

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 6, 2015

1:03 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Bob Lynn
Representative Max Gruenberg
Representative Neal Foster
Representative Matt Claman

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

PRESENTATION: FETAL ALCOHOL SPECTRUM DISORDER (FASD) & THE
EQUIVALENCE OF INTELLECTUAL/DEVELOPMENTAL DISORDER

- HEARD

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

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
01/28/15	(H)	Heard & Held
01/28/15	(H)	MINUTE(JUD)
01/30/15	(H)	JUD AT 1:00 PM CAPITOL 120

01/30/15 (H) -- MEETING CANCELED --
02/02/15 (H) JUD AT 1:00 PM CAPITOL 120
02/02/15 (H) -- MEETING CANCELED --
02/06/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

WILLIAM EDWARDS, Deputy Public Defender
Offices of the Los Angeles County Public Defender
Los Angeles, California

POSITION STATEMENT: Presented testimony regarding Fetal Alcohol Spectrum Disorder (FASD).

THOMAS BROWN, Staff
Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 79 on behalf of the House Judiciary Standing Committee, sponsor by request, chaired by Representative LeDoux.

TIM HINTERBERGER, Ph.D., Chair
Campaign to Regulate Marijuana Like Alcohol in Alaska
Washington, D.C.

POSITION STATEMENT: Speaking on behalf of Dr. Hinterberger, Rachelle Yeung, Legislative Analyst, Marijuana Policy Project (MMP) paraphrased Dr. Hinterberger's, February 5, 2015, Memorandum which discusses MMPs concerns regarding CSHB 79.

TRACEY WOLLENBERG, Deputy Public Defender
Appellate Division
Public Defender Agency
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSHB 79, expressed concerns.

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

POSITION STATEMENT: During the hearing on CSHB 79, expressed concerns.

ACTION NARRATIVE

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CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Keller, Lynn, Gruenberg and LeDoux were present at the call to order. Representatives Claman and Foster arrived as the meeting was in progress.

PRESENTATION: Fetal Alcohol Spectrum Disorder (FASD) & the Equivalence of Intellectual/Developmental Disorder

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WILLIAM EDWARDS, Deputy Public Defender, Offices of the Los Angeles County Public Defender, stated he is one of the leading experts in the country in terms of criminal justice issues and Fetal Alcohol Spectrum Disorder (FASD). Alaska is the leading state in the country dealing with issues of FASD, with the highest prevalence rates and more diagnostic teams attempting to have children and adults diagnosed. He recommends the committee consider changing Alaska's definition of what constitutes a developmental disability to include "fetal alcohol spectrum disorder." He pointed out that AS 47.20.290 discusses developmentally delayed children and mentions fetal alcohol syndrome, but it does not apply to a misdiagnosed adult requiring services. Furthermore, he offered, there are findings that only 20 percent of all children and adults who are diagnosed actually have the facial features and an intelligence quotient (IQ) below 70. "If your IQ is not below 70, you will not qualify for services as if you were someone with a developmental disability. Which means your IQ is below 70, the age of onset before that disability started was prior to the age 18." He opined that all children born with FASD are born with a developmental disability and he urged the committee to consider Minnesota's statute that deals with individuals with developmental disabilities. Minnesota Statute 252.27 reads:

252.27 CHILDREN'S SERVICES; PARENTAL CONTRIBUTION.

Subd. 1a. Definitions. A "related condition" is a condition: (1) that is found to be closely related to a developmental disability, including, but not limited to, cerebral palsy, epilepsy, autism, fetal alcohol spectrum disorder ...

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MR. EDWARDS continued that the definitional change does not mean that an individual is guaranteed to receive services, but it

helps to open the door. Any child or adult in Minnesota, he offered, can use this statute once they have a proper medical diagnosis to receive the services they need. Children or adults without supportive services will end up in juvenile hall or prison, he opined. Urging legislative change to include FASD and what constitutes a developmental disability is the right thing to do, he expressed.

