

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 18, 2015

1:22 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster

COMMITTEE CALENDAR

CONFIRMATION HEARING:

VIOLENT CRIMES COMPENSATION BOARD

GEORGE BROWN, MD - Douglas

CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 5

"An Act relating to the persons who may be appointed conservators of a protected person."

- MOVED HB 5 OUT OF COMMITTEE

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 5

SHORT TITLE: CONSERVATOR OF PROTECTED PERSONS
SPONSOR(s): REPRESENTATIVE(s) HAWKER

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	JUD
02/06/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/06/15	(H)	<Bill Hearing Canceled>
02/11/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/11/15	(H)	Heard & Held
02/11/15	(H)	MINUTE(JUD)
02/18/15	(H)	JUD AT 1:00 PM CAPITOL 120

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
02/06/15	(H)	Heard & Held
02/06/15	(H)	MINUTE(JUD)
02/09/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/15	(H)	-- MEETING CANCELED --
02/11/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/11/15	(H)	Heard & Held
02/11/15	(H)	MINUTE(JUD)
02/13/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/13/15	(H)	Heard & Held
02/13/15	(H)	MINUTE(JUD)
02/16/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/16/15	(H)	-- MEETING CANCELED --
02/18/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CECILE ELLIOTT, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 5, answered questions.

MARIE DARLIN, Coordinator
American Association of Retired Persons (AARP)
Capital City Task Force
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 5, testified in support.

GEORGE BROWN, MD, Appointee
Violent Crimes Compensation Board
Douglas, Alaska

POSITION STATEMENT: As appointee to the position on the Violent Crimes Compensation Board, discussed his qualifications and answered questions.

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

POSITION STATEMENT: Presented committee substitutes regarding CSHB 79.

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

POSITION STATEMENT: During the hearing on CSHB 79, answered questions.

HALEY HOBAN
North Pole, Alaska

POSITION STATEMENT: Testified as a "Close Up" student regarding CSHB 79 and problems with the legalization of marijuana.

MADISON STIBES
North Pole, Alaska

POSITION STATEMENT: Testified as a "Close Up" student regarding CSHB 79 and problems with the legalization of marijuana.

CAIDEN PETERSEN

North Pole, Alaska

POSITION STATEMENT: Testified as a "Close Up" student regarding CSHB 79 and problems with the legalization of marijuana.

DON HART

Wasilla, Alaska

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

RHONDA MARCY

Wasilla, Alaska

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

ACTION NARRATIVE

[1:22:17 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:22 p.m. Representatives Claman, Gruenberg, Keller, Lynn, and LeDoux were present at the call to order. Representative Millett arrived as the meeting was in progress.

HB 5-CONSERVATOR OF PROTECTED PERSONS

[1:23:32 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 5, "An Act relating to the persons who may be appointed conservators of a protected person." [Before the committee was HB 5, Version 29-LS0032\W]

[1:23:42 PM](#)

CECILE ELLIOTT, Staff, Representative Mike Hawker, Alaska State Legislature, referred to a prior discussion regarding "by blood, marriage, or adoption," and explained it is terminology used throughout the statutes that when an individual is related by marriage they are an in-law. She noted it is Representative Hawker's express intent that this legislation be implemented using no additional state resources as HB 5 is to narrowly expand the definition of family to serve as a conservator.

CHAIR LEDOUX opened public testimony

[1:26:44 PM](#)

MARIE DARLIN, Coordinator, American Association of Retired Persons (AARP), Capital City Task Force, stated she represents the Capital City Task Force that previously forwarded its letter of support for the original bill. "There has been so much discussion and everything else, I think that is where we stand right now," she said.

REPRESENTATIVE CLAMAN asked whether AARP expects conflicts.

[1:27:53 PM](#)

MS. DARLIN responded that the Capital City Task Force speaks with the people with the knowledge of the reports and supports the original bill.

MS. DARLIN, in response to Representative Claman, stated she "has no idea" who are typically being appointed as conservators or whether it is difficult to find conservators.

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[1:30:13 PM](#)

REPRESENTATIVE CLAMAN stated he is not offering an amendment, but has been working on basically taking out the first phrase of (c) so it would read that an individual, otherwise conflicted, could go to the judge and ask the judge to waive the conflict.

[1:31:04 PM](#)

REPRESENTATIVE KELLER made a motion that the committee zero out the indeterminate fiscal note presented by the Department of Health and Social Services. There being no objection, it was so ordered.

