ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE
January 26, 2015
1:02 p.m.

MEMBERS PRESENT

SENATE JUDICIARY

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

HOUSE JUDICIARY

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Charisse Millett
Representative Matt Claman
Representative Max Gruenberg

MEMBERS ABSENT

SENATE JUDICIARY

All members present.

HOUSE JUDICIARY

Representative Bob Lynn

OTHER LEGISLATORS PRESENT

Representative Jim Colver

COMMITTEE CALENDAR

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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

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

WITNESS REGISTER

AMY SALTZMAN, Staff
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced SB 30, version N, on behalf of the committee.

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Delivered a sectional analysis of Sections 1-4 of SB 30, version N.

HILARY MARTIN, Attorney
Legislative Legal Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Drafter of SB 30.

BRUCE SCHULTE, Spokesman
Coalition for Responsible Cannabis Legislation
Anchorage, Alaska
POSITION STATEMENT: Provided information about medical marijuana use during the discussion on SB 30, version N.

TRACY WOLLENBERG, Deputy Public Defender

Appellate Division
Public Defender Agency
Anchorage, Alaska
POSITION STATEMENT: Raised questions about SB 30, version N.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Department of Law
Juneau, Alaska
POSITION STATEMENT: Raised questions about SB 30, version N.

ACTION NARRATIVE

1:02:54 PM
CHAIR LESIL MCGUIRE called the joint meeting of the Senate and House Judiciary Standing Committees to order at 1:02 p.m. Present at the call to order were Senators Wielechowski, Coghill, Micciche, Costello, and Chair McGuire; and Representatives Keller, Claman, Millet, Foster, Gruenberg, and Chair LeDoux.

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

1:03:57 PM
CHAIR MCGUIRE announced the consideration of SB 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." [The hearing contains discussion of the companion bill, HB 79.] She reviewed the agenda and asked the members to hold their questions about whether the bill should provide an affirmative defense, a defense, or make the conduct legal until after Amy Saltzman and Jordan Shilling had an opportunity to give an overview of the bill.

1:07:23 PM
AMY SALTZMAN, Aide to the Senate Judiciary Committee and Staff to Senator Lesil McGuire, introduced SB 30 reading the following sponsor statement excerpt into the record.

> Senate Bill 30 revises Alaska's criminal statutes to ensure public safety of our communities following the passage of the PSUM initiative to legalize and regulate marijuana.

Senate Bill 30 provides clear rules for the public and peace officers: It criminalizes giving marijuana to a person under 21, manufacturing “butane hash” and minor consumption. The bill also synchronizes the multiple definitions of marijuana in statute, along with defining “marijuana concentrate.”

1:08:43 PM
JORDAN SHILLING, Staff, Senator John Coghill, reviewed a sectional analysis of Sections 1-4 of SB 30.

Section 1:
Pages 1-3: Lines 5-20

Amends the misconduct involving a controlled substance in the fourth degree statute to conform to the ballot initiative that legalizes substances weighing one ounce or less, under certain circumstances. Delivering more than 1 ounce of marijuana is a class C felony.

Section 2:
Pages 3-4: Lines 21-26

Clarifies weights to conform to the initiative, criminalizes furnishing marijuana to a person under 21 years of age, and criminalizes the manufacturing of marijuana using a solvent-based extraction method, other than glycerin. Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor.

Section 3:
Pages 4-5: Lines 27-9

Amends misconduct involving a controlled substance in the sixth degree to prohibit a person under 18 years of age from consuming or possessing an ounce or less of marijuana. This is a class B misdemeanor.

Section 4:
Pages 5-6: Lines 10-31 and 1-4

Creates a new misconduct involving a controlled substance in the seventh degree by establishing a violation for consuming marijuana in a public place. [The definition for "public place" is found in AS 11.81.900(b)(53).] Under paragraph (2), it is a violation for a person under 21 years of age but at least 18

years of age to consume or possess one ounce or less of marijuana.

It is a class A misdemeanor for an agent or employee of the licensee to, with criminal negligence, permit persons under 21 years of age to do several actions on a licensed marijuana premise.

