

HOUSE BILL NO. 292

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/19/18

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to misconduct involving a controlled substance in the second degree;**
2 **and providing for an effective date."**

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

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

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

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

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

12 (3) under circumstances not amounting to murder in the first degree
13 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the
14 person commits or attempts to commit arson in the first degree, kidnapping, sexual

1 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor
 2 in the first degree, sexual abuse of a minor in the second degree, burglary in the first
 3 degree, escape in the first or second degree, robbery in any degree, or misconduct
 4 involving a controlled substance under AS 11.71.010(a), 11.71.025, 11.71.030(a)(1),
 5 (2), or (4)-(8), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that
 6 crime or in immediate flight from that crime, any person causes the death of a person
 7 other than one of the participants;

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

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

15 (A) a felony violation of AS 11.41;

16 (B) in violation of a law or ordinance in another jurisdiction
 17 with elements similar to a felony under AS 11.41; or

18 (C) an attempt, a solicitation, or a conspiracy to commit a crime
 19 listed in (A) or (B) of this paragraph.

20 (b) Murder in the second degree is an unclassified felony and is punishable as
 21 provided in AS 12.55.

22 * **Sec. 2.** AS 11.41.150(a) is amended to read:

23 (a) A person commits the crime of murder of an unborn child if the person

24 (1) with intent to cause the death of an unborn child or of another
 25 person, causes the death of an unborn child;

26 (2) with intent to cause serious physical injury to an unborn child or to
 27 another person or knowing that the conduct is substantially certain to cause death or
 28 serious physical injury to an unborn child or to another person, causes the death of an
 29 unborn child;

30 (3) while acting alone or with one or more persons, commits or
 31 attempts to commit arson in the first degree, kidnapping, sexual assault in the first

1 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
 2 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the
 3 first or second degree, robbery in any degree, or misconduct involving a controlled
 4 substance under AS 11.71.010(a), **11.71.025**, 11.71.030(a)(1), (2), or (4)-(8), or
 5 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
 6 immediate flight from that crime, any person causes the death of an unborn child;

7 (4) knowingly engages in conduct that results in the death of an unborn
 8 child under circumstances manifesting an extreme indifference to the value of human
 9 life; for purposes of this paragraph, a pregnant woman's decision to remain in a
 10 relationship in which domestic violence, as defined in AS 18.66.990, has occurred
 11 does not constitute conduct manifesting an extreme indifference to the value of human
 12 life.

13 * **Sec. 3.** AS 11.71 is amended by adding a new section to read:

14 **Sec. 11.71.025. Misconduct involving a controlled substance in the second**
 15 **degree.** (a) Except as authorized in AS 17.30, a person commits the crime of
 16 misconduct involving a controlled substance in the second degree if the person
 17 manufactures or delivers, or possesses with intent to manufacture or deliver,

18 (1) one or more preparations, compounds, mixtures, or substances of
 19 an aggregate weight of 25 grams or more containing a schedule IA controlled
 20 substance;

21 (2) 50 or more tablets, ampules, or syrettes containing a schedule IA
 22 controlled substance;

23 (3) one or more preparations, compounds, mixtures, or substances of
 24 an aggregate weight of 50 grams or more containing a schedule IIA or IIIA controlled
 25 substance; or

26 (4) 100 or more tablets, ampules, or syrettes containing a schedule IIA
 27 or IIIA controlled substance.

28 (b) Misconduct involving a controlled substance in the second degree is a
 29 class A felony.

30 * **Sec. 4.** AS 11.71.030(a) is amended to read:

31 (a) Except as authorized in AS 17.30, a person commits the crime of

1 misconduct involving a controlled substance in the **third** [SECOND] degree if the
2 person

3 (1) manufactures or delivers, or possesses with intent to manufacture
4 or deliver,

5 (A) one or more preparations, compounds, mixtures, or
6 substances of an aggregate weight of one gram or more containing a schedule
7 IA controlled substance;

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

10 (C) one or more preparations, compounds, mixtures, or
11 substances of an aggregate weight of 2.5 grams or more containing a schedule
12 IIA or IIIA controlled substance; or

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

15 (2) delivers any amount of a schedule IVA, VA, or VIA controlled
16 substance to a person under 19 years of age who is at least three years younger than
17 the person delivering the substance;

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

19 (A) with reckless disregard that the possession occurs

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

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

22 or

23 (B) on a school bus;

24 (4) manufactures any material, compound, mixture, or preparation that
25 contains

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

27 or

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

30 (5) possesses an immediate precursor of methamphetamine, or the
31 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,

1 with the intent to manufacture any material, compound, mixture, or preparation that
 2 contains methamphetamine, or its salts, isomers, or salts of isomers;

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

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

6 or

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

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

11 (8) under circumstances not proscribed under AS 11.71.010(a)(2),
 12 delivers

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

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

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

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

25 (iii) methamphetamine or its salts, isomers, or salts of
 26 isomers in an organic solution.

27 * **Sec. 5.** AS 11.71.030(d) is amended to read:

28 (d) Misconduct involving a controlled substance in the **third** [SECOND]
 29 degree is a class B felony.

