

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 26, 2014

1:11 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

**COMMITTEE CALENDAR**

HOUSE BILL NO. 250

"An Act making an expression of apology, responsibility, liability, sympathy, commiseration, compassion, or benevolence by a health care provider inadmissible in a medical malpractice case; requiring a health care provider to advise a patient or the patient's legal representative to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care; and amending Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence."

- MOVED CSHB 250(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 362

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

- HEARD & HELD

HOUSE BILL NO. 315

"An Act relating to juries in criminal cases; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 64(FIN)

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 250

SHORT TITLE: MEDICAL MALPRACTICE ACTIONS

SPONSOR(S): REPRESENTATIVE(S) OLSON

01/21/14	(H)	PREFILE RELEASED 1/17/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	HSS, JUD
02/27/14	(H)	HSS AT 3:00 PM CAPITOL 106
02/27/14	(H)	Heard & Held
02/27/14	(H)	MINUTE(HSS)
03/13/14	(H)	HSS AT 3:00 PM CAPITOL 106
03/13/14	(H)	Scheduled But Not Heard
03/14/14	(H)	HSS AT 8:00 AM CAPITOL 106
03/14/14	(H)	Moved CSHB 250(HSS) Out of Committee
03/14/14	(H)	MINUTE(HSS)
03/17/14	(H)	HSS RPT CS(HSS) NT 6DP
03/17/14	(H)	DP: REINBOLD, PRUITT, KELLER, NAGEAK, TARR, HIGGINS
03/24/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/14	(H)	Heard & Held
03/24/14	(H)	MINUTE(JUD)
03/26/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 362

SHORT TITLE: SYNTHETIC DRUGS  
SPONSOR(s): REPRESENTATIVE(s) MILLETT

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

BILL: HB 315

SHORT TITLE: JURY NULLIFICATION  
SPONSOR(s): REPRESENTATIVE(s) T.WILSON

02/19/14 (H) READ THE FIRST TIME - REFERRALS  
02/19/14 (H) JUD  
03/26/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 64

SHORT TITLE: OMNIBUS CRIME/CORRECTIONS/RECIDIVISM BILL  
SPONSOR(s): JUDICIARY

02/27/13 (S) READ THE FIRST TIME - REFERRALS  
02/27/13 (S) STA, JUD  
04/04/13 (S) STA AT 9:00 AM BUTROVICH 205  
04/04/13 (S) <Bill Hearing Postponed>  
04/09/13 (S) STA RPT CS 1DP 1NR 1AM NEW TITLE  
04/09/13 (S) DP: DYSON  
04/09/13 (S) NR: GIESSEL  
04/09/13 (S) AM: COGHILL  
04/09/13 (S) STA AT 9:00 AM BUTROVICH 205  
04/09/13 (S) Moved CSSB 64(STA) Out of Committee  
04/09/13 (S) MINUTE(STA)  
07/25/13 (S) JUD AT 10:00 AM WASILLA  
07/25/13 (S) Heard & Held  
07/25/13 (S) MINUTE(JUD)  
01/29/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/29/14 (S) Heard & Held  
01/29/14 (S) MINUTE(JUD)  
01/31/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/31/14 (S) Heard & Held  
01/31/14 (S) MINUTE(JUD)  
02/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/03/14 (S) Heard & Held  
02/03/14 (S) MINUTE(JUD)  
02/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/05/14 (S) Heard & Held  
02/05/14 (S) MINUTE(JUD)  
02/07/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/07/14 (S) -- MEETING CANCELED --

02/10/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/10/14 (S) Heard & Held  
 02/10/14 (S) MINUTE(JUD)  
 02/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/12/14 (S) Moved CSSB 64(JUD) Out of Committee  
 02/12/14 (S) MINUTE(JUD)  
 02/14/14 (S) JUD RPT CS 4DP 1NR NEW TITLE  
 02/14/14 (S) DP: COGHILL, MCGUIRE, WIELECHOWSKI,  
 DYSON  
 02/14/14 (S) NR: OLSON  
 02/14/14 (S) FIN REFERRAL ADDED AFTER JUD  
 02/25/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 02/25/14 (S) Heard & Held  
 02/25/14 (S) MINUTE(FIN)  
 03/06/14 (S) FIN AT 5:00 PM SENATE FINANCE 532  
 03/06/14 (S) Heard & Held  
 03/06/14 (S) MINUTE(FIN)  
 03/11/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 03/11/14 (S) Heard & Held  
 03/11/14 (S) MINUTE(FIN)  
 03/11/14 (S) FIN AT 5:00 PM SENATE FINANCE 532  
 03/11/14 (S) Heard & Held  
 03/11/14 (S) MINUTE(FIN)  
 03/13/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 03/13/14 (S) Moved CSSB 64(FIN) Out of Committee  
 03/13/14 (S) MINUTE(FIN)  
 03/14/14 (S) FIN RPT CS 3DP 1NR 3AM NEW TITLE  
 03/14/14 (S) DP: KELLY, MEYER, HOFFMAN  
 03/14/14 (S) NR: OLSON  
 03/14/14 (S) AM: FAIRCLOUGH, DUNLEAVY, BISHOP  
 03/14/14 (S) TRANSMITTED TO (H)  
 03/14/14 (S) VERSION: CSSB 64(FIN)  
 03/17/14 (H) READ THE FIRST TIME - REFERRALS  
 03/17/14 (H) JUD, FIN  
 03/24/14 (H) JUD AT 1:00 PM CAPITOL 120  
 03/24/14 (H) Heard & Held  
 03/24/14 (H) MINUTE(JUD)  
 03/26/14 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

DOUG WOJCIESZAK, Founder and President  
 Sorry Works!  
 Glen Carbon, IL

**POSITION STATEMENT:** Spoke in support of HB 250.

ANNIE HOLT, Executive Director

Alaska Physicians and Surgeons  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 250.

