ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 13, 2015
1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 35
"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED SB 35 OUT OF COMMITTEE

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 & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 35
SHORT TITLE: 2015 REVISOR'S BILL
SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/30/15	(S)	READ THE FIRST TIME - REFERRALS
01/30/15	(S)	JUD
02/09/15	(S)	JUD AT 1:30 PM BUTROVICH 205
02/09/15	(S)	Heard & Held
02/09/15	(S)	MINUTE(JUD)

BILL: SB 30
SHORT TITLE: MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES
SPONSOR(s): JUDICIARY

01/23/15	(S)	READ THE FIRST TIME - REFERRALS
01/23/15	(S)	JUD, FIN
01/26/15	(S)	JUD AT 1:00 PM BUTROVICH 205
01/26/15	(S)	Heard & Held
01/26/15	(S)	MINUTE(JUD)
01/28/15	(H)	JUD AT 1:00 PM CAPITOL 120
01/28/15	(H)	-- Companion Bill --
01/30/15	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/30/15	(S)	-- Meeting Postponed to Monday 2/2/2015 --
02/02/15	(S)	JUD AT 1:30 PM BUTROVICH 205
02/02/15	(S)	-- Rescheduled from 01/30/15 --
02/05/15	(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/05/15	(S)	Scheduled but Not Heard
02/06/15	(S)	JUD AT 1:30 PM BUTROVICH 205
02/06/15	(S)	-- MEETING CANCELED --
02/09/15	(S)	JUD AT 1:30 PM BUTROVICH 205
02/09/15	(S)	Heard & Held
02/09/15	(S)	MINUTE(JUD)
02/11/15	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/11/15	(S)	Heard & Held
02/11/15	(S)	MINUTE(JUD)
02/13/15	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

JAY BUTLER, Chief Medical Officer
Division of Public Health
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Explained the uses of medical marijuana during the hearing on SB 30.

TRACY WOLLENBERG, Deputy Public Defender
Appellate Division
Public Defender Agency
Juneau, Alaska
POSITION STATEMENT: Commented on SB 30, version I, and noted some inconsistencies with the voter intent.

RACHELLE YEUNG, Legislative Analyst
Marijuana Policy Project
Washington, D.C.

POSITION STATEMENT: Provided information in the context of SB 30.

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board
Department of Commerce, Community and Economic Development
Anchorage, Alaska
POSITION STATEMENT: Commented on the parallels and differences between alcohol and marijuana in the context of SB 30.

ACTION NARRATIVE

1:33:57 PM
CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Costello, Coghill, Micciche, Wielechowski, and Chair McGuire.

SB 35-2015 REVISOR'S BILL

1:34:28 PM
CHAIR MCGUIRE announced the consideration of SB 35.

1:34:34 PM
SENATOR COGHILL moved to report SB 35, labeled 29-LS0330\H, from committee with individual recommendations and attached fiscal note(s).

1:34:56 PM
CHAIR MCGUIRE announced that, without objection, SB 35 is reported from the Senate Judiciary Standing Committee.

1:35:06 PM
At ease

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

1:37:07 PM
CHAIR MCGUIRE reconvened the meeting and announced the consideration of SB 30. [CSSB 30, labeled 29-LS0231\I, was before the committee.]

1:37:35 PM
JAY BUTLER, Chief Medical Officer, Division of Public Health, Department of Health and Social Services (DHSS), briefed the members on medical marijuana. He explained that probably the

most common use by physicians is to treat neuropathic pain. It is also used for persistent muscle spasms in diseases such as multiple sclerosis (MS) and surveys suggest that 10-15 percent of MS patients use medical marijuana for relief. Other studies have provided evidence that medical marijuana reduces pain from peripheral and post-traumatic neuropathy as well as HIV induced neuropathy. Marijuana is also used to treat nausea from chemotherapy, AIDS cachexia, glaucoma, Tourette syndrome, and certain seizure disorders. FDA approved products that are derived from Tetrahydrocannabinol (THC) include Dronabinol and Nabilone. An oral spray that contains both THC and CannaBiDial, which has been approved in the UK and a few EU countries, is on the FDA fast-track list.

