

HB

549

For your info

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November 3, 1977

Avrum Gross, Attorney General
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Dear Av,

In response to a letter received from the State Office of Alcoholism & Drug Abuse, I (with help) have reviewed House Bill #549, "An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act."

On the whole, the bill is not bad. It appears to be patterned after the federal act with various categories of drugs based on their relative physical and psychological dependence. Having an advisory committee which passes recommendations along to the Commissioner of Health and Social Services (who then promulgates regulations) is probably desirable as it allows for flexibility.

Now the perceived problem areas: the committee has a good mix of members, but why are there no individuals who are involved with the rehabilitation of drug abusers? Why are there no attorneys (particularly those that deal with such drug cases)? Maybe even someone from law enforcement?

The act classifies amphetamines and cocaine as Schedule I drugs; this is an attempt by the law enforcement folks to still make the use of cocaine a very serious drug offense. It also attempts to include hashish and hashish oil under Schedule II. The other substances I might agree with being under Schedule II, but not hashish, hashish oil, and cocaine. It would seem that the determinations were made on the basis of cost in order to include these three substances under Schedule II (especially since marijuana is under Schedule V).

I have some concern about the penalties as outlined under Section 17.17.250. While on the surface it would appear to be more lenient than the present penalties, with presumptive sentencing being given serious consideration by the State the reverse may be true (and might seriously affect treatment options). I am not opposed to putting a non-addicted "pusher" in jail for a lengthy period of time, but I am opposed to doing so if the individual is also addicted and it can be shown he/she was selling in order to support their own habit. The presumptive sentence

plan may mean no treatment can be provided until after the prison term is completed.

Section 17.17.280 is a throwback to present law; the "intent to deliver" language should be stricken from this section if the former section is to have any real meaning.

Under Schedule II, the financial penalty for possession of cocaine has increased substantially over present law (although the prison time is decreased). That might be okay, except that it would appear to be the result of higher income folks getting caught--and allowing them a substantial fine rather than the embarrassment of a prison term or substance. The only problem I see is that if some poor guy gets caught, the burden of a \$2000 fine might be prohibitive. Again, cocaine does not belong under this Schedule category.

I am pleased to see the section dealing with required treatment for addicts (Section 17.17.220 B). My only concern here is that judges be given the option of treatment facilities (not only lock-ups and therapeutic communities). We have been dealing with heroin addicts, have them on methadone, and maintain strict control. The point is there are many alternatives possible--and I am concerned that therapeutic communities (most of which cannot produce the results desired) would be seen as the only treatment placement...AND PAROLE OFFICERS CANNOT BE GIVEN THE RESPONSIBILITY TO MAKE THE ACCEPTED RECOMMENDATION.

Proposed Section 17.17.340 says a penalty imposed for violation of this chapter is in addition to, not in place of, a civil or administrative penalty or sanction otherwise authorized by law. This would apparently keep in the civil penalty for the possession of marijuana because it is authorized by present statute, 17.12.110. This is a real anomaly in that it would permit one to be civilly handled for possession of marijuana, but not subject to any prosecution for sale of marijuana. This section must exclude marijuana if the previously mentioned reduced penalties are to make any sense.

This bill is probably more positive than negative. It certainly is positive in its treatment of heroin addicts, and youth who possess small quantities of cocaine and marijuana. There are some ambiguities that will need to be cleaned up to make this a workable bill, but all in all if the proper folks get on the advisory committee and if the commissioner uses their advice wisely, we should end up with better laws controlling the possession and sale of prohibited substances than at the present time.

Sincerely,

Frank J. Gold

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. 443 549
 Title An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act.
 Requested by Office of the Governor Date 5-25-77

II. FISCAL DETAIL
 Agency Affected Department of Law
 Program Category Affected Administration of Justice
 Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The proposed bill is designed to implement a comprehensive, revised statutory scheme to regulate the possession, use, sale and distribution of all abusable drugs. Certain provisions of the bill will result in an increase in prosecutorial activity such as the provisions pertaining to forfeitures, while others are expected to result in a concomitant decrease. Changes may occur in the number of offenses charged and in the number of trials. However, it is expected that any such changes will require the redirection of present resources, rather than an increase.

Without some experience under the bill, it is impossible to accurately project either cost increases or cost savings under the bill. Other criminal justice agencies that will potentially be affected by the bill include the Alaska Court System, the Department of Public Safety; the Division of Corrections, Department of Health and Social Services, and the Public Defender Agency.

IV. DATE 5-25-77 PREPARED BY Daniel W. Hickey DANIEL W. HICKEY, CHIEF PROSECUTOR
 AGENCY Department of Law - Criminal Division
 PHONE 465-3428

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

HB 549

May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill designed to implement a comprehensive and more rational statutory scheme to control the possession, use, sale and distribution of illicit drugs in Alaska through a logical classification and penalty system.

