

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 14, 2014
1:41 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 370

"An Act relating to employer drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and limiting the prescription of controlled substances to employees."

- MOVED CSHB 370(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 315

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

- HEARD & HELD

CS FOR SENATE BILL NO. 173(JUD)

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

- HEARD & HELD

CS FOR SENATE BILL NO. 128(JUD)

"An Act relating to the crime of harassment."

- MOVED HCS CSSB 128(JUD) OUT OF COMMITTEE

SENATE BILL NO. 170

"An Act relating to a defense to the crime of prostitution for victims of sex trafficking."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 2(JUD)
Urging the United States Congress to act on the request of the governor to acquire for the state additional land in the Tongass National Forest from the United States government by purchase or negotiation or by seeking amendment to the Alaska Statehood Act.

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 254

"An Act relating to powers of attorney; relating to the uniform probate code; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 370

SHORT TITLE: AWCB CONTROLLED SUBSTANCE PRESCRIPTIONS

SPONSOR(s): LABOR & COMMERCE

03/03/14	(H)	READ THE FIRST TIME - REFERRALS
03/03/14	(H)	L&C, JUD
03/19/14	(H)	L&C AT 3:15 PM BARNES 124
03/19/14	(H)	Heard & Held
03/19/14	(H)	MINUTE(L&C)
03/26/14	(H)	L&C AT 3:15 PM BARNES 124
03/26/14	(H)	Heard & Held
03/26/14	(H)	MINUTE(L&C)
04/04/14	(H)	L&C AT 3:15 PM BARNES 124
04/04/14	(H)	Moved CSHB 370(L&C) Out of Committee
04/04/14	(H)	MINUTE(L&C)
04/07/14	(H)	L&C RPT CS(L&C) NT 1DP 4NR 1AM
04/07/14	(H)	DP: OLSON
04/07/14	(H)	NR: CHENAULT, HERRON, REINBOLD, SADDLER
04/07/14	(H)	AM: JOSEPHSON
04/07/14	(H)	L&C AT 3:15 PM BARNES 124
04/07/14	(H)	<Bill Hearing Canceled>
04/11/14	(H)	JUD AT 1:00 PM CAPITOL 120
04/11/14	(H)	<Bill Hearing Canceled>
04/14/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 315

SHORT TITLE: JURY NULLIFICATION

SPONSOR(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
03/26/14 (H) Heard & Held
03/26/14 (H) MINUTE(JUD)
04/14/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 173

SHORT TITLE: SYNTHETIC DRUGS

SPONSOR(s): MEYER

02/14/14 (S) READ THE FIRST TIME - REFERRALS
02/14/14 (S) JUD
03/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/05/14 (S) Heard & Held
03/05/14 (S) MINUTE(JUD)
03/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/12/14 (S) Moved CSSB 173(JUD) Out of Committee
03/12/14 (S) MINUTE(JUD)
03/14/14 (S) JUD RPT CS 3DP 1NR 1AM NEW TITLE
03/14/14 (S) DP: COGHILL, MCGUIRE, DYSON
03/14/14 (S) NR: OLSON
03/14/14 (S) AM: WIELECHOWSKI
03/14/14 (S) FIN REFERRAL ADDED AFTER JUD
03/18/14 (S) FIN REFERRAL REMOVED
03/28/14 (S) TRANSMITTED TO (H)
03/28/14 (S) VERSION: CSSB 173(JUD)
03/31/14 (H) READ THE FIRST TIME - REFERRALS
03/31/14 (H) JUD, FIN
04/10/14 (H) FIN AT 8:30 AM HOUSE FINANCE 519
04/10/14 (H) <Pending Referral>
04/11/14 (H) JUD AT 1:00 PM CAPITOL 120
04/11/14 (H) Heard & Held
04/11/14 (H) MINUTE(JUD)
04/14/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 128

SHORT TITLE: ELECTRONIC BULLYING

SPONSOR(s): MEYER

01/22/14 (S) READ THE FIRST TIME - REFERRALS
01/22/14 (S) JUD
02/17/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/17/14 (S) Scheduled But Not Heard

02/19/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/19/14 (S) Heard & Held
02/19/14 (S) MINUTE(JUD)
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/03/14 (S) Heard & Held
03/03/14 (S) MINUTE(JUD)
03/07/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/07/14 (S) Moved CSSB 128(JUD) Out of Committee
03/07/14 (S) MINUTE(JUD)
03/10/14 (S) JUD RPT CS 2DP 1NR SAME TITLE
03/10/14 (S) DP: COGHILL, DYSON
03/10/14 (S) NR: OLSON
04/02/14 (S) TRANSMITTED TO (H)
04/02/14 (S) VERSION: CSSB 128(JUD)
04/03/14 (H) READ THE FIRST TIME - REFERRALS
04/03/14 (H) JUD
04/14/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 170

SHORT TITLE: AFFIRMATIVE DEFENSE TO PROSTITUTION

SPONSOR(s): GARDNER

02/12/14 (S) READ THE FIRST TIME - REFERRALS
02/12/14 (S) JUD
03/14/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/14/14 (S) -- MEETING CANCELED --
03/17/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/17/14 (S) Heard & Held
03/17/14 (S) MINUTE(JUD)
03/21/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/14 (S) Moved SB 170 Out of Committee
03/21/14 (S) MINUTE(JUD)
03/24/14 (S) JUD RPT 4DP
03/24/14 (S) DP: COGHILL, WIELECHOWSKI, MCGUIRE,
DYSON
03/28/14 (S) TRANSMITTED TO (H)
03/28/14 (S) VERSION: SB 170
03/31/14 (H) READ THE FIRST TIME - REFERRALS
03/31/14 (H) JUD
04/09/14 (H) JUD AT 1:00 PM CAPITOL 120
04/09/14 (H) Scheduled But Not Heard
04/14/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

KONRAD JACKSON, Staff
Representative Kurt Olson

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Representative Olson, chair of the House Labor and Commerce Standing Committee, sponsor, introduced HB 370.

AESHA PALLESEN, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing of HB 370.

MIKE MONAGLE, Director
Central Office
Division of Workers' Compensation
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Provided comments during the hearing of HB 370.

PAMELA GOODE
Delta Junction, Alaska

POSITION STATEMENT: Testified in favor of HB 315 with the inclusion of certain amendments.

RICHARD SVOBODNY, Deputy Attorney General
Central Office
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 315; suggested two changes during the hearing of CSSB 173(JUD); answered questions during the hearing of CSSB 128 (JUD); answered a question during the hearing of SB 170.

