

CS FOR HOUSE BILL NO. 66(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/10/23

Offered: 5/8/23

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to homicide resulting from conduct involving controlled substances;**
2 **relating to misconduct involving a controlled substance; relating to sentencing; and**
3 **providing for an effective date."**

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

5 * **Section 1.** AS 11.41.110(a) is amended to read:

6 (a) A person commits the crime of murder in the second degree if

7 (1) with intent to cause serious physical injury to another person or
8 knowing that the conduct is substantially certain to cause death or serious physical
9 injury to another person, the person causes the death of any person;

10 (2) the person knowingly engages in conduct that results in the death
11 of another person under circumstances manifesting an extreme indifference to the
12 value of human life;

13 (3) under circumstances not amounting to murder in the first degree
14 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the

1 person commits or attempts to commit arson in the first degree, kidnapping, sexual
 2 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor
 3 in the first degree, sexual abuse of a minor in the second degree, burglary in the first
 4 degree, escape in the first or second degree, robbery in any degree, or misconduct
 5 involving a controlled substance under AS 11.71.010(a), 11.71.021(a), 11.71.030(a)(2)
 6 or (9), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or
 7 in immediate flight from that crime, any person causes the death of a person other than
 8 one of the participants;

9 (4) acting with a criminal street gang, the person commits or attempts
 10 to commit a crime that is a felony and, in the course of or in furtherance of that crime
 11 or in immediate flight from that crime, any person causes the death of a person other
 12 than one of the participants; [OR]

13 (5) the person with criminal negligence causes the death of a child
 14 under the age of 16, and the person has been previously convicted of a crime involving
 15 a child under the age of 16 that was

- 16 (A) a felony violation of AS 11.41;
- 17 (B) in violation of a law or ordinance in another jurisdiction
 18 with elements similar to a felony under AS 11.41; [OR]
- 19 (C) an attempt, a solicitation, or a conspiracy to commit a
 20 crime listed in (A) or (B) of this paragraph; **or**

21 **(6) the person knowingly manufactures or delivers a controlled**
 22 **substance in violation of AS 11.71.010 - 11.71.030, and a person dies as a direct**
 23 **result of ingestion of the controlled substance; the death is a result that does not**
 24 **require a culpable mental state.**

25 * **Sec. 2.** AS 11.41.120(a) is amended to read:

- 26 (a) A person commits the crime of manslaughter if the person
 - 27 (1) intentionally, knowingly, or recklessly causes the death of another
 28 person under circumstances not amounting to murder in the first or second degree;
 - 29 (2) intentionally aids another person to commit suicide; or
 - 30 (3) knowingly manufactures or delivers a controlled substance in
 31 violation of **AS 11.71.040(a)(1)** [AS 11.71.010 - 11.71.030 OR 11.71.040(a)(1)] for

1 schedule IVA controlled substances, and a person dies as a direct result of ingestion of
 2 the controlled substance; the death is a result that does not require a culpable mental
 3 state [; IN THIS PARAGRAPH, "INGESTION" MEANS VOLUNTARILY OR
 4 INVOLUNTARILY TAKING A SUBSTANCE INTO THE BODY IN ANY
 5 MANNER].

6 * **Sec. 3.** AS 11.41.140 is amended to read:

7 **Sec. 11.41.140. Definitions [DEFINITION].** In AS 11.41.100 - 11.41.140,

8 **(1) "ingestion" means voluntarily or involuntarily taking a**
 9 **substance into the body in any manner;**

10 **(2) "person" means**, when referring to the victim of a crime,
 11 [MEANS] a human being who has been born and was alive at the time of the criminal
 12 act; a [A] person is "alive" if there is spontaneous respiratory or cardiac function or,
 13 when respiratory and cardiac functions are maintained by artificial means, there is
 14 spontaneous brain function.