[1:31:35 PM](#)

REPRESENTATIVE KELLER moved to report HB 5, Version W, from committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 5 was reported from the House Judiciary Standing Committee.

[1:32:15 PM](#)

The committee took an at-ease from 1:32 p.m. to 1:35 p.m.

CONFIRMATION HEARING: Violent Crimes Compensation Board

[1:35:54 PM](#)

CHAIR LEDOUX announced that the next order of business would be a confirmation hearing for Dr. George Brown, appointee to the Violent Crimes Compensation Board.

[1:36:05 PM](#)

GEORGE BROWN, MD, explained he was previously appointed by former Governor Sean Parnell to serve out a term with a vacancy on the Violent Crimes Compensation Board, he has attended four board meetings, and is "learning the ropes." He explained that due to his work in clinical medicine and public health his interest has been regarding the prevention of family violence and child abuse. He noted that many families applying for compensation are obviously suffering from the results of these problems, and opined that his experience in this area provides qualifications.

[1:37:41 PM](#)

DR. BROWN, in response to Representative Gruenberg, stated that Bowman Gray School of Medicine is associated with Wake Forest University, and is a good Southern Baptist institution.

REPRESENTATIVE KELLER thanked Dr. Brown for his willingness to serve.

[1:38:43 PM](#)

DR. BROWN added that a recent celebration of the Alaska Children's Trust Fund at the Governor's Mansion was an exciting and confirming experience to see how the organization that he worked hard on to get started, continues to work at the primary prevention [level] of these problems. He said he is confident working together continues to decrease these problems

[1:40:35 PM](#)

REPRESENTATIVE KELLER moved to forward the name of Dr. George W. Brown to the joint session of the House and Senate for confirmation. There being no objection, the confirmation of Dr. George W. Brown was advanced from the House Judiciary Standing Committee.

[1:41:13 PM](#)

The committee took an at-ease from 1:41 p.m. to 1:44 p.m.

[1:44:18 PM](#)

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

[1:46:32 PM](#)

CHAIR LEDOUX announced that the final 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."

[1:46:42 PM](#)

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) HB 79, labeled 29-LS0409\G, Martin, 2/16/15, as the working document.

REPRESENTATIVE GRUENBERG objected for discussion purposes.

[1:46:52 PM](#)

THOMAS BROWN, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, explained he would discuss policy changes and would not discuss technical conforming amendments. He noted that last week the House Judiciary Standing Committee received committee substitute (CS) Version "I," which was discarded [prior to introduction] in favor of Version "G." Mr. Brown paraphrased the following (original punctuation included with formatting changes):

All references to "preparations, compounds, mixtures, or substances" have been replaced with "marijuana" to conform with the definition as stated in the initiative, AS 17.38.900

Former section 32 - conforming language dealing with AS 12.55.135(j), related to sentencing for certain marijuana crimes, is deleted and repealed-this section was superfluous as misdemeanors listed in the bill do not require jail time over one year so a bail schedule is unnecessary

Section 44 - added 17.38.020 from the ballot initiative, amended to remove the language NOTWITHSTANDING ANY OTHER PROVISION OF LAW

Section 50 - added 17.38.110 from the ballot initiative, local option provision, amended to specify that established villages have the ability to opt out of commercial marijuana operations

Section 51 - removed the crime of possession of more than 4 ounces;

- Changed the prohibition of manufacture with a substance other than vegetable glycerin to prevent a person other than a registered marijuana establishment from producing a marijuana concentrate or extract using a volatile or explosive gas;

- Made certain exceptions for a medical marijuana patient registered under AS 17.37 who is at least 18 years old to enter a marijuana establishment and purchase marijuana;

- Removed the crime of possession of more than one ounce and less than four ounces;

- Removed AS 17.38.270, a proposed section which dealt with rehabilitation;

- Removed AS 17.38.260, a proposed section which established weight calculations for marijuana plants;

- Changed "marijuana overdose" to "significant adverse marijuana reaction;"

- Removed AS 17.38.290, which allowed for forfeitures and seizures;

- Added 17.38.280 which allows for the confidentiality of court records of minors;

- Added 17.38.290-340 which allow and define local option procedures for exemptions from commercial marijuana use;

- Made a 3rd degree marijuana misconduct violation punishable by a \$300 fine;
- Limited the fine for a 4th degree marijuana misconduct violation punishable by a \$100 fine;
- Added exceptions for marijuana misconduct crimes for people "acting in the person's capacity as an officer, agent, or employee of the marijuana establishment";
- Added to 1st degree marijuana misconduct the crime of manufacturing more than six marijuana plants, not more than three of which are mature;
- Added "usable marijuana" to the possession limit of 1 ounce of marijuana