SARALYN TABACHNICK, Executive Director
Aiding Women in Abuse and Rape Emergencies, Inc. (AWARE)
Juneau, Alaska

POSITION STATEMENT: Expressed concerns about HB 315 as it is currently drafted; testified in favor of SB 170.

FRANK TURNEY
Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 315 with certain amendments [not provided].

MARIA RENSEL

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 315.

JOHN BRADING

Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing of HB 315.

ALYSSA WILLIAMS

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 315.

MARK W. ECK

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 315 with certain amendments.

ALEX MOORE

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 315.

EDRA MORLEDGE, Staff

Senator Kevin Meyer

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Senator Meyer, prime sponsor of CSSB 173(JUD), provided testimony and answered questions); speaking on behalf of Senator Meyer, prime sponsor of CSSB 128(JUD), provided testimony and answered questions.

ELIZABETH RIPLEY, Executive Director

Mat-Su Health Foundation

Wasilla, Alaska

POSITION STATEMENT: Testified in favor of HB 362 and SB 173.

KELLI FARQUER

No city provided, Florida

POSITION STATEMENT: Testified in favor of SB 173.

KATHLEEN STRASBAUGH, Attorney

Legislative Legal Counsel

Legislative Legal Services

Legislative Affairs Agency

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing of CSSB 128(JUD).

QUINLAN STEINER, Director
Central Office
Public Defender Agency
Department of Administration

POSITION STATEMENT: Answered questions during the hearing of CSSB 128(JUD).

SENATOR BERTA GARDNER
Alaska State Legislator
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of SB 170, introduced the bill.

STEVEN HANDY, Staff
Senator Berta Gardner
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking on behalf of Senator Gardner, sponsor, provided background information on SB 170 and answered questions.

TARA RUPANI, Member
Community United for Safety and Protection
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 170.

KAYT SUNWOOD
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing of SB 170.

JON DUKE, Professor
Department of Justice
University of Alaska Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of SB 170.

MAXINE DOOGAN, Member
Community United for Safety and Protection
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 170.

RICHARD ALLEN, Director
Office of Public Advocacy
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Answered a question during the hearing of HB 370.

ACTION NARRATIVE

[1:41:30 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:41 p.m. Present at the call to order were Representatives Pruitt, Gruenberg, Foster, Lynn, and Keller. Representative LeDoux arrived as the meeting was in progress.

HB 370-AWCB CONTROLLED SUBSTANCE PRESCRIPTIONS

[1:42:57 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 370, "An Act relating to employer drug testing; requiring the Alaska Workers' Compensation Board to adopt regulations relating to the prescription of controlled substances to employees; and limiting the prescription of controlled substances to employees."

[Before the committee was CSHB 370(L&C).]

[1:43:00 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, speaking on behalf of Representative Olson, chair of the House Labor & Commerce Standing Committee, sponsor, informed the committee HB 370 is an act relating to employer drug testing and requires the Alaska Workers' Compensation Board to adopt regulations related to the prescription of controlled substances. He noted that two sections of the bill are especially important. One section directs that should an injured worker require a long-term opiate prescription, after 90 days he/she may be subject to a random urinalysis test to confirm that they are taking the medication, and to call for an adjustment in medication, if needed. It has been found that after 90 days or longer, a patient may not be taking the prescriptive dose, and adjustments are needed. The intent is "to really help get those injured workers well sooner." Mr. Jackson said further studies indicate that the long-term use of opioids can lead to addiction, and thus there is a need to ensure that workers receive the medication at the proper strength. The other important part of the bill deals with the length of time for which a Schedule 1 drug [defined by the U.S. Controlled Substances Act] is prescribed, and recommends reducing the time period to a 30-day prescription. He stressed

that the focus of the proposed legislation is on the return to good health of the injured worker for the purpose of returning him/her to productivity.

[1:46:53 PM](#)

REPRESENTATIVE LEDOUX asked whether an employer is required to pay for more than a 90-day prescription of a controlled substance.

MR. JACKSON explained that after 90 days of taking a Schedule 1 opiate, a drug test may be administered to the worker. If the worker is not taking the drug, future prescriptions would not be paid for under the assumption that is the patient's choice and a change in medication is warranted. Again, the intent is to help doctors determine the injured worker's level of pain and the proper prescription.

CHAIR KELLER said he was convinced that there is a problem in the state related to the use of painkillers, noting that Alaska has the highest cost for Workers' Compensation.

REPRESENTATIVE LEDOUX asked whether a worker is limited to a prescription of 30 days or if there can be an additional prescription after seeing a doctor.

MR. JACKSON said after another visit with the doctor, an additional prescription can be written. He pointed out that these steps will "increase some of the oversight and stop the large quantities of the opiates from being ... in circulation."

[1:51:05 PM](#)

REPRESENTATIVE GRUENBERG asked Mr. Jackson whether the drug Nuvigil is one of the drugs referred to in the bill on page 2, lines 7-14, subsections (p) and (q).

MR. JACKSON said he did not know.

REPRESENTATIVE GRUENBERG disclosed that he is prescribed the drug Nuvigil and may have a conflict of interest.

[1:52:35 PM](#)

REPRESENTATIVE LEDOUX posed a scenario in which an injured worker was instructed by a doctor to reduce the amount of medication whenever possible, and the worker did, but later

there was a need to return to the higher dosage. She said her understanding of the bill is that if a worker tests negative due to the lower dosage, the employer may not pay for a return to the higher dosage.

MR. JACKSON explained that the bill reduces the prescription to a 30-day supply to ensure closer interaction between patient and physician. He opined that all doctors wish patients to reduce the prescribed dosage as soon as possible to help avoid addiction. However, after 90 days, the worker should again talk with a doctor as it is expected that the worker would not need another prescription. The idea [of the bill] is to encourage patients to restrict their use of "heavy narcotics" as soon as possible due to possible addiction problems and the high cost of the drug to the Workers' Compensation system.

CHAIR KELLER asked whether a worker who is selling his/her drugs could take one pill to pass the random drug test.

MR. JACKSON said that is a possibility and deferred to the Division of Worker's Compensation, Department of Labor & Workforce Development, for information on regulations related to the administration of the test.

[1:56:58 PM](#)

REPRESENTATIVE LEDOUX questioned whether the sponsor's concern is about doctors who are overprescribing medications, and if so, suggested the committee discuss the problem with the State Medical Board, Department of Commerce, Community & Economic Development. She said she did not see the difference between an injured worker receiving Workers' Compensation and an injured person who does not.

MR. JACKSON agreed the focus of HB 370 is on workers who are receiving Workers' Compensation. The societal problem of addiction and the overuse of opiates should be a serious concern of everyone; however, this bill seeks to reduce the high cost of drugs to Workers' Compensation.

