

CS FOR SENATE BILL NO. 74(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/5/05
Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act making findings relating to marijuana use and possession; relating to**
2 **marijuana and misconduct involving a controlled substance; and providing for an**
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 PURPOSE. The purpose of this Act is to protect the health and safety of persons in
8 this state and to provide legislative findings concerning this Act regarding marijuana and its
9 effects in this state.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 FINDINGS. The type of marijuana available in the United States and Alaska today,
13 and the changes in the patterns of usage of the drug, particularly by young Alaskans, Alaska
14 Natives and those undergoing alcohol treatment, pose a threat to the public health and welfare

1 that justifies prohibiting possession in this state, even by adults at home. In this Act, the
2 legislature has considered its duty to implement the right to privacy in art. I, sec. 22,
3 Constitution of the State of Alaska, and its duty to promote the public health and welfare in
4 art. VII, sec. 4, Constitution of the State of Alaska. To carry out the intent of the voters and
5 the legislature, it will ultimately be necessary for the courts in Alaska to come to different
6 conclusions about state statutes relating to marijuana than those expressed in *Noy v. State*, 83
7 P.3d 538 (Alaska App. 2003), and *Crocker v. State*, 97 P.3d 93 (Alaska App. 2004). To assist
8 the courts in considering these issues, the legislature further finds that

9 (1) the potency of marijuana has increased dramatically since the 1960s and
10 1970s; the national average amount of delta-9-tetrahydrocannabinol (THC), the main
11 psychoactive ingredient, was less than one percent then, but increased steadily in the 1980s
12 and 1990s, and by 2003 was six times higher, at 6.4 percent; marijuana grown and available in
13 Alaska is much more potent than the national average, and has been tested with THC levels
14 over 20 percent; the average potency of Alaska marijuana for the period 1993-2003 was over
15 10 percent and for 2003 was nearly 14 percent; Alaska marijuana today commands hundreds
16 of dollars per ounce on the illegal market and is often sold in smaller amounts within the price
17 range of teenagers; the increasing potency of marijuana corresponds to an increase in
18 substance abuse treatment admissions, particularly youth 12 - 17 years of age, and in the
19 number of persons seeking emergency medical care due to marijuana-related incidents;

20 (2) several hundred adults and children are admitted into treatment each year
21 in Alaska for marijuana abuse, with more than half being children under 18 years of age and
22 more than a third being Alaska Natives; pregnant women in Alaska use marijuana at a higher
23 rate than the national average and the percentage of pregnant Alaska Native women using
24 marijuana is more than double the national average and the average for non-Native Alaskan
25 women; the percentage of Alaska Native high school youth who have used marijuana is
26 significantly higher than among non-Native youth;

27 (3) there is evidence that many users become dependent on marijuana under
28 the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders
29 IV; studies have shown that use of marijuana and withdrawal from marijuana affect some of
30 the same neurochemical processes as known addictive drugs; Marijuana Anonymous chapters
31 to treat marijuana addicts exist in a majority of states in the country. This is persuasive

1 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of
2 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

3 (4) early exposure of young people to marijuana increases the likelihood of
4 lifelong health and social problems, makes it more likely that the person will later use more
5 potent illegal drugs, and is associated with depression and an increased risk of attempting
6 suicide;

7 (5) a high percentage of persons in treatment for alcohol abuse also abuse
8 marijuana, particularly among Alaska Natives; although the relationship between marijuana
9 and alcohol and other drugs is not fully understood, there is a correlative effect that makes it
10 more difficult to treat alcoholism when marijuana is also used;

11 (6) marijuana consists of hundreds of different chemicals and can affect
12 almost every organ and system in the body, including the lymph system, the heart, and the
13 lungs; THC binds to receptors in the brain that should otherwise bind to naturally occurring
14 brain chemicals; marijuana can affect memory, attention, judgment, and other cognitive
15 functions and can impair motor coordination, time perception, and balance; marijuana smoke
16 contains more carcinogenic hydrocarbons than tobacco smoke; marijuana often contains
17 bacteria or fungus that are dangerous to humans, and is harvested and sold without removing
18 pesticides and fungicides;

19 (7) a high percentage of persons arrested in this state, including adults and
20 juveniles who commit violent offenses, have marijuana in their system at the time of the
21 arrest; the percentage is particularly high for adults arrested for domestic violence who test
22 positive for marijuana at the time of the arrest;

23 (8) if a parent uses marijuana, their children are four to five times more likely
24 to become marijuana users; many high school students report that they have been able to get
25 marijuana at home or from a relative; criminal penalties for possession of marijuana in the
26 home will deter possession by adults and reduce its availability and accessibility to children;
27 studies have shown that criminal penalties for possession of marijuana are effective in
28 increasing the perception among teenagers of the risks of using the drug, thus reducing its use
29 by young people;

30 (9) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of
31 appeals allowed any person over 17 years of age to possess up to four ounces of marijuana in

1 their home; at the same time, the court held that possession of four ounces could legitimately
 2 be prohibited even in the home because it was reasonable for the legislature to conclude in
 3 1982 that possession of four ounces is indicative of an intent to sell; the Noy decision also led
 4 the same court in Crocker v. State, 97 P.3d 93 (Alaska App. 2004) to adopt requirements for
 5 search warrants to investigate marijuana-growing that, in the words of the dissenting chief
 6 judge, make it "difficult for the state to enforce legitimate laws prohibiting the sale and
 7 possession of marijuana."

