

**CS FOR HOUSE BILL NO. 66(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 5/8/23**

**Referred: Rules**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to homicide resulting from conduct involving controlled substances;**  
2 **relating to misconduct involving a controlled substance; relating to sentencing; and**  
3 **providing for an effective date."**

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

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

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

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

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

13 (3) under circumstances not amounting to murder in the first degree  
14 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the

1 person commits or attempts to commit arson in the first degree, kidnapping, sexual  
 2 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor  
 3 in the first degree, sexual abuse of a minor in the second degree, burglary in the first  
 4 degree, escape in the first or second degree, robbery in any degree, or misconduct  
 5 involving a controlled substance under AS 11.71.010(a), 11.71.021(a), 11.71.030(a)(2)  
 6 or (9), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or  
 7 in immediate flight from that crime, any person causes the death of a person other than  
 8 one of the participants;

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

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

16 (A) a felony violation of AS 11.41;

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

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

21 **(6) another person dies as a direct result of ingesting a controlled**  
 22 **substance that is knowingly manufactured or delivered by the person in violation**  
 23 **of**

24 **(A) AS 11.71.010 - 11.71.030; or**

25 **(B) AS 11.71.040(a)(1) for schedule IVA controlled**

26 **substances.**

27 \* **Sec. 2.** AS 11.41.110 is amended by adding new subsections to read:

28 (c) A death under (a)(6) of this section is a result that does not require a  
 29 culpable mental state.

30 (d) In (a)(6) of this section, "ingesting" means voluntarily or involuntarily  
 31 taking a substance into the body in any manner.

1 \* **Sec. 3.** AS 11.71.010(a) is amended to read:

2 (a) Except as authorized in AS 17.30, a person commits the crime of  
3 misconduct involving a controlled substance in the first degree if the person

4 (1) delivers any amount of a schedule IA controlled substance to a  
5 person under 19 years of age who is at least three years younger than the person  
6 delivering the substance;

7 (2) delivers any amount of a schedule IIA or IIIA controlled substance  
8 to a person under 19 years of age who is at least three years younger than the person  
9 delivering the substance; [OR]

10 (3) engages in a continuing criminal enterprise; or

11 (4) delivers any amount of a schedule IA, IIA, IIIA, or IVA  
12 controlled substance to a person who is

13 (A) mentally incapable;

14 (B) incapacitated; or

15 (C) unaware that a controlled substance is being delivered.

16 \* **Sec. 4.** AS 11.71.010(b) is amended to read:

17 (b) For purposes of this section,

18 (1) a person is engaged in a "continuing criminal enterprise" if

19 (A) [(1)] the person commits a violation of this chapter which  
20 is punishable as a felony; and

21 (B) [(2)] that violation is a part of a continuing series of five or  
22 more violations of this chapter

23 (i) [(A)] which the person undertakes in concert with at  
24 least five other persons organized, supervised, or otherwise managed by  
25 the person; and

26 (ii) [(B)] from which the person obtains substantial  
27 income or resources;

28 (2) "incapacitated" has the meaning given in AS 11.41.470;

29 (3) "mentally incapable" has the meaning given in AS 11.41.470.

30 \* **Sec. 5.** 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 degree if the person

2 (1) [REPEALED]

3 (2) delivers any amount of a

4 (A) schedule IVA or [,] VA [, OR VIA] controlled substance to  
5 a person under 19 years of age who is at least three years younger than the  
6 person delivering the substance; or

7 (B) schedule VIA controlled substance to a person under 18  
8 years of age who is at least three years younger than the person delivering  
9 the substance;

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

11 (A) with reckless disregard that the possession occurs

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

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

14 or

15 (B) on a school bus;

16 (4) [REPEALED]

17 (5) [REPEALED]

18 (6) [REPEALED]

19 (7) [REPEALED]

20 (8) [REPEALED]

21 (9) under circumstances not proscribed under AS 11.71.021(a)(2) - (6),  
22 manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or  
23 possesses any amount of a schedule IIA or IIIA controlled substance with intent to  
24 manufacture or deliver.

