

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 4, 2014

1:33 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Lesil McGuire, Vice Chair  
Senator Fred Dyson  
Senator Donald Olson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 284

"An Act relating to an interstate compact on a balanced federal budget."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 369(JUD)

"An Act relating to restrictions on the criminal prosecution for certain offenses for a person who seeks medical assistance for a person experiencing a drug overdose."

- HEARD & HELD

SENATE BILL NO. 184

"An Act relating to the exemption from jury service for certain teachers."

- BILL HEARING CANCELED

CS FOR HOUSE BILL NO. 366(JUD)

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

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 284

SHORT TITLE: COMPACT FOR A BALANCED BUDGET

SPONSOR(s): REPRESENTATIVE(s) KELLER

01/29/14 (H) READ THE FIRST TIME - REFERRALS  
01/29/14 (H) STA, JUD  
02/13/14 (H) STA AT 8:00 AM CAPITOL 106  
02/13/14 (H) Moved Out of Committee  
02/13/14 (H) MINUTE(STA)  
02/14/14 (H) STA RPT 6DP 1NR  
02/14/14 (H) DP: MILLETT, GATTIS, KELLER, ISAACSON,  
HUGHES, LYNN  
02/14/14 (H) NR: KREISS-TOMKINS  
02/21/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/21/14 (H) Heard & Held  
02/21/14 (H) MINUTE(JUD)  
02/28/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/28/14 (H) Heard & Held  
02/28/14 (H) MINUTE(JUD)  
03/03/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/03/14 (H) Moved Out of Committee  
03/03/14 (H) MINUTE(JUD)  
03/05/14 (H) JUD RPT 3DP 1DNP 3NR  
03/05/14 (H) DP: MILLETT, LYNN, KELLER  
03/05/14 (H) DNP: GRUENBERG  
03/05/14 (H) NR: LEDOUX, PRUITT, FOSTER  
03/19/14 (H) TRANSMITTED TO (S)  
03/19/14 (H) VERSION: HB 284  
03/21/14 (S) READ THE FIRST TIME - REFERRALS  
03/21/14 (S) JUD  
03/27/14 (S) STA AT 9:00 AM BUTROVICH 205  
03/27/14 (S) <Bill Hearing Canceled>  
03/31/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/31/14 (S) Heard & Held  
03/31/14 (S) MINUTE(JUD)  
04/04/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 369

SHORT TITLE: DRUG OVERDOSE: IMMUNITY FROM PROSECUTION

SPONSOR(s): REPRESENTATIVE(s) PRUITT

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

03/17/14 (H) Heard & Held  
 03/17/14 (H) MINUTE(JUD)  
 03/21/14 (H) JUD AT 1:00 PM CAPITOL 120  
 03/21/14 (H) Moved CSHB 369(JUD) Out of Committee  
 03/21/14 (H) MINUTE(JUD)  
 03/24/14 (H) JUD RPT CS(JUD) NT 5DP 1AM  
 03/24/14 (H) DP: MILLETT, PRUITT, FOSTER, GRUENBERG,  
 LYNN  
 03/24/14 (H) AM: LEDOUX  
 03/28/14 (H) TRANSMITTED TO (S)  
 03/28/14 (H) VERSION: CSHB 369(JUD)  
 03/28/14 (S) READ THE FIRST TIME - REFERRALS  
 03/28/14 (S) JUD  
 04/02/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/02/14 (S) -- MEETING CANCELED --  
 04/04/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

ERNEST PRAX, Staff  
 Representative Wes Keller  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HB 284

CHIP DEMOSS, Chair and CEO  
 Compact for America  
 Houston, Texas  
**POSITION STATEMENT:** Testified in support of HB 284.

NICK DRANIAS, Director  
 Policy Development and Constitutional Government  
 Goldwater Institute  
 Phoenix, Arizona  
**POSITION STATEMENT:** Testified in support of HB 284.

MORGAN HOPSON, Staff  
 Representative Lance Pruitt  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Provided information related to HB 369 on  
 behalf of the sponsor.

REPRESENTATIVE LANCE PRUITT  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HB 369.

KATHLEEN STRASBAUGH Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Provided information on HB 369, speaking as drafter.

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

**POSITION STATEMENT:** Commented on HB 369.

RANDY HAHN, Alaska State Troopers  
Department of Public Safety (DPS)  
Wasilla, Alaska

**POSITION STATEMENT:** Provided information on HB 369.

#### **ACTION NARRATIVE**

[1:33:09 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Wielechowski, Olson, Dyson, and Chair Coghill.