8 * **Sec. 3.** AS 11.71.040(a) is amended to read:

9 (a) Except as authorized in AS 17.30, a person commits the crime of
 10 misconduct involving a controlled substance in the fourth degree if the person

11 (1) manufactures or delivers any amount of a schedule IVA or VA
 12 controlled substance or possesses any amount of a schedule IVA or VA controlled
 13 substance with intent to manufacture or deliver;

14 (2) manufactures or delivers, or possesses with the intent to
 15 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
 16 of an aggregate weight of one ounce or more containing a schedule VIA controlled
 17 substance;

18 (3) possesses

19 (A) any amount of a schedule IA or IIA controlled substance;

20 (B) 25 or more tablets, ampules, or syrettes containing a
 21 schedule IIIA or IVA controlled substance;

22 (C) one or more preparations, compounds, mixtures, or
 23 substances of an aggregate weight of three grams or more containing a
 24 schedule IIIA or IVA controlled substance;

25 (D) 50 or more tablets, ampules, or syrettes containing a
 26 schedule VA controlled substance;

27 (E) one or more preparations, compounds, mixtures, or
 28 substances of an aggregate weight of six grams or more containing a schedule
 29 VA controlled substance;

30 (F) one or more preparations, compounds, mixtures, or
 31 substances of an aggregate weight of **four ounces** [ONE POUND] or more

1 containing a schedule VIA controlled substance; or

2 (G) 25 or more plants of the genus cannabis;

3 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

4 (A) with reckless disregard that the possession occurs

5 (i) on or within 500 feet of school grounds; or

6 (ii) at or within 500 feet of a recreation or youth center;

7 or

8 (B) on a school bus;

9 (5) knowingly keeps or maintains any store, shop, warehouse,
10 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
11 keeping or distributing controlled substances in violation of a felony offense under this
12 chapter or AS 17.30;

13 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
14 thing that [WHICH] prints, imprints, or reproduces a trademark, trade name, or other
15 identifying mark, imprint, or device of another or any likeness of any of these upon a
16 drug, drug container, or labeling so as to render the drug a counterfeit substance;

17 (7) knowingly uses in the course of the manufacture or distribution of a
18 controlled substance a registration number that is fictitious, revoked, suspended, or
19 issued to another person;

20 (8) knowingly furnishes false or fraudulent information in or omits
21 material information from any application, report, record, or other document required
22 to be kept or filed under AS 17.30;

23 (9) obtains possession of a controlled substance by misrepresentation,
24 fraud, forgery, deception, or subterfuge; or

25 (10) affixes a false or forged label to a package or other container
26 containing any controlled substance.

27 * **Sec. 4.** AS 11.71.050(a) is amended to read:

28 (a) Except as authorized in AS 17.30, a person commits the crime of
29 misconduct involving a controlled substance in the fifth degree if the person

30 (1) manufactures or delivers, or possesses with the intent to
31 manufacture or deliver, one or more preparations, compounds, mixtures, or substances

1 of an aggregate weight of **less than one** [ONE-HALF] ounce [OR MORE] containing
 2 a schedule VIA controlled substance;

3 (2) manufactures or delivers, or possesses with the intent to
 4 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
 5 of an aggregate weight of less than one-half ounce containing a schedule VIA
 6 controlled substance, for remuneration;

7 (3) possesses

8 (A) less than 25 tablets, ampules, or syrettes containing a
 9 schedule IIIA or IVA controlled substance;

10 (B) one or more preparations, compounds, mixtures, or
 11 substances of an aggregate weight of less than three grams containing a
 12 schedule IIIA or IVA controlled substance;

13 (C) less than 50 tablets, ampules, or syrettes containing a
 14 schedule VA controlled substance;

15 (D) one or more preparations, compounds, mixtures, or
 16 substances of an aggregate weight of less than six grams containing a schedule
 17 VA controlled substance; [OR]

18 (E) one or more preparations, compounds, mixtures, or
 19 substances of an aggregate weight of **one ounce** [ONE-HALF POUND] or
 20 more containing a schedule VIA controlled substance; **or**

21 **(F) one or more preparations, compounds, mixtures, or**
 22 **substances containing a schedule VIA controlled substance while driving**
 23 **or operating a motor vehicle, aircraft, or motorized watercraft;** or

24 (4) fails to make, keep, or furnish any record, notification, order form,
 25 statement, invoice, or information required under AS 17.30.

26 * Sec. 5. AS 11.71.060(a) is amended to read:

27 (a) Except as authorized in AS 17.30, a person commits the crime of
 28 misconduct involving a controlled substance in the sixth degree if the person

29 (1) uses or displays any amount of a schedule VIA controlled
 30 substance;

31 **(2)** [OR] possesses one or more preparations, compounds, mixtures, or

1 substances of an aggregate weight of less than **one ounce** [ONE-HALF POUND]
2 containing a schedule VIA controlled substance;

3 **(3) possesses one or more preparations, compounds, mixtures, or**
4 **substances containing a schedule VIA controlled substance while a passenger in a**
5 **motor vehicle, aircraft, or motorized watercraft;**

6 **(4) being the driver or operator of a motor vehicle, aircraft, or**
7 **motorized watercraft, knowingly permits a passenger to possess one or more**
8 **preparations, compounds, mixtures, or substances containing a schedule VIA**
9 **controlled substance;** or

10 **(5) [(2)]** refuses entry into a premise for an inspection authorized under
11 AS 17.30.

12 * **Sec. 6.** AS 11.71.080 is amended to read:

13 **Sec. 11.71.080. Aggregate weight of live marijuana plants.** For purposes of
14 calculating the aggregate weight of a live marijuana plant, the aggregate weight shall
15 be **one-sixth of the measured** weight of the marijuana **plant after the roots of the**
16 **marijuana plant have been removed** [WHEN REDUCED TO ITS COMMONLY
17 USED FORM].

18 * **Sec. 7.** AS 11.71.050(a)(2) is repealed.

19 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).