The bill is a modified version of the Uniform Controlled Substances Act, promulgated by the National Conference of Commissioners on Uniform State Laws. It is designed to provide for a high degree of uniformity among the laws of the several states and the federal government thereby creating a network of federal and state law enabling government at all levels to develop a coordinated and effective approach to the enforcement of drug laws. To date, the Uniform Act has been adopted in at least 42 other jurisdictions.

Alaska's present statutes relating to drug offenses are confusing and often inconsistent with each other, particularly in terms of the range of penalties provided. In general, they constitute a hodgepodge of individual statutory provisions of varying age that have been adopted in response to individual problems as they became apparent. This situation has been compounded in recent years and months by judicial decisions such as those in Ravin v. State, 537 P.2d 494 (Alaska 1975), pertaining to marijuana and, more recently, in State v. Erickson, Anchorage Superior Court No. 76-5772 Cr. (December 22, 1976), pertaining to the classification of cocaine as a narcotic.

Immediately after the Erickson decision, I asked the attorney general and the commissioner of public safety to make a comprehensive review of our drug laws and try to arrive at a coordinated realistic state policy toward the classification of drugs and the enforcement of drug laws. That has not been easy. As I am sure everyone recognizes, attitudes about drugs in society vary widely, and trying to reach a position which can be supported by all elements of the law enforcement community takes a great deal of time. We have spent that time. Extensive conferences have been held between members of the Metro Unit, other members of the Department of Public Safety, and the state prosecutor's office. Each section of this proposed bill has been discussed and debated at length. I am sorry to be so late in introducing this bill, but in my mind it was critical that the bill represent a combined law enforcement perspective and I felt that it was worthwhile to take the time to reach that consensus.

The time at which this bill is introduced will make it difficult, if not impossible, to consider it in depth this session. There is, however, a perfect vehicle for its analysis between sessions. The Criminal Code Revision Subcommittee, chaired by Representative Gardiner, will be completing their work on the entire criminal code before the legislature convenes next January, and hopefully this bill will be handled in an orderly fashion as a part of that total revision effort.

While the bill is primarily the product of a series of working sessions between the Department of Public Safety and the Criminal Division of the Department of Law, representatives from several disciplines and interest groups have been consulted extensively and to some extent have participated in the drafting of this bill. These include law enforcement personnel, defense attorneys, pharmacists, scientists, social workers, and members and staff of the Criminal Code Revision Subcommittee. Although each of the various interests who have been consulted and involved in the drafting of the bill may not agree with each provision in the bill, there is general consensus that overall the bill constitutes a badly needed and significant improvement over present statutes.

The main objective and advantage of the Uniform Controlled Substances Act and of this bill is that it creates a single coordinated statutory system of drug control similar to that now in effect at the federal level and in at least forty-two other states through classification of all abusable drugs into five schedules. Each schedule has its own criteria in relation to the others for inclusion of a drug based upon the degree of danger to the public health and safety which is to be assessed in accordance with a series of specific classification criteria set out in the bill. An additional mechanism is provided for in the bill to administratively add, delete, or move drugs from one schedule to another by regulation adopted in accordance with the Administrative Procedure Act.

There are two distinct advantages to such a regulatory system. First, persons within the legitimate drug industry are subjected to essentially the same standards and requirements at both the state and federal levels. Second, the statutory scheme proposed will permit the state to respond quickly and efficiently to changes in the use and abuse of drugs without repeatedly seeking legislation when more stringent or even less stringent controls are found necessary and appropriate. The classification system established in the bill will allow, subject to legislative nullification and in accordance with prescribed standards, for the administrative inclusion or rescheduling of substances based upon new scientific findings and the abuse pattern and potential of a substance after public hearings.

Another objective of the bill is to establish a closed regulatory system for legitimate handlers of controlled substances in order to curtail drug diversion into illegitimate channels. This system requires, for example, registration with a designated state agency, maintenance of records and the use of uniform order forms in conformity with federal law.

While the bill does not directly provide for specific drug treatment, rehabilitation and research programs, it does provide for registration of such programs and individuals involved in the handling of drugs for research, treatment and rehabilitative purposes. Thus, the bill explicitly makes education and research an integral part of the total law enforcement effort with respect to drugs through creation of a viable research environment.

From a law enforcement perspective, the bill constitutes a substantial improvement over present statutes in terms of the classification and penalty structure, the linkage it will provide with federal and other state enforcement systems, its forfeiture provisions, and its provisions dealing with a number of miscellaneous subjects such as forged prescriptions.