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REPRESENTATIVE GRUENBERG inquired as to the legal ramifications of the definitional change, what statutes, programs, and people it will affect, and the cost to the state. Once those questions are answered, he pointed out that the legislature would have to determine programs to cut in order to accomplish the definitional change.

MR. EDWARDS opined that for individuals not qualifying for social security insurance (SSI) and/or state services, the definitional change would open the door to people who are not allowed to receive services unless they have a developmental disability. He offered to defer to an individual in the audience who may be able to answer Representative Gruenberg's questions regarding costs.

REPRESENTATIVE GRUENBERG stated he did not expect Mr. Edwards to answer his questions, just to be aware of the prism the legislature is looking through.

MR. EDWARDS reiterated that services for these people will keep them out of the prison systems in every state. He posited that when services are in place it will help the child out of juvenile hall, and into the community, and not move further into the criminal justice system.

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REPRESENTATIVE FOSTER requested a short history of why FASD was not included originally in the definition of developmental disabilities.

MR. EDWARDS remarked that he did not know why Alaska's legislative history does not "include it in your bill that I mentioned." He offered that Alaska's child welfare statute only mentions the word "fetal alcohol syndrome" which closes a lot of people out of services, as only about 20 percent nationally of all people actually have an IQ below 70. He continued that if

an individual has an IQ above 70, they will not receive services.

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CHAIR LEDOUX presented a scenario of a person with an IQ hovering around 70, and questioned whether that person is any worse off than anyone else with an IQ around 70.

MR. EDWARDS, in response to Chair LeDoux, stated that under the federal definition, an individual with an IQ of 70 or below with low adaptive behavior deficits that can demonstrate the onset of disability prior to the age of 18 would qualify. He noted that the term "mental retardation" has been changed to "intellectual disability." An individual with an IQ of 98 could have very low adaptive behaviors in that they cannot take public transportation, live on their own, have a bank account, or work without a job coach. He called attention to two issues, in that an individual can be diagnosed as having an intellectual disability versus an individual who has FAS and FASD.

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REPRESENTATIVE LYNN specified that there are several different standardized tests to determine intellectual disability, such as the Stanford-Binet (SB), or the Wechsler Adult Intelligence Scale (WAIS), or others. He asked which test is used because when different IQ tests are used there will be different results for the same person.

MR. EDWARDS agreed and advised that if an individual has an intellectual disability with an IQ of 70 or below, they will receive services in their state. He reiterated that an individual with FASD could have an IQ of 98, and still have severe cognitive deficits with problems in the executive area of the brain and not able to perform [as stated above]. He conveyed that these individuals require an exterior coach to remind them constantly about "doing things" which is why they require special services.

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REPRESENTATIVE LYNN again requested the name of the standardized test used as in the Stanford-Binet (SB), and that possibly Alaska uses WAIS, and some other test in another state. He reiterated that with different tests there will be different numbers on the same person.

MR. EDWARDS expressed that the IQ score is only part of the diagnosis of FASD, as it includes a medical diagnosis, and neuropsychological testing.

REPRESENTATIVE LYNN reiterated his question as to which IQ test is used.

MR. EDWARDS stated that IQ is very misleading for FASD and it cannot be said that because an individual has an IQ of 70 or 75, they will have FASD.

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

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CHAIR LEDOUX announced that the last 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."

CHAIR LEDOUX pointed out that on February 24, 2015, according to the initiative, marijuana becomes legal for personal consumption. She opined that the legislature would like a bill in which the provisions are clear to the citizens, law enforcement community, and the legal community. Chair LeDoux specified it is her intent that the bill that is passed out of the House Judiciary Standing Committee heeds to the will of the people who voted for Ballot Measure 2. She proffered that the bill is 70 percent of the way there.

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REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 79, Version 29-LS0409\E, Martin, 2/4/15, as the working document.

REPRESENTATIVE GRUENBERG objected for discussion.