#### **HB 284-COMPACT FOR A BALANCED BUDGET**

[1:33:50 PM](#)

**CHAIR COGHILL** announced the consideration of HB 284. "An Act relating to an interstate compact on a balanced federal budget." This was the second hearing.

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**ERNEST PRAX**, Staff, Representative Wes Keller, Alaska State Legislature, Juneau, Alaska, sponsor of HB 284, reported that Chip DeMoss and Nick Dranias were available to respond to questions that were raised during the previous hearing.

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**CHIP DEMOSS**, Chair and CEO, Compact for America, Houston, Texas, advised that in response to requests during the last hearing, he sent details from the McLaughlin polling. He also sent information from an economic study that was performed by two

economists who serve on the Compact for America Advisory Council. It gets to the crux of the matter of prioritization of expenditures at the federal level.

CHAIR COGHILL summarized his understanding of the requirements of the compact. The governor is the lead from each state and states are contractually bound unless three-fourths agree to a change.

MR. DEMOSS agreed that signatory states are bound once the 38th state joins. It is anticipated that Congress will have approved the congressional resolution by then and the convention would be scheduled about 45 days after the 38th state joins. The convention is limited to 24 hours, so everything would be complete in less than two months.

CHAIR COGHILL asked if the convention addresses the language that is sent to Congress.

MR. DEMOSS clarified that when a state joins the compact, it is pre-ratifying the language of the Balanced Budget Amendment (BBA). Congress presumably will pass a congressional resolution in the near future agreeing to send the BBA, if it's prepared by the convention, back to the state legislatures for ratification. Because the state legislatures have already provided the pre-ratification in the compact, there is no need for any further legislative action by any member state.

CHAIR COGHILL asked for an explanation of the 45 days.

MR. DEMOSS explained that the convention will be held in Dallas, Texas 45 days after the 38th state joins the compact. This is assuming that Congress will already have agreed to call the convention in accordance with the compact.

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SENATOR DYSON offered his understanding of the explanation that it wouldn't be necessary for each state to ratify the language in the compact after the convention.

MR. DEMOSS agreed.

SENATOR DYSON observed that that implies that every state's call for a convention has to be identical in defining the issue that will be worked on during the convention.

MR. DEMOSS agreed; the application is in Article 5 on page 9, lines 9-18. The actual resolution prospectively ratifying the BBA, if it is passed at the convention and if it is referred to the state legislatures for ratification by Congress, is in Article 9 on page 14, lines 17-25.

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SENATOR MCGUIRE joined the committee.

CHAIR COGHILL summarized his understanding of the process.

NICK DRANIAS, Director of Policy Development and Constitutional Government, Goldwater Institute, Phoenix, Arizona, said the congressional resolution would be a counterpart to the compact and as currently drafted it would be an omnibus resolution with two parts. The first would be the call of the convention and the second would be the selection of legislative ratification. The goal is to pass the singular resolution thereby locking in Congress's commitment to the selection of legislative ratification.

CHAIR COGHILL asked if states are bound once [the 38th] state signs the compact.

MR. DRANIAS affirmed that entrenchment occurs once 38 states join the compact. That coincides with the effective date of the application for the convention. The intent is to ensure that none of the signing states back out of the process before the convention can meet and vote the proposed amendment up or down.

CHAIR COGHILL asked if the cost per delegate is borne by each state.

MR. DRANIAS said yes, but it's optional as to whether the state funds the compact commission as it is currently drafted. The only costs anticipated for delegates are the reimbursement of travel expenses.

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SENATOR WIELECHOWSKI asked if this applies during times of war.

MR. DRANIAS answered yes, although the amendment allows two forms of flexibility in the debt limit. First, the (\$21 trillion) debt limit can be thought of as a revolving line of credit. If the government were able to pay down some of that debt, it would free up some of that revolving line of credit for use in emergency situations. The second form of flexibility is

the ability to lift the debt limit if a majority of state legislatures approve.

He pointed out that the federal government only borrows 40-45 percent of every dollar it spends so it has 55-60 percent of each tax dollar in cash flow. He calculated that military spending accounts for less than 20 percent of the overall budget, so the federal government could double or triple its current military expenditures without having to borrow.

SENATOR WIELECHOWSKI questioned how continuing to allow \$21 trillion in debt could be construed as seeking a balanced federal budget.