1:40:05 PM
CHAIR MCGUIRE offered her understanding that some of these derivatives do not have hallucinogenic effects.

DR BUTLER replied the derivatives do not, but the oral spray contains THC so it would have the same effect as THC.

CHAIR MCGUIRE asked him to differentiate the effects when he describes different products.

DR BUTLER informed the committee that there are two types of cannabinol receptors in the body. CB 1 receptors, which are primarily in the central nervous system and peripheral nerves, are most often associated with the psychogenic effects. The CB 2 receptors are in certain nerves and some immune cells.

He advised that the actual use of medical marijuana requires a physician statement that the patient has one of the qualifying medical conditions listed in AS 17.37, but not the specific condition. The statute requires the patient to be under the care of a physician in a "bonafide physician/patient relationship" and it has provisions to accommodate caregivers.

The physician statement is submitted to the Bureau of Vital Statistics within the Department of Health and Social Services which maintains the medical marijuana registry and issues certificates. The applicant must pay a $25 fee and submit a copy of his/her driver's license and state ID card. The same type of identification is required for any caregiver who is covered under the certificate. The certification must be renewed every year. Minors under age 18 may be listed on the registry but a parental statement is required.

DR. BUTLER reported that 831 Alaskans are currently in the medical marijuana registry, including 6 minors. The medical marijuana statutes do not address how to obtain the marijuana and there are no dispensaries in the state. Anecdotal evidence indicates it is not difficult to obtain.

1:46:41 PM
SENATOR WIELECHOWSKI asked if a person has to reach a level of intoxication to achieve relief for a medical condition.

DR. BUTLER replied intoxication is dependent on the individual and their susceptibility and experience with the use of marijuana products.

SENATOR COGHILL asked how many cards have been issued to people under age 21.

DR. BUTLER replied he didn't have the number for 18, 19, and 20 year olds, but there are 6 certificates for patients under age 18.

SENATOR COGHILL advocated requiring parental consent to administer medical marijuana to someone under age 21.

SENATOR WIELECHOWSKI asked if there is research on the impacts of secondhand smoke from marijuana and the impacts on a fetus from the use of marijuana.

DR. BUTLER replied exhaled marijuana smoke does contain compounds recognized to be harmful, but the data are inadequate to quantify the risk. With regard to the second question, he confirmed that THC crosses the placenta and is excreted in breast milk. He noted that the most recent pregnancy risk assessment monitoring system (PRAM) survey in Alaska suggests that about 7 percent of pregnant women report having smoked marijuana during pregnancy. Some data suggests that smaller size babies may be associated with marijuana exposure, but it's not clear because a large proportion of marijuana smokers also smoke tobacco.

1:51:19 PM
SENATOR WIELECHOWSKI asked if there is data on how long it would take to be under the influence from secondhand smoke.

DR. BUTLER replied the concept of a secondhand high is not well supported in the medical literature.

SENATOR COSTELLO asked if there is talk within DHSS of adding a question about the use of marijuana to the Behavioral Risk Factor Survey.

DR. BUTLER replied that question is on the Youth Risk Behavior Survey and he believes it is on the Behavioral Risk Factor Surveillance System. He noted that more high school students report having smoked marijuana in the past 30 days than tobacco.

SENATOR MICCICHE questioned the need for a medical marijuana separate statute once marijuana is regulated like alcohol.

DR. BUTLER opined that it will probably take several years to know if there will be a continuing need for a registry once people can get medical marijuana over the counter. But it may be useful to have a registry for people under age 21 who need medical marijuana and for those who are hesitant to use it without some documentation of the need.

SENATOR MICCICHE asked if other states cover medical marijuana in an insurance plan.

DR. BUTLER offered to follow up, but he suspects the answer is no.

1:56:41 PM
TRACEY WOLLENBERG, Deputy Public Defender, Appellate Division, Alaska Public Defender Agency, described version I as more consistent with the voter intent in Ballot Measure 2, but noted that some inconsistencies persist.

