

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

February 25, 2005

1:41 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 70

"An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

MOVED CSSB 70(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: CRIMES INVOLVING CONTROLLED SUBSTANCES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(S)	READ THE FIRST TIME - REFERRALS
01/21/05	(S)	HES, JUD
02/23/05	(S)	HES AT 1:30 PM BUTROVICH 205
02/23/05	(S)	Heard & Held
02/23/05	(S)	MINUTE(HES)
02/25/05	(S)	HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

Crystal Smith, Legislative Aide
Staff to Senator French
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 70.

Dean Guaneli, Senior Assistant Attorney General
Department of Law (DOL)
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 70.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:41:54 PM](#). Present were Senators Lyda Green, Gary Wilken, Kim Elton, and Chair Fred Dyson.

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

CHAIR DYSON announced SB 70 to be up for consideration.

CHAIR DYSON commented the bill had been postponed for the consideration of Amendment 1 that adds anabolic steroids to the list of controlled substances.

[1:43:37 PM](#)

CRYSTAL SMITH, aide to Senator French, said only Alaska and Vermont do not list anabolic steroids as a controlled substance. Anabolic steroids are illegal under federal law, but are considered a minor concern by customs agents who typically turn steroid traffickers over to state officials. Since anabolic steroids are not contraband under state law, Alaskan officials do not proceed against them.

CHAIR DYSON asked whether the administration had objections to Amendment 1.

DEAN GUANELI, Department of Law, said the administration had no objections. The list of steroids in the amendment is essentially the same as the federal list of banned steroids. Amendment 1 would classify anabolic steroids as a 5A controlled substance thereby making possession or distribution of a moderate to large amount a felony and possession of a small amount a misdemeanor.

SENATOR ELTON asked whether problems might arise from listing anabolic steroids given the possibility that new versions of the drug might be developed and would not be listed.

MR. GUANELI responded the bill addresses designer drugs, but noted there are parameters to the precision with which such

legislation could be written. If the language is too broad, it is difficult to enforce and if it is too narrow, chemists can design around it.

SENATOR ELTON moved Amendment 1.

A M E N D M E N T 1

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 70

Page 1, line 2, following "**substance;**":

Insert "**relating to listing certain anabolic steroids as controlled substances;**"

Page 3, following line 28:

Insert a new bill section to read:

"* **Sec. 6.** AS 11.71.180 is amended by adding a new subsection to read:

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

- (1) boldenone;
- (2) chlorotestosterone (4-chlorotestosterone);
- (3) clostebol;
- (4) dehydrochlormethyltestosterone;
- (5) dihydrotestosterone (4-dihydrotestosterone);
- (6) drostanolone;
- (7) ethylestrenol;
- (8) fluoxymesterone;
- (9) formebolone (formebolone);

- (10) mesterolone;
- (11) methandienone;
- (12) methandranone;
- (13) methandriol;
- (14) methandrostenolone;
- (15) methenolone;
- (16) methyltestosterone;
- (17) mibolerone;
- (18) nandrolone;
- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;
- (26) testosterone;
- (27) trenbolone."

Renumber the following bill sections accordingly.

Page 3, line 31:

Delete "The changes made in secs. 1 - 5 of this Act apply"

Insert "This Act applies"

CHAIR DYSON objected for the purpose of discussion.

CHAIR ELTON asked whether the term 'Schedule 5A' would tie the state list to the federal list.

DEAN GUANELI responded the "A" in "5A" represents Alaska, which distinguishes Alaska's list from the federal list. The federal list designates anabolic steroids as Schedule 3 drugs so the penalties are a little higher. The administration feels a Schedule 5 designation is appropriate for the state's penalty structure.

CHAIR DYSON asked whether Senator Elton's concern would be addressed if line 19 were changed to read "anabolic steroids including but not limited to the following:"

MR. GUANELI responded it is the administration's view that the phrase "includes but not limited to" amounts to the same thing legally.

[1:50:00 PM](#)

SENATOR GREEN asked whether there would be need to reference the state list to the federal list so that the state wouldn't have to change its list if the federal list were to change.

MR. GUANELI responded the DOL's view of the safest approach is to adopt a specific list and if new compounds are developed then adopt them under Alaska law.

CHAIR DYSON removed his objection. There were no further objections and Amendment 1 was adopted.

CHAIR DYSON asked Mr. Guaneli to explain conceptual Amendment 2.

MR. GUANELI said the amendment addresses the circumstance in which stolen methamphetamine causes an overdose death by creating an affirmative defense. An affirmative defense is a defense that the defendant has to prove. It is difficult for the state to prove a series of negatives and if the defendant can prove that methamphetamine was used for personal consumption, the state would not charge the defendant with manslaughter.