1:12:37 PM
REPRESENTATIVE GRUENBERG asked what the penalty is for an employee of a licensee to allow the criminal conduct mentioned on page 5, lines 22-23.

MR. SHILLING surmised it would fall under the misconduct involving a controlled substance in the sixth degree statute. He deferred further response to Legislative Legal.

REPRESENTATIVE GRUENBERG requested a written response to the question.

CHAIR LEDOUX read the language on page 6, lines 16-17 and asked how anyone could conceive that someone would manufacture an ounce or less.

MR. SHILLING deferred the question to the drafter.

1:14:48 PM
HILARY MARTIN, Attorney, Legislative Legal Services, Legislative Affairs Agency, explained that the initiative allows a person to possess up to one ounce of marijuana. Section 5 provides a defense when the charge is the manufacture of up to an ounce of marijuana or up to six marijuana plants.

CHAIR LEDOUX described the defense language as confusing and questioned how it would be possible to have a business if manufacturing is limited to one ounce.

MS. MARTIN responded that part of the issue is that "manufacture" includes growing marijuana.

CHAIR MCGUIRE summarized the defense for an individual under Section 5 then asked Ms. Martin where the bill talks about the manufacture of more than one ounce.

MS. MARTIN directed attention to page 7, line 20. Anyone who is licensed under AS 17.38, and is acting in compliance with that

license, has a defense under AS 11.71.040-11.71.060. That is misconduct in the fourth, fifth, and sixth degrees.

CHAIR MCGUIRE remarked that one of the challenges will be to understand where the individual is protected and where the license holder will be protected.

MS. MARTIN referenced Representative Gruenberg's earlier question and advised that it would be a class A misdemeanor for a violation under Sec. 11.71.067(a).

REPRESENTATIVE GRUENBERG asked if it's the same standard for the employee as it is for the owner of the establishment. The mens rea is "with criminal negligence," which is something in between "recklessness" or "negligence."

MS. MARTIN agreed that "criminal negligence" is a lower standard than "reckless."

CHAIR MCGUIRE asked Ms. Martin to read the mental state for criminal negligence.

1:21:26 PM
MS. MARTIN paraphrased the following definition for criminal negligence under AS 11.81.900(a)(4):

> (4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

REPRESENTATIVE GRUENBERG asked if the same standard applies to both the owner of the establishment and the employee, even if the owner isn't present.

MS. MARTIN answered yes.

REPRESENTATIVE GRUENBERG observed that the same criminal negligence standard is used throughout Title 4 for people who serve alcohol to people who are under 21 years of age.

MS. MARTIN reported that Title 4 was the model for SB 30.

1:22:57 PM
SENATOR WIELECHOWSKI highlighted that the bill gives the police the ability to arrest people for carrying an ounce or less of marijuana. Once they're arrested, they will have to post a bond and potentially go through a jury trial while they assert that it is an affirmative defense to possess marijuana. He stressed that this is despite the fact that the Supreme Court of Alaska ruled that the people of Alaska have a constitutional right to possess a certain amount of marijuana and the people of Alaska voted to allow possession of one ounce or less of marijuana.

MS. MARTIN agreed that the characterization was technically correct. She added that the Supreme Court of Alaska under Ravin v. State allowed the possession of a small amount of marijuana for adults in their home, but there is technically nothing to stop a police officer from arresting a person for possessing that amount.

She reiterated that the bill establishes a defense to the charge of misconduct involving a controlled substance if the person is acting within the bounds set out by the initiative.

CHAIR MCGUIRE asked Ms. Martin to explain why she chose to draft the bill as a defense.

1:26:12 PM
MS. MARTIN stated that the initiative made marijuana legal in some situations, but left it illegal in most cases. She tried to solve some of the inconsistencies by creating a defense to the prosecution if the individual is acting in a way that is consistent with the initiative. The defense uses the language from the initiative about one ounce or less, six plants, and the property lawfully in possession.

She further explained that the misconduct involving a controlled substance statutes currently contain some affirmative defenses. Medical marijuana, for example, is an affirmative defense.