Section 53 - defined established village as used in sections 50 and 51

- Defined usable marijuana to accommodate the removal of the weight calculation of live marijuana plants

Former section 77-78 - deleted amendments to AS 23.30.120 (a) & AS 23.30.235, pertaining to workers' compensation

Former section 88 - deleted an amendment to AS 28.15.176 to correct a drafting error which only changed a catchline in current law

Section 116 - removed language that allowed testing of a minor's blood or urine for the purpose of determining the marijuana content of the minor's blood or urine

Section 119, 121 - deleted "blood or urine" from these sections, which relate to a minor's refusal of a chemical test

Section 130 - added "possess" so that the commissioner of corrections can prohibit a prisoner from using, consuming AND possessing marijuana or marijuana products

Section 134 - technical changes

Former section 141 - deleted amendments to AS 17.38.220(a)(3) relating to crimes for which juveniles may be punished as adults, now conflicting with the 17.38.280

Section 142 - added the Dept. of Administration to the list of departments the Dept. of Health & Social Services must consult with in establishing and conducting programs designed to deal with the problem of persons operating a motor vehicle while under the influence of an alcoholic beverage, marijuana, inhalant, or controlled substance

[1:50:12 PM](#)

MR. BROWN, in response to Chair LeDoux, advised that references to "preparations, compounds, mixtures, or substances" are located throughout the bill.

CHAIR LEDOUX asked Mr. Brown to identify areas throughout the bill discussing weight.

MR. BROWN responded that he would discuss that issue within his summary of changes and began his sectional analysis of Version G. He said that Sec. 44, adds Sec. 17.38.020 from the ballot initiative and was added "pretty much verbatim," but deleted the language "NOTWITHSTANDING ANY OTHER PROVISION OF LAW." Section 50 adds Sec. 17.38.110 from the ballot initiative, which is also known as the "local option" provision.

[1:52:25 PM](#)

REPRESENTATIVE GRUENBERG asked the reason witnesses want Sec. 44 in the bill.

MR. BROWN responded that all written and oral testimony the committee received indicate that this is the "strongest language possible" to definitively state that marijuana is legal, that personal possession is legal, and that personal consumption is legal. He explained previous versions of the bill did not include .020, which removes marijuana from the list of controlled substances and states that possession is not a crime. He explained that the addition of this section makes it explicit in approximately four-five different ways that it is legal for

Alaskans over the age of 21 to possess, grow, and consume marijuana.

REPRESENTATIVE GRUENBERG surmised this is the "core section" of the bill.

MR. BROWN responded that as far as the proponents of the initiative are concerned, he would probably say "yes," except he cannot speak on their behalf. He reiterated that Sec. 50 is also known as the local option provision and that Sec. 17.38.110(a) was added from the initiative, page 29, lines 2-4.

[1:55:40 PM](#)

The committee took a brief at-ease.

[1:56:31 PM](#)

MR. BROWN referred to Sec. 50, [AS 17.38.110(a)] page 29, lines 2-4, which read:

(a) An established village may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores by a voter initiative as provided in AS 17.38.290.

MR. BROWN explained it is to specify that local government includes established villages.

[1:56:50 PM](#)

REPRESENTATIVE GRUENBERG noted that [HB 75] is in the Community and Regional Affairs Standing Committee which deals with [established villages] and questioned whether there would potentially be two bills from two different committees reading differently. He asked whether the term "established village" is defined somewhere and referred to the current text [page 28, lines 30-31, and page 29, line 1], 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.

REPRESENTATIVE GRUENBERG related that the added language reads "that they may prohibit the operation of ... by a voter initiative as provided in [AS 17.38.290]." He asked the difference between the two sentences, and why the new language is limited to voter initiatives.

MR. BROWN, in responding to Representative Gruenberg, advised the original language was taken from the ballot initiative which only used the term "local government." As to the definition of an "established village," he deferred to an expert from the Department of Law (DOL), or the Department of Health & Social Services (DHSS), or another [expert].

REPRESENTATIVE GRUENBERG questioned whether it was the intent of the ballot initiative to limit "this" to a voter initiative, or whether it was intended to add an initiative. The wording could be "either by an ordinance or an initiative," he said.

