THE STATE of ALASKA
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The Honorable Lesil McGuire
Senate Judiciary Committee Chair
State Capitol, Rm. 121
Juneau, Alaska 99801

The Honorable Gabrielle LeDoux
House Judiciary Committee Chair
State Capitol, Rm. 118
Juneau, Alaska 99801

Re: SB 30 (29-LS023\N)

Dear Senator McGuire and Representative LeDoux:

You have asked the Criminal Division for written testimony regarding SB 30 (29-LS023\N) as well as a history of marijuana law in Alaska. The Criminal Division thanks the House and Senate Judiciary Committees for the opportunity to provide this information. A history of marijuana law is attached and the Criminal Division's technical comments are provided below.

Misconduct Involving a Controlled Substance in the Fourth Degree (Sec. 1, Page 2, Line 27)

This language is currently in statute and prohibits the possession of 25 or more plants of genus cannabis (AS 11.71.040(a)). Ballot Measure 2 (the initiative) allows a person to possess six plants or less. This creates a gap in the law. Currently, there is no legal framework to handle possession of 7-24 marijuana plants.

Misconduct Involving a Controlled Substance in the Fifth Degree (Sec. 2, Page 4, Line 24)

This language prohibits the manufacture of a schedule VIA controlled substance, as defined in the bill, through the use of a solvent-based extraction method that uses a substance other than vegetable glycerin as the solvent. This conduct would be a class A misdemeanor. If a charge were brought under this section it would be for manufacturing a schedule VIA controlled substance in this manner.

Section 5 of the bill (page 6, lines 16-24) provides a defense to manufacturing charges if a person is 21 years of age or older at the time of the manufacture, the manufacture was of one ounce or less of marijuana, occurred on property lawfully owned by the defendant or with the property owner's permission, and occurred on property that was reasonably secured from unauthorized access.

Section 5 of the bill also provides a defense to manufacturing charges for marijuana establishments licensed under 17.38 and their employees (page 7, lines 20-30). In order to use this defense for a manufacturing charge, the marijuana establishment must have been licensed under 17.38 and in compliance with those licensing requirements.

Given the potential volatility of some of the substances that are commonly used with solvent-based extraction methods, it is unclear if the intent is to allow both private individuals and marijuana establishments to manufacture schedule VIA controlled substances using a substance other than vegetable glycerin.

Definitions of Marijuana and Scheduling of Hashish, and Hash Oil or Hashish Oil (Sec. 6-9, Page 8, Lines 3-31 and Page 9, Lines 1-2)

Sections 6-9 of SB 30 deal with the definition of marijuana, marijuana concentrate, and the rescheduling of hashish and hash oil or hashish oil. The definition of marijuana found in section 7 (page 8, lines 6-20) is very similar to the definition of marijuana found in the initiative. This definition includes "marijuana concentrate."

Section 9 (page 9, lines 3-5) defines "marijuana concentrate" as a product created by extracting cannabinoids from any part of the plant genus cannabis. Arguably, hashish and hash oil or hashish oil could fall under this definition and therefore be considered marijuana concentrates which are included in the definition of marijuana.

However, section 6 (page, 8, lines 3-5), which reschedules hashish and hash oil and hashish oil to a schedule VIA controlled substance, lists these substances separately from

marijuana. Therefore, while marijuana, hashish and hash oil or hashish oil are in the same schedule, because hashish and hash oil or hashish oil are listed separately within that schedule, the implication is that they are separate and distinct substances and should not be considered marijuana.

Marijuana Open Container (Sec. 11, Page 9, Lines 15-17)

Section 11 of the bill defines "open marijuana container" which is generally prohibited in the passenger compartment of a vehicle. The definition of "open marijuana container" includes the requirement that there be evidence that the marijuana has been consumed in the motor vehicle. It is unclear what the intent is in adding this requirement. This requirement is unlike the current open container provision for alcohol which generally prohibits an open alcoholic beverage container in the passenger compartment of a vehicle regardless of whether it has actually been consumed in the vehicle.

Repeal Section (Sec. 13, Page 9, Lines 25-26)

This section repeals a number of statutes including several statutes enacted by the initiative. Several of the elements found in the statutes which are to be repealed are found in the defense section (section 5) of the bill. However, repealing some of the statutes enacted by the initiative, specifically AS 17.38.070, will likely have consequences outside of the criminal context.

Again, thank you for the opportunity to provide comments on SB 30 (29-LS023\N). Please let me know if I can be of any further assistance.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By: Kaci Schroeder
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Encl: A Short History of Marijuana Law in Alaska

A Short History of Marijuana Law in Alaska

1975 Legislation

In 1975, the Alaska Legislature made changes to the state drug law. Ch. 110, SLA 1975. Among the changes were that personal possession by adults of one ounce or less in public, or possession of any amount of marijuana by adults in private, was made punishable only by a "civil fine of not more than $100." *See former* AS 17.12.110(e). Eleven days later, on May 27, 1975, the Alaska Supreme Court issued *Ravin v. State*, 537 P.2d 494 (1975).

In *Ravin,* the Court held that it was a violation of the Alaska Constitution's right to privacy to prosecute adults who possess or use marijuana in the privacy of their homes in amounts *not indicative of an intent to sell.*

1982 Legislation

In 1982, the legislature moved Alaska's drug laws into Title 11. They repealed the $100 civil fine and made it a class B misdemeanor to possess four ounces of marijuana or more in private or in public. It was a violation to possess less than four ounces in public. However, in light of *Ravin*, the legislature did not prohibit private possession of less than four ounces of marijuana for personal use by persons aged 19 or older.

1990 Legislation

In the general election of 1990, Alaska voters approved a ballot proposition that amended the statutes such that possession of *any amount of marijuana less than eight ounces* was a class B misdemeanor.

1998 and 1999 Legislation

In 1998, the voters passed a medical marijuana initiative. In the following year the Legislature rewrote the previous year's initiative to make it workable.

2000 and 2004

In 2000, Alaska voters turned down a ballot measure to legalize marijuana.

In 2004, Alaska voters turn downed a ballot measure to decriminalize and regulate marijuana.

2006 Legislation

In 2006, for the first time since 1982, the legislature amended the state drug laws.

The ACLU challenged portions of both the new AS 11.71.050 (prohibiting possession of under four ounces) and portions of the new AS 11.71.060 (prohibiting possession of less

than one ounce), but the superior court found that the ACLU had not argued that possession of more than one ounce was protected under *Ravin* or that "any plaintiff or ACLU member actually possesses more than one ounce of marijuana in the home." However, the superior court also found that the new 11.71.060, which criminalizes possession of less than one ounce, violated the Supreme Court's decision in *Ravin* and entered a preliminary injunction against the state enforcing the new law.

On April 3, 2009, the Alaska Supreme Court in *State v. ACLU* said the matter was not ripe on the issue of whether the 2006 law overturned the court's 1975 decision in *Ravin*. *State v. ACLU*, 204 P.3d 364 (2009). The preliminary injunction has been removed.

Presently, the 2006 legislation is the law of this state. It has not been challenged since the Supreme Court's decision.