MR. DRANIAS replied it's ironic, but the only way to restrict the ratio of spending to taxes, in a way that can't be gamed, is to allow some degree of borrowing flexibility to handle cash flow volatility. A number of states discovered that having a balanced budget requirement in their constitutions also provides for a limited amount of debt capacity. He cited Arizona and New Mexico. The problem was that the states tied the definition of "balanced" to budget projections rather than to cash flow.

He acknowledged that the revolving line of credit more reasonably should be \$1-2 trillion, but the federal government has accumulated \$21 trillion in debt. Fortunately, over time the economic impact of that borrowing capacity will shrink relative to the economy, he said.

SENATOR WIELECHOWSKI asked if he foresees that federal funds flowing to Alaska would decrease if this amendment were to pass. He noted that currently that is more than \$15,000 per Alaskan.

MR. DRANIAS replied it's difficult to predict how the federal government will allocate the more limited funds it has discretion to allocate.

SENATOR WIELECHOWSKI wondered if it wouldn't be better to have someone other than the governor to serve as the delegate.

MR. DRANIAS responded that it would not threaten the compact for a state to change the default selection from the governor to up to three delegates that the legislature selects, but his opinion is that the better policy is to have the governor as the sole delegate.

SENATOR WIELECHOWSKI asked, if the goal is to reduce the national debt, why it shouldn't take two-thirds of the states to increase the debt limit rather than a simple majority.

MR. DRANIAS replied he would like the number to be nine-tenths, but if the bar is set too high it won't happen at all. He opined that this isn't perfect, but it's a vast improvement over the status quo.

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SENATOR WIELECHOWSKI observed that the bill gives the president sweeping authority over the budget process. He asked if the bill basically rewrites Articles 1 and 2 of the U.S. Constitution, which explicitly places all legislative power in Congress.

MR. DRANIAS answered no; that reference is to the impoundment regulation in the amendment. Impoundment is the executive ability to delay or reprioritize spending to match cash to bills. The president currently has impoundment power and the amendment simply regulates it saying that the president must impound spending once it gets within 98 percent of the debt limit. Given current borrowing rates, that means that three to six months before reaching a debt limit the president would have to start designating what would be delayed or reprioritized when the debt limit is reached. This would result in more transparency because the president would have to show what he intended to impound and then Congress would have 30 days to pass a concurrent resolution to override the impoundments. This forces more responsible use of the impoundment power and enhances the power of Congress to check and balance any abuse in the process.

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SENATOR DYSON observed that most state legislatures meet for just a few months and some meet every other year, which would work against states acting with dispatch to accomplish this.

MR. DRANIAS said he strongly suspects that states will enjoy exercising their new powers over the federal debt limit, and will amend their laws and policies if necessary.

SENATOR DYSON said it appears that there are three or four national organizations working with legislatures on an Article V convention and one or two working against it. The sense of his colleagues is that the effort is twofold: to satisfy each group that is working on the language, and then add Alaska's name to the queue of states calling for an Article V convention. He

assumes that as the number of signatory states approaches 38, other states will work quickly to adjust the precise language to achieve the required consistency. He asked Mr. Dranias to comment.

MR. DRANIAS responded that because the compact does not become entrenched until 38 states join, there is plenty of opportunity for adjustment along the way.

SENATOR DYSON asked him to comment on the groups that are working on variations of this issue and how that should be viewed.

MR. DRANIAS said there are three major groups on the center right and at least one major group on the center left. The basic commonality is to dissolve fear of using the Article V amendment power.

SENATOR WIELECHOWSKI expressed concern that this creates a commission that appears to have no sunset clause and the state could be funding it with little oversight.

MR. DRANIAS pointed to the termination clause in the last provision of the compact. It says the compact is self-terminating seven years after the first state enacts the compact. The funding provision is subject to state law so there is currently no funding obligation in the language. The commission is controlled by the first three states that enact the compact and those representatives will decide how the commission behaves.

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CHAIR COGHILL announced he would hold HB 284 for further consideration.

#### **HB 369-DRUG OVERDOSE: IMMUNITY FROM PROSECUTION**

[2:12:59 PM](#)

CHAIR COGHILL announced the consideration of HB 369. "An Act relating to restrictions on the criminal prosecution for certain offenses for a person who seeks medical assistance for a person experiencing a drug overdose." He noted the proposed committee substitute (CS). [CSHB 369(JUD) was before the committee.]

MORGAN HOPSON, Staff, Representative Lance Pruitt, sponsor of HB 369, deferred to the sponsor, who was online, to introduce the legislation.

SENATOR MCGUIRE extended congratulations to Representative Pruitt for the "Top 40 Under 40" award he received today.