CHAIR LEDOUX voiced concerns and questioned why the bill couldn't treat marijuana the same way as the alcohol laws.

MS. MARTIN replied this is just one approach; it could be changed.

1:29:46 PM
CHAIR LEDOUX opined that marijuana could be controlled differently than the way the bill suggests.

MS. MARTIN restated that this is an initial approach; it could be done differently.

CHAIR MCGUIRE thanked Ms. Martin for her efforts.

1:31:13 PM
SENATOR COGHILL asked if she agrees that it would be a significantly different approach to mirror the alcohol statutes and would probably require much of Title 4 to be rewritten.

MS. MARTIN replied a number of choices would need to be made because there are differences with alcohol. "It's not simply going to be straight marrying what crimes exist in Title 4."

SENATOR COGHILL expressed support for the current approach because the federal government still classifies marijuana as a controlled substance and illegal in many circumstances.

MS. MARTIN warned that regardless of state law, marijuana is still a controlled substance under federal law.

1:33:46 PM
CHAIR MCGUIRE recognized that Representative Colver was present.

REPRESENTATIVE CLAMAN referenced Section 13 and asked the logic behind basically repealing everything the voters favored in the initiative.

MS. MARTIN replied those sections are incorporated into the defense. AS 17.38.020 is the personal use provision.

SENATOR COGHILL suggested that Ms. Martin clarify that repealing doesn't remove the statute; rather it adds accountability measures for misdemeanor.

MS. MARTIN agreed that the repealed sections are either included in the defense or in the bill. For example, AS 17.38.040 is public consumption, and in the bill it's in Sec.11.71, misconduct in the seventh degree. AS 17.38.020 and AS 17.38.030 have to do with personal use and cultivation, and that language is incorporated into the defense.

REPRESENTATIVE CLAMAN commented that the discussion is whether to support the voters' intent regarding AS 17.38.020 and AS 17.38.030 or this proposal that repeals those sections but provides a defense during prosecution.

MS. MARTIN replied that's one way to describe the defense, but she couldn't speak to prosecutions.

1:36:43 PM
CHAIR MCGUIRE asked if she had thought about how criminalization interacts with the Ravin Act. That was a [1975] Alaska Supreme Court ruling that said that up to four ounces of marijuana is allowed for personal use in the privacy of your home. Because the initiative says one ounce and Ravin says four ounces, her assumption is that this committee will have to consider what happens with two, three, and four ounces.

MS. MARTIN acknowledged that she didn't have a good answer as to how the initiative and Ravin work together. The possession limits are different and the age limitations are arguably different, so it's an open question.

1:39:15 PM
CHAIR MCGUIRE said it's more complicated than simply making marijuana legal. If it's not structured as a defense, it will be necessary to make certain things illegal that previously were nebulous.

REPRESENTATIVE GRUENBERG asked the definition of "defense" and if Alaska law differentiates between a defense and an affirmative defense.

1:40:33 PM
MS. MARTIN replied both are defined in AS 11.81.900. In an affirmative defense, the burden is on the defendant to establish the defense by a preponderance of the evidence. In a defense, evidence is admitted and the state has the burden of disproving the defense beyond a reasonable doubt.

REPRESENTATIVE GRUENBERG pointed out that the initiative intent was that the prosecution must provide proof of the issue beyond a reasonable doubt. He asked for the legal underpinning for changing that to a defense.

MS. MARTIN agreed that the initiative says it's not an offense under law. She added that AS 11.81 defines "offense" as "conduct for which a sentence of imprisonment or fine is authorized."

REPRESENTATIVE GRUENBERG said he understands the definition but the bill uses it in defining a crime as opposed to allocating the burden of proof. He asked if she agrees that they are used in different ways.

MS. MARTIN replied she did not know, but she would probably argue that it means offense in the sense of a crime.

1:44:11 PM
SENATOR COSTELLO stressed the importance of following the intent of the initiative. She asked Ms. Martin if she consulted other states when she chose to draft the bill as a defense. She then asked about the possibility of considering a different approach.

MS. MARTIN replied she did not consult other states; she used the medical marijuana model, which created an affirmative defense. She restated that it is the committee's prerogative to request another draft.