EDRA MORLEDGE, Staff  
Senator Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 362 on behalf of Senator Meyer.

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

**POSITION STATEMENT:** Answered questions regarding HB 362.

VASILIOS GIALOPSOS, Staff  
Representative Charisse Millett  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions regarding HB 362.

GUS SANDAHL  
Kenai, Alaska

**POSITION STATEMENT:** Testified in favor of HB 362.

REPRESENTATIVE TAMMI WILSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 315 as sponsor.

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

**POSITION STATEMENT:** Testified that the DOL has serious concerns with HB 315.

JORDAN SHILLING, Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions regarding SB 64.

SERGEANT CHRIS GIFFORD, President

Juneau Police Department Employees Association  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of raising the felony threshold as found in SB 64.

JEFF JESSE, Chief Executive Officer  
Alaska Mental Health Trust Authority  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 64.

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

**POSITION STATEMENT:** Presented two concerns regarding SB 64.

JOE BAIR  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SB 64 and on the complexities of sexual assault laws.

ANDY PEVEHOUSE  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of SB 64.

JAYCE ROBERTSON  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SB 64.

RONALD TAYLOR, Deputy Commissioner  
Department of Corrections (DOC)  
Anchorage, Alaska

**POSITION STATEMENT:** Discussed rehabilitative services in Alaska's correctional system.

CARMEN GUTIERREZ  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 64.

AL TAMAGNI, Member  
National Federation of Independent Business  
Anchorage, Alaska

**POSITION STATEMENT:** Testified against SB 64 with regards to raising the felony theft threshold above \$750.

RICK ALLEN, Director  
Office of Public Advocacy  
Alaska Department of Administration

Anchorage, Alaska

**POSITION STATEMENT:** Made comments on the felony/misdemeanor monetary threshold.

## **ACTION NARRATIVE**

[1:11:54 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:11 p.m. Representatives Foster, LeDoux, Lynn, Millett, Gruenberg and Keller were present at the call to order. Representative Pruitt arrived as the meeting was in progress.

### **HB 250-MEDICAL MALPRACTICE ACTIONS**

[1: 12:35 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 250 "An Act making an expression of apology, responsibility, liability, sympathy, commiseration, compassion, or benevolence by a health care provider inadmissible in a medical malpractice case; requiring a health care provider to advise a patient or the patient's legal representative to seek legal advice before making an agreement with the patient to correct an unanticipated outcome of medical treatment or care; and amending Rules 402, 407, 408, 409, and 801, Alaska Rules of Evidence."

[1:13:47 PM](#)

DOUG WOJCIESZAK, Founder and President, Sorry Works!, said he works around the country with doctors, nurses, health care insurers, and legal professionals, teaching them how to disclose and, if necessary, apologize after something goes wrong in a medical setting. He noted that he has been doing this for over seven years. In 1998, he lost his brother to medical errors, and his family did not get disclosure or any communication, he explained. The family had to file a lawsuit to get any answers, and even after getting money and when the liability was clear, the doctors and the hospital still did not communicate with the family. He said he has taken that experience and now travels around telling the medical community that "if you don't want someone like me to sue you, here's what you need to do." He

added that he takes people step-by-step through the process, and he works with defense and plaintiff counsel, hospital risk managers, hospital leadership, and others.

[1:15:21 PM](#)

MR. WOJCIESZAK noted that he has reviewed HB 250 and has been in contact with the sponsor's staff. He said about 36 states have similar laws, and he has seen that the laws help doctors and nurses be more comfortable communicating with patients and families if something goes wrong. He said that, according to defense and plaintiff lawyers, the primary reason doctors get sued when something goes wrong is the total lack of communication. Families feel abandoned and left in the lurch because they want to hear from the doctor. Doctors will say that they are afraid to talk because it will be used against them in court, he stated. Bills, like HB 250, help people feel a little more comfortable and allow people like him to go out and have "the conversation with hospitals." The laws help the defense counsel get a little more comfortable allowing doctors to communicate. The big goal, he stated, is to make medicine safer. "When doctors talk more, systems get better, patients and families are safer, and society is better served," he opined.

[1:17:37 PM](#)

REPRESENTATIVE GRUENBERG noted that he has cosponsored the bill, and he asked Mr. Wojcieszak if lawyers are afraid of getting sued for their own malpractice.

MR. WOJCIESZAK said he has not heard that question, but his book was written with two defense attorneys. He said his message to defense counsel and doctors is that when something goes wrong, simply say, "Gosh Max, I'm sorry this happened to your mom; we're going to review to figure out what happened and then we'll get back to you in due process."

[1:19:37 PM](#)

MR. WOJCIESZAK suggested there might be a case for legal malpractice if an attorney tells a doctor not to talk to a patient and then the doctor gets sued. He opined that many doctors have been poorly advised not to talk after something goes wrong, "and that's what leads to so many lawsuits." The

general movement in the medical world is that it is better to talk. If the doctor goes too far and speculates or prematurely admits fault, "then we'll clean that up" with documentation and expert reviews. He said he has heard of doctors who say, "Sorry, I've killed your mom," and then a follow-up review shows no error. Some courts will consider the comments as hear-say, he stated.

