

SENATE BILL NO. 74

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

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/21/05

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act making findings relating to marijuana use and possession; relating to**
2 **marijuana and misconduct involving a controlled substance; and providing an effective**
3 **date."**

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

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

7 PURPOSE. The purpose of this Act is to protect the health and safety of persons in
8 this state, and to provide legislative findings concerning this Act regarding marijuana and its
9 effects in this state.

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

12 FINDINGS. The legislature finds that marijuana poses a threat to the public health
13 that justifies prohibiting its use and possession in this state, even by adults in private. The
14 legislature further finds that

1 (1) marijuana has been for many years and continues to be the most
2 commonly used illegal controlled substance in the United States;

3 (2) marijuana has many adverse health and social effects, and there is
4 evidence that it has addictive properties similar to heroin and other similar illegal controlled
5 substances;

6 (3) in addition to concerns about marijuana use generally, the legislature is
7 particularly concerned with the rates of use of marijuana by young people and Alaska Natives,
8 which exceed national averages;

9 (4) early exposure of children to marijuana increases the likelihood of lifelong
10 health and social problems, and makes it much more likely that the person will go on to use
11 more potent illegal controlled substances;

12 (5) a high percentage of adults arrested in this state for domestic violence test
13 positive for marijuana at the time of arrest;

14 (6) marijuana use by children is associated with an increased risk of
15 attempting suicide;

16 (7) marijuana consists of over four hundred different chemicals and can affect
17 almost every organ and system in the body, including the lymph system, the heart, and the
18 lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and
19 can impair motor coordination, time perception, and balance, especially in children;

20 (8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco
21 smoke and a person who smokes several marijuana cigarettes a week may be taking in as
22 many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes
23 every day;

24 (9) the potency of marijuana in the 1960s and 1970s was very low compared
25 to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main
26 psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but
27 has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six
28 times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent
29 than national averages, and has been tested with THC levels of over 20 percent; marijuana of
30 the potency generally available in 2005 is a strong hallucinogenic drug that can command
31 hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana

1 corresponds to an increase in the number of persons seeking emergency medical care for
2 marijuana-related incidents;

3 (10) several hundred adults and children in this state are admitted into
4 treatment each year for marijuana abuse, with more than half of the admissions being children
5 under the age of 18 and more than a third of the admissions being Alaska Natives; youth and
6 Alaska Natives made up a disproportionate number of the total statewide treatment
7 admissions for marijuana abuse in 2003;

8 (11) Alaska consistently ranks in the top 10 states, and occasionally in the top
9 five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts
10 of marijuana grown in this state are sold throughout the state and exported to other parts of the
11 United States; the price of high-quality marijuana is hundreds of dollars per ounce and
12 thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed
13 in 2005, shows that marijuana often sells for \$500 or more per ounce;

14 (12) a large percentage of persons arrested in this state, including adults and
15 juveniles who commit violent offenses, have marijuana in their system at the time of arrest;

16 (13) marijuana use by a parent has been, and will continue to be, a major
17 contributing factor to children having easy access to and using marijuana;

18 (14) criminal penalties for marijuana possession and education efforts are
19 effective in reducing marijuana use and limiting its access by children;

20 (15) possession of marijuana, even for personal, recreational use, has been,
21 and continues to be, illegal under federal law;

22 (16) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of
23 appeals adopted a statute enacted two decades ago that was repealed by the voters in 1990,
24 and allows adults to possess up to four ounces as the constitutionally-protected amount of
25 marijuana that each adult can have in their home; this decision usurped the legislature's and
26 the voters' authority to change laws relating to health and safety;

27 (17) the *Noy* decision by the Alaska court of appeals also struck down the
28 one-ounce possession limit in the medical marijuana law enacted in 1999, thus further
29 usurping the legislature's and the voters' authority to change laws relating to health and safety;

30 (18) the *Noy* decision by the Alaska court of appeals also led this court in
31 *Crocker v. State*, 97 P.3d 93 (Alaska App. 2004) to adopt unnecessary and unreasonable

1 requirements for search warrants to investigate marijuana-growing in this state that inhibit law
 2 enforcement efforts to reduce the amount of marijuana illegally grown indoors and illegally
 3 sold or exported; and

4 (19) the potency of marijuana today, the profit to be made growing marijuana
 5 today, and the consequences to the health of Alaskans, make it necessary for the legislature to
 6 reconfirm by this Act that it is illegal to possess any amount of marijuana anywhere in this
 7 state, and to reassess the legislative lines that have been drawn in the past that classify
 8 marijuana possession as either felony or misdemeanor conduct; in taking this legislative
 9 action, the legislature has taken into consideration its duty to implement the right to privacy in
 10 art. I, sec. 22, Constitution of the State of Alaska.

