

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE JUDICIARY STANDING COMMITTEE
SENATE JUDICIARY STANDING COMMITTEE**

January 28, 2015

1:07 p.m.

MEMBERS PRESENT

HOUSE JUDICIARY

Representative Gabrielle LeDoux, Chair
Representative Neal Foster
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Max Gruenberg

SENATE JUDICIARY

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

HOUSE JUDICIARY

Representative Wes Keller, Vice Chair

SENATE JUDICIARY

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 79

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 30

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

- -- COMPANION BILL --

PREVIOUS COMMITTEE ACTION

BILL: HB 79

SHORT TITLE: MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

SPONSOR(S): JUDICIARY

01/26/15	(H)	READ THE FIRST TIME - REFERRALS
01/26/15	(H)	JUD, FIN
01/26/15	(H)	JUD AT 1:00 PM BUTROVICH 205
01/26/15	(H)	Heard & Held
01/26/15	(H)	MINUTE(JUD)
01/28/15	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 30

SHORT TITLE: MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

SPONSOR(S): JUDICIARY

01/23/15	(S)	READ THE FIRST TIME - REFERRALS
01/23/15	(S)	JUD, FIN
01/26/15	(S)	JUD AT 1:00 PM BUTROVICH 205
01/26/15	(S)	Heard & Held
01/26/15	(S)	MINUTE(JUD)
01/28/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board (ABC)
Department of Commerce, Community, and Economic Development
Anchorage, Alaska

POSITION STATEMENT: Provided testimony regarding the overlay of criminal statutes with regulating marijuana as a legal substance in HB 79 and SB 30.

KAREN O'KEEFE, Director
State Policies Department
Marijuana Policy Project (MPP)
West Hollywood, California

POSITION STATEMENT: Testified regarding concerns with the current draft of HB 79 and SB 30.

BRUCE SCHULTE, Spokesman
Coalition for Responsible Cannabis Legislation
Anchorage, Alaska

POSITION STATEMENT: Testified as to marijuana extraction regarding HB 79 and SB 30.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Responded to questions regarding HB 79 and SB 30.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Office of the Attorney General
Department of Law
Juneau, Alaska

POSITION STATEMENT: Responded to a question regarding HB 79 and SB 30.

ACTION NARRATIVE

[1:07:44 PM](#)

CHAIR GABRIELLE LEDOUX called the joint meeting of the House Judiciary Standing Committee and the Senate Judiciary Standing Committee to order at 1:07 p.m. Representatives Lynn, Claman, Gruenberg, Foster and LeDoux were present at the call to order. Representative Millett arrived as the meeting was in progress. Senators Coghill, Costello, Micciche, Wielechowski, and McGuire were present at the call to order.

^#hb79

^#sb30

HB 79-MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES
SB 30-MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

[1:08:32 PM](#)

CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 79 "An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date." and SENATE BILL NO. 30 "An Act relating to controlled substances; relating to marijuana; relating to

driving motor vehicles when there is an open marijuana container; and providing for an effective date."

CHAIR LEDOUX advised that HB 79 and SB 30 would not move out of committee today.

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CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC), Department of Commerce, Community, and Economic Development, discussed the overlay of criminal statutes with regulating marijuana as a legal substance. Alaska Statute Title 4 spells out all of the rules around alcohol which, she explained, has been deemed a dangerous substance and therefore, is regulated. Title 4 depicts misdemeanors and felonies relating to alcohol where individuals are prosecuted for those crimes and are not only license holders, but individuals selling, furnishing, or serving alcohol to minors. She offered that the committees could engage in a philosophical discussion as to whether marijuana will be a regulated substance, controlled substance, or a scheme where it is both. She advised that the feedback she received from Major Dennis Casanovas, Alaska State Troopers, Anchorage Police Department (APD) officers, and the officers she met in Colorado and other states, is that the danger of creating a set of rules in many different places is that it subjects officers in the field to making determinations that are not "bright lined." She expressed that the legislature must create very clear lines, as in the "carve out" procedure in Title 11, that marijuana is a controlled substance, an illegal substance, except in certain instances wherein the state declares it to be legal. She described scenarios where officers in the field wonder whether they are in Title 11, or Title 17.38, in the world of legalized marijuana.

