmative defense.

[1:58:41 PM](#)

REPRESENTATIVE LEDOUX said she believes that styling legislation as an affirmative defense puts the person who wants to call EMS to help a friend into the position of having to go to court even if the person is found innocent. She opined that the intention of CSHB 369 is to let it be known on the street that if someone is overdosing, "call the cops and you're not going to go to jail or go to court." She acknowledged that the style may be a bit different, but if the Department of Law is not going to court to challenge the law constitutionally, and the defendant certainly won't [challenge it], she said to leave the language as it is.

[1:59:54 PM](#)

VICE CHAIR LYNN stated that he is more concerned with substance than he is with style.

REPRESENTATIVE MILLETT remarked that she liked the drafting of CSHB 369 because, for instance, someone on probation makes the call and they have to go before the court, which could be a violation of their probation. She assumed CSHB 369 ensures it would not be a violation of probation in reporting an overdose.

[2:00:33 PM](#)

MS. CARPENETI noted that the legislation includes "may not be prosecuted for a violation of the possession statutes" and does not say the individual cannot be prosecuted for a probation violation.

[2:00:55 PM](#)

REPRESENTATIVE MILLETT questioned what the violation would be if the individual was not being prosecuted or taken to court. She surmised that the individual is saving a person's life but if a condition of [probation] is that he or she couldn't be in contact with someone using drugs that would be a probation violation. "Is that what you are saying?"

[2:01:19 PM](#)

MS. CARPENETI remarked that it depends upon the circumstances as Lieutenant Dial testified, rarely do police officers arrest people on the scene of a medical emergency like an overdose. The language reads that a person may not be prosecuted for possession of such drugs, and it does not say it could not be used as a basis for a petition to revoke probation, she said.

[2:01:50 PM](#)

REPRESENTATIVE LEDOUX questioned what language Ms. Carpeneti would recommend in order to establish that the [probation issue] is covered.

[2:02:01 PM](#)

MS. CARPENETI said she could go to her office and return with her best suggestions, but criminal law is too important to write it "on the fly."

[2:02:19 PM](#)

The committee took a brief at-ease.

[2:03:29 PM](#)

REPRESENTATIVE MILLETT withdrew her motion to move CSHB 369 out of committee.

[2:03:51 PM](#)

REPRESENTATIVE GRUENBERG offered a situation where an individual says he or she is not in possession and just called in to help a friend, but the police officers question the story and decide to investigate. At that point, the issue would be taken to trial. He related that the drafting is ambiguous. He asked if it is clear from the text that this would be an affirmative defense. "I think it's ambiguously drafted and if there's a question whether it's an affirmative defense or an element of a crime of some type, might not the court apply the Rule of Leniency and not make it an affirmative defense but in some manner make it an element of the crime? Isn't this somewhat unclear?"

[2:05:29 PM](#)

MS. CARPENETI stated it is not unclear. As it is currently drafted, it is clear that it is not an affirmative defense. The evidence would be treated like a defense, like self-defense or various other defenses that the prosecution has to disprove beyond a reasonable doubt, she opined.

[2:06:06 PM](#)

REPRESENTATIVE GRUENBERG asked, "So as long as the defendant introduced some evidence to put the issue in play?"

[2:06:13 PM](#)

MS. CARPENETIT stated, "That is correct."

[2:06:15 PM](#)

REPRESENTATIVE PRUITT remarked that he wanted to follow up with Representative Millett's probation discussion and noted it appeared to be a policy call on the part of the legislature on whether or not to include "safe harbor" in probation. He questioned if the discussion was stretching too far.

[2:07:04 PM](#)

MS. CARPENETI related that it was a difficult question because a person on probation should be trying to avoid using drugs, and assuming it is a condition of his or her probation not to use a controlled substance, the person is probably not doing very well on probation. As a question of that person's wellbeing, the legislature may not want to add prohibition on bringing a probation revocation in regard to that conduct, but she would prefer giving the issue some thought, she maintained.