[1:21:38 PM](#)

ANNIE HOLT, Executive Director, Alaska Physicians and Surgeons, said her organization has 150 members and supports HB 250. Over 30 states have introduced such a law with the goal of empowering the patient/physician relationship and encouraging dialogue between the two, especially when there is an unanticipated outcome. Such outcomes may or may not be directly attributable to the physician's care. She noted that a genuine expression of sorrow by the physician can be misinterpreted, and physicians are concerned that it can increase their liability. In the best interest of physicians and their patients, this legislation would support open conversations and understanding of what happened without the specter of liability, she stated.

[1:22:56 PM](#)

CHAIR KELLER closed public testimony.

REPRESENTATIVE GRUENBERG said, "We had an amendment that would have put language about the civil rules; you raised a point in a conversation with [Representative Kurt Olson] and me on the floor. Your point was very well taken, and had I offered it, I would have offered it in a little different form, as a result of your conversation."

[1:23:59 PM](#)

REPRESENTATIVE GRUENBERG moved to pass HB 250 out of committee with individual recommendations and accompanying fiscal notes. There being no objection, CSHB 250(HSS) was reported out of the House Judiciary Standing Committee.

[1:24:21 PM](#)

The committee took an at-ease from 1:24 p.m. to 1:26 p.m.

**HB 362-SYNTHETIC DRUGS**

1:26:17 PM

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 362, "An Act relating to a prohibition on the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs."

1:27:52 PM

REPRESENTATIVE MAX GRUENBERG moved to adopt HB 362, labeled 28LS1538\U, Strasbaugh, 3/18/14, as a working document.

CHAIR KELLER objected for discussion purposes.

1:28:44 PM

EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, said that Senator Meyer is carrying the Senate Version (SB 173). She noted that he has previously sponsored legislation to outlaw synthetic cannabinoids, and the bills have passed. The cannabinoids go by various names, such as spice and bath salt, and they are commonly used as alternatives to cocaine and marijuana. The substance is sold by the gram in small packets in convenience stores and smoke shops, and it is easily accessible, she explained. Unfortunately, many people think these drugs are safe, including parents, because they are so readily available. "They're actually not safe; they cause many psychotropic effects on users," she stated. The bill is an attempt to stop the sale of these drugs by targeting the way they are packaged, rather than the chemical compounds they are made of. "What happens is, the manufacturers of these drugs, who are often overseas, simply change the compounds that we previously outlawed by a molecule or two, and all of a sudden, they're not illegal anymore," she explained.

MS. MORLEDGE said that the Anchorage Assembly passed an ordinance to ban the packaging of synthetic cannabinoids, and the House and Senate bills are modeled after that ordinance, as it has been very successful. "They virtually wiped it out of all of the smoke shops and convenience stores," she stated. She surmised that Alaska is the only state attempting this approach—to target the packaging rather than the compound—and "it hasn't really been challenged as ... a state law." She noted that a similar ordinance was passed in Maine and there have been no challenges.

[1:31:45 PM](#)

REPRESENTATIVE GABRIELLE LEDOUX asked if [the label] has to include some or all of the following criteria: false and misleading; does not specify the name of the synthetic drug; does not specify the name and place of the manufacturer, packer, or distributor; and all of [the criteria listed under paragraph (2)].

[1:32:11 PM](#)

MS. MORLEDGE noted that her understanding is that the substance would have to meet one criterion from [paragraph] (b)(1) and one from [paragraph] (b)(2).

[1:32:31 PM](#)

KATHLEEN STRASBOUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, said, yes, [the package] would have to have one from (b)(1) and one from (b)(2).

[1:32:45 PM](#)

REPRESENTATIVE LEDOUX suggested that the manufacturer could simply put the ingredients on the label in order to be legal.

MS. STRASBOUGH she said does not have all of the facts associated with the bill, but those who trade in these products do not like the scrutiny and do not want to provide that information.

[1:33:45 PM](#)

MS. MORLEDGE said the items are being marketed as things that they are not, like incense. The packaging often states, "Not for human consumption," but that is exactly what it is intended for, she explained. She suggested that the Anchorage city prosecutor answer the question.

CHAIR KELLER asked if instant coffee, a stimulant, could fall under this prohibition.

[1:35:34 PM](#)

MS. STRASBOUGH said this bill depends upon mislabeling; a person selling coffee would likely not want to disguise it. There is another law, Imitation Controlled Substance, where something like that might occur, but the element of falsity is necessary for a violation to be committed under HB 362, she explained.

CHAIR KELLER assumed [instant coffee could fall under the statute].

[1:36:47 PM](#)

REPRESENTATIVE GRUENBERG said he agrees with Chair Keller and also with Representative LeDoux. He turned to page 1, line 11, where the intent is correctly drafted because the item must have (A), (B), or (C), and "or" is the key word [under (b)(1)]. However, "and" appears on page 1, line 13, but there only needs to be one of (A) through (G) under [(b)(2)]. The word "or" does not appear at the end of line 18, like it appears at the end of line 11. He said he will offer an amendment at the appropriate time to ensure that it requires only one criterion from [(b)(2)] by inserting the word "or".

[1:38:12 PM](#)

REPRESENTATIVE GRUENBERG asked if his suggestion is correct.

