

CS FOR SENATE BILL NO. 70(JUD)

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/5/05
Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances regarding the crimes of manslaughter and**
2 **misconduct involving a controlled substance; relating to listing certain anabolic steroids**
3 **as controlled substances; amending Rule 41, Alaska Rules of Criminal Procedure; and**
4 **providing for an effective date."**

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

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

8 FINDINGS. The legislature finds that the illegal manufacturing of methamphetamine
9 of the type that is generally encountered in Alaska subjects anyone within a wide area to the
10 risk of fire, explosion, and toxic chemicals in gaseous, liquid, and solid form. This activity
11 presents such a high level of danger to the community and to law enforcement and
12 environmental personnel that the mandatory minimum cash bail required by sec. 6 of this Act
13 is justified for defendants described in that section.

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

- 1 (a) A person commits the crime of manslaughter if the person
 2 (1) intentionally, knowingly, or recklessly causes the death of another
 3 person under circumstances not amounting to murder in the first or second degree;
 4 [OR]
 5 (2) intentionally aids another person to commit suicide; or
 6 **(3) knowingly manufactures or delivers a controlled substance in**
 7 **violation of AS 11.71, and a person dies as a direct result of ingesting the**
 8 **controlled substance; the death is a result that does not require a culpable mental**
 9 **state; in this paragraph, "ingesting" means voluntarily or involuntarily taking a**
 10 **substance into the body in any manner.**

11 * **Sec. 3.** AS 11.41.120 is amended by adding a new subsection to read:

- 12 (c) It is an affirmative defense to a prosecution under (a)(3) of this section that
 13 (1) the defendant manufactured the controlled substance for the
 14 defendant's own personal use;
 15 (2) the controlled substance was stolen from a locked area designed for
 16 securing valuable items or dangerous materials; and
 17 (3) the defendant did not know or have reason to believe that the
 18 controlled substance would be taken from the locked area.

19 * **Sec. 4.** AS 11.71.020(a) is amended to read:

- 20 (a) Except as authorized in AS 17.30, a person commits the crime of
 21 misconduct involving a controlled substance in the second degree if the person
 22 (1) manufactures or delivers any amount of a schedule IA controlled
 23 substance or possesses any amount of a schedule IA controlled substance with intent
 24 to manufacture or deliver;
 25 (2) manufactures any material, compound, mixture, or preparation that
 26 contains
 27 (A) methamphetamine, or its salts, isomers, or salts of isomers;
 28 or
 29 (B) an immediate precursor of methamphetamine, or its salts,
 30 isomers, or salts of isomers;
 31 (3) possesses an immediate precursor of methamphetamine, or the

1 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
 2 with the intent to manufacture any material compound, mixture, or preparation that
 3 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

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

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

7 or

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

10 **(5) possesses methamphetamine in an organic solution with intent**
 11 **to extract from the solution methamphetamine salts, isomers, or salts of isomers**
 12 **[ISOMER].**

13 * **Sec. 5.** AS 11.71.180 is amended by adding a new subsection to read:

14 (f) Schedule VA includes, unless specifically excepted or unless listed in
 15 another schedule, any material, compound, mixture, or preparation that contains any
 16 quantity of the following substances, including their salts, esters, isomers, and salts of
 17 esters and isomers if those salts, esters, or isomers promote muscle growth, whenever
 18 the existence of these salts, esters, and isomers is possible within the specific chemical
 19 designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug
 20 or hormonal substance that is chemically and pharmacologically related to testosterone
 21 (other than estrogens, progestins, and corticosteroids) and that promotes muscle
 22 growth; "anabolic steroids" does not include an anabolic steroid that is expressly
 23 intended for administration through implants to cattle or other nonhuman species and
 24 that has been approved by the United States Secretary of Health and Human Services
 25 for that administration, unless a person prescribes, dispenses, or distributes that type of
 26 anabolic steroid for human use; "anabolic steroids" includes, but is not limited to, the
 27 following:

- 28 (1) boldenone;
 29 (2) chlorotestosterone (4-chlorotestosterone);
 30 (3) clostebol;
 31 (4) dehydrochlormethyltestosterone;