REPRESENTATIVE MILLETT expressed reservations about modeling the legislation on the medical marijuana statutes; they are largely untested because the user group is so small. She questioned whether this could lead to a sizeable increase in litigation.

MS. MARTIN agreed the number of people affected by the medical marijuana statutes is likely smaller. She added that this draft is the current approach to try to resolve the conflicts between the initiative and the misconduct involving a controlled substance statutes. She declined to predict what future litigation might come up.

CHAIR MCGUIRE told Ms. Martin that she would have an opportunity to draft the bill so it is not a defense.

1:47:45 PM
SENATOR MICCICHE stated, "I hasn't spoken to anyone on this committee that is not in full agreement that we are going to meet the intent of the initiative in its entirety."

CHAIR MCGUIRE agreed.

CHAIR LEDOUX asked if there is any data on the number of people that are using medical marijuana.

MS. MARTIN replied the number of people who have registered for medical marijuana is a known number but she does not have that data.

CHAIR MCGUIRE recalled that the number of registered medical marijuana users is about 6,000, but the question is whether people are registering. She asked Mr. Schulte to address the questions about medical marijuana.

1:49:53 PM
BRUCE SCHULTE, Spokesman, Coalition for Responsible Cannabis Legislation, offered his understanding that there are about 2,000 medical marijuana card holders in the state and 2-3 times that number who have not registered.

CHAIR MCGUIRE asked what the deterrents might be to registering to use medical marijuana.

MR. SCHULTE replied one reason is the fear that registering could bring unwanted scrutiny from law enforcement. Another expressed concern is that holding a medical marijuana card could preclude a person from owning guns.

REPRESENTATIVE CLAMAN asked Mr. Schulte to comment on the anecdotal reports that few people have registered for a medical marijuana card because there is nobody licensed in the state to sell medical marijuana.

MR. SCHULTE confirmed that he has heard that argument.

1:53:52 PM
SENATOR WIELECHOWSKI asked if Section 1 violates the constitution, because the Supreme Court of Alaska ruled that people have a right to possess up to four ounces of marijuana.

MS. MARTIN replied Section 1 does not deal with straight possession, but she agrees that Ravin is an outstanding issue.

REPRESENTATIVE GRUENBERG asked for supplemental information on the medical marijuana program, including the inability to buy medical marijuana and the idea of adding to the list of qualifying diseases in the current regulations. He noted that

Arizona expanded its medical marijuana regulations to include post-traumatic stress disorder (PTSD).

CHAIR MCGUIRE offered to share an article discussing the American Pediatrics Council coming forward about decriminalizing marijuana at the federal level. The discussion centered on how certain forms of cannabis can be life altering for children who have epilepsy and autism.

She opined that the legislature has failed the public in fully implementing medical marijuana, because the affirmative defense was not the intent.

SENATOR COGHILL commented that drafting the bill as a defense drives a narrow line that works with the controlled substance laws, but it will still be necessary to work with those laws outside the initiative to ensure consistent application.

MS. MARTIN agreed.

CHAIR MCGUIRE agreed that creating a defense was the simplest approach. The other is more specific and will require the committee to think about things such as quantities over one ounce and how that comports with Ravin and use by people under age 21 for medicinal purposes.

MS. MARTIN agreed.

REPRESENTATIVE MILLETT opined that the initiative was flawed because it did not take the Ravin decision into consideration.

MS. MARTIN agreed there is an unresolved conflict. Ravin allows adults to possess up to four ounces of marijuana for personal use and the initiative says people 21 years and older may possess up to one ounce.

2:01:40 PM
SENATOR WIELECHOWSKI reviewed Section 3 that makes possession of marijuana by someone under age 18 a class B misdemeanor and Section 4 that makes possession of marijuana by someone 18-20 years of age a class A misdemeanor. He asked what the comparable penalties are for alcohol for someone in those age groups.

MR. SHILLING offered his understanding that the first two instances of a minor consuming alcohol are violations with community work service and the third is a class B misdemeanor.