CHAIR KELLER stated that that can be worked out with the sponsor.

REPRESENTATIVE GRUENBERG said it is not clear to him whether each sale would be a separate violation. "If you sold 10 of these packages to one person and three to another, you would have committed 13 separate offenses?"

[1:39:21 PM](#)

MS. MORLEDGE answered that the intent is a \$500 violation per package.

REPRESENTATIVE GRUENBERG said he will offer an amendment that specifies that intent. He then said he is concerned about the question that Chair Keller raised. "We have things that are depending upon having street names," and those names vary, so how can it withstand a test for vagueness? "I see this thing not being challenged as a whole bill but in an individual case where they have something from category A and something from

category B, and I see one thing is legal, and somebody will say 'well, I bought a legal drug.'

[1:40:57 PM](#)

MS. MORLEDGE said the sponsor will be happy to work with Representative Gruenberg on refining the bill's language.

REPRESENTATIVE BOB LYNN noted page 2, line 19, where the esoteric names [of the product] are listed. "What happens if somebody comes up with a new name that is not included in this list?"

[1:41:34 PM](#)

REPRESENTATIVE GRUENBERG answered that the law would have to be amended.

MS. MORLEDGE said the names are included now because they are known; perhaps when the names change, the list can be deleted. These are drugs that we would like off of the street immediately, she stated.

REPRESENTATIVE LYNN asked if there was language that would include future street names.

MS. MORLEDGE said, "We would be happy to work on that."

[1:42:34 PM](#)

REPRESENTATIVE CHARISSE MILLETT said she is willing to work with both Representatives Gruenberg and Lynn. "It is an ever-changing group of names, and that's what we struggle with. And it's an ever-changing group of drugs that are mixed in with these," she noted. It is difficult to capture everything, but she wants to make sure kids do not have access to the drugs and people do not sell them. She reiterated that she will work with anyone to make the bill better.

REPRESENTATIVE LEDOUX asked about a definition of "false and misleading."

[1:43:39 PM](#)

MS. STRASBOUGH said those terms are in frequent use in the statutes. "I'm sure that a definition can be put together if someone wanted one," she added.

REPRESENTATIVE LEDOUX asked if it is defined.

MS. STRASBOUGH said she has not researched it, but it is her impression that the statute uses the term without definition.

[1:44:46 PM](#)

REPRESENTATIVE LEDOUX said she is looking forward to an answer on why a person [selling the substance] would not just specify what is in the package and who manufactured it in order to make it legal.

VASILIOS GIALOPSOS, Staff, Representative Charisse Millett, Alaska State Legislature, said that the overwhelming majority of these synthetic substances comes from China. In order for them to enter the United States under those pretenses, the substances would have to comply with the federal Food and Drug Administration (FDA), and they would not be able to do so.

REPRESENTATIVE LEDOUX asked why the substances would not be able to meet the FDA requirements. If it cannot meet those requirements, why is it not illegal?

MR. GIALOPSOS said that was an excellent question that he would not be answering at this point.

[1:46:44 PM](#)

REPRESENTATIVE GRUENBERG noted that page 3, line 17, states that the commissioner of the Department of Public Safety may delegate its authority as appropriate. He asked if that phrase is normally used, because it does not specify any outer limits of what may be delegated. It could be unconstitutional, he added. He then noted that the language does not specify who the authority can be delegated to; it could be to a non-governmental agency, and he sees potential problems.

[1:48:17 PM](#)

GUS SANDAHL, Kenai, Alaska, said he works in law enforcement, and he is very supportive of legislation that prohibits the sale and possession of these substances across all of Alaska. He appreciates the time taken to eliminate loopholes and for considering the bill.

CHAIR KELLER said he agreed and complimented the sponsor.

REPRESENTATIVE GRUENBERG said he had two more questions. Regarding the section with the penalties, page 3, lines 21-22, a person who violates the law is guilty of a violation. "Are you intending to punish the person who makes the drugs, who wholesales them, who retails it, or all three?" He then referred to page 3, line 30, [defining a synthetic drug] as a chemical intended to.... He asked who would have to have the intent, "and how are you going to prove it?" He said he supports the concept [of the bill], but he is trying to save it from potential serious challenges.

REPRESENTATIVE LEDOUX surmised that a violation is a civil matter, rather than a criminal matter. "If it's civil, you're not entitled to a public defender; you're not entitled to a trial by jury; is that the reason for making it a violation as opposed to a misdemeanor?"

CHAIR KELLER said that question will be answered later, and HB 362 was held over.

### HB 315-JURY NULLIFICATION

[1:51:47 PM](#)

CHAIR KELLER announced that the final order of business was HOUSE BILL NO. 315, "An Act relating to juries in criminal cases; and providing for an effective date." He said he will not rush this bill, but there is no time for questions. The discussion will continue at a future date.

[1:52:26 PM](#)

REPRESENTATIVE TAMMI WILSON, Alaska State Legislature, said HB 315 relates to jury nullification. She made the following statement:

Before one is able to understand why jury nullification is a good idea, one must understand the importance of a trial by jury. Our Founding Fathers considered them to be a powerful weapon in the war against tyranny. Thomas Jefferson wrote, "I consider trial by jury as the only anchor yet imagined by man,

by which a government can be held to the principles of its constitution." In the Federalist Papers, Alexander Hamilton wrote that trial by jury was the "very palladium of free government" and a "valuable check upon corruption."