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REPRESENTATIVE LANCE PRUITT, Alaska State Legislature, Juneau, Alaska, sponsor of HB 369, introduced the legislation speaking to the following sponsor statement:

Alaska suffers from some of the highest rates of drug overdose in the nation, and these figures are rising at an alarming rate. The window to save an individual experiencing a life-threatening drug overdose is narrow, and response time is critical. Many individuals, as well as their friends and family, will hesitate or choose not to contact emergency medical services for fear of criminal repercussions relating to the controlled substance. HB 369 grants limited immunity to individuals who contact emergency medical services and stay with the person experiencing a life-threatening overdose until emergency personnel arrive and make contact. The proposed legislation also requires that the caller comply with responding emergency medical personnel or public safety officers to provide any necessary information.

The individual experiencing the overdose is already granted limited personal immunity to criminal charges when they are submitted for medical attention. For many in this condition, this also serves as an important point of contact for the referral to an agency that can help with their substance abuse. Unfortunately, most individuals experiencing a life-threatening overdose are unable to contact emergency services for themselves, and are at the mercy of the discretion of other persons present.

Alaskans are working hard to fight the epidemic of abuse of controlled substances, including illegal and prescription drugs. The purpose of providing assistance, regulation and legal ramifications for misuse of pharmaceuticals or use of illegal drugs is to protect our society and those who currently suffer from substance abuse addictions. The passage of this bill can reduce the number of overdose deaths by granting this limited immunity to a person who seeks in good faith emergency medical services for another

individual experiencing a life-threatening drug overdose.

CHAIR COGHILL asked Ms. Hopson if she had anything to add.

MS. HOPSON described the change that was made to the original language in the bill. In Section 1, the words "immunity from prosecution" were replaced with "restriction on prosecution." This was done to avoid transactional immunity, which could potentially make it more difficult to prosecute other offenses related to the incident outside of the possession offenses outlined in the bill. Someone would not be relieved of charges of reckless endangerment or assault or intent to distribute or manufacture, for example. She noted that she brought a blank committee substitute (CS) and could speak to that change at the chair's discretion.

CHAIR COGHILL asked for an explanation of the criminal statutes referenced in Section 1, Sec. 11.71.311(a).

MS. HOPSON said they're all possession offenses. She deferred further explanation to Kathleen Strasbaugh.

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KATHLEEN STRASBAUGH Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, reviewed the list of offenses that a person may not be prosecuted for under the provision set forth in HB 369.

AS 11.71.030(a)(3) is misconduct involving a controlled substance in the third degree. Subsection (a)(3) addresses possession of any amount of schedule IA or IIA controlled substance near a school grounds, youth center, or on a school bus.

AS 11.71.040(a)(3) and (4) is misconduct involving a controlled substance in the fourth degree. Subsection (a)(3) governs possession of any amount of schedule IA controlled substance or a IIA controlled substance listed in the schedule. It also governs possession of 25 or more tablets, ampules, or syrettes containing a schedule IIA or IVA controlled substance and one or more preparations, compounds, mixtures, or substances of an aggregate weight of schedule IIIA or IVA controlled substances. Subsection (a)(4) is possession of a schedule IIIA, IVA, VA, or VIA controlled substance near a school grounds, youth center, or on a school bus.

AS 11.71.050(a)(2) is misconduct involving a controlled substance in the fifth degree? Subsection (a)(2) is a possession offense affecting smaller amounts of most of the substances in misconduct involving a controlled substance in the fourth degree.

As 11.71.060(a)(1) or (2) is misconduct involving a controlled substance in the sixth degree. Subsection (a)(1) involves use or display of any amount of a schedule VIA controlled substance (marijuana product). Subsection (a)(2) involves possession of one or more preparations, compounds, mixtures, or substances of smaller amounts of a schedule VIA controlled substance (marijuana) and schedule IIIA controlled substances that have been sprayed on tobacco, an herb, or another organic material.

SENATOR WIELECHOWSKI expressed interest in any statistics showing how many people this potentially would have applied to in the last five years.

MS. HOPSON said she didn't have exact statistics, but in the last five years the Alaska Bureau of Vital Statistics reports the annual fatalities from drug overdoses range between 100 and 130 per year. A University of Washington study found that before similar legislation was implemented just 50 percent of user groups said they would report drug overdose incidents. After the implementation, 88 percent said they would report.

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SENATOR WIELECHOWSKI cited the NCSL website that mentions that "Connecticut and other states limit immunity by specifying that good-faith reporting does not include seeking help during the course of the execution of an arrest or search warrant." He asked if the sponsor had given that sort of situation any consideration.