She focused on Section 50 to highlight inconsistencies with Sec. 17.38.020 of the initiative, which the bill repeals. She argued that defining marijuana in terms of aggregate weight is inconsistent with the initiative, which defines it in terms of the number of plants, not the weight. The definition in the initiative gives clear guidance to the public that they can't possess more than six plants, but they may not know or be able to control the aggregate weight. Allowing the marijuana grown from those plants on the premises where the plants were grown is consistent with the idea of making marijuana a legal substance that is treated like alcohol.

2:01:05 PM
SENATOR COGHILL questioned whether the language on page 29, line 15, was consistent with the initiative or if it needed to be rewritten.

MS. WOLLENBERG replied that language is consistent with the initiative, but she would suggest adding language about a certain amount of usable marijuana and eliminating the aggregate weight provision. She cautioned that ascribing some weight apart from the plants will be tricky because the initiative allows possession of all the marijuana produced from six plants.

SENATOR COGHILL said the goal was to maintain consistency between the initiative and the law defined by the court in Ravin.

MS. WOLLENBERG suggested it might be worthwhile to find out if a range of weights can be ascribed to a plant in order to determine whether four ounces is a realistic limit. She noted that the court of appeals in Alaska has determined that four ounces in one's home is presumed constitutional under Ravin.

SENATOR MICCICHE asked about the significance of flowering versus non-flowering plants.

MS. WOLLENBERG offered her understanding that flowering plants are ready for harvest.

CHAIR MCGUIRE asked Ms. Yeung if she would answer the question.

2:05:26 PM
RACHELLE YEUNG, Legislative Analyst, Marijuana Policy Project, agreed with the explanation.

SENATOR MICCICHE asked Ms. Yeung to discuss weight variation of marijuana plants.

MS. YEUNG advised that there can be a wide variation in the weight of marijuana plants so it would be difficult to ascribe a standard weight. Some may be the size of a small house plant while others may be taller than a person. She concurred with Ms. Wollenberg's assessment that having an aggregate weight provision would be more confusing to the user than restricting the number of plants.

2:06:45 PM
SENATOR WIELECHOWSKI asked if she agrees that someone could commit a seriously punishable felony simply because he/she is a very good gardener.

MS. YEUNG replied that is why Ballot Measure 2 allows adults who grow marijuana to possess all the product that is grown from their plants.

SENATOR WIELECHOWSKI asked about the distinction between possessing one ounce and four ounces.

MS. YEUNG explained that the distinction is that a person can possess and use the marijuana from the plants he/she has grown on their premises. The one ounce designation is for possession outside that venue.

SENATOR COGHILL suggested deleting the aggregate weight provision and returning to the initiative language regarding number of plants.

SENATOR MICCICHE expressed concern with allowing four ounces. He maintained that it cannot be assumed that the voters who supported the initiative would also support possession of four ounces of marijuana. He agreed with returning to one ounce.

MS. WOLLENBERG suggested one way to comport with voter intent is to reinsert Sec. 17.38.020 from the initiative and exempt anything made legal in that section from criminal penalties and remove the aggregate weight provision in Sec. 17.38.260.

She pointed out that similar problems to those she described in Sec. 17.38.200(a)(1) appear in Sec 17.38.200(a)(2), but (a)(2) addresses manufacture and delivery. She noted that the delivery provision in Sec. 17.38.210 is also inconsistent, but it is more consistent than the higher offense in Sec. 17.38.200. She reminded the members that the initiative allows a person to possess marijuana with the intent to deliver, as long as they do not deliver more than one ounce to a person.

SENATOR MICCICHE questioned the inconsistency between the delivery provision in the initiative and the current laws regulating alcohol. The initiative allows delivery to a home whereas the point of sale for alcohol cannot be in a home.

MS. WOLLENBERG deferred to Ms. Yeung.

MS. YEUNG said it appears that the language in the initiative is broad enough to allow delivery services but she couldn't say that with certainty. She offered to do follow up research.

SENATOR WIELECHOWSKI pointed out another inconsistency between alcohol regulation and the proposed regulation of marijuana. A person can buy as much alcohol as he/she likes from a package store whereas marijuana is limited to one ounce.

SENATOR COGHILL said it seems that .020 allows an adult to be in the delivery business without a license, but he/she could only carry up to one ounce or six plants at a time.

