



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

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March 9, 2015

The Honorable Anna MacKinnon
Senate Finance Co-Chair
State Capitol, Rm. 516
Juneau, Alaska 99801

Re: SB 30 (29-LS0231\F) and ATV's

Dear Senator MacKinnon:

At the March 5, 2015 hearing on SB 30, the Department of Law was asked to submit its testimony in writing identifying policy questions contained in the bill. The department was also asked a question which required additional research. The policy issues that were identified at that hearing are below as well as the response to the question which needed further research.

Promoting Contraband (Page 75, Line 26)

Under current law, it is a class C felony to introduce or receive, or attempt to introduce or receive, a controlled substance into a correctional facility. (AS 11.56.375). Despite it being legal to possess and use certain amounts of marijuana, it is still a controlled substance, and a person could still be charged with a class C felony for introducing or receiving marijuana into a correctional facility. When it comes to promoting contraband offenses, should marijuana be treated similarly to tobacco? Introducing or receiving tobacco into a correctional facility is a class A misdemeanor.

The current version of SB 30 addresses this issue by removing marijuana from the controlled substances schedule and adding it into AS 33.30.015(a) which lists items that prisoners are not allowed to possess inside a correctional facility. This amendment brings marijuana in line with tobacco and makes it a class A misdemeanor to bring marijuana into a correctional facility.

Possession of Marijuana within 500 feet of School Grounds (Page 14, Line 14)

Currently, it is a class C felony to possess marijuana within 500 feet of school grounds, a recreation or youth center, or on a school bus. (AS 11.71.040). While there is no similar provision for alcohol, it is a policy question as to whether or not this prohibition should be continued. If the answer is yes, the severity of the penalty may also be evaluated.

Local Option (Page 35, Line 13)

Ballot Measure #2, An Act to Tax and Regulate the Production, Sale, and Use of Marijuana (the initiative) allows some local governments to prohibit the operation of marijuana cultivation, manufacturing, testing, and retail stores. The initiative's definition of "local government" does not include unincorporated villages. SB 30 addresses this by inserting language into AS 17.38 which allows an established village to vote to prohibit marijuana establishments from operating within their boundaries.

Under current law, local governments, including municipalities and established villages, can restrict the import of alcohol into their communities. Depending on the circumstances surrounding the import of alcohol into a local option community, a person could be guilty of a class A misdemeanor or a class C felony. (AS 04.16.200). Should local governments and established villages be allowed to prohibit the import of marijuana into their communities?

Hash Oil

There has been testimony that hash oil falls under the initiative's definition of marijuana. How should this substance be weighed? The most common practice is to weigh substances by their mass. Should this be the same practice for hash oil which is a fluid?

Further, regardless of the possession limits which are found in the initiative or in statute, once hash oil is put into a baked good and becomes an "edible" there is no way for law enforcement to separate out the hash oil to verify its weight. The initiative is very clear that flour, chocolate, or any other substance that is combined with marijuana should not be counted towards its weight. Therefore, once hash oil or any other fluid or crystalline form of marijuana is combined with another substance, any possession limits are unenforceable.

Driving Under the Influence

State legislatures across the country have adopted various thresholds for the amount of THC a person can have in their system when operating a motor vehicle. These thresholds range from "any amount" to five nanograms of active THC per milliliter of blood. However, the science surrounding THC and impairment is not as developed as it is for alcohol and there is no roadside test for THC. Therefore, the best available test is a blood test which can measure the level of active THC in a person's system.

Alaska's current DUI structure offers several safeguards against wrongful drug DUI convictions. Alaska is not a "per se" state and AS 28.35.030 allows a defendant to explain the results of a chemical test. Additionally, defendants may introduce evidence that they were not "under the influence" of alcohol, despite the results of a chemical test.

Given the legalization of marijuana possession and the commercialization of the marijuana industry, should Alaska consider establishing thresholds for the amount of THC a person can have in their system when operating a motor vehicle?

All-Terrain Vehicles (Page 61, Line 8)


During the hearing, a question was asked about how an all-terrain vehicle could transport an open container under AS 28.35.029(b). While there is no case law directly on point, all motor vehicles which are operated on highways or vehicular ways must abide by the rules of the road. Therefore, it is likely that a person driving an all-terrain vehicle on a "highway or vehicular way or area" would be treated similarly to a person driving a motor driven cycle in that an open container may be transported as long as it is enclosed within another container.

Please let me know if I can be of any further assistance.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:


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