SENATOR ELTON noted the amendment creates an exception for people that manufacture a controlled substance and he questioned whether they are deserving of an affirmative defense.

CHAIR DYSON asked whether there was objection to Amendment 2.

[1:54:41 PM](#)

SENATOR GREEN asked whether there is a provision for other potential dangers that involve a third party.

MR. GUANELI responded he knew there are some in weapons statutes, but he would have to look for other examples.

[1:56:21 PM](#)

CHAIR DYSON said there have been attempts to bring charges against people for recklessly making loaded firearms available to children and for making car keys available to inebriates. Case law seems to dictate that one must exercise precaution with dangerous instruments and weapons.

MR. GUANELI said that is certainly the case with civil law but added that there is nothing in criminal law that makes such handling of firearms a crime. There is a theoretical possibility of applying the notion of reckless endangerment to such cases, but there has yet to be any attempt to pursue it.

He could imagine a case, such as that of a crack house; in which taking elaborate measures to safeguard drugs would not satisfy the criteria for an affirmative defense. It would seem reasonable to prosecute such a case since the precautions taken by the operators indicate that they expected theft to occur. He thought the case raised by the chair involved someone who made drugs for personal consumption with a reasonable expectation that they would not fall into the hands of others.

1:59:19 PM

SENATOR ELTON asked whether methamphetamine manufacturers typically make methamphetamine for personal or commercial use.

MR. GUANELI responded more and more people are making methamphetamine for personal use. Typically such people use some of the product and then sell the rest to fund additional production. Users do not usually take any precautions to prevent theft.

2:03:27 PM

CHAIR DYSON asked whether there was any sustained objection to Amendment 2.

SENATOR ELTON stated concern with the bill but did not object.

CHAIR DYSON noted the America Civil Liberties Union (ACLU) expressed concern that SB 70 blurs the line between negligent homicide and manslaughter in a new way. There being no further objections, Amendment 2 was adopted.

CHAIR DYSON introduced conceptual Amendment 3 and asked Mr. Guaneli to describe it.

MR. GUANELI said under current law it is a mid-level felony assault to recklessly cause serious physical injury to another person. It is a class B felony, one level below the charge of manslaughter. Serious physical injury is defined as a protracted impairment of a physical condition and this definition fits many kinds of effects associated with the manufacture and abuse of controlled substances.

MR. GUANELI proposed adding a new subsection to the second-degree assault statute patterned after the manslaughter provision. It would read something to the effect of:

Knowingly manufactures or delivers a controlled substance in violation of AS.11.71 and a person

suffers serious physical injury as a direct result of ingestion of the controlled substance; the serious physical injury is a result that does not require a culpable mental state.

He said the affirmative defense amendment that was adopted to apply to the manslaughter provision would also apply to the assault provision.

[2:07:44 PM](#)

SENATOR ELTON said it seems that the affirmative defense provision of the bill addresses stolen methamphetamine that was originally manufactured for personal use, not cases in which children had been injured by methamphetamine reagents and byproducts.

MR. GUANELI said the amendment was drafted to create a comparable assault statute addressing injury caused by the ingestion of controlled substances, not exposure to reagents and byproducts in the environment. Exposure cases are a different matter, which are addressed elsewhere in the Governor's bill.

SENATOR ELTON said the assault provision presupposes a before and after comparison which may not always be easy to make.

MR. GAUNELI acknowledged it may not always be easy, especially in cases involving addicts with preexisting symptoms, but he noted that there would be cases where the provision could be applied clearly.

SENATOR GREEN noted there seemed to be a difference between cases involving injuries sustained before the age of consent and those sustained after.

[2:11:21 PM](#)

SENATOR ELTON noted cases of drug-induced injury involve many different levels of causation and culpability and asked if someone who walked into traffic under the influence of a drug could be charged under the provision.

MR. GUANELI responded they would not be charged since the language refers to a "direct result of ingestion".

CHAIR DYSON moved to adopt conceptual Amendment 3 as previously described.

SENATOR ELTON objected to the motion and suggested the bill be recommended to the Senate Judiciary Standing Committee, which would be in a better position to consider the amendment.

[2:13:43 PM](#)

CHAIR DYSON acknowledged Senator Elton's concern and withdrew the Amendment 3.

CHAIR DYSON moved to pass CSSB 70(HES) from committee with individual recommendations. There being no objection, it was so ordered. There being no further business to come before the committee, he adjourned the meeting at [2:15:34 PM](#).