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MS. FRANKLIN continued that within the interplay between Title 4 and Title 17.38 is the question of regulatory board authority and noted that Title 4 grants authority over all alcohol related crimes. She highlighted that the ABC Board has five enforcement officers statewide who are authorized to investigate and charge individuals with crimes related to alcohol whether or not they are licensees. She provided that Title 17.38 does not address enforcement under either the ABC Board or a marijuana control board and does not address the scope of enforcement powers. She indicated that the legislature should make it clear whether or not the board charged with regulating and licensing marijuana

establishments has any power or authority to enforce on someone selling marijuana without a license, or whether that will fall to more general law enforcement authority such as the troopers or local law enforcement.

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CHAIR LEDOUX asked whether the ABC Board is responsible with respect to people selling liquor without a license.

MS. FRANKLIN responded in the affirmative and added that the statute is contained in Title 4. Obviously, she reasoned, since the ABC Board has only five officers statewide it is not capable of enforcing on every alcohol related crime. The idea, she explained, is that there is a centralized agency with enforcement authority over this substance and someone to assist law enforcement in determining whether the alcohol related conduct is legal and authorized. She indicated that is where the overlay of marijuana under Title 11 becomes blurry.

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CHAIR LEDOUX surmised that under current alcohol law, it is not just the ABC Board with authority but also troopers and local police.

MS. FRANKLIN answered in the affirmative and stated that enforcement officers authorized under Title 4 have specific statutory authority. She related that prior to enactment on February 24, 2015, within the marijuana world the ABC Board does not have any legal authority over marijuana. She opined that when the date arrives there is nothing in AS 17.38 authorizing ABC Board enforcement regarding a delivery service that is currently delivering marijuana. The question, she emphasized, is whether there will be authority with a board to enforce rules, to what extent, and how far the authority extends.

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CHAIR MCGUIRE noted there has been considerable debate whether or not this bill should contain a provision giving distinct authority to the ABC Board or a hybrid marijuana control board. She asked Ms. Franklin's opinion as to whether that provision should be included in SB 30, or relegated to a second or third piece of legislation.

MS. FRANKLIN answered that it depends upon the authority that will be given to the board in terms of criminal enforcement. In the event the board is given broader criminal enforcement, such as the ABC Board has over alcohol, it could be included in the criminal bill. She opined that on February 24, 2015, the agency will pursue an emergency regulation to define "public" for enforcement officers in terms of citing individuals consuming marijuana in public. She advised that Anchorage passed its ordinance last night, which is a mirror image of AS 17.38.040 that outlaws consuming marijuana in public. The agency has worked with the Court System to ascertain that everything would be in place on the date of enactment, and that a definition of the term "public" would be forthcoming. With regard to which bill it is in, she deferred to the legislators. She remarked that if the board will have broad enforcement authority to put it [in the bill] early, but if [the board doesn't have broad enforcement authority] it will not make much difference.

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REPRESENTATIVE MILLETT recounted that two years ago the Alcoholic Beverage Control Board was moved from the Department of Public Safety (DPS) to the Department of Commerce, Community, and Economic Development (DCCED). She questioned under which department the new board should be placed.

MS. FRANKLIN responded that the ballot measure stipulates DCCED so the question is whether or not it is a serious enough issue to go against the voters. She opined that both boards should be in the same department because to put each substance in different departments could potentially lead to the substances being approached in a fundamentally different manner. She said that the debate over the ABC Board's location has been concluded, but the debate over what type of department the regulation of a dangerous substance belongs puts a light on the difficult balancing act of both of the substances due to the commercial, public safety and public health concerns. She noted that Colorado has shown a societal cost to the substance and those costs must be covered in some manner.

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REPRESENTATIVE CLAMAN surmised that the legislature needs to take statutory steps to provide specific authority for the ABC Board or a marijuana control board to exert enforcement authority over marijuana because it was not done in the initiative.