CHAIR LEDOUX, in responding to Representative Gruenberg's question, advised that the sectional analysis relates to CS, Version\E.

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THOMAS BROWN, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, paraphrased the following testimony [original punctuation provided]:

House Bill 79 revises some of Alaska's criminal statutes to ensure that the will of the electorate is respected by cleaning up some of the now-contradictory laws regarding marijuana. The purpose of this bill is to provide our law enforcement community with clear instructions so that innocent people are not punished for following the law.

The first version of this bill was deeply unpopular and I'd like to emphasize, as the chair already remarked, that the CS before you, version E, is still a work in progress. The central complaint against the original draft was that it merely provided a defense for conduct involving marijuana, instead of making the conduct itself lawful. We believe that this draft goes a long way towards establishing the legality of marijuana and associated activities. Again, this bill is not a final but merely a step forward and we view this hearing as an opportunity for the public and the affected departments to make their opinions heard and to actively solicit their advice.

I would like to present a brief summary of what the CS for HB 79 would do. I am prepared to answer some of your questions and we have experts available here or online who can answer the more technical questions the committee.

First, it should be noted that a good portion of the sections of the CS House Bill 79 are conforming amendments and that many of the other sections are the result of specific choices we made and asked the drafters to consider. Since the bill removes marijuana from the list of controlled substances, a large number of statutes had to be amended to re-include marijuana as those statutes now no longer apply to marijuana. Basically, since the voters seemed to want marijuana regulated like alcohol it was felt that they still wanted some uses of marijuana to be illegal. So some new crimes had to be created to reflect that new reality.

It is a priority for the bill to conform as much as possible to the initiative and to marijuana's new legal status. We still have some way to go on that.

So with your patience I'd like to present a rough sectional analysis of the CS for House Bill 79.

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MR. BROWN paraphrased the following sectional analysis regarding CSHB 79:

Section 1, 2 - re-include marijuana as a substance which a person may not be under the influence of and operate an aircraft, or use ski trails or equipment.

Section 3 - amends the licensing requirement for nurse practitioners to re-include marijuana abuse as a condition for denial, suspension or revocation of license.

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REPRESENTATIVE GRUENBERG referred Sec. 3, page 2, line 21, "habitually abuses" and asked whether there is a definition of abuse.

MR. BROWN advised there is not a definition in HB 79, but it is in other statutes.

REPRESENTATIVE GRUENBERG further asked if it is defined in AS 08.68.

MR. BROWN stated it is not defined in AS 08.68, in the portion in HB 79. He deferred to someone from the Department of Health & Social Services (DHSS).

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MR. BROWN continued his paraphrased analysis:

Section 4 - removes schedule 6A controlled substances from the list of agents an optometrist cannot prescribe.

Section 5 - prohibits pawnbrokers from knowingly entering into a transaction with someone under the influence of marijuana.

Section 6 - defines illegal activity involving marijuana as a reason for abatement of certain places.

Section 7 - re-includes operating a vehicle under the influence of marijuana as a serious criminal offense. He noted this is not statute titles for DUI laws as this is a separate section altogether. That section will need revisiting in order to ascertain that driving under the influence of marijuana is in fact part of the regular DUI statutes for Alaska.

Section 8 - re-establishes the liability of someone driving under the influence of marijuana for personal injury or wrongful death.

Section 9, 10 - removes schedule 6A controlled substances from the statutes defining murder in the second degree and murder of an unborn child.

Section 11, 12 - re-incorporates marijuana into the statutes defining weapons misconduct in the third and fourth degrees.

Section 13, 14 - removes marijuana from crimes of misconduct with a controlled substance in the third and fourth degrees.

Section 15-20 are conforming amendments.

Section 21 - specifies marijuana in the general provisions definition of intoxication.

Section 22, 23 - allows for the prohibition of marijuana use as a condition for pre-trial release.

Section 24 - is a conforming amendment, clarifying definitions to match the initiative language.

