

**SENATE BILL NO. 147**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/18

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

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

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

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

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

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

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

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

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

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus;

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

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

or

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

(5) possesses an immediate precursor of methamphetamine, or the 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

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

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

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

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

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

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) [REPEALED]

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

(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

(2) a sentence of suspended imprisonment greater than

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

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

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

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

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

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

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

(2) arson in the first or second degree;

(3) burglary in the first degree;

(4) distribution of child pornography;

(5) sex trafficking in the first degree;

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

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

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

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

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