MS. FRANKLIN agreed that the initiative did create the ABC Board as the regulatory authority but did not address enforcement. It spoke about civil penalties for violating rules around licensing and small penalties for consuming in public. She reiterated that the initiative did not speak to the penalty for selling marijuana without a license once licenses are issued, or enforcement authority in terms of what agency, whether it is a general law enforcement authority, or whether there is specific authority with a regulatory agency to enforce against non-licensees. The initiative depicted creating penalties for licensees who violate the rules, but not for people operating completely outside of the licensing authority. She described an operation that operates in a semi-commercial manner as it appears on the surface to be a legitimate business, yet are not waiting to get licenses or to follow the rules. She reiterated that the legislature needs to make "clear bright lines" as to the rules.

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SENATOR WIELECHOWSKI pointed out that the initiative read that marijuana cannot be used in a public place and requested guidance on how "public" place is defined in Colorado. He referred to [Matanuska-Susitna Borough Resolution Serial No 15-006] which questioned if a passenger vehicle is considered a public place, a private baseball field, smoking club, or standing on the edge of an individual's private property.

MS. FRANKLIN responded that a definition is needed for "public" as in AS 17.38.040. She advised that the ABC Board's definition is in AS 11.81.900[52] which read:

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

MS. FRANKLIN advised that this definition is used for purposes of criminal statutes, and drinking in public. The statute does include some parks so it may or may not include the baseball field, but it does not include vehicles. She explained that an officer can refer to a definition that is in place. AS 17.38.040(52) is a similar definition to the Anchorage

definition in its ordinance, and similar to the Colorado definition. She described it as a fairly standard definition in terms of defining spaces where an individual's activities affect others and noted it is the best definition moving forward for the term "public" as in AS 17.38.040.

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SENATOR WIELECHOWSKI questioned whether publically owned facilities such as the Alaska Housing Finance Corporation (AHFC) that is rented out or leased out [would be considered public].

MS. FRANKLIN addressed a section in the initiative that allows private business and property owners to specifically ban marijuana. She advised that the publically owned issue has come up before in terms of where an area is publically owned but is leased out to individuals, such as in assisted living facility or receives state funding, would that apply. Ms. Franklin referred to AS 17.38.120(d), which read:

(d) Nothing in this chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

MS. FRANKLIN stated that generally speaking a corrections facility would not be owned by a private entity and it would seem that these issues will be tested in court by those facilities banning the substance.

[1:36:13 PM](#)

SENATOR COSTELLO requested specifically who Ms. Franklin spoke with in Colorado, how they addressed edibles, and whether the non-chemical solvent language in the bill bans all edibles [page 4, lines 21-26]. She questioned what lessons Alaska can learn from Colorado in how it approaches this issue and edibles.

MS. FRANKLIN responded that the main "boots on the ground" regulators in Colorado were Andrew Friedman, Colorado Director of Marijuana Coordination, and Ron Kammerzell, Senior Director of Enforcement for the Colorado Department of Revenue, and the marijuana enforcement division employees who enforce marijuana

rules, and several members of the Colorado attorney general's office working on marijuana. She explained that many of Colorado's edible issues came about because it already had licenses issued for medical marijuana dispensaries in place which were selling very potent edibles, high THC content for medical marijuana patients with a high tolerance level. In 2014, she advised, the Colorado recreational market began and it found that very strong edibles were out among consumers who did not know about potency, were having uncomfortable experiences, and going to the hospital. Consequently, she remarked, Colorado changed the rules and created serving sizes, child proof packaging rules, and a new set of rules to address the recreational edible market explaining the delayed effect of edibles. There is now a total limit on the number of servings in any given package and when a package has more than one serving it must be resealable to child proof, she offered. Colorado also created a public education campaign starting with five milligrams of THC per serving as an edible. She highlighted that the result of the public education campaign was that emergency rooms and the Colorado enforcement system saw a dramatic decrease. She related that Alaska can easily incorporate Colorado's rules and possibly scale back a bit more as Alaska does not have a medical marijuana dispensary in place and it can determine the size of a serving on the lower range without upsetting medical marijuana licensees. In that regard, Alaska has the opportunity to cap out the total THC content of an individual edible product in that should an individual eat the whole thing they would not experience overdosing, she surmised.