11 * **Sec. 3.** AS 11.71.030(a) is amended to read:

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

14 (1) under circumstances not proscribed under AS 11.71.020(a)(2) - (4),
 15 manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or
 16 possesses any amount of a schedule IIA or IIIA controlled substance with intent to
 17 manufacture or deliver;

18 (2) delivers any amount of a schedule IVA, VA, or VIA controlled
 19 substance to a person under 21 [19] years of age [WHO IS AT LEAST THREE
 20 YEARS YOUNGER THAN THE PERSON DELIVERING THE SUBSTANCE]; or

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

22 (A) with reckless disregard that the possession occurs

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

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

25 or

26 (B) on a school bus.

27 * **Sec. 4.** AS 11.71.040(a) is amended to read:

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

30 (1) manufactures or delivers any amount of a schedule IVA or VA
 31 controlled substance or possesses any amount of a schedule IVA or VA controlled

1 substance with intent to manufacture or deliver;

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

6 (3) possesses

7 (A) any amount of a schedule IA or IIA controlled substance;

8 (B) 25 or more tablets, ampules, or syrettes containing a
9 schedule IIIA or IVA controlled substance;

10 (C) one or more preparations, compounds, mixtures, or
11 substances of an aggregate weight of three grams or more containing a
12 schedule IIIA or IVA controlled substance;

13 (D) 50 or more tablets, ampules, or syrettes containing a
14 schedule VA controlled substance;

15 (E) one or more preparations, compounds, mixtures, or
16 substances of an aggregate weight of six grams or more containing a schedule
17 VA controlled substance;

18 (F) one or more preparations, compounds, mixtures, or
19 substances of an aggregate weight of **four ounces** [ONE POUND] or more
20 containing a schedule VIA controlled substance; or

21 (G) 25 or more plants of the genus cannabis;

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

23 (A) with reckless disregard that the possession occurs

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

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

26 or

27 (B) on a school bus;

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

1 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
 2 thing which prints, imprints, or reproduces a trademark, trade name, or other
 3 identifying mark, imprint, or device of another or any likeness of any of these upon a
 4 drug, drug container, or labeling so as to render the drug a counterfeit substance;

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

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

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

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

15 * **Sec. 5.** AS 11.71.050(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 fifth degree if the person

18 (1) manufactures or delivers, or possesses with the intent to
 19 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
 20 of an aggregate weight of one-half ounce or more containing a schedule VIA
 21 controlled substance;

22 (2) manufactures or delivers, or possesses with the intent to
 23 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
 24 of an aggregate weight of less than one-half ounce containing a schedule VIA
 25 controlled substance, for remuneration;

26 (3) possesses

27 (A) less than 25 tablets, ampules, or syrettes containing a
 28 schedule IIIA or IVA controlled substance;

29 (B) one or more preparations, compounds, mixtures, or
 30 substances of an aggregate weight of less than three grams containing a
 31 schedule IIIA or IVA controlled substance;

1 (C) less than 50 tablets, ampules, or syrettes containing a
2 schedule VA controlled substance;

3 (D) one or more preparations, compounds, mixtures, or
4 substances of an aggregate weight of less than six grams containing a schedule
5 VA controlled substance; or

6 (E) one or more preparations, compounds, mixtures, or
7 substances of an aggregate weight of one ounce [ONE-HALF POUND] or
8 more containing a schedule VIA controlled substance;

9 **(F) one or more preparations, compounds, mixtures, or**
10 **substances containing a schedule VIA controlled substance while driving**
11 **or operating a motor vehicle, aircraft, or motorized watercraft;** or

12 (4) fails to make, keep, or furnish any record, notification, order form,
13 statement, invoice, or information required under AS 17.30.

14 * **Sec. 6.** AS 11.71.060(a) is amended to read:

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

17 (1) uses or displays any amount of a schedule VIA controlled
18 substance;

19 **(2) [OR] possesses one or more preparations, compounds, mixtures, or**
20 **substances of an aggregate weight of less than one ounce [ONE-HALF POUND]**
21 **containing a schedule VIA controlled substance; [OR]**

22 **(3) manufactures, delivers, or possesses with the intent to**
23 **manufacture or deliver, one or more preparations, compounds, mixtures, or**
24 **substances of an aggregate weight of less than one-half ounce containing a**
25 **schedule VIA controlled substance;**

26 **(4) possesses one or more preparations, compounds, mixtures, or**
27 **substances containing a schedule VIA controlled substance while a passenger in a**
28 **motor vehicle, aircraft, or motorized watercraft;**

29 **(5) being the driver or operator of a motor vehicle, aircraft, or**
30 **motorized watercraft, knowingly permits a passenger to possess one or more**
31 **preparations, compounds, mixtures, or substances containing a schedule VIA**

1 **controlled substance; or**

2 **(6)** [(2)] refuses entry into a premise for an inspection authorized under
3 AS 17.30.

4 * **Sec. 7.** AS 11.71.080 is amended to read:

5 **Sec. 11.71.080. Aggregate weight of live marijuana plants.** For purposes of
6 calculating the aggregate weight of a live marijuana plant, the aggregate weight shall
7 be **one-sixth of the measured weight of the marijuana plant after the roots of the**
8 **marijuana plant have been removed** [THE WEIGHT OF THE MARIJUANA
9 WHEN REDUCED TO ITS COMMONLY USED FORM].

10 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).