2:17:01 PM
MS. YEUNG clarified that it would have to be without remuneration.

SENATOR COGHILL mused that a person might charge for the delivery service but not the marijuana.

MS. YEUNG described that as a sneaky circumvention that law enforcement would see through. She noted that those cases have not been upheld in Colorado.

SENATOR MICCICHE asked her to spend more time evaluating that point because he didn't believe that commercial delivery was the intent of the initiative.

MS. YEUNG agreed.

MS. WOLLENBERG continued to comment on the bill. In Sec. 17.38.220, she recommended specifying the specific dollar amount of the fine. As currently written, the reference to AS 12.55 will bring in the gamut of penalties specified in that statute and potentially import a penalty disproportionate to the conduct. If it denotes criminality, the person might be entitled to counsel and the other rights attendant to a criminal case. She then warned that Sec. 17.38.230 may be subject to a challenge under Ravin to the extent that it criminalizes use by an adult who is over 18 in his/her own home.

She said she understands that Sec. 17.38.270 will be removed, but she wanted to note that is problematic because of the disproportionate penalty that it imposes and the fact that treatment can only be done under the tutelage of the Department of Corrections (DOC). Sec. 17.38.290 may also impose a disproportionate penalty because a person could potentially be subject to forfeiture of their car for committing a violation.

MS. WOLLENBERG said that confidentiality of certain marijuana-related conduct by those under age 18 came up during the

previous hearing and she would encourage the committee to make those records confidential. She also suggested that the concern that there is no exception for the use of medical marijuana could be addressed by building an exception into the bail and probation conditions in Section 26. A judge could then exempt someone to provide medical marijuana for somebody who is on probation or parole if they have a medical marijuana certificate.

2:22:53 PM
SENATOR COGHILL asked if the conduct would still be a violation and remain under juvenile jurisdiction but it would be confidential.

MS. WOLLENBERG said no; AS 47.12.030 on page 80 specifically exempts from juvenile jurisdiction most of the minor offenses that were discussed on Wednesday. She opined that the committee could keep marijuana-related violations by minors in juvenile court and that would get the juvenile probation officers involved and potentially invoke the right to counsel. The committee could also write a statute to keep the records of the violations confidential for minors adjudicated in adult court.

SENATOR WIELECHOWSKI asked if she has concerns about the definition of public place and concerns about allowing the police to order a blood and urine test.

MS. WOLLENBERG said she does have concern about the provision on page 69 that allows the police to require a minor to submit to a blood or urine test to determine the marijuana content in those body fluids. Adults are treated differently because a search warrant would be required. With regard to the definition, she suggested looking at whether the definition of "public place" in Title 11 could be amended to allow marijuana use in a place of business that's a private function or party.

2:29:28 PM
CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board, Department of Commerce, Community and Economic Development (DCCED), opened her comments on the bill focusing on Section 128 (page 74) relating to primacy. She read the definition of "local government" in Sec. 17.38.900(4) and suggested that it be amended to parallel the provision in Title 4 that allows a village to create a perimeter and have an established village for purposes of alcohol local option. That would allow the local governing bodies that are able to hold alcohol elections to also hold marijuana elections. Under the current definition, that

ability is limited to a municipality or home rule city. She advocated for tracking the change to include established villages through to other sections to avoid creating loopholes in primacy.

SENATOR MICCICHE asked how the local option provision in Title 4 was created initially.

MS. FRANKLIN explained that Title 4 provides local options for municipalities and a separate section of local options for established villages. It provides guidance for creating a perimeter and becoming an established village for the purpose of holding local option elections. By contrast, AS 17.38.110 provides that a local government, which is defined as a municipality, may choose a local option through an ordinance. She again advocated for allowing established villages to hold local option elections for marijuana.

SENATOR COGHILL said he had an amendment to address that point, but he wasn't prepared to offer it yet.

MS. FRANKLIN said the next area of concern relates Sec. 17.38.200 and Sec. 17.38.220. She cautioned to make a clear differentiation between illegal commercial activities versus going outside the bounds of personal use so that someone can't claim that the lower level of offense applies to their conduct.