[1:59:37 PM](#)

REPRESENTATIVE KELLER called the committee's attention to [Sec. 53, AS 17.38.900(17)], page 37, line 15:

(17) "established village" means an area that does not contain any part of an incorporated city or another established village and that is an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents;

[2:00:12 PM](#)

REPRESENTATIVE MILLETT referred to "enactment of an ordinance or by a voter initiative," and surmised that those are the only two ways municipalities can actually enact a law.

REPRESENTATIVE GRUENBERG remarked it would depend upon the situation whether it is allowed by charter, "or something." He questioned the language on line 1, as it allows the enactment ... that the prohibition may be either by an ordinance or an initiative, but does not mention on line 4 that it could be done by an ordinance. The only word mentioned is "initiative," he remarked.

[2:01:14 PM](#)

MR. BROWN turned to Sec. 51, page 29, and highlighted that it removed the crime of possession of more than four ounces, changed [the language from] the prohibition of manufacture with a substance other than vegetable glycerin to prevent a person other than a registered marijuana establishment from producing a marijuana concentrate or extract, to the language "using a volatile or explosive gas," it makes certain exceptions for a medical marijuana patient registered under AS 17.37 who is at least 18 years old to enter a marijuana establishment and purchase marijuana, and removes the crime of possession of more than one ounce and less than four ounces. He further highlighted that it removed two separate sections, one dealing with rehabilitation, and the other section establishing weight calculations for marijuana plants. He pointed out that AS 17.38.260 relating to weight calculations for marijuana plants was removed as, he noted, the ballot initiative was very clear - one ounce or six plants - the weight of the plants being immaterial.

CHAIR LEDOUX clarified that Mr. Brown meant one ounce and six plants.

MR. BROWN agreed and stated if there is no purpose for weighing the plants when an individual is allowed to cultivate plants as a plant. He explained it is no longer the material of the plant that is in question as it is the amount of plants an individual possesses. Therefore, he said, determining the weight of the plants is unnecessary. He explained that the drafter injected the term "usable marijuana" in many places throughout the bill that had weight calculations in it previously.

CHAIR LEDOUX questioned whether this draft goes further than what the initiative requires by using a four ounce rather than a one ounce.

MR. BROWN responded that in some places, "Yes," to comply with Ravin v. State, 537 P.2d 494 (Alaska 1975) decision.

[2:03:55 PM](#)

MR. BROWN referred to Sec. 51, [AS 17.38.260], page 33, line 11, and stated the term "marijuana overdose" was removed and replaced with "significant adverse marijuana reaction." He opined this is a nod to the fact that marijuana overdoses are extremely unlikely.

[2:04:50 PM](#)

REPRESENTATIVE KELLER called attention to [Sec. 51, AS 17.38.200], page 29, line 11, refers to an individual not registered. On page 29, line 16, refers to the maximum as "not more than three of which are mature, flowering plants." He said the comparison between a person who is not registered on line 11, and the person who is registered, page 23, and "yet they have exactly the same subsection (ii)". He advised he does not understand why it would be the same. He reiterated he is calling attention to page 29, lines 15-16 which appear to be identical to lines [page 29], 29-30. He pointed out that lines 15-16 are referring to a marijuana establishment that is not registered, and lines 29-30 are referring to a marijuana establishment that is registered as a marijuana establishment.

MR. BROWN explained that it appears to be another drafting error, and advised that after reviewing his notes he marked lines 15-18 out to be amended in the future.

[2:06:22 PM](#)

REPRESENTATIVE MILLETT asked for confirmation that the lines would be taken out of "is not a registered ..."

MR. BROWN advised there will be a discussion about that in order to be certain it is completely understood, but yes.

[2:06:53 PM](#)

REPRESENTATIVE CLAMAN referred to "significant adverse marijuana reaction," and advised it is not defined anywhere.

CHAIR LEDOUX opined there is not a provision defining "significant adverse marijuana reaction."

REPRESENTATIVE GRUENBERG recalled a previous bill dealing with an individual in this type of situation and could not be prosecuted, and questioned how the two bills relate.

MR. BROWN offered that the legislation, last session, was Representative Lance Pruitt's bill offering immunity from prosecution in the circumstances of drug overdose. He explained that an individual can call Emergency Medical Services (EMS), or the police and not be prosecuted for being in attendance, possessing, or using a controlled substance for the purpose of saving another individual's life. He advised the language was "poached" from Representative Pruitt's bill.