CHAIR LEDOUX offered her belief that the initiative is not inconsistent with Ravin, but it does not go as far as Ravin with respect to possession amounts.

MS. MARTIN responded that Ravin says an adult can possess up to four ounces for personal use in their home and the initiative says, notwithstanding any other law, a person over age 21 may possess one ounce of marijuana. The question of how to address Ravin is still open under the current structure, she said.

CHAIR MCGUIRE suggested that Tracey Wollenberg with the Public Defender Agency and Rick Svobodny with the Department of Law offer a perspective about how Ravin conflicts or does not conflict with the current draft of the bill.

SENATOR MICCICHE commented that the reality under Ravin v. State is that the "weed fairy" had to magically deliver up to four ounces of marijuana to your home. He suggested that it is possible to meet the intent of the initiative, which is one ounce, for transportation and then storing up to four ounces in the home. He maintained that this would meet the intent of both without conflict.

CHAIR MCGUIRE invited Ms. Wollenberg to give her opinion on the current version of the bill and the conflicts with Ravin.

2:06:13 PM
TRACY WOLLENBERG, Deputy Public Defender, Appellate Division, Public Defender Agency (PDA), stated that the agency shares some of the concerns voiced by committee members. Retaining the criminal offenses in AS 11.71 and creating a defense is inconsistent with the language and express purposes of the initiative and undermines voter intent.

She said Sec. 17.38.010 states that the use of marijuana shall be legal for persons age 21 and older and that one of the purposes is to allow law enforcement to focus on violent and property crimes. Sec. 17.38.020 sets out what acts shall not be a criminal or civil offense and that those lawful acts shall not be a basis for seizure. She stated that creating the defense contravenes both of the provisions in Sec. 17.38.020 and the intent set out in Sec. 17.38.010 that certain types of marijuana related conduct be legal.

MS. WOLLENBERG addressed Representative Gruenberg's question about the difference between an affirmative defense and a defense. She explained that an affirmative defense places the burden of production and persuasion on the defendant. In a defense the defendant has the burden of production but does not have the burden of persuasion.

The current draft places the burden on the defendant to produce evidence in order to put the defense in play. A defendant who does not put on any evidence will be convicted even though his or her conduct was completely legal. Another potential result is that different judges could make different decisions about whether a defendant has presented sufficient evidence to put the defense in play.

MS. WOLLENBERG stated that the another ramification of setting this up as a defense is that it would give police the ability to arrest for otherwise lawful conduct. This undermines the intent to allow law enforcement to focus on violent and property crimes as set out in Sec. 17.38.010. It could result in inconsistent enforcement and officers might use the possession, or manufacture of marijuana as justification for further searches when there is no basis for doing so. This could result in discriminatory enforcement. This undermines the provision in Sec. 17.38.020 that the acts that are intended to be legal shall not be the basis for seizure. She noted that the phrase "shall not be the basis for seizure" is not replicated in SB 30.

MS. WOLLENBERG suggested that a potential easy fix is to leave AS 17.38 intact and add it as an exception in Section 1. This preserves voter intent and makes it clear that law enforcement needs to look at AS 17.38 to determine whether or not somebody has committed a criminal offense. She said this does not account for Ravin, but she does not believe that Ravin is inconsistent with the initiative.

MS. WOLLENBERG summarized that the major point is that creating a defense is not implementing voter intent and it places a burden on the defendant once arrested to put evidence in play to prove that their conduct was legal. She stressed that this would vastly increase the use of resources by the court, prosecution and public defender.

2:17:37 PM
SENATOR MICCICHE highlighted that another challenge with framing the legislation as a defense is that once a charging document is

made, the person's name will be on CourtView forever. "That will affect them in the future for employment and other issues, so it's a challenge going this way."

CHAIR MCGUIRE agreed.

REPRESENTATIVE GRUENBERG asked Ms. Wollenberg if she would put her testimony in writing, including a citation to the authority as to whether the term "defense" complies with the language of the initiative.

MS. WOLLENBERG replied she would do so if Quinlan Steiner approves.