Section 25 - establishes that law enforcement agency laboratory reports are evidence of the weight of marijuana.

Section 26, 27 - allows for the prohibition of marijuana as an authorized sentence or for a term of probation.

Section 28 - describes the punishment allowable for possessing marijuana in violation of statute.

Section 29-31 - clarifies that marijuana can be an aggravating or mitigating factor in the sentencing of certain crimes.

Section 32 - is a conforming amendment, clarifying definitions to match the initiative language.

Section 33, 34 - clarifies that synthetic drugs which resemble marijuana are still illegal. He noted that previously they were illegal only because they were facsimiles of a controlled substance. Marijuana is no longer a controlled substance and the synthetic drugs must be made illegal in and of themselves and not because they resemble marijuana.

Section 35-37 - eliminates the requirement to defer to federal substance scheduling standards in the case of marijuana.

Section 38 - provides an affirmative defense for registered caregivers charged with offenses related to marijuana.

Section 39 - is a conforming amendment, clarifying definitions to match the initiative language.

Section 40 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a retail marijuana store with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

Section 41 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana cultivation facility with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

Section 42 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana product manufacturing facility with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

Section 43 - establishes that a person 21 years of age or older may own, operate, be an agent of or be employed by a marijuana testing facility with a valid registration and perform all of the related duties and activities and not be prosecuted for it or have it be a basis for seizure or forfeiture.

Section 44 - technical changes to initiative language.

Section 45 - describes the crime of misconduct involving marijuana in the 1st degree and classifies it as a class A misdemeanor; describes the crime of misconduct involving marijuana in the second degree and classifies it as a class B misdemeanor; describes the crimes of misconduct involving marijuana in the third and fourth degrees and classifies them as violations; allows for bail forfeiture for marijuana related violations; describes offenses defined by amounts; provides for an affirmative defense for medical marijuana related offenses; provides definitions.

Section 46 - defines marijuana concentrate.

Section 47 - allows for protective orders to require the respondent to participate in marijuana abuse treatment programs.

Section 48, 49 - prohibits the violent crimes compensation board from denying a victim based on their use of marijuana or from being injured in a vehicle operated by someone under the influence of marijuana.

Section 50 - for insurance purposes defines drug abuse to include marijuana dependency.

Section 51 - for labor practices defines drug testing to include marijuana as defined in the initiative.

Section 52 - allows for parental visitation rights to be conditioned on the abstention of marijuana use.

Section 53-55 - prohibits driving in a motor vehicle with an open marijuana container that is not in the trunk of the vehicle; defines the term open container; allows for the transport of an open marijuana container on a motor driven cycle or behind the last upright seat in a trunkless vehicle.

Section 56, 57 - allows for the prohibition of marijuana use or the entering of an establishment where marijuana is sold as a condition of parole.

Section 58 - is a conforming amendment defining controlled substance.

Section 59, 60 - prevents prisoners from possessing material related to the manufacture of marijuana and allows for the consideration of marijuana use as a determinant for terms of imprisonment.

Section 61-65 - defines illegal activity involving marijuana and prohibits tenants from engaging in such while renting property; provides technical changes and conforming amendments.

Section 66 - removes marijuana as a controlled substance.

Section 67 - defines marijuana as an intoxicant.

Section 68 - criminalizes minor access to marijuana establishments.

Section 69 - requires infant care providers to report marijuana exposure of an infant.

Section 70-74 - requires persons incapacitated by marijuana in a public place to be taken into protective custody and brought to a treatment or health facility; requires such persons to be released once no longer incapacitated; requires next of kin of such persons to be notified upon admission to the health or treatment facility; and prevents action for

damages to be taken upon the decision to deliver such persons to a facility.

Section 75 - allows for the commitment of a person incapacitated by marijuana to a public health facility for emergency treatment.

Section 76, 77 - allows for certain authorized persons to petition for a 30-day involuntary commitment to a public treatment facility of someone incapacitated by marijuana; allows for the extension of involuntary commitment.