MS. FRANKLIN told the committee that the provisions in SB 30 for minor possessing or consuming marijuana come close to what the Title 4 stakeholder workgroup worked towards for an appropriate penalty for minors consuming alcohol. The recommendation was to strip AS 04.16.050 of the current requirements, which moves habitual conduct from a violation to a crime, back into the violation category with a mandatory court appearance. The fine would be $500 for any minor consuming, but the minor would receive information on how to reduce the fine markedly by proactively seeking treatment or education relating to alcohol.

SENATOR COGHILL asked if the workgroup discussed confidentiality.

MS. FRANKLIN replied it was a major concern, but a problem with full confidentiality on minor offenses is that it would require a magistrate to hold an individual closed hearing for each matter. The workgroup came up with a compromise procedure to have the minor's name appear in CourtView while the case is open and then disappear once the case is closed.

2:47:44 PM
SENATOR WIELECHOWSKI asked if that procedure would entitle the minor to a public defender or if the court would issue an arrest warrant if he/she didn't show up for court.

MS. FRANKLIN explained that the minor offense rules apply to conduct that is designated with a fine that is not to exceed $500. Arrest warrants for failure to appear are specifically prohibited, but the court would enter a default judgment and it would become a criminally delinquent fine that is collectible from the PFD. The workgroup realized that was one way to bring the matter to the attention of the parents.

SENATOR WIELECHOWSKI asked 1) if the minors qualify for a public defender, 2) the number of cases, 3) how many are likely to go to trial, and 4) if more resources would be needed.

MS. FRANKLIN explained that as a general rule no defense or prosecution time is spent on minor offenses. The magistrate makes a decision and imposes a fine. She noted that some of the fines in Sec. 17.38 don't align with the minor offense procedure rules.

2:55:06 PM
SENATOR WIELECHOWSKI asked if this will result in police officers spending a lot of time sitting in court in order to prosecute kids.

MS. FRANKLIN said she can't predict how many offenses will be written up and how many individuals will ask for a trial. She suspects there will be an initial spike but that it will drop quickly thereafter.

SENATOR MICCICHE thanked Ms. Franklin for her work on Title 4 and told the committee that a primary reason he is sponsoring the rewrite is to get more reasonable minor consuming regulations. He asked how to dovetail the likely outcome of the Title 4 rewrite with SB 30 that isn't existing law.

MS. FRANKLIN said she appreciates that SB 30 addresses the conduct in the form of a violation without a lot of the requirements that result in unintended consequences. She suggested looking carefully at the rehabilitation section for ways to proactively encourage rehabilitation and have a clear intention about what happens if the youth doesn't adhere to an imposed requirement in the treatment plan. The Title 4 rewrite

does away with the "get treatment or else" rubric and instead offers a carrot to significantly reduce a $500 fine.

SENATOR MICCICHE told the members he'd share the proposed language for AS 04.16.050.

SENATOR COGHILL advocated requiring parental consent or participation for medical marijuana. He asked if that isn't what happens in a licensed establishment when a young person is accompanied by a parent.

MS. FRANKLIN said that's correct. She explained the different types of licenses where minors can go on a licensed premises and acknowledged that smoking marijuana doesn't accompany a meal the way a glass of wine or a beer might. She noted that both recreational marijuana states have avoided having places to publicly consume marijuana. She said that might be addressed in year two.

MS. FRANKLIN turned to medical marijuana noting that she provided copies of the document that was approved by the ABC Board yesterday entitled Preliminary Consideration of Implementation of 17.38. She opined that Alaska is fortunate it is starting from scratch because having the overlay of medical marijuana dispensaries on the recreational market has caused problems in Colorado. One is a gray market where people are cultivating large quantities of marijuana in the name of being patient caretakers. She stressed that the caretaker provision in AS 17.37 has not been abused and she would prefer it not be changed. She cautioned that creating a special category would potentially result in more applications like it did in Colorado.

3:11:29 PM
SENATOR COSTELLO asked for a list of the membership of the Title 4 stakeholder workgroup.

MS. FRANKLIN agreed to provide the information.

3:12:32 PM
There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:12 p.m.