Additionally, the penalty structure of the bill includes a comprehensive presumptive sentencing schema largely patterned after legislation which I submitted to you earlier this session. This particular feature, along with a penalty distinction between casual sales of illicit drugs and those which occur in a commercial context, make the bill somewhat unique among jurisdictions which have adopted the Uniform Controlled Substances Act. The presumptive sentencing provisions are designed to further rationalize the penalty structure for drug offenses and to eliminate as much room for disparity as possible in sentences imposed for similar offenses committed under similar circumstances. They are also intended to provide emphasis on the more serious offenses under the bill such as sales of controlled substances to minors and "commercial" sales of heroin, cocaine, and amphetamines.

I believe that this bill represents a carefully thought through focal point for a comprehensive examination of Alaska's drug statutes which, as I have indicated, are badly in need of revision. I urge your serious consideration of the bill during the interim and, more importantly, the subject it addresses, and I trust that the bill will be of assistance to the Criminal Code Revision Subcommittee in their consideration of the subject. Attached is a sectional analysis which explains individual provisions of the bill in more detail.

Sincerely,

Jay S. Hammond
Governor

HB 549

SECTIONAL ANALYSIS

* Section 1. Adds Chapter 17 to Title 17 entitled the Uniform Controlled Substances Act.

Article 1. Standards and Schedules.

Sec. 17.17.010. Authority to Schedule Controlled Substances. Establishes the commissioner of the Department of Health and Social Services as the administrator of the Act; the commissioner, upon the advice of the Controlled Substances Advisory Committee, may add, delete or reschedule substances according to their degree of danger; provides standards for the committee to use in determining the degree of danger of a substance, including for example, the abuse pattern and the biomedical hazard of the substance.

Sec. 17.17.020. Controlled Substances Advisory Committee. Establishes the Controlled Substances Advisory Committee, provides for its composition, the terms of its members and their compensation; sets out the procedures for adding, deleting, or rescheduling (reclassifying) substances in the schedules.

Sec. 17.17.030. Nomenclature. Provides that a substance is not to be excluded from the schedules if, for example, its trade name differs from the chemical designation in the schedules.

Sec. 17.17.040. Schedule I. Establishes Schedule I substances as those having the highest degree of danger; Schedule I presently includes, among others, opium, codeine, heroin, morphine, methadone, and their derivatives.

Sec. 17.17.050. Schedule II. Provides that Schedule II substances are those less dangerous than the substances in Schedule I and more dangerous than those in the other schedules; Schedule II presently includes amphetamines, coca leaves, and their derivatives.

Sec. 17.17.060. Schedule III. Establishes Schedule III substances as those more dangerous than those in Schedule II but not as dangerous as the substances in Schedule IV; Schedule III presently includes barbiturates, hallucinogenics and their derivatives, barbitol and phenobarbitol, and small amounts of codeine, morphine, and opium combined with other ingredients in recognized therapeutic amounts, and hashish and hashish oil.

Sec. 17.17.070. Schedule IV. Provides that Schedule IV substances are less dangerous than Schedule III substances but more dangerous than substances in Schedule V; Schedule IV presently includes very small amounts of codeine, morphine, sulfate, and opium combined with other ingredients in recognized therapeutic amounts; for example, many of the cough syrups available in the drug store.

Sec. 17.17.080. Schedule V. Establishes Schedule V as the least dangerous of the controlled substances and provides that marijuana is a Schedule V substance.

Article 2. Regulation of Manufacture, Distribution, Dispensing, and Research with Controlled Substances.

Sec. 17.17.150. Regulations. Requires the commissioner of health and social services to adopt regulations for the administration of the Act and allows the commissioner to charge reasonable fees for registration.

Sec. 17.17.160. Registration Requirements. Requires persons who manufacture, distribute, dispense, or conduct research with controlled substances to be registered under the Act to do so; exempts from registration employees and agents of registered persons acting in the normal course of business, exempts warehousemen and ultimate users in lawful possession from registration; allows the commissioner to waive registration requirements if the waiver is in the public interest; and allows the commissioner to inspect the premises of a registrant or applicant for registration.

Sec. 17.17.170. Registration. Requires the commissioner to register applicants when it is in the public interest to do so, and establishes the standards the commissioner must use in determining whether issuance of a registration to manufacture, distribute or dispense is in the public interest; requires the commissioner to register researchers who are registered as researchers under federal law; and provides that compliance by manufacturers and distributors with federal regulations provisions entitles them to registration in the state.

Sec. 17.17.180. Revocation and Suspension of Registration. Provides the standards under which a registration may be revoked or suspended and the procedures for disposition of the registrant's controlled substances during revocation or suspension proceedings.