As for the concept that juries have not only the power but the obligation to nullify unjust rulings of a judge, John Adams wrote, "It is not only the juror's right, but his duty to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court."

Our Founding Fathers zealously defended this right and recognized that only an informed and empowered jury could effectively protect a defendant from the potentially harmful effects of judges. Jury nullification allows citizens to have the final say on what is fair in a court of law.

Therefore, jury nullification is a good idea and one supported by Constitutional principles and freedoms.

REPRESENTATIVE WILSON noted that there are 27 states that have some form of jury nullification, and most of them are within their state constitutions. "New Hampshire just finished passing a jury nullification," she said. If one were to truly believe that when people join a jury, they leave all of their past experiences, all of their biases, and "everything" behind, and make their determinations only based on the judge's instructions and the testimony, then juries would be selected in the order the people arrive. But, people do take their experiences and biases into the courtroom, so "a lot of this is already going on," Representative Wilson explained. "What this bill basically says is we want the judge to give us permission to do it."

[1:56:00 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), said the DOL has two serious concerns with HB 315. The language allows the defendant to instruct the members of a jury that they may disregard the laws as given to the judge "and to all of us by the people who make the law; that is, you. You're the people who make the law that we try and enforce to the best of our ability when we charge people with crimes."

MS. CARPENETI stated that the second concern is the fact that the law will allow the defendant in a criminal case to ask the judge to disregard Alaska's rules of evidence, which have been written with a view of making a trial as fair as possible. The bill requires the evidence to be relevant, and that is already true under Alaska law, but there are various rules that try and dictate evidence that is just too prejudicial to be fair or is hearsay and not reliable enough to be introduced for consideration by the jury. However, [HB 315] allows [evidence] if it is relevant in any way—even though it might be specifically disallowed in statute or in the evidence code. "And then, it allows the state to come back and rebut that. I think that what we would find is that allowing the jury to disregard the courts [and] disregard our rules of evidence, would result in trials that are not very orderly or not very fair to either side."

CHAIR KELLER set aside HB 315.

**SB 64-OMNIBUS CRIME/CORRECTIONS/RECIDIVISM BILL**

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CHAIR KELLER announced that the next order of business would be CS FOR SENATE BILL NO. 64(FIN), "An Act relating to theft and property offenses; relating to the definition of 'prior convictions' for certain theft offenses; establishing the Alaska Criminal Justice Commission and providing an expiration date; relating to the crime of custodial interference; relating to the duties of the Alaska Judicial Council; relating to jail-time credit for offenders in court-ordered treatment programs; relating to conditions of release, probation, and parole; relating to duties of the commissioner of corrections and board of parole; establishing a fund for reducing recidivism in the Department of Health and Social Services; requiring the commissioner of health and social services to establish programs for persons on conditions of release or probation that require testing for controlled substances and alcoholic beverages; requiring the board of parole to establish programs for persons on parole that require testing for controlled substances and alcoholic beverages; relating to the duties of the Department of Health and Social Services; and providing for an effective date."

[1:58:27 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, said he will address the questions the committee had regarding custodial interference. He noted that there was some debate during the last meeting about whether those sections would be more appropriate in the attempted kidnapping or kidnapping statutes. He said he provided the committee with a memo on this topic. He reminded the committee that the sections were added through an amendment in the Senate Judiciary Standing Committee. The issue was brought to its attention by a constituent in Anchorage who relayed the scenario of a man walking into a school representing himself as the lawful parent of a child, probably with the intent of kidnapping the child, and only getting charged with criminal mischief in the fourth degree. The reason the man could not be charged with attempted kidnapping was because of the difficulty in proving the attempt. "Attempt would require a substantial step towards restraining another person with the intent to hold that person," he explained.

MR. SHILLING explained that the provision was placed in the custodial interference statutes because the offender would be attempting to portray himself as a relative—as a lawful custodian. The offenders are saying that they have a right to custody, so that is why the decision was made to put it into the custodial interference statutes, he stated.

[2:01:03 PM](#)

REPRESENTATIVE GRUENBERG said he hopes that Mr. Shilling will convey to the sponsor that his previous comments were made to help the legislation, not to "torpedo" it. He said he spoke with Senator Wielechowski, the bill's author. This is a big bill and it warrants some careful consideration, and Representative Gruenberg would like to review it.

[2:02:11 PM](#)

SERGEANT CHRIS GIFFORD, President, Juneau Police Department Employees Association, said he has been a police officer for 15 years, and he has handled a lot of theft cases and would like to talk about the felony threshold in SB 64. He has dealt with minor to very serious property crimes, he noted. Police officers and state troopers who investigate property crimes in Alaska take all cases seriously, but he can only speak to his experience in Juneau. In Juneau, if a person steals a corndog or a DVD player, a uniformed officer will respond. He stated

that there is seldom a situation that is called in that receives no personal attention or action by law enforcement; however, police prioritize their level of calls for service. Crimes against persons are a priority over property crimes, he explained, and persons reporting a theft can feel like they are being ignored if an officer is called to a scene of domestic violence at the same time, for example. The officer is not ignoring the theft but just prioritizing the incidents, he said. "In Juneau, an officer will respond to a theft regardless of the monetary amount," he stated, and "raising the threshold for property crimes will not change the police response to them—we respond to all crimes as we can and when we are able, in relation to other pending calls." Delays in response times can be alleviated by adding officers, he noted.