Section 78 - defines drug abuser to include marijuana dependency.

Section 79 - excludes marijuana from the definition of drug.

Section 80 - defines the incapacitation by marijuana.

Section 81 - defines intoxicated person to include impairment by marijuana.

Section 82 - conforming amendment to define marijuana as in the initiative language.

Section 83, 84 - allows for the prohibition of marijuana use as a condition of participation in substance abuse programs and sets testing requirements of marijuana by these programs.

Section 85 - conforming amendments of the definitions of intoxicated person and marijuana as described in the initiative language.

Section 86 - repeals multiple statutes no longer necessary as a result of the initiative or this bill.

Section 87 - clarifies the applicability of certain sections.

Section 88 - provides the effective date.

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CHAIR LEDOUX used Section 77, which refers to involuntary commitment proceedings, as an example. Previously, she noted, because marijuana was considered a controlled substance it was already included. She advised that sections such as this are considered conforming amendments as opposed to a situation where an individual could not be involuntarily committed as a result of marijuana use.

MR. BROWN agreed and indicated that the word "marijuana" was specifically added as it is no longer a drug or a controlled substance. He further indicated that "if we want to be able to continue treating people who have issues with a substance, controlled or not, we need to be very specific."

CHAIR LEDOUX conveyed that as she reviewed the bill it appears "there were all sorts of things" in which now marijuana would subject an individual to involuntary commitment, et cetra, et cetra, wherein it hadn't been able to happen before. She asked if her assessment was correct.

MR. BROWN answered "correct."

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REPRESENTATIVE CLAMAN surmised that the basic intent is to enact the language the voters approved in the initiative and then basically supplement the rest of the statutes to make them consistent with what the voters approved.

MR. BROWN answered in the affirmative and stated that removing marijuana as a controlled substance basically leaves everything open and it must be made specific in the statute.

CHAIR LEDOUX opened public testimony.

[1:35:26 PM](#)

TIM HINTERBERGER, Ph.D., Chair, Campaign to Regulate Marijuana Like Alcohol in Alaska. Speaking on behalf of Dr. Hinterberger, Rachelle Yeung, Legislative Analyst, Marijuana Policy Project (MMP) paraphrased Dr. Hinterberger's, February 5, 2015 Memorandum directed to Thomas Brown as follows [original punctuation provided]:

We appreciate the opportunity to review the early redraft of HB 79.

The draft revision that became available for our review on February 4 takes a substantially improved approach compared to the earlier version. Rather than merely creating a defense against state criminal charges, the revision would exempt most of the conduct allowed by Measure 2 from Alaska criminal statutes.

While this draft is far better overall, it still includes provisions we view as not conforming to the will of voters. Our concerns and suggestions are detailed in the following pages. Perhaps the most concerning elements of the redraft are:

Deletion of the initiative's comprehensive legal protections for adults. Measure 2's AS 17.38.020 makes marijuana-related conduct lawful it protects adults from not only state charges but also municipal offenses; and it prevents seizures and property forfeitures. In contrast, the redraft would merely remove state crimes.

Criminalizing conduct allowed by Measure 2, including lowering to one ounce the amount of marijuana adults can lawfully possess in the location where they cultivate plants.

Unnecessary restrictions on the safe production of extracts for making edibles.

Thank you again for the opportunity to comment. Please let us know if you have any questions.

Sincerely,

Dr. Timothy Hinterberger, Chair
Campaign to Regulate Marijuana Like Alcohol

Karen O'Keefe, Director
State Policies

Alaska Marijuana Policy Project
Regarding: Draft Revisions to HB 79
Position: Oppose Unless Amended
Specific Concerns With the Draft Redraft of HB 79

1. **As was the case with the original version of HB 79, the proposed redraft would repeal Measure 2's comprehensive legal protections for adults and replace them with inadequate protections. (Sec. 86)**

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The committee took an at ease from 1:39 to 1:41: p.m.