2:09:00 PM

MR. BROWN responded in the affirmative to Representative Gruenberg in that it is another conforming amendment putting all of the marijuana together, and basically have a fairly comprehensive structure for dealing with marijuana related crimes.

REPRESENTATIVE GRUENBERG inquired whether there was a significant difference between this version and Representative Pruitt's bill, and that Mr. Brown could get back to him.

2:09:54 PM

REPRESENTATIVE KELLER referred to Sec. 51, page 31, line 3, and asked for clarification, "(A) possesses more than six but less than 25 plants," and on page 31, line 9, "(iii) up to six immature marijuana plants ..." He questioned whether the numbers were 25 or 31.

MR. BROWN explained that the possession of "more than six but less than 25 plants" is merely for possession, and lines 9-10, "up to six immature marijuana plants for remuneration," has to do with dealing. The distinction is possession and dealing, he explained.

2:11:00 PM

MR. BROWN continued with Sec. 51, and stated that AS 17.38.290 allowing for forfeiture and seizure of property and monies in relation to marijuana crimes was deleted. He pointed out that Sec. 51, AS 17.38.280, page 33, lines 22-25, was added and it allows for the confidentiality of court records of minors.

2:12:18 PM

REPRESENTATIVE KELLER referred to Sec. 51, AS 17.38.250, page 33, lines 7-9, and asked the attorneys in the room whether the legislature can tell the Alaska Supreme Court what to do without anticipating an attached court rule change.

CHAIR LEDOUX opined that "we can on something like this," and they have not been told by the court attorney that the committee "can't."

MR. BROWN advised he spoke with the representative of the court system and was told this has been done a couple dozen times in statute, and the legislature does have the authority.

REPRESENTATIVE GRUENBERG noted that the word "shall" can be used in two different ways: mandatory or directive.

[2:14:30 PM](#)

MR. BROWN referred to Sec. 51, AS 17.38.290 - Sec. 51, AS 17.38.340, page 34, line 26, - page 37, line 9, which is the local option rule allowing and defining local option procedures for exemptions from commercial marijuana use.

[2:15:20 PM](#)

REPRESENTATIVE CLAMAN asked the committee to refer to [Sec. 51, AS 17.38.280], page 34, [lines 22-25], the confidential records provision and questioned whether that mirrors similar provisions for minor consuming or whether minor consuming is not confidential.

MR. BROWN offered to get back to him with the correct answer.

[2:15:55 PM](#)

MR. BROWN related that Sec. 51, [AS 17.38.220] page 32, lines 15-16, is amended to read:

(c) Misconduct involving marijuana in the third degree is a violation and is punishable by a fine of \$300.

MR. BROWN responded to Representative Gruenberg that the previous language was "Misconduct involving marijuana in the third degree is a violation and is punishable as provided in AS 12.55." He offered that the statute set up a series of different schedules, procedures, and circumstances with the ballot initiative setting the maximum fine at "\$400."

[2:18:40 PM](#)

MR. BROWN related that [Sec. 51, AS 17.38.220] page 32, lines 25-26, were amended to read

(b) Misconduct involving marijuana in the fourth degree is a violation and is punishable by a fine of \$100.

MR. BROWN indicated that these two fines can be paid in the same manner as paying a traffic ticket.

REPRESENTATIVE GRUENBERG presented the scenario of an individual having two cigarettes and the total amount is "whatever it is." He inquired as to whether the individual would be subject to two different counts under the fourth degree violation. He asked whether six cookies would be six counts in the fourth degree with the fine being \$600.

[2:20:13 PM](#)

MR. BROWN advised that is not his understanding, unless each joint weighed more than one ounce, but that would be aggregated. He said he will confirm the correct answer.

[2:20:38 PM](#)

MR. BROWN referred to Sec. 51, [AS 17.38.200] page 29, lines 11-13 "and repeated a couple time throughout," added the language:

(A) is not a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent, or employee of the marijuana establishment and knowingly ...

MR. BROWN continued to Sec. 51, [AS 17.38.200] page 29, lines 15-16,

(ii) manufactures more than six marijuana plants, not more than three of which are mature, flowering plants;

MR. BROWN referred to Representative Keller's prior comments and noted that the language may be amended. However, he added, that same language is repeated on page 29, lines 29-30.