CHAIR KELLER mentioned a bill currently in the House Finance Committee which addresses the problem from a different approach.

REPRESENTATIVE LEDOUX asked whether state medical organizations have commented on the bill.

MR. JACKSON expressed his belief that the sponsor has not received any negative comments from the medical community. Concerns have been received from labor organizations, although there has been previous testimony in support of the bill in its current form from representatives of AFL/CIO and Teamsters.

[1:59:47 PM](#)

REPRESENTATIVE GRUENBERG asked about the possible self-incrimination implications of the bill. He suggested that the committee hear testimony from the Public Defender Agency, Department of Administration.

MR. JACKSON assured the committee that the bill is not an attempt to search for criminals but is focused on getting workers the level of medication needed.

[2:01:46 PM](#)

AESHA PALLESEN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), informed the committee that the language in the bill states that the negative drug test could only be used for the purpose of establishing that the employer may be able to refuse to pay for a future prescription of the drug.

REPRESENTATIVE GRUENBERG was not satisfied by the foregoing information because, although other uses are not allowed by the language in the bill, other uses must be prevented under Alaska law. He asked if the bill provides that the information is confidential, and whether the information could "become the fruit of the poisonous tree."

MS. PALLESEN advised that the state currently has a "pretty comprehensive scheme addressing drug and alcohol testing by employers" and the proposed subsection of the bill would be subject to all of the conditions and restrictions [currently in law] including a confidentiality provision. To Representative Gruenberg's second question, she answered that there may be concerns about the criminal implications of the bill if the test result information was used for criminal purposes, but the limitation on the allowed use of the negative drug test is intended to prevent that.

REPRESENTATIVE GRUENBERG urged for a full exploration of the possible implications to physician/patient privilege, and to "the conduit theory."

[2:04:19 PM](#)

MIKE MONAGLE, Director, Central Office, Division of Workers' Compensation, Department of Labor & Workforce Development, pointed out that Workers' Compensation is generally exempt under the Health Insurance Portability and Accountability Act of 1996 (HIPPA); therefore, the communication between those conducting the testing and the employer does not have the same HIPPA protection that "general health" would have. Typically, in a Workers' Compensation action, the term "employer" includes the employer's insurance company or its claims administrator, thus testing under the proposed provision would be through the case manager or claims administrator for the employer's insurance company.

CHAIR KELLER said HB 370 would be set aside for further testimony.

[The committee returned to HB 370 later in the meeting.]

HB 315-JURY NULLIFICATION

[2:06:02 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 315, "An Act relating to juries in criminal cases; and providing for an effective date."

[2:06:26 PM](#)

CHAIR KELLER opened public testimony.

[2:07:04 PM](#)

PAMELA GOODE, Delta Junction, informed the committee she was representing herself as a private citizen. She stated her support for HB 315 with the inclusion of the following amendments [to HB 315, Version 28-LS1467\U, on page 1, line 14, section 1, (c)]:

delete "Notwithstanding any other law;" add "No facts tried by the jury shall be otherwise reexamined in any court of the United States, according to the rules of the common law."

MS. GOODE said with the aforementioned changes she supported the bill. The bill is necessary for the restoration of justice because currently there is bureaucratic code that oversteps statute, statutes that overstep the U.S. Constitution, and judges who have forgotten their proper lawful authority. She gave an example of a person who committed a misdemeanor and had to pay a fine. Ms. Goode opined that a jury of the misdemeanant's peers would have determined that "he did nothing wrong."

[2:10:27 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, provided a brief history of his experience with racial prejudice 40 years ago. He related current statistics that show over 100 American Indians have been executed for murdering Caucasians, and the number of Caucasians who have been executed for murdering American Indians - in the entire history of the U.S. - is zero. He said, "That is jury nullification." Mr. Svobodny turned to the procedural problems associated with the bill and cautioned that if the bill passes, the effect would be that the rules of evidence are eliminated if the accused is convicted, and the trial moves to jury nullification. He said, "Rules of evidence really don't apply, [and] that's a change not in one court rule, but in all the rules of evidence." He pointed out that although it is not specified by the caption of the bill, this change would require a two-thirds majority vote. Also, the bill changes a number of rules of criminal procedure, but is not a suspension of rules. The bill directs that after deliberation, if the jury finds a person guilty, there is a "switch to whether that was just or unjust," but the bill is silent on situations such as a hung jury on the issue of whether the verdict is just or unjust. He characterized the proposed legislation as ambiguous in that regard.

[2:15:36 PM](#)

MR. SVOBODNY further cautioned about unforeseen consequences; for example, the vast majority of weapons offenses in Alaska are prosecuted by the state, not the federal government, thus these cases would most likely be moved from state court to federal court, which is counterproductive to the state's efforts to stem federal overreach. He informed the committee that DOL is opposed to the bill.

CHAIR KELLER asked whether courts ever levy penalties, fines, or sanctions against a juror for wrongdoing.

MR. SVOBODNY said yes and no. Jurors can receive sanctions if they don't show up for jury duty, and the court could sanction jury members if it had issued an order to not read a newspaper and a juror disregarded the order. However, he was unaware of an instance where a court has imposed sanctions on the jurors, although misconduct by jurors has led to the retrial of a case. Chair Keller clarified that he was asking about sanctions in response to a juror's decision, and Mr. Svobodny said "No, ... the jury's deliberative process is privileged from disclosure."

REPRESENTATIVE LYNN asked whether the principles of the bill are connected with a recent confrontation in Nevada involving a cattle rancher whose cattle were seized by the Bureau of Land Management (BLM), U.S. Department of the Interior, after the rancher lost two cases in court.

MR. SVOBODNY said misconduct on the part of the federal government is more transparent than the activities of a jury, where deliberations are generally confidential. It may be that the rancher has a moral or just cause - or not - but that does not nullify the law, which was made by the legislature. [The bill] is really saying, "The people can ignore the law you make."

REPRESENTATIVE GRUENBERG stated he would provide to the committee an article about someone convicted of murder and after 25 years in jail, it was recently determined that he was innocent.

[2:21:42 PM](#)

SARALYN TABACHNICK, Executive Director, Aiding Women in Abuse and Rape Emergencies, Inc. (AWARE), said that one of her concerns about HB 315 is that a defendant could subpoena the testimony of a victim's counselor, thereby disregarding the statutory victim counselor privilege established in the Alaska Statutes in 1992. She pointed out that the legislature recently strengthened the confidentiality statute to include military counselors. Ms. Tabachnick cautioned that the proposed bill could have a tremendous impact on whether victims speak confidentially to advocates. Another concern is that the Rape Shield Statute [AS 12.45.045] would essentially be repealed, and this is a statute that was recently expanded by the legislature.