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[DR. HINTERBERGER'S testimony continued] Measure 2 makes it lawful under Alaska state law and the laws of all of its political subdivisions for adults 21 and older to possess, give away to other adults, and cultivate marijuana for personal use. (AS 17.38.020) It also explicitly provides that that conduct may not be a basis for seizure or asset forfeiture. HB 79's Section 86 would repeal these comprehensive legal protections. While the redraft removes criminal penalties for most (but not all) of the conduct allowed by Measure 2, doing so is not nearly as comprehensive as the protections provided in AS 17.38.020.

It is essential that AS 17.38.020 remain on the books to make sure that adults' personal use activities related to marijuana are not subject to penalties under local ordinances and to protect them from seizure and forfeiture. It is also crucial that these activities be explicitly "lawful" under state law. Any number of state and municipal statutes may refer to "illicit" or "illegal" activity. AS 17.38.020 makes it clear that the marijuana-related activity covered by that section is indeed lawful under state law, notwithstanding federal law.

2. **As was the case with the original version of HB 79, the proposed redraft would criminalize conduct Measure 2 makes legal, including by reducing the amount of marijuana adults could possess.**

The current version of HB 79 deletes marijuana and hash from controlled substances and creates a new crime for marijuana offenses: AS 17.38.200. This is

generally a very sensible approach. However, the specifics of what is criminalized are unacceptable. The current draft of HB 79 dramatically restricts adults' freedoms relating to marijuana by criminalizing conduct that voters made lawful.

- Measure 2's AS 17.38.020 (b) provides that adults aged 21 and older may grow six plants (three of which may be mature) and possess all of the marijuana produced from those plants on those premises. AS 17.38.200 (a)(1) and (2) reduces the amount they can possess or manufacture by criminalizing "one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing marijuana." While AS 17.38.200's language is somewhat ambiguous, it also appears to conflict with the provisions of Measure 2 that allow possession of up to an ounce at locations other than the personal cultivation location, excluding the weight of non-marijuana ingredients. AS 17.38.200(a)(1) and (2) appear to include the non-marijuana ingredients when calculating the weight.

- The redraft would delete Measure 2's criminal penalties for cultivating marijuana where it is visible to the public, where it is not secured, or without the consent of a property owner. (AS 17.38.030) Instead, it would criminalize mere possession or display (in addition to cultivating) in any of these types of locations. (AS 17.38.220(a)(1)) Measure 2 specifies that a private property owner may prohibit marijuana, but that is very different from requiring an adult to get a property owner's affirmative consent prior to entering their restaurant, private parking lot, home, or car with a small amount of marijuana on his or her person. In addition, creating a new crime for doing so is inappropriate and not on par with how alcohol is treated.

- The redraft, like the original HB 79, conflicts with Measure 2 by penalizing mere display of marijuana by those over 21. (AS 17.38.230)

3. **A significant improvement over the original version of HB 79, the proposed redraft would still prohibit certain safe methods of extraction by adults. (AS 17.38.200(a)(4))**

We do not object to imposing a ban on the home production of extracts using methods that can be dangerous when conducted at a residence. However, an exception also needs to be made for water-based extractions, which cannot cause explosions. Extractions are important to patients who use non-smoked methods of administration.

4. **As was the case with the original version of HB 79, the proposed redraft would not make any exceptions allowing for individuals under 21 on the premises of a licensee. (AS 17.38.200(a)(5))**

Three types of exceptions should be included:

- for individuals who are not employed by the marijuana business and do not work directly with marijuana, but who have legitimate work at the establishment, such as EMTs, regulatory staff, maintenance personnel, elected officials, and members of the media. Notably, there are several far broader exceptions to a similar statute for persons under 21 who enter the premises of an establishment selling alcohol. (AS 04.16.049)
- for registered medical marijuana patients under the age of 21, who currently have no safe way to obtain the medicine Alaska voters have allowed them to use since 1998.
- to include a defense for retailers who have a good faith belief that a customer is 21 and older – based on the presentation of an ID card that appears to both be valid and to be the person who presents it – as is the case for alcohol sales. (AS 04.21.050)