SERGEANT GIFFORD said that raising the felony threshold from \$500 to \$1200 is reflective of inflation. "I think it's fair," he stated. Many times, a person who is accused of a theft of \$500 is convicted of a misdemeanor crime anyway; they are charged with a felony but end up with a misdemeanor conviction. Raising that level puts serious pressure on prosecutors to keep those felony cases as felony cases. Someone who steals \$2,000 deserves a felony conviction, incarceration, and supervised probation and/or parole, he opined. "I think all property crimes should be prosecuted vigorously, but the statute should be fair and reflective of current monetary values," he concluded.

CHAIR KELLER asked Sergeant Gifford if the property threshold makes no difference as far as the [Juneau Police Department is concerned].

SERGEANT GIFFORD said that the department investigates violations, which are not even crimes, if possible. If there is something more serious pending, the department takes that first, he added.

REPRESENTATIVE LEDOUX said many merchants are concerned that if the property crime is raised to \$1,200, then a \$750 theft, for example, would only be a misdemeanor and not taken as seriously.

SERGEANT GIFFORD said police are fact finders, and that is not based on the monetary amount. A felony level case may involve different legal aspects, but that would be a question for an attorney.

REPRESENTATIVE LEDOUX asked if the department would prioritize a higher theft amount over another during an investigation.

SERGEANT GIFFORD said a very typical case is the theft of bottle from a liquor store, and the surveillance footage is reviewed and an investigation is done, whether the theft is a \$500 case [of liquor] or a \$22 bottle. "We do the best we can...."

REPRESENTATIVE GRUENBERG spoke to the effect of SB 64. "Currently if the value of the merchandise is \$500 or more it is a class C felony; under the bill, if the value was \$1,200 or more it would be a felony." He asked if there is now a difference in the level of attention in investigating a felony over a misdemeanor.

SERGEANT GIFFORD said the department gets all the facts that it can in a theft case and follows all leads, like tracking down a witness. "We are not doing our job 100 percent if we are not trying to get all of the evidence we possibly can," he stated. There is usually not a whole lot of difference in investigating a felony or a misdemeanor. Many times an arrest is not made for a felony because prosecutors need to schedule a grand jury "and things like that." He said, "A lot of times we will gather information and file the charges with the prosecutor's office, and the person may walk away at that point but later go in front of a grand jury and be indicted and arrested on an arrest warrant."

[2:13:58 PM](#)

JEFF JESSE, Chief Executive Officer, Alaska Mental Health Trust Authority, stated that he is testifying in favor of SB 64. It is rare to find a bill that is both timely and strategic, he opined. The House Finance Standing Committee recently attached intent language to the budget, saying that the court system, the Alaska Housing Finance Corporation, the Mental Health Trust, and the departments of Corrections, Labor and Workforce Development, and Health and Social Services need to continue to work together toward a plan to reduce recidivism and avoid building another prison in 2016, which is the path the state is currently on unless it does something different. The agencies have been working toward this effort, and he noted that the Criminal Justice Working Group has a reentry task force and has been working on how to enhance the process of reentry to deter recidivism. However, it will require a broader set of actions in order to avoid building a \$300 million prison within the next four or five years, he stated.

MR. JESSE surmised that the finance committee was responding to the need for a sustainable budget, and building new prisons every four to eight years is unlikely to support a sustainable budget. This bill is an important first step because it contains a number of keystones to reducing recidivism, including raising the property crime threshold for a felony. It is time, he said. Representative Craig Johnson recently reminded him that the state incarcerates for two reasons: "We're either mad at them or we're afraid of them." For theft crimes, mostly people are mad at the offenders, and the fact that inflation has raised the price of items does not necessarily mean that people are madder than at the time when original thresholds were set. Clearly, there needs to be a change in the threshold, he reiterated. The Criminal Justice Commission created by SB 64 is also very important. He continued:

If you want to control the prison population, you need to start reviewing the sentencing guidelines that we have in state law and make sure that those sentencing guidelines and requirements are where you want them to be, so that we're only incarcerating people for the particular circumstances that we want them incarcerated for and that we are incarcerating them for the period of time that is most appropriate to achieve the goals, not only for setting public standards of behavior, but also those sentences that would be most beneficial in terms of rehabilitation and preventing recidivism.

MR. JESSE opined that the Recidivism Reduction Fund is also a key element of SB 64. He reiterated the cost of a new prison and said that, obviously, recidivism cannot be reduced without cost. He said [the state] is getting smarter in using the resources available, but clearly there will be a need for additional resources. This is no different from the "Bring the Kids Home" initiative, where dollars needed to be reinvested that were being spent out of state to serve Alaska children. In this case, [the state] is looking at long-term budgetary sustainability and what strategic investments need to be made in order to reduce the population of people in prison and avoid building another prison. Mr. Jesse turned to the 24/7 Sobriety program and said it is an evidence-based practice that has proven to be very effective in keeping people sober and keeping them from recidivating. A vast majority of people in corrections had substance abuse connected with their criminal behavior. He expressed support for the "good time" provided to

those participating in treatment and said that the basic needs to avoid someone from recidivating is housing, job, and support in recovery. He stated that this bill is a huge first step that will reduce recidivism and the budget.

CHAIR KELLER asked if Mr. Jesse saw any areas that were missed.

MR. JESSE said the bill is a great start and covers a pretty broad cross section of the things that should be started right now.

[2:20:42 PM](#)

REPRESENTATIVE GRUENBERG noted that a district court judge in Montana declared the 24/7 program to be unconstitutional and it is getting appealed to their supreme court.