[2:22:22 PM](#)

REPRESENTATIVE GRUENBERG referred to [Sec. 51, AS 17.38.200] page 29, and said that it reads that an individual commits first degree misconduct if at the time of the possession the person is acting in the capacity of an officer, agent or employee of the marijuana establishment. He opined it doesn't appear to require that the person have any knowledge that the particular

establishment was improperly registered as all the person has to know is that they are transporting marijuana.

[2:25:31 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law, referred to page 29, line 24, and stated a "culpable mental state" is necessary for there to be a crime. The person under this provision must be acting, and if an individual is acting in the capacity of [officer, agent or employee] they have done a certain thing, and normally when a statute doesn't refer to a particular culpable mental state, it would be knowing as to conduct and reckless as to result. That is built into Title 11 and, he said, he would assume that an appellate court would read that into Title 17 because unless there are specific findings about the need for a crime ... to have strict liability as a culpable mental state. That is, he explained, it doesn't make any difference what your state of mind is, unless there are specific findings, there will need to be a particular state of mind that a person has before they have committed a crime.

CHAIR LEDOUX suggested inserting "knowingly," so there is a bright line as opposed to leaving it to the courts to interpret.

MR. SVOBODNY pointed out that it is better when the legislature tells the court what it wants the law to be.

[2:27:51 PM](#)

REPRESENTATIVE CLAMAN referred to [Sec. 51, AS 17.38.900] page 37, line 11, which read:

(15) "criminal negligence" has the meaning given in AS 11.81.900;

REPRESENTATIVE CLAMAN continued that line 19 reads:

(18) "knowingly" has the meaning given in AS 11.81.900;

REPRESENTATIVE CLAMAN noted that the only thing missing is to add the definition of "recklessly" in reference to Title 11, and it probably solves the issue Mr. Svobodny is addressing.

MR. SVOBODNY stated he could not answer the question right away. "To be blunt, the drafters made this issue way too complicated,"

and he would prefer staying with the language known for culpable mental state. He defined conduct as "knowingly," and result as "recklessly," or it could be with "criminal negligence." He suggested that in criminal law there is generally four culpable mental states, "intentionally" which is left for crimes like murder or robbery.

REPRESENTATIVE CLAMAN opined that the bill should refer to Title 11 and not attempt to reinvent as the courts have spent years interpreting those terms and applying the statutory terms. He expressed that the legislature should not go anywhere else.

2:30:09 PM

REPRESENTATIVE KELLER referred to Sec. 27, [AS 12.30.016] page 19, lines 21-26, which read:

(2) submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of marijuana, marijuana products, or marijuana accessories by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing marijuana, marijuana products, or marijuana accessories;

REPRESENTATIVE KELLER remarked that this section applies to people on parole and questioned whether this a standard for anyone on parole.

MR. SVOBODNY responded that he doesn't have the statutes with him, but believes this section deals with bail. It is the provision wherein if an individual has been charged with a crime that involves substances abuse, there can be special conditions. He explained it allows a court to impose that, as a condition of bail release in a crime involving alcohol or drugs, for example. It is not a "shall" as the court may impose conditions depending upon what is necessary to assure the individual's appearance in court or to protect the public.

REPRESENTATIVE KELLER observed that it is a red flag when getting into the area of constitutional rights. He then referred to [Sec. 37, AS 17.21.090(3)(B)] page 23, lines 11-14, which read:

(i) a crystalline or powder product in crystalline, loose powder, block, tablet, or capsule form; or

(ii) plant material in granular, loose leaf, powder, or liquid form or used as a food additive; and

REPRESENTATIVE KELLER noted that this section is regarding synthetic drugs, and the bill is saying a synthetic drug can consist of marijuana. He questioned line 13, subsection [ii] wherein it refers to "loose leaf" form in that he thought that is what marijuana is.

MR. SVOBODNY reiterated he does not have the statutes in front of him, but believes Representative Keller is correct that it is around the synthetic drug issue.

MR. BROWN called attention to Sec. 37, [AS 17.22.090] page 23, lines 8-9, which read:

(3) ... introduced into the human body, to mimic or simulate the effect of a drug, or controlled substance, or marijuana;

MR. BROWN stated the two key words are "mimic or simulate." He then referred to subsection (C), which read:

(C) not a controlled substance or marijuana.

[2:34:44 PM](#)

REPRESENTATIVE GRUENBERG referred to [Sec. 27, AS12.30.016] page 19, lines 21-26, which read:

(2) submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of marijuana, marijuana products, or marijuana accessories by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing marijuana, marijuana products, or marijuana accessories;

REPRESENTATIVE GRUENBERG noted two issues: (1) can the court say as a condition of parole, and he assumed probation, that an individual cannot possess a legal substance. [Someone from the audience said, yes]; and, (2) a search of an individual's entire residence can be ordered, even if the person only occupies a small portion of it, he continued.