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

26 (a) Except as authorized in AS 17.30 and AS 17.38, a person commits the  
27 crime of misconduct involving a controlled substance in the fourth degree if the person

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

31 (2) manufactures or delivers, or possesses with the intent to

1 manufacture or deliver, one or more preparations, compounds, mixtures, or substances  
2 of an aggregate weight of one ounce or more containing a schedule VIA controlled  
3 substance;

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

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

7 (A) with reckless disregard that the possession occurs

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

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

10 or

11 (B) on a school bus;

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

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

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

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

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

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

30 (11) [REPEALED]

31 (12) violates AS 11.71.050(a)(4) and, within the preceding 10 years,

1 has been previously convicted of a crime under AS 11.71.050(a)(4), or a law or  
 2 ordinance in this or another jurisdiction with elements similar to AS 11.71.050(a)(4);  
 3 or

4 **(13) delivers any amount of a schedule VIA controlled substance to**  
 5 **a person who is 18 years of age who is at least three years younger than the**  
 6 **person delivering the substance.**

7 \* Sec. 7. AS 12.55.125(c) is amended to read:

8 (c) Except as provided in (i) of this section, a defendant convicted of a class A  
 9 felony may be sentenced to a definite term of imprisonment of not more than 20 years,  
 10 and shall be sentenced to a definite term within the following presumptive ranges,  
 11 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

12 (1) if the offense is a first felony conviction and does not involve  
 13 circumstances described in (2) of this subsection, four to seven years;

14 (2) if the offense is a first felony conviction

15 (A) and the defendant possessed a firearm, used a dangerous  
 16 instrument, or caused serious physical injury or death during the commission  
 17 of the offense, or knowingly directed the conduct constituting the offense at a  
 18 uniformed or otherwise clearly identified peace officer, firefighter, correctional  
 19 employee, emergency medical technician, paramedic, ambulance attendant, or  
 20 other emergency responder who was engaged in the performance of official  
 21 duties at the time of the offense, seven to 11 years;

22 (B) and the conviction is for manufacturing related to  
 23 methamphetamine under AS 11.71.021(a)(2)(A) or (B), seven to 11 years if

24 (i) the manufacturing occurred in a building with  
 25 reckless disregard that the building was used as a permanent or  
 26 temporary home or place of lodging for one or more children under 18  
 27 years of age or the building was a place frequented by children; or

28 (ii) in the course of manufacturing or in preparation for  
 29 manufacturing, the defendant obtained the assistance of one or more  
 30 children under 18 years of age or one or more children were present;

31 **(C) and the conviction is for manufacturing or delivery**

1                    **under AS 11.71.021(a)(1) related to a schedule IA controlled substance set**  
2                    **out in AS 11.71.140(c)(29), seven to 11 years;**

3                    (3) if the offense is a second felony conviction, 10 to 14 years;

4                    (4) if the offense is a third felony conviction and the defendant is not  
5                    subject to sentencing under (l) of this section, 15 to 20 years.

6                    \* **Sec. 8.** AS 11.41.120(a)(3) is repealed.

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

9                    APPLICABILITY. AS 11.41.110(a), as amended by sec. 1 of this Act,  
10                    AS 11.41.110(c) and (d), added by sec. 2 of this Act, AS 11.71.010(a), as amended by sec. 3  
11                    of this Act, AS 11.71.010(b), as amended by sec. 4 of this Act, AS 11.71.030(a), as amended  
12                    by sec. 5 of this Act, AS 11.71.040(a), as amended by sec. 6 of this Act, and AS 12.55.125(c),  
13                    as amended by sec. 7 of this Act, apply to offenses committed on or after the effective date of  
14                    this Act.

15                    \* **Sec. 10.** This Act takes effect July 1, 2023.