[2:23:14 PM](#)

FRANK TURNEY informed the committee he is a jury activist. He said he was in support of HB 315 "with amendments added" [amendments not provided]. Mr. Turney agreed with others that the bill as written leaves too much "wiggle room" and he expressed his support for amendments that have been provided to Representative Tammie Wilson. He informed the committee that the freedoms of religion, speech, and assembly under common law were established by the "William Penn file of jury acquittals." Mr. Turney provided a short history of another instance of jury nullification in 1735 that - he opined - led to the cherished tradition of freedom of the press in America. He urged for the committee to not rush to judgment in order to satisfy the Department of Law, and read from a statement accredited to Judge Weeks as follows:

You know, jurors don't have the right, but they've got the power.

MR. TURNEY said having power gives a right, especially when there is no victim. He further urged the committee to research this matter. He spoke of his personal experience with juries over 25 years and stressed that 26 states under the preamble of free speech recognize jury nullification rights. He concluded that when the U.S. Constitution was written "they dropped the ball on jury rights."

[2:27:27 PM](#)

MARIA RENSEL said she was speaking for herself in favor of the bill and "the amendments that were mentioned by [previous speaker] Pam Goode." She stated that HB 315 is the first step to restoring jury rights in Alaska, and expressed her belief that jury nullification does not equal racism. Ms. Rensel supported adding to the bill a statement "that the judges in every state shall be bound by the Constitution" and referred to her written comments that have been forwarded to the committee. She spoke of her personal experience serving on a jury in Fairbanks. Ms. Rensel said jury nullification rights began with the Magna Carta and are also guaranteed by the U.S. Constitution. Her experience on a jury led her to believe that "we have been indoctrinated or educated out of our vote, out of our rights." She provided a brief history of the jury's right to judge laws as well as the facts, and questioned whether the government is a government of the people or a government of the lawyers. Ms. Rensel remarked:

Both the trial jury and the grand jury are the people's everyday way of reining in governments at every level. ... The only way that we can ... really clean up encroachments by our local, state, and federal governments is to be able to investigate things and act on juries. ... The elections can only ensure our democracy but it's really the jury's right to nullify and judge the law as well as the facts that will ensure our republic.

[2:31:37 PM](#)

JOHN BRADING read several short quotes from a book entitled "Citizen's Rule Book," published by Whitten Printers, and from an essay by Lysander Spooner dated 1850. He also referenced two legal cases: State of Georgia v. Brailsford (1794) and United States v. Dougherty, 1972.

MR. BRADING asked the committee to restore honor to "we the people."

[2:34:28 PM](#)

ALYSSA WILLIAMS said she was representing herself and read from a document [not provided]. She said, "Currently in Alaska, if you are called to jury duty you are expected to forget or forfeit this responsibility; you are thrown out for knowing that you were responsible for judging not only the facts, but the law." Ms. Williams stated that judges and prosecutors are responsible to protect life, liberty, and property, and "should not be allowed to sway convictions for their own benefit." Constitutionality, not tyranny, should be applied in the courts. Furthermore, the jury is to defend and justly convict the individual and not protect the government or the law. Ms. Williams concluded that HB 315 is needed and asked for the committee's support of the bill.

[2:36:30 PM](#)

MARK W. ECK stressed to the committee that jurors are citizens as are defendants and members of the committee "when they're not in office." He said the bill would secure the rights of jurors. When jurors are called to serve, potential jurors are asked if they believe in the rights of jurors. If the answer is yes, they are dismissed from the jury, which is "a violation of not

only our rights as jurors, but as people." He quoted from the Fully Informed Jury Association as follows:

The primary function of the independent juror is not, as many think, to dispense punishment to fellow citizens accused of breaking various laws, but rather to protect fellow citizens from tyrannical abuses of power by government.

MR. ECK continued to explain that the jury is the final defense from unjust laws that take away the natural rights of the people. He said jury duty is an honor, not a chore, because one puts himself/herself in the position of the defendant and decides whether the defendant wronged another. However, a defendant is given another tool of defense against an unjust law or application of such, and under HB 315, the defendant would be able to explain the rights of jury duty to the jury, in addition to instruction from a government official, and the opportunity is given to the prosecution to rebut the information given to the jury. The citizens of Alaska need this bill to further secure their liberty in today's uncertain times. He remarked:

By moving this bill forth, with the people's desired amendments, you will be setting an example for the rest of the country and will go down in history as protectors of liberty and the rights of we the people of the United States of America and the citizens of Alaska.

[2:39:19 PM](#)

ALEX MOORE said he strongly supports the rights for jury nullification because all Americans have constitutional rights. He provided an example of a man who committed a traffic violation to do what he thought was right. Mr. Moore said, "If you are trying to remove these rights to have a conscience, and decide what is wrong and right, then you're not really acting as a citizen." He strongly urged for the passage of the bill.

[HB 315 was held over.]

SB 173-SYNTHETIC DRUGS

[2:42:38 PM](#)

CHAIR KELLER announced that the next order of business would be CS FOR SENATE BILL NO. 173(JUD), "An Act relating to a

prohibition on the possession, offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs."

2:43:26 PM

The committee took an at-ease from 2:43 p.m. to 2:44 p.m.

2:44:30 PM

EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, speaking on behalf of Senator Meyer, sponsor of CSSB 173(JUD), informed the committee that the sponsor has made no changes to the bill since the previous hearing on 4/11/14; however, she pointed out that the sponsor worked extensively on the bill with the Department of Law (DOL); Legislative Legal and Research Services, Legislative Affairs Agency; the Public Defender Agency (PDA), Department of Administration; the Office of Public Advocacy (OPA), Department of Administration; and the Municipality of Anchorage Legal Department, Criminal Law (Prosecution). She acknowledged that the bill takes an unconventional route by targeting the packaging of synthetic drugs - rather than their chemical compounds - to get synthetic drugs off the street. This route has been implemented by a town in Maine without [legal] challenge thus far. The Municipality of Anchorage (MOA) implemented a related ordinance in January 2014, and has been successful at removing synthetic drugs from head shops, smoke shops, and convenience stores. In an effort to ensure that there would not be illegalization of legitimate substances by the proposed legislation, the bill requires that packaging meet one criterion from [section 1, subsection (b), paragraph (1)] of the bill and one criterion from [section 1, subsection (b), paragraph (2)] of the bill. Ms. Morledge further explained that the list of names of drugs [subparagraph G] could be removed from the bill and as long as the drugs met one of the other criteria in paragraph [(2)] and one of the criteria in [paragraph (1)], a case could be proven.

CHAIR KELLER clarified that the aforementioned prohibitions are if the drug meets one criterion of section 1, [subsection (b), paragraph (1), or one criterion of section 1, subsection (b), paragraph (2)], of the bill.