REPRESENTATIVE GRUENBERG asked if the fact that the initiative refers to an offense and the bill changes that to a defense might render the legislation unconstitutional.

MS. WOLLENBERG said she believes it would be subject to constitutional challenge under art XI, sec. 6 of The Alaska Constitution.

REPRESENTATIVE GRUENBERG requested that she include that in the memo.

2:21:57 PM
SENATOR WIELECHOWSKI asked if Sections 3 and 4 are good policy as opposed to the way alcohol offenses are treated for a similar age group. They make possession of marijuana a class A or class B misdemeanor if the person is under 21 years of age but at least 18 years of age.

MS. WOLLENBERG said she'd need to consult the alcohol statutes before giving an answer, but she believes that it's worthwhile to ensure that the legislature is consistence in terms of the level of offense it ascribes to people under 21 years of age.

She added that Sections 3 and 4 appear somewhat backwards. Essentially, it is a violation to use or display marijuana in a public place, but it's a misdemeanor to use or display it in a nonpublic place. She questioned whether that was the intent or an oversight.

CHAIR MCGUIRE requested her opinion on that in the broader memo and that Mr. Steiner coauthor the memo.

CHAIR LEDOUX asked if the current statutes are inconsistent with Ravin.

MS. WOLLENBERG replied the current statutes prohibit the possession of marijuana, whereas Ravin protects possession of up to four ounces of marijuana in the home.

CHAIR MCGUIRE suggested she reference that point in the memo and her opinion on the three definitions of marijuana currently in statute.

2:27:02 PM
SENATOR MICCICHE suggested it would be helpful for the public if the committee would, at some point, discuss the level of offenses and related penalties.

CHAIR MCGUIRE agreed. She recognized the Department of Law and asked all testifiers to submit written comments for the committees to consider.

2:29:22 PM
RICHARD SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law, introduced himself and Kaci Schroeder. He relayed that Ms. Schroeder would be the legislative liaison and the voice for DOL on this topic, but he had a few thoughts to offer at the outset.

He highlighted that this is a complicated drafting issue because the initiative does not use Angelo Saxon law which starts with the presumption that everything is legal unless it is made illegal by legislation. Rather, it uses the Napoleonic Code that assumes that everything is illegal unless the government makes it legal. Another difficulty is that the initiative deals with criminal laws while the bill generally tries to deal with both criminal laws and establishing regulations for an industry, presupposing some things some things that may or may not be done with regulation.

MR. SVOBODNY reminded the members that medical marijuana passed as an initiative in about 1998 and the structure in statute is what the legislature created after that initiative.

REPRESENTATIVE CLAMAN commented that it is perhaps a further complication that the voter initiative basically tries to roll back what the legislature did when it made marijuana possession illegal.

MR. SVOBODNY responded that Ravin was decided in 1975 and the drug statutes were passed in 1982; throughout this time certain provisions have dealt with marijuana. Providing more background, he reminded the members that the Ravin decision said that an undefined amount of marijuana was allowed in the home for personal use. The legislature shortly thereafter picked four ounces as the amount that was indicative of non-personal use in the home. The Alaska court of appeals decision in Noy v. State said it was reasonable for the legislature to say that four ounces was not indicative of personal use in your home.

CHAIR MCGUIRE asked how the effort to recriminalize marijuana in 2006 during the Murkowski administration factors in.

MR. SVOBODNY explained that Ravin said the decision was based on the likelihood of abuse when the concentration of the active ingredient, THC, in marijuana was about 18 percent. The court said this could be revisited. In 2006 the legislature received information that marijuana had THC concentrations of 27 percent and decided it should be illegal. The ACLU sued the State of Alaska saying that the 2006 legislative changes should be stayed and those cases should not be prosecuted. The trial court agreed. The case went to the Alaska Supreme Court and they dodged the issue saying there was no case in controversy.

REPRESENTATIVE CLAMAN recalled that in the early 1990s Alaska voters introduced an initiative and voted to criminalize the possession of marijuana in any location. It left open the question of Ravin, but did away with the up to four ounce home possession in statute.