Sec. 17.17.190. Order To Show Cause. Establishes procedures the commissioner must follow before denying, suspending, revoking or refusing to renew a registration; provides that the commissioner may suspend a registration without complying with these procedures if imminent danger to the public health or safety warrants immediate suspension.

Sec. 17.17.200. Records of Registrants. Sets out the requirements for record keeping by registrants.

Sec. 17.17.210. Order Forms and Prescriptions. Adopts federal law dealing with order forms and prescriptions.

Article 3. Offenses and Penalties.

Sec. 17.17.250. Prohibited Acts A; Penalties. Prohibits the unauthorized delivery of controlled substances to minors; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the drug with respect to which the violation occurred.

Sec. 17.17.260. Prohibited Acts B; Penalties. Prohibits the unauthorized manufacture of controlled substances; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.270. Prohibited Acts C; Penalties. Prohibits the unauthorized delivery and possession for delivery of controlled substances under circumstances manifesting an intent to deliver controlled substances as part of an ongoing commercial enterprise or to deliver controlled substances to ten or more persons; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.280. Prohibited Acts D; Penalties. Prohibits the unauthorized delivery of controlled substances and possession with the intent of delivery; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.290. Prohibited Acts E; Penalties. Prohibits possession of controlled substances except where authorized by the Act; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.300. Prohibited Acts F; Penalties. Prohibits knowingly keeping a structure used by persons in violating this chapter; fraudulent use of a registration number, obtaining controlled substances fraudulently, furnishing false information in a document required by the Act, refusing entry for an inspection authorized by the Act, and recordkeeping violations; provides penalties for these violations.

Sec. 17.17.310. Prohibited Acts G; Penalties. Prohibits public use and display of marijuana and use of marijuana while driving; provides penalties for these violations; provides that possession of marijuana for individual use is not unlawful, nor is distribution to persons 19 years of age and over of less than one ounce of marijuana for no remuneration.

Sec. 17.17.320. Sentencing. Sets out sentencing procedures for persons convicted of a violation of the Act including the circumstances where the presumptive sentence should be imposed; provides factors which may aggravate or mitigate the presumptive sentence and the procedures for establishing aggravating and mitigating factors; and provides that a person convicted of possession of a controlled substance who is addicted to a controlled substance may be sentenced to undergo treatment in addition to or instead of a fine or imprisonment.

Sec. 17.17.330. Subsequent Offenses. Provides that the presumptive sentences for repeat offenders under the chapter are higher than for first offenders.

Sec. 17.17.340. Penalties Under Other Laws. Specifies that the penalties under this Act are in addition to any civil or administrative penalties imposed by law.

Sec. 17.17.350. Bar to Prosecution. Provides that if a person is prosecuted by another state or the federal government for an act which also violates this Act, acquittal or conviction in the other jurisdiction bars prosecution in Alaska.

Article 4. Enforcement and Administrative Provisions.

Sec. 17.17.380. Cooperative Arrangements and Confidentiality. Allows the commissioner of health and social services to cooperate with other state and federal agencies in data collection, information exchange, and training.

Sec. 17.17.390. Forfeitures. Sets out the property which may be forfeited and the conditions and procedures for seizure of property subject to forfeiture under the Act; sets out the procedures for disposing of forfeited property.

Sec. 17.17.400. Burden of Proof; Liabilities. Provides that the state need not negate an exemption or exception under the Act in any pleading or proceeding under the Act; provides that no liability is imposed by the chapter on an officer carrying out his or her duties.

Sec. 17.17.410. Judicial Review. Provides for review by the superior court of administrative decisions made under the Act.

Sec. 17.17.420. Education and Research. Requires the commissioner of health and social services to encourage education and research in the field of drug abuse, and empowers the commissioner to establish research projects and educational programs.

Article 5. General Provisions.

Sec. 17.17.900. Definitions. This section defines terms used in the chapter.

* Sec. 2. Amends the definition of "unprofessional or dishonorable conduct" in the licensing provisions for physicians to conform with the provisions of the Act.

* Sec. 3. Amends AS 08.80.470, regarding licensing of pharmacists, to conform with the provisions of the Act.

* Sec. 4. Adds the duty to administer the Act to the duties of the Department of Health and Social Services under AS 44.29.020.

* Sec. 5. Provides that offenses committed before the effective date of the Act do not abate as a result of passage of the Act but that penalties in the Act which are less severe than those under prior law will apply to these offenses; provides that forfeiture and administrative proceedings begun before passage of the Act are not affected by the Act; requires the commissioner of health and social services to initially register under the Act persons licensed under present state law.

* Sec. 6. Provides that all administrative orders issued and regulations adopted under a law affected by the Act and not in conflict with the Act shall continue in effect until modified, superseded, or repealed.

* Sec. 7. Repealer.