



**REPRESENTATIVE CHUCK KOPP  
DISTRICT 24  
Klatt Road – Oceanview – Southport – Bayshore**

**Sectional Analysis  
House Bill 10 version U**

“An Act relating to misconduct involving a controlled substance; providing for substitution of judgment; and relating to sentencing.”

Please note that this is a sectional summary and not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

**Section 1** (pages 1-3)

Amends **AS 11.71.040 Misconduct involving a controlled substance in the third degree**. This section amends subsection (a) by adding additional grounds for committing a felony of possession of any amount of schedule IA or IIA (heroin and opiate) drugs. Specifically, a person commits a felony possession if they possess any amount of a schedule IA or IIA drug and they have been previously convicted two or more times of felony drug possession under this new provision, or convicted two or more times of misdemeanor drug possession (AS 11.71.050(a)(4)).

This new paragraph makes clear that certain possession felonies are not affected by this new provision. Specifically, felony possession of heroin/opiates near a school (AS 11.71.030(a)(3)) or felony possession of date rape drugs (AS 11.71.040(a)(3)).

**Section 2** (page 3)

Conforming amendment to **AS 11.71.050 Misconduct involving a controlled substance in the fourth degree**. Amends AS 11.71.050(a)(4) by adding the new paragraph of Section 1 above (AS 11.71.040(a)(12)) into the list of exemptions of what constitutes misdemeanor drug possession.

**Section 3** (pages 3- 4)

Conforming amendment to **AS 11.71.311. Restriction on prosecution for certain persons in connection with a drug overdose**. Amends AS 11.71.311(a) by adding the new paragraph of Section 1 above (AS 11.71.040(a)(12)) into the list of crimes that may not be prosecuted against a person if that person sought in good faith either medical or law enforcement aide for another person they believed to be having a drug overdose.

#### **Section 4** (pages 4-5)

Amends the Sentencing and Probation chapter (AS 12.55) of the Code of Criminal Procedure (AS Title 12) by adding a new section that introducing the policy of substitution of judgment.

The substitution of judgment allows the court, prosecution, and defendant to agree—after a finding or plea of guilty and before entry of judgment of guilt—to place the defendant on probation if they will enter a drug treatment program. If the defendant successfully completes the drug treatment program the court can vacate the charge and substitute the felony conviction with a misdemeanor drug possession conviction.

This new section has tight restrictions on the defendant and if the defendant is found

- to have violated the conditions of probation,
- engaged in other criminal activity, or
- failed to participate in the treatment program,

The court may revoke the probation, enter the judgment on the defendant’s previous plea or finding of guilt and pronounce sentence at any time as outlined in the new section.

#### **Section 5** (page 5-6)

Amends **AS 12.55.078. Suspending entry of judgment.** This section clarifies that if a person is finally convicted of the new provision added by section 1 (AS 11.71.040(a)(12)), that is fails the treatment program and has judgment entered against them, they are not eligible for a suspended entry of judgment.

#### **Section 6** (page 6-7)

Amends **AS 12.55.085. Suspending imposition of sentence.** This section clarifies that if a person is finally convicted of the new provision added by section 1 (AS 11.71.040(a)(12))—that is the defendant fails the treatment program and has judgment entered—they are not eligible for a suspended imposition of sentence.

#### **Section 7**

Adds a new section to the uncodified law of the State of Alaska and provides that the act has prospective effects on offenses covered by the provisions of this bill. Specifically, that the provisions of the bill only apply to offenses committed on or after the effective date of the act