2:41:50 PM
CHAIR LEDOUX asked if there have been any charges for possession of small amounts of marijuana since the Alaska Supreme Court dodged the issue and if not, why not.

MR. SVOBODNY replied the idea that the police go out and investigate cases involving small amounts of marijuana is incorrect. But they will charge someone if they find a small amount of marijuana in the course of another investigation such as minor consuming and traffic accidents. Just as the police aren't going out and looking for those cases, the prosecution has no written policy on dealing with marijuana cases that come forward. It's a poor use of state resources to prosecute those cases, he said.

REPRESENTATIVE KELLER asked if there has been a case where the legislature tries to define a law before a license was established.

MR. SVOBODNY said he knows of none, but that is a concern

2:45:40 PM
KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, began her comments by reviewing the defense section of SB 30. She said that as currently written the defense would apply to the misconduct involving a controlled substance in the fourth degree statute. Under that statute, it is a felony to possess any amount of marijuana on school grounds, near a youth center, or on a school bus. She questioned whether that was the intent. She further noted the disparate treatment between persons under 21 years of age and those older than 21. The younger group would be charged with a felony because the defense doesn't apply to people under age 21, but people older than 21 would be fine.

She said the defense also applies to manufacturing charges for individuals and marijuana establishments and both could potentially be charged with manufacturing. Manufacturing a VIA controlled substance through the use of a solvent-based extraction is specifically prohibited and is covered by a defense for both individuals for marijuana establishments. She asked if that was the intent.

MS. SCHROEDER reviewed the repeal section and cautioned that repealing AS 17.38.070 may have both regulatory and criminal consequences. She also questioned whether hash is marijuana. The bill reduces it to a schedule VIA controlled substance and distinguishes it from marijuana, but the definition of marijuana potentially could include it and it could also be included as a concentrate. She described the reading as circular. "You have to read the definition then you have to read the definition of concentrates and you have to look at schedule VIA."

She also asked for clarification of the intent of Section 11 because the current drafting would be difficult to prosecute. It defines an open marijuana container but then it says "and there is evidence that marijuana has been consumed in the motor vehicle."

CHAIR MCGUIRE asked Ms. Schroder to put her comments in writing.

REPRESENTATIVE GRUENBERG suggested Ms. Schroeder also contact committee members individually after she submitted her written comments.

SENATOR MICCICHE observed that motorhomes fall into the categories of both a home and a motor vehicle and he would suggest that members give some thought to whether marijuana will be treated like alcohol in that context.

REPRESENTATIVE CLAMAN said Ms. Schroeder raised a question about hash and hash oil and he didn't see any reference to either in the initiative. He asked if she sees that as a significant difference.

MS. SCHROEDER confirmed there is no specific mention of hash in the initiative and the definition for marijuana is the same in both the initiative and the bill. Under current statute, hash is specifically excluded from the definition of marijuana, and it's a schedule IIIA drug. The bill reduces hash to a schedule VIA drug, the same as marijuana, and identifies it as a separate substance. However, it could be argued that it is a marijuana concentrate, which is found in the definition of marijuana.

REPRESENTATIVE CLAMAN asked for examples of schedule IIIA drugs.

MS. SCHROEDER replied synthetic marijuana would fall in that group.

CHAIR MCGUIRE offered to share the information her office has gathered about the pertinent things in Title 11 and the penalties associated with the different misdemeanors and felonies.

2:56:35 PM
SENATOR COGHILL commented on the difficulty associated with describing different substances. "When I looked at the derivatives and the manufacture of these compounds, it really doesn't tell us what those are."

CHAIR MCGUIRE agreed and added that "butane hash" is specifically set aside because it a dangerous method of manufacturing.

2:58:44 PM

CHAIR LEDOUX questioned making the use of synthetic marijuana a prosecutable offense if "real" marijuana is legal.

CHAIR MCGUIRE said she looks forward to hearing about the chemicals in the manufacturing process at the next hearing.

She thanked the participants.

3:00:03 PM
There being no further business to come before the committees, Chair McGuire adjourned the joint meeting of the Senate Judiciary Standing Committee and the House Judiciary Standing Committee at 3:00 pm.