MS. HOPSON acknowledged that hadn't been discussed and deferred further comment to Ms. Carpeneti.

CHAIR COGHILL asked if there had been any discussion of what constitutes "good faith."

MS. HOPSON explained that the good faith implies that the person would stay with the person who had overdosed until law enforcement arrives and then they cooperate by providing identification. She offered her belief that this provision would be of little help to someone who tried to use it when officers were about to exercise a search warrant.

CHAIR COGHILL offered his understanding that a person who reports an overdose still has some responsibility for unrelated criminal conduct.

MS. HOPSON said yes. It would be a different scenario if, for example, a responding office entered the premise and discovered an amount of the drug that suggested the person had an intent to distribute.

SENATOR WIELECHOWSKI asked if there had been any discussion about whether or not the bill might act to suppress evidence in other criminal charges that arose as a result of the emergency response.

MS. HOPSON restated that the phrase "immunity from prosecution" was changed to "restriction on prosecution" to avoid the possibility of transactional immunity, which could potentially limit prosecution of other charges related to the incident outside of the possession offenses outlined in the bill.

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SENATOR WIELECHOWSKI asked about applying this to alcohol overconsumption.

MS. HOPSON said the sponsor's intent is to maintain the narrow scope in order to get it through the process this session.

CHAIR COGHILL said he wouldn't want to give a false impression that the bill provides broad immunity from prosecution for misuse of an illegal substance.

MS. HOPSON affirmed that it applies exclusively to possession for personal use in the circumstance of reporting an overdose.

CHAIR COGHILL asked Ms. Strasbaugh to comment on potentially amending the applicability section to apply only on or after the effective date.

MS. STRASBAUGH said it's a policy choice for the legislature, but the idea was that it would apply to cases in process. Because there is a difference of opinion about whether or not the simple use of the word "before" creates significant problems, the wording could be changed so that there is a specific reference to cases in process at the time the bill becomes effective, she said.

CHAIR COGHILL asked if the definition of "drug overdose" on page 2, lines 10-13, was unique to this section of the code.

MS. HOPSON deferred the question.

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ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), Juneau, Alaska, stated that DOL strongly recommends removing the term "before" in the applicability section on page 2, line 16.

CHAIR COGHILL said his intention was that the bill would apply prospectively. He then asked if "good faith" was a known standard.

MS. CARPENETI answered yes. She continued to explain that when the bill was heard in the other body, DOL suggested an affirmative defense but the policy decision was not to do that, so the burden is on the prosecution to disprove good faith by proof beyond a reasonable doubt. If someone calls 911 just as law enforcement knocks on the door to conduct a search, DOL presumably would have to disprove that the call was in good faith.

CHAIR COGHILL asked how that would differ if it were an affirmative defense.

MS. CARPENETI explained that in an affirmative defense the burden of proof on the prosecution is by a preponderance of the evidence. She offered her belief that the rationale for the decision to stay with reasonable doubt was the desire to save lives now and argue the legal questions later.

CHAIR COGHILL asked if the bill was narrowly crafted to apply only to possession.

MS. CARPENETI agreed and noted it doesn't say personal possession. It would be a different question if the quantity was sufficient to indicate intent to distribute.

SENATOR WIELECHOWSKI asked if only the caller gets relief from prosecution or all people who might have stayed on scene.

MS. CARPENETI replied it only says the person who places the call for help, but law enforcement has said that they rarely arrest anybody when they're called for an overdose because they're focused on helping the person who has overdosed.

SENATOR WIELECHOWSKI asked if she knew how many people this potentially could have saved in the past five years.

MS. CARPENETI said she didn't have that information.

CHAIR COGHILL asked Mr. Hahn if he could answer.

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RANDY HAHN, Alaska State Troopers, Department of Public Safety (DPS), Wasilla, Alaska, said he didn't have an answer and wasn't sure if that specific data was even in the system.

CHAIR COGHILL asked if law enforcement responding to an overdose would probably tend to the person who had overdosed rather than charging everyone present.

TROOPER HAHN replied the first priority is to save the victim, so it would be highly unlikely to have any arrests at that particular time. If it looked like there was a potential distribution center, it would be addressed in a later investigation.

SENATOR WIELECHOWSKI asked Ms. Carpeneti if it was a concern that the bill doesn't exclude seeking help during the course of the execution of an arrest or search warrant.