MR. SVOBODNY answered in the affirmative and advised that this is the existing bail statute that added marijuana.

[2:36:27 PM](#)

MR. BROWN referred to Sec. 51, [AS 17.38.200(a)(1)(A)] page 29, [lines 17-18], which read:

(iii) transports more than one ounce
of usable marijuana or more than six
plants;

MR. BROWN advised that "usable marijuana" was added to the statute in reference to "one ounce of" as it eliminates the whole plant idea. He noted that since marijuana, as defined in AS 17.38.900, includes compounds, extracts, resins, and so forth, it is one ounce of usable marijuana no matter the form. He offered that it has been in place throughout Sec. 51, so there is no concern about hash, or hash oil, as it is usable marijuana in whatever form it happens to be.

[2:38:29 PM](#)

REPRESENTATIVE MILLETT asked for clarification that an individual can have one ounce of hash oil concentrate, which has a high level of THC, in their possession.

MR. BROWN responded "That is my understanding, yes."

REPRESENTATIVE KELLER highlighted that one ounce of concentrate could "stoke" for quite a while compared to another kind of an ounce, and the committee must review this further.

[2:39:42 PM](#)

MR. BROWN referred to Sec. 53, [AS 17.38.900, page 37, line 15 and line 30], which read:

(17) "established village" means an area that
does not contain any part of an incorporated city

or another established village and that is an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents;

(22) "usable marijuana" has the meaning given in AS 17.37.070.

REPRESENTATIVE GRUENBERG asked whether "established village" is a term appearing elsewhere in the law, or whether it was new.

MR. BROWN advised he would research the issue and get back to him.

[2:40:37 PM](#)

MR. BROWN moved to former Sec. 77-78, and advised they were deleted as they were amendments to AS 23.31.020(a) and AS 23.30.235 which pertain to workers' compensation. He then referred to former Sec. 88, which was deleted and was an amendment to AS 28.15.176 that corrected a drafting error.

MR. BROWN referred to Sec. 116, [28.35.280(a)] page 67, line 3, and advised the section removed the following language: "... request that the person submit to a chemical test or test of the person's blood or urine for the purpose of determining the marijuana content of the person's blood or urine."

REPRESENTATIVE MILLETT asked for clarification that the language left in the bill read:

(2) request that the person submit to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath; and

MR. BROWN responded that instead of saying the state can draw their blood or urine, the legislation is saying the state can request to take their blood or breath.

MR. BROWN responded to Representative Gruenberg that he would research why the state does not test urine, but is allowed to test breath.

[2:44:28 PM](#)

REPRESENTATIVE KELLER referred to Sec. 107, [AS 28.35.031(a)] page 63, [lines 13-28], and said that just operating a vehicle ... you shall be considered to have given consent. He questioned whether that provision is possible under other statutes in Alaska where an individual cannot give consent until the individual is 18. He opined that this section, "presuming there is consent, may not be possible in somebody from age 14-18, it would apply to someone 18-21, I don't think."

MR. BROWN responded that this is existing statute and the drafter added marijuana to it, he deferred to Mr. Svobodny.

[2:45:56 PM](#)

REPRESENTATIVE CLAMAN referred to Sec. 116, pages 66-67 and said that the implied consent discussed is not giving authority for a blood or urine test based on the stopping of an individual. He described it as setting it up so a person can be required to give a breath test, and questioned whether that was the intent of this committee substitute.

MR. BROWN responded in the affirmative, and will get back to him as to why the drafter chose to keep blood in and take urine out.

REPRESENTATIVE CLAMAN stated there is no blood test here.

REPRESENTATIVE MILLETT surmised that when an individual takes a breath test measuring blood alcohol content, it is not actually authorizing a blood test. She described it as basically giving authorization ... putting marijuana in existing statute even though there is not a blow test for marijuana.