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CHAIR MCGUIRE requested Ms. Franklin to prepare a packet for the House and Senate Judiciary Standing Committees containing recommendations, including the definition of edibles that was provided to the Senate State Affairs Standing Committee. Together with the packet to include, a binder of items Ms. Franklin collected in her journeys, written information, and all backup documents. Chair McGuire also requested a letter regarding draft [bill] improvements as to whether or not the issue of licensing boards should be acted upon by the legislature, and if so, what its authority should be, what Ms. Franklin would like to see by virtue of a board, and what is needed when reviewing Title 4 with respect to criminal powers, investigatory powers, resources, et cetera. Ms. Franklin was directed to "not leave a stone unturned." Chair McGuire questioned the work load of the ABC Board given all it has with

Title 4 licenses, whether the ABC Board is ready to take this on, and what Ms. Franklin envisions the board to look like as it is a brand new area of commercialization. She expressed the concern that people are not criminalized when they shouldn't be, and that the public is not harmed by the commercialization of a substance that isn't managed properly.

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MS. FRANKLIN advised she would provide the information requested. She further advised that since 1980, the ABC Board has had five volunteer members, currently two industry representatives and three public representatives - one of whom must be from a rural community. She articulated that the ABC Board, Alaska Mental Health Trust, and Rasmussen Foundation have worked for two and one-half years on updates to Title 4. She related that there is the manner in which alcohol has been regulated, and the manner the broad stakeholders group, which includes CHAR and many members at all levels and aspects of the liquor industry, contemplate that liquor should be regulated. The board, as envisioned by the Title 4 revision and the stakeholders' committee, is to remain a five member board that includes one public health and one public safety designation - a rural public member. She opined that it is an ideal setup for a marijuana board with the same makeup but with two marijuana industry representatives. She expressed that if it was under the ABC Board and two marijuana representatives were added, the public health and public safety designation would have to be increased as there would be a total of four industry representatives on a seven member board. There would be a public safety concern if the industries had a majority vote on the board, she commented. In essence, she remarked, the ABC Board would be a nine member board and once it is a nine member board, it might as well be two five-member boards. She described the agency as "very busy" with over 1800 liquor licenses, 10 employees statewide and half are licensing, half are commissioned police enforcement officers. The agency's budget is \$1.75 million per year, but it does bring in licensing receipts of which most goes back to the cities with the idea that the cities will use it to help with law enforcement of alcohol issues.

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MS. FRANKLIN continued that the initiative read that half of the licensing fees would go back to a municipalities if its business is located in a municipality. She described many similarities

in the way AS 17.38 is written as to the way Title 4 works. She emphasized that it is a volunteer board so the bulk of the alcohol work is performed by employees of the agency, and if it is left with this agency it must be expanded. She offered that it could be expanded in a fiscally responsible manner that is less than creating an entire new 10-member agency. She commented that there are no marijuana regulators waiting to be placed on a board as this is a new substance to regulate versus criminal enforcement. She maintains that the agency employees are experts and have the most experience in issuing licenses, enforcement, and licensees having issues who do not have criminal intent but need a special kind of enforcement. She described the ideal setup as two volunteer boards, both served by this agency. She noted that the attorney general's office reviewed concerns regarding conflict and determined there is not a legal conflict in an agency serving both boards.

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REPRESENTATIVE CLAMAN surmised that Ms. Franklin preferred staffing performed within the agency even though it would result in the hiring of additional people to regulate two different substances. He further surmised that within the agency a board should be created for marijuana that maintains the existing board structure and population as the board for alcohol. He questioned whether the official position of the Walker administration is urging the legislature to do exactly as Ms. Franklin described.

MS. FRANKLIN answered in the affirmative in that she met with Governor Walker in December and outlined three options: option A, it all stays with the ABC Board; option B, the hybrid version she previously described; and option C, it all goes to a marijuana control board and a separate agency. She stated that Governor Walker did endorse the hybrid plan.