MR. JESSE said there are many conditions placed on release, and he would be surprised if there was a compelling constitutional argument against requiring sobriety as a condition for release.

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PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), noted that she will speak to two items today. When ANDVSA first saw the bill, members were OK with [the 24/7 sobriety program] being in the Department of Corrections (DOC), but as the bill changed and became a part of the Department of Health and Social Services (HSS), they developed concerns about victim safety, but some of the concerns may not be real in the long run, she stated. She said she understands the need to do something about Alaska's prison population and that \$2 a day for sobriety tests compares well with \$138 for imprisonment. One concern is whether HSS can actually deal with violent offenders who have been drinking, including sexual predators or offenders of domestic violence. She understood that DOC would be a consultant, and the point of view of ANDVSA is that there may be quite a bit of consulting and contracting. States with 24/7 programs, like Montana and South Dakota, have a very strong and immediate law enforcement response. She cautioned that the program may be evidence-based in practice but not in its structure. Ms. Brown said ANDVSA is definitely supportive of some kind of program that works on sobriety because it is known that alcohol and substance abuse

does not cause sexual assault, but it is a co-occurring disorder.

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MS. BROWN said the second concern is that "your representative who you created in terms of the Office of Victims' Rights, that that person who represents victim rights—constitutional rights...—be a member of that sentencing commission." The victim's constitutional rights should be considered equally with the defendant's constitutional rights, she stated. She noted AS 44.19.645 regarding the powers and duties of the commission, which includes providing for the protection of the rights of crime victims. Having a representative from the Office of Victims' Rights will represent the constitutional rights of victims, she reiterated. She knows that the commission should have a manageable number of members, but "we feel very strongly that at least that ... office should be on that panel."

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JOE BAIR, Wasilla, Alaska, said he is supportive of SB 64 redefining what is criminal and to what extent it is criminal. He said his concern today is in redefining sexual crimes, which not many people want to talk about. He gave the example of two men having a heated discussion whereby one man backs the other against the wall. If the man who is against the wall puts up his arms into the area of the other man's chest to move him back, it could be construed as an assault—a misdemeanor. If the one person was a female in the same situation and if any part of the man's hand touched any part of her breast, it would be a felony, and the woman does not even have to [press charges]. It is a crime against the state, and anyone who saw the interaction could bring it forward, he stated. If the woman said she was touched, even if the man said, "yea, I was trying to get her out of my space," it does not matter—it is a felony. "That's the problem that we're at today—these felonies are not defined," he opined. Whether it is an attempted sexual assault or a vicious rape, the penalty can be the same. That is why he thinks there should be some distinguishing, he stated.

CHAIR KELLER told Mr. Bair that the committee is there to look at those tough questions.

MR. BAIR said he had another example. He said he and his wife had been sexually assaulted in their "younger days." Consequently, they were very careful with their children, and he

was never alone with his nieces. "I bend over backwards to not be in a situation where anything could be construed as being irregular," he noted, but he finds that it is detrimental to him. He spoke of helping a young child get off some play equipment and asked what would happen if a parent questioned what he was doing. "These are strange things, but without clear definitions, I always feel at risk," he told the committee.

[2:34:47 PM](#)

ANDY PEVEHOUSE, Kenai, Alaska, said he works for the Alaska Public Defender Agency, but he is speaking for himself, and he supports SB 64, particularly with regard to the increased misdemeanor and felony monetary threshold for property crimes. On the Kenai Peninsula, police investigate every crime whether it is a class B misdemeanor or a class A felony, he noted. In terms of prosecutions, he has seen thefts of \$1 prosecuted, and he has seen a theft of something valued \$501 prosecuted as a class C felony, "so I don't think that there's any risk that changing the threshold is going to change how crimes are prosecuted." He noted that the consequences of being branded a felon are extreme, and it closes many doors for people, particularly young people. Crimes like theft and criminal mischief are largely crimes of passion or opportunity, he explained. He gave the example of a girlfriend and boyfriend who are angry, and one of them throws a rock and breaks a windshield. If it costs more than \$500 to replace a windshield, it is a felony, even though the person was not likely thinking about it, especially not whether it was a felony or a misdemeanor. The "hothead" is suddenly a felon, he stated. Raising the threshold will protect people who might do something foolish but who really should not be branded as felons, he opined.

MR. PEVEHOUSE noted that the bill does not change the part of the theft statute that keeps recidivists thieves from becoming felons. The law, as it stands, is that the third class A misdemeanor of theft can be charged as a class C felony—it aggravates and elevates on the third one. He did not think anyone should be concerned that by changing the threshold, the message will not go out to repeat offenders. "So if you continue to be a thief, at some point you certainly deserve that class C felony," he stated. What was worth \$500 30 years ago would be [worth a lot more] today.

CHAIR KELLER noted that he is surprised at how much interest there is in SB 64.

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JAYCE ROBERTSON, Soldotna, Alaska, noted that he has submitted written testimony and he has written a letter to Chair Keller. He said he agrees with much of what Mr. Jesse said, and he particularly supports the SB 64 language regarding the conditions of release and "treatment versus punishment." His strongest support is with the "hopeful addition" of language from SB 81, which would have an immense positive impact on his life. He said he once had a substance abuse problem, but he has been clean and sober for almost three years. He has been involved with the legal system and with rehabilitation and punishment. He stated that punishment seems to be the main focus instead of rehabilitation. Noting that he also supports the felony threshold change and the recidivism [fund], he mostly supports treatment for offenders.