[2:07:46 PM](#)

VICE CHAIR LYNN questioned if the above issue goes to the heart of CSHB 369.

MS. CARPENETI opined that the heart of the bill reads that DOL cannot prosecute for possession offenses that are class B and C felonies and class A and B misdemeanors.

VICE CHAIR LYNN stated that it was very narrow.

MS. CARPENETI agreed that it was narrow in the world of drug prosecution.

[2:08:20 PM](#)

REPRESENTATIVE MILLETT posed a scenario of a person on probation and not aware another person is doing drugs but who begins to overdose. She expressed that it is a disincentive for someone on probation to call for help unless they are not charged with an offense against their probation. She said there should be a "safe harbor" for someone on probation. "Maybe they are trying to save this person. Maybe they've gone through drug rehabilitation and they are on probation and they're trying to do an intervention on their buddy, and he has an overdose, and he's actually doing a good deed, but, in some case, it would violate his probation and he would also be prosecuted," she stated.

[2:09:52 PM](#)

REPRESENTATIVE LEDOUX related that the legislature should want to include the person on probation doing the wrong thing. She related that there must be a balance and she errs on balancing to save a life. The great piece of CSHB 369 is getting word out on the street that a person can call and they will not get into trouble, she opined.

VICE CHAIR LYNN agreed and stated CSHB 369 is a pro-life bill and if the bill passed it could save someone's life.

[2:10:42 PM](#)

REPRESENTATIVE MILLETT presumed that the legislature does not want to put someone back in prison because they violated their

probation by being a Good Samaritan in a bad situation that they did not create on their own.

VICE CHAIR LYNN said he totally agrees.

[2:11:11 PM](#)

The committee took a brief at-ease.

[2:11:26 PM](#)

REPRESENTATIVE PRUITT stated he would like to know if the House Judiciary Standing Committee would like to include the [probation] issue.

REPRESENTATIVE FOSTER stated that he supports adding the probation language, but he does not want to stall the bill.

[2:12:57 PM](#)

REPRESENTATIVE GRUENBERG related his concern that someone could be on probation for an entirely different crime, and many cases that involve a Petition to Revoke Probation (PTR) is brought with a new charge. There must be consideration whether the legislature is going to exempt any PTRs that result from this, or just drug-related [charges]. Another concern is that Ms. Carpeneti said if there is any doubt in law enforcement's mind, they will continue the investigation. The question will be how CSHB 369 is interpreted. He stated it needs to be an affirmative defense to put the burden on the defendant who would have the knowledge, unless, under the manner CSHB 369 is drafted, it would be an element of the crime as long as evidence is admitted, and the burden remains on the prosecution to disprove beyond a reasonable doubt. "We have to consider how this will work in a court of law if the thing goes forward," he stated.

[2:15:37 PM](#)

REPRESENTATIVE MILLETT expressed that she does not want the affirmative defense because the incentive is to save a life. To put the burden on the person reporting the overdose to prove they were not involved in it, is a disincentive for someone to call EMS to save a life, she maintained. When you add the burden of proof on the defendant, it causes disincentive, which would gut the bill. Speaking of probation, "I think that we

could have a Rules meeting ... I don't want to slow down the bill either because I think this is a life-saving bill." She spoke of a recent overdosing event behind the Lucky Wishbone where a man might have been saved. It is imperative that CSHB 369 is passed this session; she does not want anyone else to die of an overdose because friends are scared of being prosecuted. She said she wants the bill to move, and if the sponsor decides to add a probation provision or "safe harbor," it would be great; there is time in the Senate to make the change.

REPRESENTATIVE LEDOUX said at some point before CSHB 369 becomes law, the probation issue should be included, or the bill will not be as effective as it could be.

REPRESENTATIVE PRUITT stated he did not understand the full capacity of what the provision on probation aspect would be. He would like to see CSHB 369 pass this year with the commitment that he will look at the probation piece as it continues through the legislature, or, if necessary, during the interim.