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REPRESENTATIVE GRUENBERG expressed his concern that there could be both legal and illegal interests that would like to be involved [in the marijuana industry], from the pharmaceutical to the "mob." He remarked there are lawyers who could potentially be involved advising both boards with conflicts of interest and board members and staff with many ethical questions. He noted that Alaska has a series of rules for the executive branch and legislative branch that are not totally the same in this area. He said he was not sure whether that will "fit the bill here"

and questioned what efforts the agency was making, or efforts the agency suggested the legislature make to carefully obtain expertise in the area of ethics.

MS. FRANKLIN responded that an assistant attorney general referred her to the Alaska Executive Branch Ethics Act, and also cited AS 39.52.010(b), which read:

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute.

MS. FRANKLIN explained that holding incompatible offices is prohibited. She highlighted that establishing that kind of conflict is highly fact sensitive and the inquiry in that would be a conflict of interest between an individual board member, and not the entire board. She continued that it is not clear whether the alcohol and marijuana industries are competing industries. The Washington State Liquor Control Board regulates both industries and she is not aware of a challenge to that as being a conflict of interest. She advised that when Washington passed its initiative that control was put with the Washington State Liquor Control Board and it did not create the possibility of a separate board. The Washington State Liquor Control Board consists of three members who are state employees and it holds three board meetings per week. She advised the Alaska ABC Board holds five meetings per year and has substantial individual business decisions to make at the meetings. She reiterated that she is not aware whether it is an accepted fact that the industries are competing or conflicting, and she imagined two separate boards as a way to minimize the possibility of a conflict of interest. The attorney working on this issue advised that she does not believe anything in Alaska state law would suggest there is a conflict of interest in an individual agency licensing two types of industries.

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REPRESENTATIVE GRUENBERG stated it is not just a question of conflict of interest, but the issue of "ethics" generally due to such things as the necessity for background checks, necessity for full disclosure of the people involved, training, and liability. He opined there will be significant ethical issues

and he would like to know if there are national experts on these subjects.

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SENATOR MICCICHE provided that the goal is to meet the intent of the voters in implementation of the initiative, AS 17.38.110, which read:

(a) A local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or by a voter initiative.

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.

(c) A local government may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a marijuana establishment within the boundaries of the local government. The local government may provide that the local regulatory authority may issue such registrations should the issuance by the local government become necessary because of a failure by the board to adopt regulations pursuant to AS 17.38.090 or to accept or process applications in accordance with AS 17.38.100.

(d) A local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62, the Administrative Procedure Act.

(e) A local government may establish a schedule of annual operating, registration, and application fees

for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a local government in accordance with (f) of this section and a registration fee shall only be due if a registration is issued by a local government in accordance with (f) of this section or (g) of this section ...

SENATOR MICCICHE questioned if there was concern regarding a litigation challenge when it comes to Native Sovereignty on the local control issue regarding a dry village. Many villages are outside an organized municipality but still retain the right to be dry. He further questioned if there could be a challenge and whether it is something the legislature should consider during implementation.

MS. FRANKLIN noted that she has responded to local governments that "want to be on the substance in our local community" and the answer is that AS 17.38.110 permits that except that nothing in that act can change Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975). Ms. Franklin advises local governments, in terms of alcohol local option law, that the best [local government] can do in a local community, given Ravin v. Alaska, is called Local Option 4 for municipalities, and Local Option 3 for villages which is banning everything but possession. She related that it has proven to be problematic in terms of enforcement in those communities. She described approximately 38 communities on the books under Local Option 4 at this time. The agency has heard over the years and in the stakeholders' process that the option does not work well for them because it permits a loophole for alcohol to be in that community in terms of possession being legal but everything else being illegal, she said. She opined that describes the status of marijuana in the State of Alaska since Ravin, and to what some people call magic marijuana where it is legal to have it but not legal to sell, transport, manufacture, or purchase it. She said the way she sees a challenge coming up to that is if there were a village or municipality that attempted to outlaw it in some sort of a lawsuit to test the Ravin decision. She extended that she did not know that any municipal attorney would allow a village to try to do that since the initiative says "you can be in it," but also says nothing in the act is intended to change any of those privileges granted through the Supreme Court under Ravin and Noy v. State of Alaska, 83 P.3d 538, 542-43 (Alaska App. 2003) cases. She said the most likely scenario is when the rules around the local options are written, whether by the ABC Board, a marijuana control board, or the legislature, that none of the

local options would be able to prohibit possession allowed by the Ravin opinion.