MS. CARPENETI said she wasn't concerned now, but DOL may consider that if they find they're unable to disprove good faith.

SENATOR WIELECHOWSKI asked if DOL feels strongly that this should be an affirmative defense.

MS. CARPENETI said Department of Law previously suggested it be structured as an affirmative defense, but the sponsor didn't support it.

CHAIR COGHILL stated his intention to adopt a CS to remove the retroactivity.

SENATOR WIELECHOWSKI asked if it creates any sort of constitutional issues that there would be people sitting in jail or on probation or parole who were convicted under circumstances that no longer apply.

MS. CARPENETI said it creates serious practical problems to include "before" in the applicability, because it doesn't say how far back.

SENATOR WIELECHOWSKI asked, assuming the term "before" is removed, how it would affect a case that was in process.

MS. CARPENETI said Department of Law always takes the position that it is very important for the legislature to clarify when to start applying a new law, but it's preferably on or after the effective date. She noted that was no effective date but there was no reason it couldn't be effective immediately.

SENATOR WIELECHOWSKI said he doesn't like the idea of punishing people for something that is no longer a crime. That's what happens without the word "before" in the applicability section.

MS. CARPENETI posited that judges, prosecutors, and defense lawyers would take that into account when arguing sentencing.

SENATOR WIELECHOWSKI expressed concern about the potential consequences for a second or third offense and again about having people sit in jail for an offense that is no longer a crime.

MS. CARPENETI offered her belief that there is enough discretion in the system to address unfairness under those circumstances.

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SENATOR WIELECHOWSKI questioned how judges would approach presumptive sentencing when one of the offenses is no longer a crime.

MS. CARPENETI said she assumes the judge would take into account the circumstances of the prior offenses and the law at the time.

SENATOR WIELECHOWSKI asked if judges would have the discretion to do that under the current sentencing laws.

MS. CARPENETI replied judges have discretion within the sentencing range.

SENATOR WIELECHOWSKI observed that it's rare that a crime is removed from the books.

MS. CARPENETI clarified that it's still a crime to possess the controlled substances.

SENATOR WIELECHOWSKI agreed, although there could be people who have been punished in the past and wouldn't be punished for the same offense now.

MS. CARPENETI said the problem is that it's very difficult to establish those facts retrospectively. Somebody could say they were convicted of possession and that they did dial 911, but nobody would know if they acted in good faith and stayed with the person.

CHAIR COGHILL asked for a motion to adopt the CS.

[2:49:50 PM](#)

SENATOR MCGUIRE moved to adopt the work draft Senate CS for CS for HB 369, labeled 28-LS1515\P, as the working document.

CHAIR COGHILL found no objection and Version P was adopted. He asked if the definition of "drug overdose" on page 2, lines 10-13 was new.

MS. CARPENETI replied it's not a definition that's part of Title 11. She deferred further explanation to Ms. Strasbaugh.

MS. STRASBAUGH said the term is used in just one other place in statute as a mitigating factor for felony sentencing.

CHAIR COGHILL asked if a life threatening emergency might become more difficult to prove under this drug overdose law.

MS. STRASBAUGH replied it would probably depend on whether the responders thought there was a danger when they arrived.

CHAIR COGHILL opined that it hinges on "reasonably believed."

MS. STRASBAUGH said unconsciousness and difficulty breathing are hallmarks that could alarm an individual enough to call the EMTs and the EMTs could realistically indicate if called upon to do so.

SENATOR WIELECHOWSKI asked if a person who was arrested and prosecuted under AS 11.71.030(a)(3) might raise it as a defense that he was having a drug overdose.

MS. CARPENETI said in order to raise a defense the defendant has to introduce some reliable evidence. The burden is then on the prosecution to disprove that beyond a reasonable doubt.

SENATOR WIELECHOWSKI said he initially questioned whether this would create an extremely high burden for prosecutors, but it sounds as though it won't be a large problem.

MS. CARPENETI said she hopes not but the Department of Law reserves the right to come back and ask for a change if it proves to be an onerous burden.

SENATOR WIELECHOWSKI said his one concern relates to the search warrant, but he didn't want to hold the bill if DOL doesn't see it a concern.

MS. CARPENETI said she didn't want to be dismissive of the potential problem because people will try to take advantage of this defense once it's available.

CHAIR COGHILL questioned whether paragraph (2) on page 2, ought to explicitly mention good faith.

SENATOR WIELECHOWSKI said that's where the problem lies.

CHAIR COGHILL stated that he would hold HB 369 in committee for further consideration.

2:59:21 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:59 p.m.