[2:21:07 PM](#)

REPRESENTATIVE MILLETT moved to report CSHB 369, labeled 28-LS1515\C, Strasbaugh, 3/20/14, out of committee with individual recommendations and the accompanying fiscal notes.

There being no objections, CSHB 369(JUD) passed out of committee.

[2:21:40 PM](#)

The committee took an at-ease from 2:21 p.m. to 2:25 p.m.

HB 235-CONFIDENTIALITY OF APOC COMPLAINTS

[2:25:23 PM](#)

VICE CHAIR LYNN announced that the next order of business would be HB 235, "An Act requiring the Alaska Public Offices Commission to maintain the confidentiality of certain proceedings, documents, and information."

[2:25:54 PM](#)

THOMAS STUDLER, Staff, Representative Pete Higgins, Alaska State Legislature, paraphrased the following sponsor statement [original punctuation provided]:

Alaskans expect their elected officials to adhere to a strict set of laws and ethics codes, but, those same standards don't apply to all.

HB 235 would change that. It's unfortunate that the legislature did not include the Alaska Public Offices Commission (APOC) when it strengthened its ethics and disclosure laws in the past decade. If it had, we would not currently be in this hyperpoliticized campaign era.

HB235 requires the Commission to maintain confidentiality of proceedings, documents, and information until the Commission establishes that a violation of Alaska Statutes has been determined. That is the same standard we as legislators are held to, the Executive Branch are held to, and ensures the process has been followed with no undue influence or unneeded rush to judgment.

The Commission performs a vital service to the people of the state. We recognize the need to have the findings open to the public, once the facts of the matter have been determined and there is a finding of a violation. This legislation does not detract from APOC's mission, duties, and responsibilities. The public will still be informed, and more importantly, have access to the record once the facts are known.

Unfortunately, this process has been misused by various entities on both sides of an issue, and even more so during the election cycle. These entities make allegations timed at influencing the election process and the often-times unfounded claims have real impacts to those involved. For all intents and practices, the APOC process has been hijacked by these entities and the media influence that follows, turns the APOC into a campaign tool, which was never its intended purpose.

I urge your support on this timely and needed reform.

[2:28:58 PM](#)

VICE CHAIR LYNN surmised that an opponent in an election campaign may file an APOC complaint that may or may not have merit, and today that would be public information.

MR. STUDLER responded to Vice Chair Lynn that under current statutes the complaint would become public information [at the time it was filed] with APOC.

[2:29:43 PM](#)

VICE CHAIR LYNN continued that, at some point, APOC would come to a conclusion on the merits of the [complaint] and if found "not guilty" the information could be on the last page of the newspaper with the original complaint on the front page.

MR. STUDLER stated that, unfortunately, that is the way it is.

[2:30:18 PM](#)

VICE CHAIR LYNN gathered that under HB 235, the complaint would be filed with APOC, and if it were not valid that would be the end of it—nobody would know about it. If the complaint was found to be valid it would then become public knowledge, he surmised.

MR. STUDLER agreed. Under HB 235, the investigation would be confidential until APOC determined its findings and then the findings would be made public along with any fines that may go with it. He opined that the sponsor is considering conformity with the executive and legislative branches regarding ethics complaints, as complaints are kept confidential until the findings, which are then made public.

[2:31:13 PM](#)

REPRESENTATIVE MILLETT said she does not support HB 235 because she supports transparency. She related that voters could be "bamboozled" if a valid complaint is filed four days before an election but APOC does not act on it until afterwards. When electing officials, the voters have a right to be fully informed of the candidate's ethics and what they are doing, she noted. There are frivolous filings and tactics both parties are guilty of, but changing the statute would be hiding from public scrutiny, she remarked. Representative Millett said she [values] the opportunity to defend herself, and until APOC comes up with the [determination], she cannot defend herself because it is private. "If I have exact knowledge and proof that I can prove

it immediately that it's not true, I want to be able to [do] that before APOC takes its time; and we all know how long APOC takes even for an expedited hearing," she stated. The loss of transparency is a concern, and she believes the current reporting process is tried-and-true in that people who have been falsely accused have the opportunity to prove themselves innocent when a complaint is filed, she opined. She said that if elected officials cannot defend themselves against an ethical violation then maybe they need tougher skin.