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CHAIR LEDOUX questioned if anyone has challenged the village local dry rule "kind of on a Ravin analysis."

MS. FRANKLIN responded "yes," but did not know the name of the case, but that it challenged under the same privacy rights, the ability to prohibit a person from possessing alcohol. At the time that Supreme Court case was decided, the Supreme Court said alcohol is a very dangerous substance, of course "they can be in it," she recalled.

[2:11:13 PM](#)

CHAIR LEDOUX asked how the one ounce proviso synthesizes with the sale by a licensee of edibles. She offered a scenario of a dinner party and asked whether the marijuana must be thrown away at the end of the dinner party if it all has not been eaten.

MS. FRANKLIN answered that her understanding, after speaking with processors and manufacturers in Colorado is that if a concentrate is removed from the definition of marijuana then essentially edibles are removed. She described edibles as processed and manufactured using marijuana concentrates. Tourists in Colorado can purchase up to 1/4 ounce of flowers or bud, and a resident can purchase 1 ounce at a time, she opined.

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REPRESENTATIVE GRUENBERG surmised that another issue Alaska will be dealing with is tort liability in the owner and the supplier.

CHAIR LEDOUX directed that would need to be accomplished either through legislation or the common law.

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KAREN O'KEEFE, Director, State Policies Department, Marijuana Policy Project (MPP), advised that the Marijuana Policy Project (MPP) is a national non-profit organization working with advocates and legislatures to reform marijuana policies. She stated that the measure received MPPs assistance with campaigning, it provided funding, and also drafting assistance. [On January 28, 2015], Dr. Tim Hinterberger submitted concerns

[located in committee packets] regarding the current draft of SB 30 and HB 79, and the previously discussed issue of affirmative defense, and a few other concerns, she pointed out.

[2:16:59 PM](#)

The committee took an at-ease from 2:16 p.m. to 2:29 p.m. due to technical difficulties.

[2:29:25 PM](#)

MS. O'KEEFE conveyed her understanding that the committees are reviewing the issue of defense and replacing the "comprehensive legal protection" of Measure 2. She recommends keeping the language from Ballot Measure 2, AS 17.38.020 and AS 17.38.070 as they are comprehensive legal protections for adults who are 21 and older, and for stores and their employees legally selling marijuana. The [protections] include not only defenses from criminal prosecution, but the conduct is exclusively lawful under state law and municipal law. In addition to that issue, she remarked, in the defense itself there is confusion as to the scope of what possession is allowed. The initiative allows an adult to possess six plants and all of the marijuana produced from those plants. Another issue, she described, is "display" as the draft of SB 30 penalizes not only public consumption but also public display of marijuana. She stated that display is one of the words included in Measure 2 as to what adults will be allowed to do. It explicitly reads that public consumption is prohibited, but display is not. Therefore, she surmised "that" word should be stricken from AS 11.17.065. The next concern is that a certain means of producing extract would be prohibited which would be fine, she said, as long as manufacturers are licensed, and complying with strict regulations, and are able to safely manufacture these kind of extracts. For adults, she noted, there is no objection to banning potentially dangerous methods of home extraction that might cause an explosion. She requested that in addition to vegetable glycerin, water be exempted as water is a solvent and adults can safely extract resins from marijuana using cold water with no chance of an explosion. She commented that this allows adults to make edible products in a safe manner in their home.

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MS. O'KEEFE described the next issue within Dr. Hinterberger's letter as "hermanizing" hashish and marijuana. Currently, SB 30, AS 11.71.190(1)(b) reads "marijuana, hashish, hash oil, or

