

HOUSE BILL NO. 10

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KOPP, Rasmussen, Spohnholz, Johnson

Introduced: 2/20/19

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to misconduct involving a controlled substance; providing for**
2 **substitution of judgment; and relating to sentencing."**

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

4 *** Section 1.** AS 11.71.040(a) is amended to read:

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

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

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

14 (3) possesses any amount of a schedule IA controlled substance listed

1 in AS 11.71.140(e);

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

3 (A) with reckless disregard that the possession occurs

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

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

6 or

7 (B) on a school bus;

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

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

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

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

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

24 (10) affixes a false or forged label to a package or other container
25 containing any controlled substance; [OR]

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

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

31 (B) less than 25 tablets, ampules, or syrettes containing a

1 schedule IA controlled substance;

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

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

7 **(12) under circumstances not proscribed under AS 11.71.030(a)(3)**
8 **or (3) of this subsection, possesses any amount of a schedule IA or IIA controlled**
9 **substance and has been previously convicted on two or more separate occasions**
10 **of a crime under**

11 **(A) this paragraph;**

12 **(B) AS 11.71.050(a)(4); or**

13 **(C) a law or ordinance of this or another jurisdiction with**
14 **elements similar to a crime listed under (A) or (B) of this paragraph.**

15 * **Sec. 2.** 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 fourth 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 less than one ounce containing a schedule VIA controlled
21 substance;

22 (2) [REPEALED]

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

25 (4) under circumstances not proscribed under AS 11.71.030(a)(3),
26 **11.71.040(a)(3), (4), or (12)** [11.71.040(a)(3), 11.71.040(a)(4)], or 11.71.060(a)(2),
27 possesses any amount of a schedule IA, IIA, IIIA, IVA, VA, or VIA controlled
28 substance.

29 * **Sec. 3.** AS 11.71.311(a) is amended to read:

30 (a) A person may not be prosecuted for a violation of AS 11.71.030(a)(3),
31 **11.71.040(a)(3), (4), or (12)** [11.71.040(a)(3) OR (4)], 11.71.050(a)(4), or

1 11.71.060(a)(1) or (2) if that person

2 (1) sought, in good faith, medical or law enforcement assistance for
3 another person who the person reasonably believed was experiencing a drug overdose
4 and

5 (A) the evidence supporting the prosecution for an offense
6 under AS 11.71.030(a)(3), 11.71.040(a)(3), (4), or (12) [11.71.040(a)(3) OR
7 (4)], 11.71.050(a)(4), or 11.71.060(a)(1) or (2) was obtained or discovered as a
8 result of the person seeking medical or law enforcement assistance;

9 (B) the person remained at the scene with the other person until
10 medical or law enforcement assistance arrived; and

11 (C) the person cooperated with medical or law enforcement
12 personnel, including by providing identification;

13 (2) was experiencing a drug overdose and sought medical assistance,
14 and the evidence supporting a prosecution for an offense under AS 11.71.030(a)(3),
15 11.71.040(a)(3), (4), or (12) [11.71.040(a)(3) OR (4)], 11.71.050(a)(4), or
16 11.71.060(a)(1) or (2) was obtained as a result of the overdose and the need for
17 medical assistance.

18 * **Sec. 4.** AS 12.55 is amended by adding a new section to read:

19 **Sec. 12.55.076. Substitution of judgment.** (a) Except as provided in (f) of this
20 section, if a person is found guilty of or pleads guilty to misconduct involving a
21 controlled substance in the third degree under AS 11.71.040(a)(12), the court may,
22 with the consent of the defendant and the prosecution and without entering a judgment
23 of guilt, defer further proceedings, place the person on probation, and order the person
24 to complete a treatment program. The court shall require the person to enroll in the
25 treatment program by a specific date and to complete the treatment program by the
26 end of the period of probation. The court may, for good cause, extend the period in
27 which a person is required to enroll in the treatment program, provided the person is
28 able to complete the treatment program within the period of probation. The period of
29 probation may not exceed the applicable terms set out in AS 12.55.090(c).

30 (b) The court shall impose conditions of probation for a person on probation
31 as provided in (a) of this section, which may include that the person

- 1 (1) abide by all local, state, and federal laws;
- 2 (2) not leave the state without prior consent of the court;
- 3 (3) pay restitution as ordered by the court; and
- 4 (4) obey any other conditions of probation set by the court.