[2:35:28 PM](#)

REPRESENTATIVE LEDOUX stated that people talk about it being unfair when an individual is accused of something and it turns out that the complaint was not justified, but she did not know how that differs from someone being accused of a crime in newspaper headlines, and six months later the individual is acquitted. That is a factor in an open and free society, she opined. The same thing goes for a [civil] lawsuit wherein an individual is accused of awful things and it is open to the public. Chances are that people are going to scrutinize something against elected officials more so than someone not a public figure, but she has problems with HB 235, opined.

[Audio difficulties]

[2:38:25 PM](#)

The committee took an at-ease due to technical difficulties.

[2:39:52 PM](#)

REPRESENTATIVE PRUITT moved to adopt CSHB 235(STA), labeled 28-LS1130\C as the working document.

There being no objections Version C was before the committee.

[2:40:19 PM](#)

REPRESENTATIVE FOSTER expressed his understanding that the investigation is kept confidential, and he surmised that the person receiving the complaint is not barred from defending themselves publically.

MR. STUDLER agreed with Representative Foster in that the subject individual always has the right to waive confidentiality. He noted that he had a newer version of the

bill that he worked on with the DOL, and it gives the subject the right to waive confidentiality. He said there are two processes in APOC, the normal and the expedited process of which within 72 hours AOPC would make a decision, but it will not proceed on an expedited case unless it knows what the facts are. "They have to know that it is a violation that they have strong belief that there has been a violation, and then they're going to proceed on an expedited basis," he stated. He related that in the event the complaint has not been requested to be expedited, APOC will proceed normally. He noted that the sponsor may include a finite time limit. He posited that whatever entity files a complaint with APOC, the subject individual has an opportunity to respond before the individual's name is "all over, everywhere." He said he is not blaming the press; that is the way it works. Someone who files a complaint runs right down to the news media, he added.

[2:42:50 PM](#)

REPRESENTATIVE LEDOUX questioned why the legislature should make rules protecting themselves from someone alleging a violation of an APOC rule when the legislature does not make those rules for the general public who may be accused of a crime or be the subject of a civil lawsuit. She reiterated that she did not understand why the legislature should protect itself when it is not protecting members of the general public. She stated it was not a rhetorical comment, but a question.

MR. STUDLER related that HB 235 is not to protect public officials but to protect the process. When APOC was established there was a process and procedure put into place to ensure that individuals elected to public office followed an ethical standard. He opined that the process is not performing as it should, and it is used for sensationalism.

[2:44:37 PM](#)

REPRESENTATIVE LEDOUX expressed that APOC has to do with following certain rules the legislature put in place and not ethical standards. She used the example that taking \$500 from a person versus taking \$1,000 from a person is not a difference in ethics. APOC is human-made rules whereas ethics is a totally different ball of wax, she opined.

[2:45:47 PM](#)

VICE CHAIR LYNN announced that CSHB 235(STA) was set aside.

HB 366-INVOLUNTARY COMMITMENT

[2:46:00 PM](#)

VICE CHAIR LYNN announced that the final order of business would be 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."

[2:46:15 PM](#)

REPRESENTATIVE LEDOUX moved the CS for HB 366, labeled Version 28-LS1172\Y, Strasbaugh, 3/21/14, as the working document.

[2:46:38 PM](#)

REPRESENTATIVE MILLETT objected.