hashish oil are schedule VIA controlled substances." She indicated that the language suggests hashish and hash oil are separate from marijuana; however, Measure 2's definition of marijuana includes concentrates and resins and thereby includes hash. She suggested striking the word "hash" everywhere as it is included in marijuana, or "alternately, it could read marijuana including hashish, hash oil and so forth is a controlled substance." She pointed out that this language would make it clear that they are not meant to be separate because it is part of the definition of marijuana. The last concern, she remarked, is the issue of open containers. Senate Bill 30 proposes penalizing individuals with marijuana in a container that had been opened, or paraphernalia if it appears to have been used in a vehicle. She said that for many people marijuana is a medicine and SB 30 allows many locations to ban [products] with marijuana. For example, a seriously ill patient may live at a nursing home that does not allow marijuana use at its facility, should the provision pass they could not go into a parked car and use marijuana when no driver is present. She opined it is an unnecessary prohibition and unnecessarily broad and it should be revised or removed completely. In addition, she provided, there are two exceptions under the alcohol statute, use in a bus or limousine, and she urged [that SB 30] be revised to match the alcohol statute. Ms. O'Keefe noted that marijuana does not have to be smoked so all of the broad prohibitions regarding open container would apply, and not only for adult recreational users but also to patients.

[2:35:30 PM](#)

SENATOR COGHILL put forward that the legislature has struggled with testing for impaired driving as public safety has been one of the harder issue to get to and he advised that open container was an attempt to go down that road. He questioned how she viewed that issue.

MS. O'KEEFE agreed with the importance that it remain unlawful for adults to drive while under the influence of marijuana or any other substance. She suggested more training for law enforcement officers for drug recognition experts in order to recognize signs of being impaired by marijuana. She urged the committee to not be overly broad as to encompass benign activity and especially people who are seriously ill.

[2:36:45 PM](#)

SENATOR COGHILL remarked that the legislature is sympathetic to the use of medicinal marijuana, and that edibles will be harder to detect than the smell of marijuana smoke. He asked whether there is any manner edible consumption could be detected without a sobriety walking test.

MS. O'KEEFE reiterated that training law enforcement is the best way of [detecting impairment]. She stated that an individual consuming an edible can be under the influence for many hours so the chances of a law enforcement officer finding an open container indicating they consumed an edible product in the car isn't the most effective manner. She indicated that many people highly impaired by marijuana are not associated with risk taking so hopeful most would not be inclined to drive in the first place. She opined there is a widening amount of training in law enforcement in order to recognize when a person is under the influence of anything, and they have specific protocols for testing. She offered that Paul Armentano [Deputy Director, National Organization for the Reform of Marijuana Laws] is an expert on the driving issue and he would be an appropriate person to expand on this law.

SENATOR COGHILL requested she forward the recommendation to the committee chairs with a note as the legislature needs to look down that road.

[2:38:55 PM](#)

SENATOR WIELECHOWSKI questioned if there is a level of THC everyone can agree under which a person is intoxicated.

MS. O'KEEFE advised that, unfortunately, there is not a specific level of THC, as even the federal government's transportation board has said there is no magic number. However, regular marijuana users can have a very high level of THC and not be impaired. "You have to rely on the field roadside sobriety type tests," she said.

[2:40:07 PM](#)

SENATOR MICCICHE offered that his question relates to the chemistry of hash oil extraction and questioned whether any state legislature has defined the specific process by what is not allowed, rather than getting specific on the process. For example, he offered, only non-hydrocarbon based extraction methods are permitted.

MS. O'KEEFE advised that the exception for vegetable glycerin is similar to the language used in Oregon's measure that was approved by voters. She stated she would "ask around" to determine if other states list the methods of extraction that are exempted from the prohibition at one's home.

SENATOR MICCICHE further questioned whether the risk is due to hydrocarbons used in extractions.

MS. O'KEEFE deferred Senator Micciche's question to the experts, including Bruce Schulte [Coalition for Responsible Cannabis Legislation]. She related her understanding that the risk is related to fumes produced. For example, she pointed out, anything producing fumes is dangerous as with an alcohol based butane solvent, but there will be no fumes when the cold water process or vegetable glycerin process is used.

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REPRESENTATIVE GRUENBERG questioned if there were other countries or jurisdictions allowing a certain amount of marijuana use and, he surmised, the legislature can either look at subject matters to begin with or jurisdictions. When reviewing jurisdictions it can be determined how the issue was framed and address them.

