

S B

4 9

ATB #49 ^{Hess #79} ~~Bill~~ relating to the
possession & control of marijuana

Introduced 1-16-79

Logged 1-16-79

Referrals Judiciary

Comm. meeting 2-9-79 - held

" activil

Notified
John Coffey
Chief Barclay
Person officer leave (Crim. Justice)
Dept of HESS
Don Hickey (AK. Dept of Law
Criminal Div.)
Louie Bencardino (Chief of Police
Sewaco)
Comm. Div of State Troopers

Allan J. Hoth
1752 Cottonwood
Fairbanks, Alaska - 99701

W. E. Brad Bradley
Pouch "V"
Gumna, Alaska - 99811

Dear Sir;

In support of your legislation to again control
Marijuana I'm sending you a note I found and
removed from my fourteen year old daughter.
She is a high school student here in Fairbanks.
The letter should speak for itself.

I checked into the matter and it seems that
long ago young Anney's was a very prominent
here in Fairbanks schools.

It is fine with me if an idiot can't
control his own life but when it starts
affecting my family I believe the wisdom can
overriding the use of a marijuana should be reported.
Common sense would state that the substance
is not good for the people and
it hurts but we should do what we can
to control it.

Thank you for the letter and I hope you can
do what you can to control it.

The laws that drugs have ruined. I've spent fifteen years in various prisons. my knowledge is first hand, not something I've read.

I appeal to you and the legislators of Alaska. Give our children a chance and let police officials deal with this problem before it gets completely out of hand.

Respectfully

Allan J. Hoth
Beulah M Hoth

Hey Whats up Charbee!

hey I was buzzing but that was it I wasn't really really stoned cause I've been smoking it and alot of it lately.

I am gonna take a couple ~~trankulizers~~ trankulizers that will fuck me up alot. I am taking 2. For a bud.

Shit so many people are following me now cause I finally got weed and they don't get none. Shit when I don't have none they don't get me high or give my speed so I am just getting people high that are cool like you Gino, Sunny, Kelly, mitchell
you guys are cool!

Well I'll write you back after you write me. 10/14 Charbee?

Your friend

Always

Yeah

///

I'll probably get

you

high

again

ic

not too

many people

follow

me.

ok?

Monday -

A copy of the book for
Lambert

to
started

So ordered. ml.

Drug Confiscations Low

This is another in a series of stories on the local drug scene.

By PATTI DePRIEST
Times Staff Writer

Drug enforcement officials here last year seized a variety of drugs, worth about \$1.8 million dollars on the street.

But that's only about 5 percent of the total drug sales in Alaska, they say, estimating about \$35 million worth of drugs were sold to Alaskan buyers.

Marijuana and cocaine were the most prevalent in investigations and seizures. Mari-

juana seizures totaled \$836,704 in street value with cocaine coming to \$816,600, said Alaska State Trooper Joe Turner. A 12-year veteran of narcotics investigations, Turner coordinates statewide operations.

Drug enforcement officials arrived at those figures by estimating marijuana at \$20 per ounce and cocaine at \$100 per gram, Turner said. Some 2,614 pounds of marijuana were seized and 8,166 grams — about 300 ounces — of cocaine.

Although drug buyers and dealers agree cocaine sells for about \$100 an ounce on the Anchorage market, they disagree with the \$20 per ounce figure for marijuana, placing an average per ounce price at about \$45. At \$45, the street value of marijuana seized would more than double.

Amphetamines, known as speed on the street market, resulted in the seizure of 18,550 tablets, Turner said.

Other drugs seized included LSD, hashish and heroin, he said.

Most of the marijuana sold in Alaska comes from Mexico and South America, with some coming in from Hawaii, Turner and Donald Trudeau, head of the Anchorage Metropolitan Drug Enforcement Unit, said.

And another narcotics investigator said Seattle, California and Ore-

(See Page 4, Col. 1)

Police Cite Variety Of Drugs

(Continued from Page 1)

gon are major shipping points for Alaska-bound drugs.

The largest shipment of marijuana seized in Alaska was 1,100 pounds with an additional 600 pounds found at the residence of the suspect, Trudeau said.

In Anchorage, drugs find their way into the city through a number of entry points including the airport, persons driving up the Alaska Highway, trucking companies, air freight companies, the Anchorage port and the U.S. mail, the investigators said.

In Southeastern Alaska, investigators must contend with the ferry system and fishing boats as well, while in Fairbanks most drugs are flown or driven in, they said.