5. **As was the case with the original version of HB 79, the proposed redraft would criminalize driving with a marijuana accessory or a container of marijuana in one's vehicle if there is evidence it has been consumed in the vehicle.**

(AS 28.35.029(a))

Measure 2 explicitly makes transportation of marijuana by adults 21 and older lawful. (AS 17.38.020(a), which the redraft would repeal.) The redraft – and the original version of HB 79 – includes an unnecessary restriction on “open containers” that appears to run counter to Measure 2 and which would be particularly onerous on patients. Private establishments, including nursing homes, may restrict their residents from using marijuana. (See: "Medical Marijuana Not Allowed At Nursing Home" <http://www.elderlawanswer.com/medical-marijuana-not-allowed-at-nursing-home-4954>) A parked vehicle may be the only place where a patient is able to administer their medicine (sublingually, by consuming edibles, by vaporization, or otherwise).

To address concerns about driving under the influence, which of course remains illegal, we would not object to penalizing smoking or vaporizing marijuana in a moving vehicle.

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TRACEY WOLLENBERG, Deputy Public Defender, Appellate Division, Public Defender Agency, Department of Administration, stated that CSHB 79 removes the defense to prosecution for certain marijuana related conduct which is more consistent with the intent of the voters. She expressed that of particular concern is Section 45, which creates new marijuana offenses as misconduct involving marijuana in the first, second, third and fourth degree. Generally, she related, this section rewrites the legal protections from marijuana related conduct enacted specifically in AS 17.38.020 of the initiative. Essentially, she stated, it continues to criminalize some aspects of conduct that the voters elected to legalize. She referred to misconduct involving marijuana in the first degree, proposed AS 17.38.200, which criminalizes knowingly possessing more than one ounce of marijuana or knowingly manufacturing or delivering or possessing with the intent to manufacture or deliver more than one ounce of marijuana. When an individual purchases marijuana from a marijuana licensed facility, the limit for doing so is one ounce but, she stated, marijuana as defined under the initiative includes plants. This provision, she noted, would effectively eliminate other portions of AS 17.38.020, specifically (b) and (c), which allows for the cultivating of a certain number of plants or the transfer of a certain number of plants to another

person, the weight of which is almost certain to be over one ounce. The initiative makes legal the possession, growing, processing or transporting of no more than six marijuana plants, up to three of which can be mature flowering plants, and the possession of all of the marijuana produced from those plants if possessed on the premises where those plants were grown.

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MS. WOLLENBERG pointed out that AS 17.38.200 [CSHB 79] prohibits possessing more than one ounce of marijuana and conflicts with the initiative. Similarly, the initiative allows for the transfer of one ounce or less plus up to six immature marijuana plants to someone 21 or older without remuneration [AS 17.38.020(c)], she conveyed. By definition, she advised, that portion of the initiative would be more than one ounce and; therefore, CSHB 79 conflicts with intent of the voters. She suggested the committee graft onto the proposed misconduct statutes the provisions from the initiative that essentially govern growing and transferring marijuana and the limits set by the voters. She then referred to AS 17.38.210, misconduct involving marijuana in the second degree, and advised there appears to be an attempt to import the portion of the initiative that allows for the transfer of up to one ounce of marijuana plus six immature marijuana plants to another person. She expressed that AS 17.38.210(a)(2)(a) conflicts with AS 17.38.200 which does not allow for the delivery of over one ounce. She opined that those two provisions as drafted appear to be inconsistent. She moved to AS 17.38.220, [misconduct involving marijuana in the third degree] and stated that the initiative is intended to set certain restrictions on personal cultivation of marijuana in the home. She described this section as broader than in the initiative by also restricting possession and displaying marijuana plants in certain circumstances. She provided that this is problematic because it would essentially prohibit possessing marijuana in a place subject to public view even though the initiative allows people to possess marijuana in or out of the home up to certain amounts and to transport marijuana up to a certain amount. In order for this section to comport with the initiative it needs to be limited to manufacturing with the idea being that if someone is growing plants it should conform to the restrictions set out in the initiative to shield those plants from public view. She pointed out that with regard to AS 17.38.230, [misconduct involving marijuana in the fourth degree] the initiative prohibits people 21 or older from using any amount of marijuana in a public place and doesn't prohibit transporting certain amount of marijuana in