MS. O'KEEFE responded that the only country that has completely made adult marijuana use and production legal is Uruguay, South America and, unfortunately, she noted, it is as new as Washington and Colorado's law. The system is not up and running and there appears to be concern as to how it done and how realistic it is. The Netherlands, since the 1970s, has had marijuana stores which are de facto legal as it is prohibited within the law, and the production of marijuana is still illegal. She described this system as imperfect but there are lessons to be learned in how they approach things.

REPRESENTATIVE GRUENBERG requested that the committees be informed on other jurisdictions and their progress in this area because whether it is civil or common law jurisdiction, if a common problem is being addressed it would be helpful to have the information.

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SENATOR MICCICHE questioned Bruce Schulte as to the challenge of the extraction process of hash oil and pondered if a broader

definition might be more helpful eliminating the risk of harmful or risky extraction methods. He surmised that all of the more dangerous processes are hydrocarbon based and the legislature does not know what future processes will look like. He asked whether the legislature should limit it to defining it or should hydrocarbon based extraction methods be eliminated.

[2:46:43 PM](#)

BRUCE SCHULTE, Spokesman, Coalition for Responsible Cannabis Legislation, advised he is a spokesman for the Coalition for Responsible Cannabis Legislation and that he submitted a packet of material to the committees in which the coalition attempted to clarify the products and processes related to marijuana. He said the materials include home extraction using butane and that butane hash oil was one of them. He described the problem being that hash oil is not volatile, but the process using butane is volatile, as is acetylene, helium and other gases. He surmised that once the regulated industry is set up the practice of producing hash oil at home using butane will largely disappear. He opined this would happen when commercial businesses are allowed to produce hash oil and other extracts in a suitable environment using close loop systems, trained personnel, and explosion proof lighting. He pointed to backyard stills at the end of alcohol prohibition in that after a period of time it was not practical because a cheaper and better product could be purchased in a store. He related that this is not a perfect answer to this concern but he hoped that the practice will diminish.

SENATOR MICCICHE advised that his question was not answered in that he is looking to eliminate that extraction process, but he does support another process that would be safer.

MR. SCHULTE questioned if Senator Micciche was referring specifically to home use or commercial production.

SENATOR MICCICHE offered that if the hydrocarbon based extraction process is unnecessarily risky and there are other processes, he would favor them.

MR. SCHULTE expanded that in a commercial environment there would be little reason for a business to extract hash oil using butane as it is not cost effective, not safe or efficient, and is not in any manner a preferred method. He described closed loop systems where the gases are highly self-contained and recaptured for reuse, and some do not include butane at all.

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MR. SCHULTE reiterated concern regarding the effort to treat hash, hash oil, and edibles, separately [from marijuana]. The coalition believes the problem in this area is that terms were misleading or unfamiliar. He commented that his board previously submitted a document, "Marijuana Products Extracts, Derivatives and Regulations" in which the plant is described, its component parts, the manner in which parts of the cannabis plant are used and processed, and defines concentrates and derivatives.

[2:52:43 PM](#)

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration, in responding to Representative Gruenberg, stated that he had not heard anything that would change the testimony offered by Tracey Wollenberg, yesterday. He noted that the agency's major concern is being addressed by the rewrite which he would like to review in order to get into the more technical problems that might arise. The agency's major concern is the manner in which defense was structured in not being consistent with the initiative or the Alaska State Constitution, he said.

REPRESENTATIVE GRUENBERG noted there will be other issues such as warranties, food and drug, and others and asked if Mr. Steiner had any comments.

MR. STEINER responded that with regard to regulations, it is not something the agency would specifically look into as the agency is not involved. He said the agency limits itself to review of the criminal aspect and some policy issues surrounding how a particular concern is addressed as it relates to criminal practice.

KACI SCHROEDER, AAG, Criminal Division, Office of the Attorney General, Department of Law, in responding to Representative Gruenberg, stated that she concurs with Mr. Steiner in that there was nothing heard today that would change the testimony previously provided to the committee.

[HB 78 was held over.]

[2:56:14 PM](#)

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ADJOURNMENT

There being no further business before the committees, the House and Senate Judiciary Standing Committee meeting was adjourned at 2:56 p.m.