- 1 (5) dihydrotestosterone (4-dihydrotestosterone);
 2 (6) drostanolone;
 3 (7) ethylestrenol;
 4 (8) fluoxymesterone;
 5 (9) formebulone (formebolone);
 6 (10) mesterolone;
 7 (11) methandienone;
 8 (12) methandranone;
 9 (13) methandriol;
 10 (14) methandrostenolone;
 11 (15) methenolone;
 12 (16) methyltestosterone;
 13 (17) mibolerone;
 14 (18) nandrolone;
 15 (19) norethandrolone;
 16 (20) oxandrolone;
 17 (21) oxymesterone;
 18 (22) oxymetholone;
 19 (23) stanolone;
 20 (24) stanozolol;
 21 (25) testolactone;
 22 (26) testosterone;
 23 (27) trenbolone.

24 * **Sec. 6.** AS 12.30.023 is amended by adding a new subsection to read:

25 (b) In addition to conditions the court may impose under (a) of this section and
 26 notwithstanding other provisions in this chapter, if the defendant is charged with
 27 manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant
 28 proves to the satisfaction of the court that the defendant's only role in the offense was
 29 as an aider or abettor and that the defendant did not stand to benefit financially from
 30 the manufacturing, the court shall require the posting of a minimum of \$250,000 cash
 31 bond if the defendant

1 (1) possessed a firearm while engaged in the manufacturing; or

2 (2) has previously been convicted in this or another jurisdiction of
3 manufacturing, delivering, or possessing methamphetamine.

4 * **Sec. 7.** AS 12.55.125(c), as amended by ch. 2, sec. 8, SLA 2005, is amended to read:

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

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

11 (2) if the offense is a first felony conviction

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

19 (B) and the conviction is for manufacturing related to
20 methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years,
21 if

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

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

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

1 (4) if the offense is a third felony conviction and the defendant is not
2 subject to sentencing under (l) of this section, 15 to 20 years.

3 * **Sec. 8.** AS 12.55.125(d), as amended by ch. 2, sec. 9, SLA 2005, is amended to read:

4 (d) Except as provided in (i) of this section, a defendant convicted of a class B
5 felony may be sentenced to a definite term of imprisonment of not more than 10 years,
6 and shall be sentenced to a definite term within the following presumptive ranges,
7 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

8 (1) if the offense is a first felony conviction and does not involve
9 circumstances described in (2) of this subsection, one to three years; a defendant
10 sentenced under this paragraph may, if the court finds it appropriate, be granted a
11 suspended imposition of sentence under AS 12.55.085 if, as a condition of probation
12 under AS 12.55.086, the defendant is required to serve an active term of imprisonment
13 within the range specified in this paragraph, unless the court finds that a mitigation
14 factor under AS 12.55.155 applies;

15 (2) if the offense is a first felony conviction,

16 (A) the defendant violated AS 11.41.130, and the victim was a
17 child under 16 years of age, two to four years;

18 (B) two to four years if the conviction is for an attempt,
19 solicitation, or conspiracy to manufacture related to methamphetamine
20 under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

21 (i) the attempted manufacturing occurred, or the
22 solicited or conspired offense was to have occurred, in a building
23 with reckless disregard that the building was used as a permanent
24 or temporary home or place of lodging for one or more children
25 under 18 years of age or the building was a place frequented by
26 children; or

27 (ii) in the course of an attempt to manufacture, the
28 defendant obtained the assistance of one or more children under 18
29 years of age or one or more children were present;

30 (3) if the offense is a second felony conviction, four to seven years;

31 (4) if the offense is a third felony conviction, six to 10 years.

1 * **Sec. 9.** AS 12.55.185 is amended by adding a new paragraph to read:

2 (1) "building," in addition to its usual meaning, includes any propelled
3 vehicle or structure adopted for overnight accommodation of persons or for carrying
4 on business; when a building consists of separate units, including apartment units,
5 offices, or rented rooms, each unit is considered a part of the same building.

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

8 INDIRECT COURT RULE AMENDMENT. Section 6 of this Act has the effect of
9 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of
10 bond that can be posted to secure the pretrial release of certain defendants charged with
11 manufacturing methamphetamine under AS 11.71.020(a)(2).

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

14 APPLICABILITY. This Act applies to offenses committed on or after the effective
15 date of this Act.

16 * **Sec. 12.** This Act takes effect July 1, 2005.