MS. MORLEDGE continued to explain that [CSSB 173(JUD)] makes very clear in the penalty section that a person who violates the proposed statute is guilty of a violation; therefore, the involvement of the Public Defender Agency and the Office of

Public Advocacy was removed, which in turn generated new zero fiscal notes of which are now available.

2:48:25 PM

REPRESENTATIVE LEDOUX inquired as to why the sponsor decided to propose legislation on the statewide level, rather than have each municipality make that choice.

MS. MORLEDGE said the sponsor was approached by MOA to proceed on a statewide level in order to prevent a person from avoiding prosecution by traveling beyond the municipal boundaries.

2:49:37 PM

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, surmised that the main issue between the sponsor, PDA, and OPA is whether the bill addresses a criminal matter or a civil matter. He directed attention to the bill on page 3, lines 21 and 22, which read:

(c) A person who violates AS 17.21.010 is guilty of a violation and, upon conviction, is punishable by a fine of not more than \$500.

MR. SVOBODNY, in order to prevent said violation from becoming a criminal matter, suggested the following clarifying language:

A person who violates AS 17.21.010 is subject to a civil penalty of not more than \$500.00.

MR. SVOBODNY also suggested the addition of subsection (e) which read:

(e) The burden of proof is by a preponderance of evidence.

MR. SVOBODNY opined the aforementioned suggestions "get to the goal of the sponsor and of the office[s] of public advocacy and the public defender." In response to Representative Pruitt's point about the validity of drug street names, he advised one option is to remove the related section from the proposed statute for placement instead in the non-codified provisions of the bill.

2:53:03 PM

REPRESENTATIVE LEDOUX observed that the bill is drafted with the intention of the violation being civil rather than criminal. The violation would be decided by a preponderance of evidence, and thus there is no right to a jury trial or to a public defender. However, the supporting documents give the impression that the proposed violation should be criminal. She asked whether there exists case law related to legislation that "phrase[s] something in a civil manner which you're really trying to criminalize and thus makes it so that people don't have their rights to trial by jury and changes the preponderance of evidence. Is there any law out there which talks about whether that's okay to do?"

[2:54:49 PM](#)

MR. SVOBODNY said he did not know of any cases; however, he has examples of similar situations that have not been challenged in court. He recalled that the legislature, with the specific intent to eliminate jury trials, for first and second minor consuming offenses changed the law. The Alaska Court of Appeals said because the offenses include the loss of a [driver's] license, the offenders still had a right to an attorney and to a jury trial. The court of appeals did not say it was improper for the legislature to change the law. Mr. Svobodny explained the elimination of the offenses was designed to reduce costs.

REPRESENTATIVE LEDOUX further questioned whether depriving people of the right to do business could be subject to "the same kind of arguments."

MR. SVOBODNY gave the scenario in which the legislature eliminates the offense of tampering with gravestones, making this offense a civil matter but not changing its effect; he opined that legislators are policymakers and can decide whether an action is civil, criminal, or neither.

[2:58:08 PM](#)

ELIZABETH RIPLEY, Executive Director, Mat-Su Health Foundation, stated that she was testifying in favor of HB 362 and SB 173. She informed the committee that the Mat-Su Health Foundation shares ownership in the Mat-Su Regional Medical Center and invests its profits back into the Mat-Su community to improve the health and wellness of Alaskans living in Mat-Su. Ms. Ripley said a recent community health needs assessment indicated that community members rank alcohol and substance abuse the top health issue in Mat-Su. The medical center has seen an increase

of patients coming to the emergency department who have health issues due to the use of synthetic drugs. Thrive Mat-Su, the local substance abuse prevention coalition, helped author the original state legislation passed in 2011 - which focused on the composition of the drugs - and which has created challenges for enforcement as drug dealers introduce new chemicals and compositions. She advised that youth believe if a product is legally for sale and can be purchased, it is safe. If there is not a way to address the alteration of the drugs by dealers, it is necessary to curtail access to the drugs by youth through a different law that addresses the sale and marketing of substances. She said SB 173 is an evidence-based strategy used in other states to limit access to synthetic drugs and to decrease their use and their negative impact on individuals and communities. Importantly, this legislation sends a message to youth of the efforts to protect them from the dangers of synthetic drugs. Thrive Mat-Su also supports legislation that addresses the marketing and sale of synthetic drugs. The Mat-Su Health Foundation Board unanimously supports the passage of SB 173 and is actively supporting similar legislation at the local level. Ms. Ripley asked for expedited passage of the bill.

[3:00:43 PM](#)

KELLI FARQUER said she was representing herself and voices that can no longer be heard from children under age who can purchase substances that are illegal, but that are readily available. The elimination of this drug can only be accomplished by eliminating the ability to purchase it, not by making it illegal. Ms. Farquer said she lost her son in November 2013, in Wasilla, for no other reason than it was available cheap, which her son interpreted to mean that the drug was safe. His death has been deemed undetermined due to the lack of laws against this type of drug. Her research has revealed that there are many deaths due to this type of synthetic drug and its high cost to civilization. Synthetic drugs are a worldwide epidemic and are mass-produced and sold at a 700 percent profit margin. To truly remove this drug from the market it must be too expensive to purchase or sell. There are no benefits to mankind from the drug. If the drug is illegal it will remain available because the profit is worth the risk; it is illegal in Florida and is still widely available. This legislation sets a good precedent for others to follow because support for this bill will save lives. Ms. Farquer asked the committee to support the bill and to urge other civic leaders to do the same in their states.

[3:03:51 PM](#)

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

REPRESENTATIVE FOSTER, in response to an earlier question as to why statewide legislation is being proposed, explained that many communities in Alaska do not have a municipal structure to make synthetic drugs illegal locally. He stressed the importance of statewide legislation to rural Alaska.

[3:04:43 PM](#)

REPRESENTATIVE GRUENBERG voiced his concern about the additional expense of statewide legislation for a program that has been successful in the Municipality of Anchorage and other municipalities.

[CSSB 173(JUD) was held over.]

SB 128-ELECTRONIC BULLYING

[3:05:06 PM](#)

CHAIR KELLER announced that the next order of business would be CS FOR SENATE BILL NO. 128(JUD), "An Act relating to the crime of harassment."