Customs officials seize drugs at the Alaska border, although they, too, estimate only about 5 percent of the drugs brought in are confiscated. There are no customs checks for air travelers.

The heroin problem has been dropping steadily in the last few years because of a crackdown by federal officials. It is "extremely hard to come by" and is limited to certain groups in Anchorage, Turner said, while the quality and percentage of heroin has dropped.

One state-funded study of heroin in Alaska estimated Anchorage to have about 700 heroin addicts in 1977.

But since addicts cannot find heroin of a high enough quality to keep their habit going, they have recently turned to the use of pharmaceutical drugs such as Percodan or morphine-based drugs, drug treatment counselors and police officials said.

For marijuana users, pot is easier to come by since it is legal to grow pot for personal use in Alaska. However, the majority of marijuana sold in Alaska is not homegrown but a brand known as Colombian which is exported from that South American country, investigators said.

One reason, Trudeau said, is that stronger marijuana is grown in other countries. Seeds from those plants may be grown in Alaska but after two or three seasons, the marijuana adopts the genes of the Alaska variety which is not as potent, he said.

The investigators said they think there is a definite drug problem in

the schools and among young people. "They normally run to the lower end of the money scale or some medium price range," Trudeau said, because youths generally do not have as much money to spend on drugs.

Where do young people get their drug money? "Some have legitimate jobs, of course," Trudeau said, "But some get it by shoplifting and burglaries then selling the merchandise or by dealing other drugs. Some kids get an allowance."

The investigators said they have found dealers who sell only to juveniles and have found some young adults — "drop outs" — who hang around the schools and deal to the students. "But there is no tight, organized group working the schools that I've been able to find," Trudeau said.

Law enforcement officials uniformly cite what they think are lax drug laws as being one cause for their enforcement problems. In fact, they said, they have stopped prosecuting "small-time" marijuana possessors and try to get to the larger dealers.

Additionally, a recent Alaska Supreme Court decision that prohibits electronic "bugging" of suspects without a search warrant has hindered drug investigations, Turner and Trudeau said.

That decision, said Turner, "will hurt law enforcement in Alaska more than any other decision we've ever been hit with."

Drug Hearing Is Postponed

VICTORIA, B.C. (AP) — A preliminary hearing for 17 persons charged with conspiracy to import 13 tons of marijuana into Canada has been adjourned to Jan. 4.

The hearing, which began Nov. 20 in Provincial Court, was expected to last six weeks.

On Wednesday, Judge Reg Moir refused to deal with an application by one of the defendants, Robert Sherman Miller, 34, of North Vancouver, for the return of the vessels Sunfish and Weatherly.

The vessels were seized by Royal Canadian Mounted Police in connection with a July 15 raid off the west coast of Vancouver Island near Tofino.

Elected pope in 751. Stephen died three days later

Marijuana: No Small-Time Operation

Gone are the counterculture days of the 1960s when marijuana dealers had long hair, wore dirty blue jeans and drove dented vans.

And gone are the days when 100 pounds of marijuana was considered a "big deal."

Enter the new look and the bigger deal.

According to an investigative article in the November issue of Penthouse magazine, organized syndicates assisted by attorneys and accountants use trailer trucks, large multi-engine aircraft and ocean freighters to deliver at least 45,000 pounds of marijuana each day to the United States.

The business netted \$12 billion retail last year, compared to a \$15.8 billion cigarette market and a \$7 billion beer business, writer Ed Rasen reported in Penthouse.

And Peter Bensinger, administrator of the Drug Enforcement Administration, puts the figure even higher. In a September speech to the International Association of Chiefs of Police in New York City, Bensinger

said, "The money to be made is awesome, we estimate in excess of \$15 billion.

"So far this year, in marijuana alone, we have seized over 2,000 tons, more than the total amount seized in the last three years combined."

Rasen, in the Penthouse article, said the "hippy dope dealers" of the 1960's have been replaced by "hip businessmen who sport short hair, three-piece suits and college degrees."

"The new breed of traffickers are young, intelligent and upper middle class. They operate outside traditional crime families and ghetto areas, though, by any standard, large scale marijuana smuggling can be considered organized crime."

"The typical new dope businessman is an attorney," Rasen said. He quotes a Miami drug enforcement official as saying large smuggling operations have lawyers who provide them "with all the advice they need to operate."

"As marijuana dealing becomes a white-collar crime, the point of entry

and country of origin are also changing," Rasen said. "Most grass used to come from Mexico by light plane, truck or car across the 2,000-mile Southwestern border. Now it's coming increasingly from Colombia and it's new point of entry is South Florida."