[2:46:58 PM](#)

REPRESENTATIVE PRUITT explained that the amendment the committee adopted on Wednesday is incorporated into the new CS, as is the deletion of "Health and Social Services." Additionally, after consultation with a federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) attorney, it was decided that "record of" should be changed to "resulting from" in CSHB 366. He referred to a [3/21/14] memorandum written by Kathleen Strasbaugh and stated that it is her terminology, and that she also changed the language concerning the court's rule from "may" to "shall." Apparently, the attorney for the BATFE indicated that if it was not changed, an individual in Alaska would not be eligible for "relief from [legal] disability" and would not be able to get their name back off the record, he opined. It is a technical change to align the language with that of the federal law, "so we can make sure that that person still has the ability to have their name removed from the list." The fiscal notes were changed, so now there are only zero fiscal notes, he added.

[2:49:30 PM](#)

REPRESENTATIVE GRUENBERG said he would like a copy of the letter from BATFE.

MORGAN HOPSON, Staff, Representative Lance Pruitt, Alaska State Legislature, responded that she printed a copy of an email within which the representative from the Department of Public Safety (DPS) notified Ms. Hopson of the suggestions from BATFE.

REPRESENTATIVE GRUENBERG asked for a copy of the documentation referred to by Kathleen Strasbaugh, Legislative Counsel, in her 3/21/14 memo to Representative Pruitt.

[2:50:45 PM](#)

REPRESENTATIVE GRUENBERG requested a copy of the email from BATFE and asked if an individual from BATFE was available online.

VICE CHAIR LYNN said no one from BATFE was online.

[2:51:48 PM](#)

REPRESENTATIVE GRUENBERG noted that he would especially like to review the document regarding "the judge must grant relief" rather than "the judge may grant relief." He stated that there are times when federal officials state something as law and when the legislature reviews it, it finds that it is [just] an interpretation of a federal law.

[2:53:14 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said she reviewed the email before conducting the drafting. Ms. Strasbaugh spoke with the attorney in question who requested the language to read [on page 4, lines 8-10] "resulting from" rather than "a record of". She noted that the bill had been built around defining a concept called "a record of" disability related to an [involuntary commitment or adjudication of mental illness or mental incompetence], and the changes were made. [Changes were made regarding the language concerning the court's role in ruling on the motion for relief] from "may" to "shall." As Ms. Strasbaugh and Representative Gruenberg had discussed, the problem in this situation is that the objective is to relieve Alaskans from a disability created under federal law. She opined that the federal interpretation is rather critical in this situation even if they are not sure they agree with it.

[2:54:55 PM](#)

VICE CHAIR LYNN asked Ms. Strasbaugh if she believes that the bill protects individuals that need to be protected.

MS. STRASBAUGH responded that she copied it exactly, so she certainly hopes so.

[2:55:20 PM](#)

REPRESENTATIVE MILLETT questioned if this is the enabling piece that will allow people with a 30-day involuntary commitment to have their names removed from the [record]. "This is the enabling piece that will say, 'now that I've served and proved that I'm not mentally unfit to carry a handgun'--this is what will enable them to get their name off of the list, correct?"

MS. STRASBAUGH responded that is the objective.

[2:56:21 PM](#)

MS. HOPSON paraphrased the following subject email:

Page 3, lines 20-26: Sec. 47.30.851(a) Any person who is prohibited from possessing a firearm or ammunition under 18 U.S.C. 922(g)(4) as a result of an adjudication or commitment that occurred in this state may, at any time, move to be relieved from the disabilities resulting from the adjudication or commitment.

Page 4, line 9: "may" must be changed to "shall".

[2:57:39 PM](#)

VICE CHAIR LYNN closed public testimony.

[2:57:54 PM](#)

REPRESENTATIVE GRUENBERG stated that he is interested in the last portion of the email, and he assumed the attorney did cite the federal statute earlier in the passage.

[2:58:34 PM](#)

MS. HOPSON responded, "That is correct."

[2:58:49 PM](#)

REPRESENTATIVE MILLETT moved to report CS for HB 366, labeled 28-LS1172\Y, Strasbaugh, 3/21/14, out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection CSHB 366(JUD) passed out of committee.

[2:59:31 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:59 P.M.