[3:06:04 PM](#)

EDRA MORLEDGE, Staff, Senator Kevin Meyer, speaking on behalf of Senator Meyer, prime sponsor of CSSB 128[JUD], informed the committee the bill is aimed at reducing electronic harassment, which is otherwise known as cyberbullying. The proposed legislation would make this offense a class B misdemeanor and inserts a new paragraph into Alaska's existing harassment statute. The current language of the bill (Version G) was drafted by the sponsor, the Department of Law (DOL), Legislative Legal and Research Services, Legislative Affairs Agency, and the Senate Judiciary Standing Committee. The bill protects individuals under the age of 18 years because, although the current statute under education requires school districts to establish policies and procedures for bullying on school grounds, electronic bullying occurs outside of school in social media sites, and through texts and email.

[3:07:40 PM](#)

CHAIR KELLER directed attention to page 2, line 5, which read:

... manner that causes severe mental or emotional injury or places the person in ...

CHAIR KELLER expressed his belief that the aforementioned condition would be hard to define, and he suggested that removing the words "causes severe mental or emotional injury or" would strengthen the bill.

MS. MORLEDGE said the sponsor is amenable to the suggested change.

REPRESENTATIVE LEDOUX asked why the legislation is limited to protecting persons under 18 years of age. Also, she questioned why something that "would cause a reasonable fear of physical injury" is not assault regardless of a person's age.

MS. MORLEDGE explained that the intent of the bill was to protect school-age children because they are more vulnerable to harassment.

REPRESENTATIVE LEDOUX restated her point that threatening a person to cause a fear of physical injury is assault under existing statutes.

MS. MORLEDGE deferred to the drafter of the bill.

[3:10:35 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, responded that existing statute states that a person commits the crime of assault in the fourth degree if by words or other contact, the person recklessly places another person in fear of imminent physical injury. She directed attention to page 1, line 4 of the proposed legislation which read:

(a) person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

MS. STRASBAUGH pointed out there are two differences between existing statute and the proposed statute: The first difference is the intent to "annoy" rather than the intent to injure, and the second is the threat of "physical injury," not "imminent physical injury." She stated that the second difference relates

to the fact that imminent does not apply to electronic bullying because the words or other conduct does not take place in the presence of a person.

[3:12:04 PM](#)

MS. STRASBAUGH, in response to Chair Keller regarding his suggestion to remove "causes severe mental or emotional injury or" said that is a policy choice. As to whether the change would cause difficulties for the prosecution, she deferred to DOL.

[3:12:20 PM](#)

REPRESENTATIVE GRUENBERG, after being told by Ms. Strasbaugh that the existing statute covering assault in the fourth degree is AS 11.41.230, noted that assault in the fourth degree is a class A misdemeanor, and second degree harassment is a class B misdemeanor, which is up to 90 days in jail. He directed attention to page 2, lines 3-5 which read:

(7) repeatedly sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 years of age in a manner that places the person in reasonable fear of physical injury.

REPRESENTATIVE GRUENBERG asked whether each communication would be a separate offense or "if you're sending a communication, or publish it, you must do it repeatedly."

MS. STRASBAUGH said she was hesitant to make an assertion as to how each case would be handled.

[3:14:23 PM](#)

REPRESENTATIVE GRUENBERG informed the committee the Rule of Lenity directs that if a statute can be interpreted two ways and in a criminal case the court will interpret the law in the most lenient way from the defendant's point of view. He gave an example in which 50 calls were interpreted as one offense.

MS. STRASBAUGH surmised a series of taunts or insults would be taken to authorities when it reached "the pain threshold." She encouraged the committee to ask the prosecuting agency how it would prosecute the posited case.

MS. MORLEDGE pointed out on page 1, line 10, the word "repeated" is currently used for telephone calls and thus was the source for the new language, "repeated sending of an electronic message."

[3:17:12 PM](#)

REPRESENTATIVE LYNN questioned the use of "inconvenient hours" on page 1, line 10. He observed that some of the language in the bill is "very, very, vague."

MS. MORLEDGE restated her point that the aforementioned language is from the existing statute and the proposed bill simply inserts electronic communication and using consistent language.

REPRESENTATIVE GRUENBERG referred to occupations which require workers to have "thick skin." He asked whether there is a definition in the Alaska Statutes of "severe mental or emotional"

[3:21:18 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, stated it would be difficult to prove the language removed by Chair Keller's proposed amendment [text provided above]. He said if the language stays in, the answer is up to the jury. In criminal law definitions, there is no definition of the terms severe mental or emotional injury to help the jury; in fact, the court will tell the jury "use ... your ordinary understanding of the language." Mr. Svobodny said this would probably cause debate in the jury room. This type of question, along with the meaning of "repeated" would be up to the jury. He gave an example of a previous ruling establishing that three threats of serious physical injury to a person satisfied the term "repeated" - which is used in the crime of assault in the third degree - as a matter of law. In response to Representative Gruenberg, Mr. Svobodny said the offense of terroristic threatening is still a law, but the language has been changed and the repeated threats to cause serious physical injury have been moved to assault in the third degree.

REPRESENTATIVE LEDOUX stated one of her concerns about including the language "causes severe mental or emotional injury," is regarding the "eggshell" plaintiff. Some actions that most people would tolerate may cause injury to those who are emotionally or mentally fragile. She said this situation is

common in tort cases and courts have ruled that a defendant is liable for an eggshell plaintiff.

[3:25:29 PM](#)

MR. SVOBODNY said the position of DOL is that if a defendant injures a victim with a disease, their injury could lead to charges of more serious assault; this is a position that is consistent with other provisions of law, that "you take your victim as you find them."

REPRESENTATIVE LEDOUX cautioned that the "causes severe mental or emotional injury" section is troublesome because there should not be a prior restraint on the freedom of speech, and she said she supported the removal of this language.

[3:27:43 PM](#)

REPRESENTATIVE LYNN moved to adopt the proposed House committee substitute (HCS) for CSSB 128(JUD), Version 28-LS1001\H, Strasbaugh, 4/12/14, as the working document. There being no objection, Version H was before the committee.

REPRESENTATIVE GRUENBERG stated he was not waiving any rights to offer an amendment.

[3:28:30 PM](#)

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

REPRESENTATIVE GRUENBERG commented that many terms in the bill are construed according to "common ordinary usage." He urged for the committee to review related court decisions and warned that more information on definitions is needed.

[3:29:43 PM](#)

CHAIR KELLER reopened public testimony.

REPRESENTATIVE GRUENBERG pointed out the use of "repeatedly" and "repeated" in the new and existing language of the bill, and asked how courts interpret the term.

[3:30:58 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency, was unsure of the definitive answer to Representative Gruenberg's question; however, he expressed his belief that repeated is "more than once."

REPRESENTATIVE GRUENBERG requested further testimony from agencies on this point.

CHAIR KELLER said his hope is that the committee will make a decision on the bill at this hearing.

[3:31:51 PM](#)

CHAIR KELLER again closed public testimony.