15 * **Sec. 4.** AS 11.71.010(a) is amended to read:

16 (a) Except as authorized in AS 17.30, a person commits the crime of
 17 misconduct involving a controlled substance in the first degree if the person

18 (1) delivers any amount of a schedule IA controlled substance to a
 19 person under 19 years of age who is at least three years younger than the person
 20 delivering the substance;

21 (2) delivers any amount of a schedule IIA or IIIA controlled substance
 22 to a person under 19 years of age who is at least three years younger than the person
 23 delivering the substance; [OR]

24 (3) engages in a continuing criminal enterprise; **or**

25 **(4) delivers any amount of a schedule IA, IIA, IIIA, or IVA**
 26 **controlled substance to a person who is**

27 **(A) mentally incapable;**

28 **(B) incapacitated; or**

29 **(C) unaware that a controlled substance is being delivered.**

30 * **Sec. 5.** AS 11.71.010(b) is amended to read:

31 (b) For purposes of this section,

(1) a person is engaged in a "continuing criminal enterprise" if

(A) [(1)] the person commits a violation of this chapter which is punishable as a felony; and

(B) [(2)] that violation is a part of a continuing series of five or more violations of this chapter

ii [(A)] which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and

(ii) [(B)] from which the person obtains substantial income or resources;

(2) "incapacitated" has the meaning given in AS 11.41.470;

(3) "mentally incapable" has the meaning given in AS 11.41.470.

* Sec. 6. AS 11.71.021(a) is amended to read:

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

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(3) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers;

(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

1 on

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(5) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine, or its salts, isomers, or salts of isomers; or

(6) under circumstances not proscribed under AS 11.71.010(a)(2),
delivers

(A) an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, to another person with reckless disregard that the precursor will be used to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

(B) a listed chemical to another person with reckless disregard that the listed chemical will be used to manufacture any material, compound, mixture, or preparation that contains

(i) methamphetamine, or its salts, isomers, or salts of isomers;

(ii) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers; or

(iii) methamphetamine, or its salts, isomers, or salts of isomers in an organic solution; **or**

(C) methamphetamine, or its salts, isomers, or salts of isomers.

* Sec. 7. AS 11.71.030(a) is amended to read:

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

(1) [REPEALED]

(2) delivers any amount of a

(A) schedule IVA **or** [] VA [, OR VIA] controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; **or**

(B) schedule VIA controlled substance to a person under 18 years of age who is at least three years younger than the person delivering the substance;

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus;

(4) [REPEALED]

(5) [REPEALED]

(6) [REPEALED]

(7) [REPEALED]

(8) [REPEALED]

(9) under circumstances not proscribed under AS 11.71.021(a)(2) - (6),

or delivers any amount of a schedule IIA or IIIA controlled substance or

amount of a schedule IIA or IIIA controlled substance with intent to

or deliver.

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

(a) Except as authorized in AS 17.30 and AS 17.38, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

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

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

(3) possesses any amount of a schedule IA controlled substance listed in AS 11.71.140(e);

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

- (A) with reckless disregard that the possession occurs
 - (i) on or within 500 feet of school grounds; or
 - (ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus;

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

10 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
11 thing that prints, imprints, or reproduces a trademark, trade name, or other identifying
12 mark, imprint, or device of another or any likeness of any of these on a drug, drug
13 container, or labeling so as to render the drug a counterfeit substance;

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

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

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

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

(11) [REPEALED]

(12) violates AS 11.71.050(a)(4) and, within the preceding 10 years, has been previously convicted of a crime under AS 11.71.050(a)(4), or a law or ordinance in this or another jurisdiction with elements similar to AS 11.71.050(a)(4);

or

(13) delivers any amount of a schedule VIA controlled substance to a person who is 18 years of age who is at least three years younger than the person delivering the substance.

* **Sec. 9.** AS 12.55.125(c) is amended to read:

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, four to seven years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.021(a)(2)(A) or (B), seven to 11 years if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(C) and the conviction is for manufacturing or delivery under AS 11.71.021(a)(1) related to a schedule IA controlled substance set out in AS 11.71.140(c)(29) or under AS 11.71.021(a)(6) related to a schedule IIA controlled substance set out in AS 11.71.150(e)(2), seven to 11 years;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not

1 subject to sentencing under (l) of this section, 15 to 20 years.

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

4 APPLICABILITY. AS 11.41.110(a), as amended by sec. 1 of this Act, AS 11.41.120(a), as
5 amended by sec. 2 of this Act, AS 11.41.140, as amended by sec. 3 of this Act,
6 AS 11.71.010(a), as amended by sec. 4 of this Act, AS 11.71.010(b), as amended by sec. 5 of
7 this Act, AS 11.71.021(a), as amended by sec. 6 of this Act, AS 11.71.030(a), as amended by
8 sec. 7 of this Act, AS 11.71.040(a), as amended by sec. 8 of this Act, and AS 12.55.125(c), as
9 amended by sec. 9 of this Act, apply to offenses committed on or after the effective date of
10 this Act.

11 * **Sec. 11.** This Act takes effect July 1, 2023.