MR. ROBERTSON said that treatment, not punishment, is the true solution to substance abuse, and he knows from personal experience and from the many people he knows in the recovery community. Directly or indirectly, every person in Alaska is impacted by substance abuse, one way or another, he opined. "It is a rampant problem, statewide, and the true solution is treatment options." The individual who is abusing drugs or alcohol will not recover until ready, "so that takes exposure to treatment and the possibilities; and that takes time and boundaries; and it forces the individual to be accountable to their own decisions," he explained. He reiterated that he would like to see language from SB 81 added to SB 64, granting the privilege to obtain a limited driver's license for a person who has completed court-ordered treatment. He explained that he had his driver's license suspended for a minimum of 10 years, and that is an extreme hardship on his family. When a person is not able to drive to work, it creates a hardship on others and encourages reliance on public assistance. Having a license would provide access to jobs, treatment, education, and 12-step recovery community meetings. Personally, he has been able to overcome the limitation, but he knows of others in the recovery community where [not being able to drive] is indescribably difficult. This change would give the state a step forward in the movement of recognizing treatment versus punishment.

CHAIR KELLER said he appreciated his testimony and called Ronald Taylor to hear about what is being done by the Department of Corrections regarding treatment options and reducing recidivism.

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RONALD TAYLOR, Deputy Commissioner, Department of Corrections (DOC), said DOC has placed great emphasis on expanding rehabilitative services. He noted that only 6 percent of DOC's total budget is used for those services, but that has been a substantial increase "of at least a million or two over the last three or four years." That includes an expansion of educational opportunities and substance abuse services, he added. The Recidivism Fund would provide supportive and reentry services that DOC is now not able to do, he said. Once persons are released from custody, "they need that added support to maintain, not only sobriety, but to be able to remain crime-free and remain in the community and be productive in the community." This would be of tremendous value, because it is a critical part of a person being able to stay out of the system, he stated.

CHAIR KELLER asked if those in prison also need more treatment of substance abuse and more education. He asked if the recidivism programs are functioning for the inmates.

MR. TAYLOR said that is correct, "We actually have expanded our institutional substance abuse programming for out-patient services and residential services, and we continue to look at ways that we can enhance our assessment capabilities inside the institution as well as in the community."

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CARMEN GUTIERREZ, Anchorage, Alaska, said she is testifying for herself, but she has worked for the State of Alaska for about 25 years in the criminal justice system, and she was the deputy commissioner for DOC for 3 years. She commended Chair Keller and the committee for their hard work to address meaningful reforms that will reduce recidivism and make Alaska communities healthier, and she said SB 64 is a great step in that direction. The bill is intended to promote offender accountability and to allow the DOC to use its limited hard prison beds in a more cost-effective fashion, she opined. An organization, called Right on Crime, is "making the conservative case for criminal justice reform." Right on Crime is very engaged in looking at cost-effective, evidence-based practices that reduce crime, reduce cost, reform offenders, and protect communities, she stated. She said that Grover Norquist is a leader of the organization and in July, 2013, sent a letter in support of SB 64. Other members of Right on Crime are noteworthy conservatives, such as Edwin Meese, Jeb Bush, Newt Gingrich, and

William Bennett. There is a recognition throughout the country that the practices of the past will only provide failed results, "and we really have a responsibility to use valuable Alaska resources in a manner that gives Alaskans the best outcomes possible," she said.

MS. GUTIERREZ urged the committee to look at the opinion noted previously by Representative Gruenberg, which she has not seen, but as Mr. Jesse indicated, courts have been imposing, via statute, conditions of release and probation, "and it is very hard for me to imagine how adding a condition of sobriety 24/7 would be found, by our courts, as being unconstitutional." She said she strongly supports the Alaska Criminal Justice Commission, and it would be very essential in Alaska moving forward in developing comprehensive strategies.

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AL TAMAGNI, Member, National Federation of Independent Business, said that he found it interesting to listen to the previous testifiers, "because none of them are really absorbing the loss; it's the business people that absorb the loss, and there really isn't enough consideration given there." He noted that inflation depends on what is stolen; a computer worth \$3,000 in 1982 would be worth \$680 today. He said, "We have already agreed to an increase in the threshold amount from \$500 to \$750." He noted that net profits have not increased 200 percent since 1976 on a percentage-type basis; they are still very, very low. The small business entities of Alaska are willing to do its share by allowing the threshold to rise to \$750, and the other entities should make more of an effort to solve the problem, he opined.

[2:58:12 PM](#)

RICK ALLEN, Director, Office of Public Advocacy, Alaska Department of Administration, said the Office of Public Advocacy does not generally take positions on proposed legislation, and it takes no official position on SB 64; however, he will testify on the felony threshold provision. Mr. Allen was a state prosecutor for over seven years, and he noted that current law is strictly prosecuted in many parts of Alaska. He said he personally indicted at least two people for felony theft for stealing bicycles worth over \$500, and in his last trial, in 2011, he successfully prosecuted a man for walking into a Target [store] and walking out with a \$600 stereo. The man was sentenced to prison for two years, and the case cost the state

over \$100,000 for the prosecution, defense, and incarceration. The legislature needs to decide "if that math pencils out to anybody but Target."

CHAIR KELLER closed public testimony, and SB 64 was held over.

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**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 P.M.