[3:32:23 PM](#)

REPRESENTATIVE LYNN moved to report the proposed HCS for [CSSB] 128(JUD), Version 28-LS1001\H, Strasbaugh, 4/12/14, out of committee with individual recommendations and the accompanying fiscal notes.

[3:32:43 PM](#)

REPRESENTATIVE PRUITT objected. Although he said he agreed with the motion, he questioned whether a class B misdemeanor is appropriate in the case of an adult who intimidates a young child. He then removed his objection.

REPRESENTATIVE GRUENBERG inquired as to whether the proposed bill is void for vagueness. One prosecutor may decide to divide ten calls into two counts and another may not; the bill is silent on this matter, and he asked Mr. Svobodny if DOL has any charging guidelines related to the bill.

MR. SVOBODNY said DOL does not have guidelines on the number of calls that are needed to establish "repeated." This issue arises across all criminal cases and charges are sometimes determined by, for example, the number of pills, or the number of bad checks.

REPRESENTATIVE GRUENBERG observed that the existing legislation has not been struck down.

REPRESENTATIVE PRUITT further asked whether DOL is confident that the proposed legislation can be enforced.

MR. SVOBODNY said he is very comfortable with the bill.

REPRESENTATIVE PRUITT restated that he removed his objection.

[3:38:46 PM](#)

There being no further objection, HCS CSSB 128(JUD) was reported from the House Judiciary Standing Committee.

SB 170-AFFIRMATIVE DEFENSE TO PROSTITUTION

[3:39:18 PM](#)

CHAIR KELLER announced that the next order of business would be SENATE BILL NO. 170, "An Act relating to a defense to the crime of prostitution for victims of sex trafficking."

[3:39:27 PM](#)

SENATOR BERTA GARDNER, Alaska State Legislator, speaking as the prime sponsor informed the committee that SB 170 is part of a national effort to provide as a defense against a prostitution charge, the chance to demonstrate to the prosecutor that one has been "trafficked" and forced into prostitution against their will. The bill also allows the prosecutor to prosecute the traffickers.

[3:40:43 PM](#)

STEVEN HANDY, Staff, Senator Berta Gardner, Alaska State Legislature, in response to Representative Lynn, said a pimp is one who traffics the prostitute and is actually the target of the bill. The purpose is to not "double victimize" the person who is being trafficked, first by the situation and also arrested for prostitution.

REPRESENTATIVE LYNN noted that those prostituting do so for many different reasons, and pimps may be coercive, cooperative, or violent.

MR. HANDY said if the prostitute - hereafter referred to as the sex traffic victim - evokes the affirmative defense authorized by the bill, the sex traffic victim is obligated to work with the prosecutor and law enforcement to identify the sex trafficker. The affirmative defense would not get the sex traffic victim "off the hook" as the decision regarding charges

against the sex traffic victim occurs in court, and not in the field.

REPRESENTATIVE PRUITT stated that prostitution takes place for several different reasons, and questioned how the bill would only apply to those who are sex traffic victims. He said, "If there's an individual that's in that, they're just trying to make money ... it's a different scenario"

MR. HANDY explained the prosecution would determine whether the affirmative defense is valid. The sex traffic victim evoking an affirmative defense would have to identify the sex trafficker, and there would follow an investigation by law enforcement.

[3:45:16 PM](#)

REPRESENTATIVE PRUITT asked for clarification on whether any instance of prostitution would garner an affirmative defense, which is the "lowest level of challenge ... on a conviction from prosecution to address."

MR. HANDY said, "That's a definite no, it would not apply to somebody who was doing this because that's their choice."

REPRESENTATIVE LEDOUX pointed out that a prosecutor in a sex trafficking case can choose whether or not to prosecute someone; therefore, an affirmative defense leaves the decision ultimately up to a jury.

MR. HANDY explained that the definition of an affirmative defense is that there are situations outside of the charges that could excuse the defendant from the charges. The situation arises after a person is arrested and charged, and the affirmative defense is a tool to get out of the charge.

[3:48:21 PM](#)

CHAIR KELLER opened public testimony.

[3:48:44 PM](#)

SARALYN TABACHNICK, Executive Director, Aiding Women in Abuse and Rape Emergencies, Inc. (AWARE), informed the committee that often women who are involved in prostitution are victims of domestic violence and sexual assault who have been coerced into sex trafficking. Senate Bill 170 creates an avenue for victims to come forward, to be believed, and treated with respect.

[3:49:49 PM](#)

TARA RUPANI, Member, Community United for Safety and Protection, representing herself, said she is a graduate student at the University of Alaska Fairbanks (UAF). Ms. Rupani stated that her research into sex trafficking legislation [House Bill 359] [passed] in 2012, has only been used against alleged prostitutes who were charged with prostitution in connection with sex trafficking cases. For example, in a case with sex trafficking victims, the victims were arrested and prosecuted for prostitution, and during 2012 or 2013, all those who were charged in Alaska under state law were also charged with trafficking. Ms. Rupani said she was disappointed to learn that the proposed legislation would not help any of the victims who have been charged under state law, including Keyana Marshall, who was charged with federal counts of sex trafficking, and would not have been able to access an affirmative defense because multiple sex traffickers were involved. Furthermore, the bill is not intended to help those who have ever willingly engaged in the sex industry, but only those who were induced into prostitution, which creates a fourth legal definition of sex trafficking and a distinction between some victims who are deserving of protection, and others who are not; in fact, all sex trafficking victims in Alaska should have access to protection without being arrested. Ms. Rupani opined that allowing victims of sex trafficking access to protection is the first step to putting sex traffickers in jail, however, "if only good victims can call the police it's actually going to make sex trafficking worse.... ... [Because] they target people that they know who ... already believe that they don't have access to protection from the police." She stated that those who have worked in the sex industry should be able to access protection. She referred to "safe harbor" laws that have been implemented in California and New York, and stressed that criminalizing victims is a huge human rights issue that has been addressed by the United Nations. Ms. Rupani said arresting victims of sex trafficking violates the Trafficking Victims Protection Act, and the proposed bill is not the solution to the situation in Alaska where law enforcement continues to defend its decision to arrest and charge sex trafficking victims. She concluded that, "A law that condemns most victims while purporting to protect only a few victims who are seen as worthy or good is going to increase sex trafficking rather than decrease it in Alaska."

[3:55:23 PM](#)

REPRESENTATIVE LEDOUX asked whether Ms. Rupani's position is that any prostitute is coerced into prostitution and should not be prosecuted.

MS. RUPANI said absolutely not.