30 * **Sec. 6.** AS 11.71.040(a) is amended to read:

31 (a) Except as authorized in AS 17.30, a person commits the crime of

1 misconduct involving a controlled substance in the **fourth** [THIRD] degree if the
2 person

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

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

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

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

13 (A) with reckless disregard that the possession occurs

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

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

16 or

17 (B) on a school bus;

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

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

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

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

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

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

5 (11) manufactures or delivers, or possesses with the intent to
6 manufacture or deliver,

7 (A) one or more preparations, compounds, mixtures, or
8 substances of an aggregate weight of less than one gram containing a schedule
9 IA controlled substance;

10 (B) less than 25 tablets, ampules, or syrettes containing a
11 schedule IA controlled substance;

12 (C) one or more preparations, compounds, mixtures, or
13 substances of an aggregate weight of less than 2.5 grams containing a schedule
14 IIA or IIIA controlled substance; or

15 (D) less than 50 tablets, ampules, or syrettes containing a
16 schedule IIA or IIIA controlled substance.

17 * **Sec. 7.** AS 11.71.040(d) is amended to read:

18 (d) Misconduct involving a controlled substance in the **fourth** [THIRD]
19 degree is a class C felony.

20 * **Sec. 8.** AS 11.71.050(a) is amended to read:

21 (a) Except as authorized in AS 17.30, a person commits the crime of
22 misconduct involving a controlled substance in the **fifth** [FOURTH] degree if the
23 person

24 (1) manufactures or delivers, or possesses with the intent to
25 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
26 of an aggregate weight of less than one ounce containing a schedule VIA controlled
27 substance;

28 (2) [REPEALED]

29 (3) fails to make, keep, or furnish any record, notification, order form,
30 statement, invoice, or information required under AS 17.30; or

31 (4) under circumstances not proscribed under AS 11.71.040(a)(3) or

1 11.71.060(a)(2)(B), possesses any amount of a schedule IA, IIA, IIIA, IVA, VA, or
2 VIA controlled substance.

3 * **Sec. 9.** AS 11.71.050(b) is amended to read:

4 (b) Misconduct involving a controlled substance in the **fifth** [FOURTH]
5 degree is a class A misdemeanor.

6 * **Sec. 10.** AS 11.71.060(a) is amended to read:

7 (a) Except as authorized in AS 17.30, a person commits the crime of
8 misconduct involving a controlled substance in the **sixth** [FIFTH] degree if the person

9 (1) uses or displays any amount of a schedule VIA controlled
10 substance;

11 (2) possesses one or more preparations, compounds, mixtures, or
12 substances of an aggregate weight of

13 (A) less than one ounce containing a schedule VIA controlled
14 substance;

15 (B) six grams or less containing a schedule IIIA controlled
16 substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or
17 otherwise applied to tobacco, an herb, or another organic material; or

18 (3) refuses entry into a premise for an inspection authorized under
19 AS 17.30.

20 * **Sec. 11.** AS 11.71.060(b) is amended to read:

21 (b) Misconduct involving a controlled substance in the **sixth** [FIFTH] degree
22 is a class B misdemeanor.

23 * **Sec. 12.** AS 12.55.135(n) is amended to read:

24 (n) A court sentencing a person convicted of misconduct involving a
25 controlled substance in the **fifth** [FOURTH] degree under AS 11.71.050(a)(4) or
26 misconduct involving a controlled substance in the **sixth** [FIFTH] degree under
27 AS 11.71.060(a)(2) may not impose

28 (1) a sentence of active imprisonment, unless the person has previously
29 been convicted more than once of an offense under AS 11.71 or a law of this or
30 another jurisdiction with elements substantially similar to an offense under AS 11.71;
31 or

1 (2) a sentence of suspended imprisonment greater than

2 (A) 30 days, if the defendant has not been previously convicted
3 of an offense under AS 11.71 or a law of this or another jurisdiction with
4 elements substantially similar to an offense under AS 11.71; or

5 (B) 180 days, if the person has been previously convicted of an
6 offense under AS 11.71 or a law of this or another jurisdiction with elements
7 substantially similar to an offense under AS 11.71.

8 * **Sec. 13.** AS 34.03.360(7) is amended to read:

9 (7) "illegal activity involving a controlled substance" means a violation
10 of AS 11.71.010(a), 11.71.025, 11.71.030(a)(1), (2), or (4) - (8), or 11.71.040(a)(1),
11 (2), or (5);

12 * **Sec. 14.** AS 47.12.315(a) is amended to read:

13 (a) Notwithstanding AS 47.12.310 and except as otherwise provided in this
14 section, the department shall disclose information to the public, on request, concerning
15 a minor subject to this chapter who was at least 13 years of age at the time of
16 commission of

17 (1) a felony offense against a person under AS 11.41;

18 (2) arson in the first or second degree;

19 (3) burglary in the first degree;

20 (4) distribution of child pornography;

21 (5) sex trafficking in the first degree;

22 (6) misconduct involving a controlled substance in the first, [OR]
23 second, or third degrees involving distribution or possession with intent to deliver; or

24 (7) misconduct involving weapons in the first through fourth degrees.

25 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

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

29 * **Sec. 16.** This Act is effective July 1, 2018.