public. She suggested that in order to comport with the initiative, remove the word "displays."

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MS. WOLLENBERG related that AS 17.38.020 of the initiative appears to have been removed with regard to personal conduct offenses. Although, she noted, it is still maintained to a certain extent in Sections 40-43 which deal with offenses by commercial marijuana facilities. The language there makes clear that the conduct which is legalized shall not serve as a basis for seizure or forfeiture of assets under Alaska law. That language is not repeated in the personal use misconduct statutes and the concern is that removing the language in one area but leaving it in another area may cause courts, parties, or law enforcement to read in some significance to the fact that the language about seizure has been removed from the personal use offenses. She opined that would not be consistent with voter intent. She stated that the initiative intended that the conduct that is made lawful not constitute an offense under state or local law. It appears to her that the change in language from "shall not be an offense" to "are not offenses" does not have much significance. Although, she offered, there is a chance that the subtle change in language would leave conduct that is otherwise intended to be lawful open to potentially being made unlawful by local municipalities. She suggested that the committee consider keeping the "shall not be an offense" language in tact as it was in the initiative.

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MS. WOLLENBERG referred to Section 68 and advised it removes from the realm of juvenile jurisdiction certain conduct by minors, in particular using false identification and misrepresenting age with regard to registered marijuana premises. She advised that removing it from the juvenile jurisdiction statute would essentially mean that it is pursued in adult court and open to public view and no longer confidential. She proffered that prosecuting juveniles for this conduct without making the records confidential could have unintended consequences for job prospects or otherwise. She suggested the committee consider making this conduct confidential which is more in keeping with the goal of ensuring there is some consequence for minors, but not a consequence more severe than what is intended.

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BRUCE SCHULTE, Spokesman, Coalition for Responsible Cannabis Legislation, referred to his 2/6/15 Memorandum directed to Representative Gabrielle LeDoux and advised that AS 17.38.200(1)(a) and AS 17.38.200(2) of CSHB 79 refers to definitions of marijuana and its related compounds by weight as being one ounce. He suggested rewording based on the fact that certain edibles, baked goods, or liquids, may well be over one ounce and yet contain a small fraction of marijuana. With regard to AS 17.38.200(4), the coalition does not support, condone, or recommend the use of butane to extract hash oil and suggested a language change to specifically refer to volatile or explosive gases. He mentioned that paragraph 4 of the memo is a grammatical issue. He opined that the heart of the initiative for many voters is AS 17.38.020 and 030 which speaks to personal use of marijuana and cultivation. In that regard, he concluded, those sections should be preserved as originally written in the initiative. He remarked that in the realm of "public place" versus "private" the coalition does not condone anyone consuming marijuana in the street, in front of restaurants, or any obviously public place. He pointed out that there are variations on the definition of "public place" versus "private place" that should be clarified. With regard to special events operating under a permit or license at the state or local level, he suggested, a specific provision written that allows the consumption of marijuana products at the special events site. He advised that local officials have asked the state to provide an overarching definition of "public place" versus "private place." He then acknowledged that sections of the initiative should be repealed where they were replaced by corresponding legal language.

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The committee took a brief at ease.

[2:05:46 PM](#)

REPRESENTATIVE GRUENBERG removed his objection. Version \E was before the committee.

[HB 79 was held over.]

[2:05:52 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:05 p.m.