[3:55:51 PM](#)

KAYT SUNWOOD, read Keyana Marshall's statement as follows:

The trauma of being forced, coerced into prostitution is a scary shameful situation. This can leave a victim emotionally, mentally, and physically scarred. To criminalize a victim is extremely cruel, however, with no protective laws in place. Such criminalization and punishment is of unethical and immoral proportions. I am familiar with this scenario because it happened to me. It wounded me deeply when members of the APD vice unit ridiculed me for being pimped. As they arrested me and placed me in a vehicle, they said something to the effect of: Our car isn't as nice as the Mercedes Benz your pimp drives. Or things like: I know he wonders where you are, or, Get back to him. I was a human trafficking victim from ages 15 through 21. I have had two abusers take advantage of me. I am now stuck with mental memories of their abusive actions and if that didn't make me feel like I had just no say in my own actions, prison did. Being a victim of abuse shouldn't be a crime. Anyone who is being forced into any prostitution-related activities should not be held liable for crimes committed in reference to prostitution or conspiracy, charges involving prostitution. When we define the word "victim" the definitions are: (1) an unfortunate person who suffers from some adverse circumstance; (2) a person who is tricked or swindled. Unfortunately, I can easily apply these definitions to myself. I was trafficked by a woman whom I used to babysit for. When she disappeared and went to prison, the next perpetrator was an abusive, angry, violent, male. He tore down my spirit and I went to prison for prostitution. These incidents would have not happened had I not been trafficked, drugged, and abused by this man. I spent nearly three years in prison after I agreed to turn state's evidence. I did that hoping someone would identify the problem. Instead I heard

things like: Crazy, or Sorry that happened to you. No victims' services were offered to me. I think passing a bill where victims are protected, rather than criminalized and re-victimized, is desperately needed. Please make sure SB 170 truly protects victims, rather than setting up good victim/bad victim, and criminalizing some. As is this bill falls short. If the intent of this bill is to address trafficking, make it safe for those who are sex trafficked, to help end sex trafficking.

[3:59:44 PM](#)

JON DUKE, Professor, Department of Justice, University of Alaska Fairbanks, informed the committee he was a retired chief of police from California and a consultant to Senator Gardner on SB 170. Mr. Duke urged the committee to support SB 170 for several reasons. The bill changes the way justice is delivered without weakening tools to control vice. Justice professionals are bound to enforce the law, and even when aware that victims of sex trafficking are often forced to break the law, agents of the state may not be able to exercise leniency. Proposed SB 170 is needed to enrich justice by increasing the options available. In addition, SB 170 would raise awareness, reduce stigma and self-recrimination, reduce victims' shame, and empower victims to ask for help to escape their plight, and utilize community resources to heal. Ultimately, victims will feel more comfortable cooperating with police to prosecute traffickers. Mr. Duke urged the committee to support SB 170.

[4:02:26 PM](#)

MAXINE DOOGAN, Member, Community United for Safety and Protection, informed the committee the Community United for Safety and Protection is a group of sex trafficking victims, current and retired sex workers, and their allies in Alaska. She said she was born and raised in Fairbanks, and her organization opposes SB [170] because it is overbroad in that it puts the burden of proof on the victim who is the defendant in a criminal proceeding. The bill also creates a loophole of arbitrary enforcement which allows the prosecutor to reinstate charges against the sex trafficking victim following the unsuccessful prosecution of sex traffickers. In addition, SB 170 does not offer immunity from prosecution, and she cautioned that there may be the unintended consequences of false accusations. Ms. Doogan said prostitution should not be illegal, and the bill does not provide a way for sex trafficking

victims to have their convictions vacated. Finally, SB 170 does not provide any identity protection for sex trafficking victims who are being prosecuted for prostitution. She urged for the removal of the criminalization of prostitution in order to provide access to equal protection under the law, and thereby reduce incidents of exploitation in Alaska. Ms. Doogan said she opposes SB 170.

4:05:14 PM

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

REPRESENTATIVE GRUENBERG asked Mr. Svobodny to describe the quantity of proof required from a defendant to prove an affirmative defense in a criminal case.

4:06:00 PM

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, recalled that the requirement is a preponderance of evidence, and is not "beyond a reasonable doubt." He said he would confirm his recollection as soon as possible.

REPRESENTATIVE GRUENBERG cautioned that the bill is written so that the burden of proof will shift to the defendant to prove that they are a sex trafficking victim by a preponderance of evidence - or a level higher - which would be very difficult. He encouraged the sponsor to consider that that may be an insurmountable burden in many cases.

REPRESENTATIVE PRUITT agreed that the defendants would be "in a very difficult spot," and may already have concerns that they cannot trust the police or the authorities. He said he agreed with the intent of the legislation, but the bill may put more of a burden on the victims.

REPRESENTATIVE LEDOUX disagreed. She suggested that the sponsor and DOL consider adding an element of proof that the prosecutor needs to prove beyond a reasonable doubt that the defendants are not sex trafficking victims.

REPRESENTATIVE GRUENBERG reminded the committee of a previously-heard bill related to an affirmative defense for the crime of someone who encounters a victim of a drug overdose. The language used in that bill was that the defendant had to produce

some evidence, and the prosecutor had to disprove beyond a reasonable doubt.

MR. SVOBODNY interjected that it is a "preponderance of the evidence."

[SB 170 was held over.]

HB 370-AWCB CONTROLLED SUBSTANCE PRESCRIPTIONS

[4:10:10 PM](#)

CHAIR KELLER returned the committee's attention to the further discussion of HB 370.

[Before the committee was CSHB 370(L&C).]

KONRAD JACKSON, staff, Representative Kurt Olson, Alaska State Legislature, speaking on behalf of Representative Olson, chair of the House Labor & Commerce Standing Committee, sponsor, said at the request of the committee, he contacted the Office of Public Advocacy, Department of Administration, to answer questions.

[4:11:26 PM](#)

RICHARD ALLEN, Director, Office of Public Advocacy, Department of Administration, offered to answer questions.

MR. JACKSON recalled that Representative Gruenberg asked about "fruit of the poison tree" and the possible criminal implications of the drug testing described in section 1 of HB 370.

REPRESENTATIVE GRUENBERG asked whether there are criminal implications within the language of HB 370.

MR. ALLEN answered that it is "a real stretch to try to come up with any sort of scenario where this would play out." There is the possibility that if a person who had tested negative was later charged with the distribution of a narcotic, the test might be used as some sort of circumstantial evidence.

[4:14:18 PM](#)

CHAIR KELLER closed public testimony on HB 370.

4:14:24 PM

REPRESENTATIVE LYNN moved to report CSHB 370(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 370(L&C) was reported from the House Judiciary Standing Committee.

4:14:43 PM

There followed a short discussion of forthcoming meetings.

4:16:22 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:16 p.m.