5 (c) At any time during the probationary term of the person released on
6 probation, a probation officer may, without warrant or other process, rearrest the
7 person so placed in the officer's care and bring the person before the court, or the court
8 may, in its discretion, issue a warrant for the rearrest of the person. The court may
9 revoke and terminate the probation if the court finds that the person placed on
10 probation is

- 11 (1) violating the conditions of probation;
- 12 (2) engaging in criminal practices; or
- 13 (3) violating an order of the court to participate in or comply with the
14 treatment program.

15 (d) If the court finds that the person has violated the conditions of probation
16 ordered by the court, the court may revoke and terminate the person's probation, enter
17 judgment on the person's previous plea or finding of guilt to the charge under
18 AS 11.71.040(a)(12), and pronounce sentence at any time within the maximum
19 probation period authorized by this section.

20 (e) If the court finds that the person has successfully completed probation and
21 the treatment program, the court shall, following motion by the person at the end of
22 the probationary period set by the court, vacate the charge under AS 11.71.040(a)(12)
23 and substitute the judgment by entering a conviction for misconduct involving a
24 controlled substance in the fourth degree under AS 11.71.050(a)(4).

25 (f) The court may not substitute judgment for a person who has one or more
26 prior convictions for a violation of AS 11.41 or for a violation of a law in this or
27 another jurisdiction having similar elements to an offense under AS 11.41 in this state;
28 for the purposes of this subsection, a person shall be considered to have a prior
29 conviction even if that conviction has been set aside under AS 12.55.085(e) or under
30 the equivalent provision of the laws of another jurisdiction.

31 * **Sec. 5.** AS 12.55.078(f) is amended to read:

1 (f) The court may not suspend the imposition or entry of judgment and may
2 not defer prosecution under this section of a person who

3 (1) is charged with a violation of AS 11.41.100 - 11.41.220, 11.41.260
4 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400,
5 AS 11.61.125 - 11.61.128, [OR] AS 11.66.110 - 11.66.135, or AS 11.71.040(a)(12);

6 (2) uses a firearm in the commission of the offense for which the
7 person is charged;

8 (3) has previously been granted a suspension of judgment under this
9 section or a similar statute in another jurisdiction, unless the court enters written
10 findings that by clear and convincing evidence the person's prospects for rehabilitation
11 are high and suspending judgment under this section adequately protects the victim of
12 the offense, if any, and the community;

13 (4) is charged with a violation of AS 11.41.230, 11.41.250, or a felony
14 and the person has one or more prior convictions for a misdemeanor violation of
15 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
16 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
17 felony in this state; for the purposes of this paragraph, a person shall be considered to
18 have a prior conviction even if

19 (A) the charges were dismissed under this section;

20 (B) the conviction has been set aside under AS 12.55.085; or

21 (C) the charge or conviction was dismissed or set aside under
22 an equivalent provision of the laws of another jurisdiction; or

23 (5) is charged with a crime involving domestic violence, as defined in
24 AS 18.66.990.

25 * **Sec. 6.** AS 12.55.085(f) is amended to read:

26 (f) The court may not suspend the imposition of sentence of a person who

27 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
28 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400,
29 AS 11.61.125 - 11.61.128, [OR] AS 11.66.110 - 11.66.135, or AS 11.71.040(a)(12);

30 (2) uses a firearm in the commission of the offense for which the
31 person is convicted; or

1 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
2 and the person has one or more prior convictions for a misdemeanor violation of
3 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
4 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
5 felony in this state; for the purposes of this paragraph, a person shall be considered to
6 have a prior conviction even if that conviction has been set aside under (e) of this
7 section or under the equivalent provision of the laws of another jurisdiction.

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

10 APPLICABILITY. (a) AS 11.71.040(a), as amended by sec. 1 of this Act, and
11 AS 11.71.050(a), as amended by sec. 2 of this Act, apply to offenses committed on or after
12 the effective date of this Act.

13 (b) AS 11.71.311(a), as amended by sec. 3 of this Act, AS 12.55.076, enacted by sec.
14 4 of this Act, AS 12.55.078(f), as amended by sec. 5 of this Act, and AS 12.55.085(f), as
15 amended by sec. 6 of this Act, apply to prosecutions occurring on or after the effective date of
16 secs. 3 - 6 of this Act, for offenses committed before, on, or after the effective date of secs. 3 -
17 6 of this Act.