[2:47:38 PM](#)

MR. BROWN referred to Sec. 119 and 121, [AS 28.35.285(a) and AS 28.35.285(d)] page 68-69, delete the words "blood and urine" from these sections as they specifically relate to a minor's refusal of a chemical test. He then referred to Sec. 130, [AS 33.30.015(a)(3)(K)] page 75, which added the word "possess" specifically so that the Department of Corrections Commissioner can prohibit a prisoner from using, consuming, and possessing marijuana or marijuana products. He noted that Sec. 134 is a technical change. Mr. Brown then pointed to former Sec. 141 and said that it deleted amendments to AS 17.38.220(a)(3) which relate to crimes for which juveniles may now be punished as adults. He offered that this provision now conflicts with AS 17.38.280 [Court records of violations by minors confidential.]

which gives the courts the ability to seal the records of minors convicted of marijuana violations. He called attention to Sec. 142, [AS 47.37.040] page 81, which adds the Department of Administration to the list of departments the Department of Health and Social Services must consult in establishing and conducting programs designed to deal with the difficulties of persons operating a motor vehicle while under the influence of marijuana

[2:50:28 PM](#)

CHAIR LEDOUX opened public testimony and offered the "Close Up" students to testify.

[2:50:37 PM](#)

HALEY HOBAN stated that there are some problems with marijuana becoming legal in that she was told marijuana is being treated like alcohol so "we can't do blood tests with it and we would take them to get blood work." She noted that chemical THC can stay in an individual's blood for 30-days and there is no way to determine how impaired someone is, and marijuana may end up being a gateway drug as there are students her age thinking that just because it is legal they can smoke it, she expressed. She offered that it is known kids already smoke it so this is going to be a bigger problem because it is legal. She said she has noticed kids caught for possessing or smoking it and have been let off very easy without necessarily getting into trouble. Thereby, telling the kids it is not a big deal, she remarked. We have to protect the kids for sure with the drug, she opined.

[2:52:53 PM](#)

MADISON STIBES said that marijuana should not be allowed in public areas as a child might see this and want to do it also so adults should not be encouraging this unhealthy addiction. She pointed out that people should not be allowed to smoke marijuana before or during that person driving as marijuana will make a person dizzy and lazier, increasing the percentage of car accidents and most likely leading to more deaths of American citizens, she remarked.

[2:54:16 PM](#)

REPRESENTATIVE LYNN noted that he may offer an amendment to a bill establishing that marijuana is illegal within 500 feet of a

school, church, places of worship, public play area and so forth.

[2:54:52 PM](#)

CAIDEN PETERSEN said she is currently in the seventh grade and believes that marijuana should never be smoked in public, in front of children, or carried in "pocket slush bags" in public. She expressed that never should a smoker be able to smoke and drive as smoking marijuana causes an individual to be loopy and dizzy "so do you want your kid playing near a street with a person that just smoked a bud driving by?" She extended that it is extremely dangerous and will hurt the people of Alaska.

[2:56:06 PM](#)

REPRESENTATIVE GRUENBERG advised Mr. Brown that he would like to review information currently dealing with medical marijuana, whether or not it is in the bill.

CHAIR LEDOUX, in response to Representative Claman regarding the initiative taking effect on February 24, 15, there is a possibility the Alcoholic Beverage Control Board (ABC) is holding a meeting to define public place.

[2:58:17 PM](#)

DON HART said he is concerned about the unconstitutionality committee substitute to HB 79 raises in that it would cause serious problems with the court system. In addition, he offered, based upon the shortage of law enforcement officers the state would have to increase law enforcement "one hundred fold" in order to handle [problems]. He expressed the bill can force people to submit themselves to searches without a search warrant by adding the word "marijuana" to the particular criminal offenses that exist today. He remarked he has heard officers in court repeatedly testify that they are entitled at their discretion to make any call they want - [assuming] the person must be under the influence of something and force them to go to the hospital and submit to tests. He opined there are no consequences to law enforcement officers when [the results are negative] when they've violated the constitutional rights to privacy in the State of Alaska. He referred to the original bill and objected to the word "containing," and reiterated his concern regarding police officer's ability to search a person's home without a search warrant. The courts have stated repeatedly, he said, with a person on parole, probation, or

personal bond, the only area the law enforcement officer is allowed to search is the part the person has access.

3:03:01 PM

RHONDA MARCY stated she agreed with the previous speaker and advised she will submit her testimony in writing. She said her concern is that only one ounce of body massage oil would be allowed to go with a [client]. She related that the committee needs more information before they fall into the "rhetoric" that the school children expressed as far as this being an "evil weed," and that the state must not let people see anyone receiving medical benefits from it. This is a "miraculous" plant and, she offered, the committee must avoid fear-mongering.

CHAIR LEDOUX stated that CSHB 79 is held over.

3:05:17 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.