Rasen said one "marijuana broker" told him large deals are no longer cash transactions and there are no "hand-to-hand transfers."

"Now offshore corporations are formed and accounts are opened at banks in tax havens," Rasen said. "The funds are placed in escrow with release powers placed in the hands of bankers or trustees; they are governed by contracts written by attorneys. Then the monies are drawn back through holding companies which filter them through other banks to offshore corporations."



COACH QUILTS—Citing drug prevalence, West Anchorage High School football coach Don Larson resigned Thursday. Larson says 60 to 75 per cent of his team uses drugs on a regular basis.

(AP wirephoto)

Drug issue forces West coach to quit

ANCHORAGE, Alaska (AP)—A high school football coach has quit, saying he cannot coach a team infected by drugs and alcohol.

"Drug use has infected our schools and society. Its use extends from our elementary schools to a former school board member. I can't accept the fact that it has crept into our football program," said West Anchorage High School Coach Don Larson in a letter of resignation.

Larson said he discovered that players smoked marijuana at lunch, before practice and after games. "I just can't handle this sort of thing," he said.

School district officials denied drug use was a problem, but Larson, who led his teams to 11 winning seasons, said 60 to 75 percent of the varsity team used drugs "on a weekly basis during the season."

After accepting Larson's resignation Friday "with regret," the district said it would investigate the coach's charges.

"I am resigning, not because of something as trivial as a won-lost record, but because my attitude toward our next year's team would be one of mistrust and suspicion," said Larson.

"The number one thing I want to develop in a football player is a positive attitude, and I can't coach when I have lost mine."

Alcohol and marijuana were most

commonly used, he said, but "I've been told cocaine, PCP (Angel Dust) and Quaaludes" are used.

"After discussions with 11 players, ranging from 10th through 12th grade, I have drawn the conclusion that the use of drugs is too prevalent for my continuation as a football coach," Larson said in his letter to Principal Larry Graham.

"I cannot compromise my personal beliefs and principles on what I feel an athlete should be," the coach added.

Larson's teams have compiled the best overall record in the local Cook Inlet Conference over the past nine years, and his 34-member 1978 team finished second in the conference with a 5-2 record.

Graham said school officials initially did not accept the coach's resignation, hoping he would change his mind.

"There is no widespread use of drugs in the Anchorage School District," said school Superintendent John Peper.

"Sure, kids may smoke out in the woods, but there aren't any drugs on the school grounds," said district information officer Bill Blessington.

Anchorage police disagree, however. "If they don't think drugs are in the school, they're blind," said an Anchorage Metropolitan Drug Enforcement Unit official. "Kids have told me any drugs you want are in the schools."

DAILY NEWS MINER
SAT. DEC. 9, 1978

ALASKA PEACE OFFICERS ASSOCIATION



February 6, 1979

Senator Glenn Hackney
Pouch "V"
Juneau, Alaska 99811

Dear Senator Hackney:

In response to your message informing me of the Hess Meeting on SB 49, I sincerely appreciate your keeping me informed of this Hearing. Unfortunately, I will not be able to attend; however, I am attempting to locate an APOA member that can make the meeting and testify on behalf of the Alaska Peace Officers Association.

Aside from being the President of the Alaska Peace Officers Association, I am a Detective with the Fairbanks Police Department and Supervisor of the Areawide Narcotics Team.

Just today, officers under my supervision were successful in obtaining a Grand Jury indictment for an individual that has been a Marijuana dealer in the Fairbanks area for a large number of years. During the Grand Jury proceedings, a young man, eighteen years old, testified to having assisted the Areawide Narcotics Team in purchasing Marijuana from this dealer and obtaining needed information for a search warrant. During his testimony, a Grand Jury member asked the young man why he was motivated to help the police. The young man stated that he could see that the use of Marijuana was ruining his life and that since he had been using Marijuana, he found himself to be lazy and run-down.

Approximately three weeks ago, a Mr. Joe Hergenreter, of 515 7th Avenue, Fairbanks, Alaska 99701, came to my office and reported that his seven and nine year old sons were using Marijuana. He reported that they were getting the Marijuana from a nine year old neighbor boy whose parents permitted the use of Marijuana. I explained the difficulty in prosecuting any violations under these circumstances to Mr. Hergenreter. As you can see, there would be no effective way to handle this case without the involvement of Mr. Hergenreter and his two sons. Mr. Hergenreter may, himself, be willing to assist by testifying; however, he was not willing to subject his children to court proceedings. As you can see, an attempt to investigate and prosecute either the nine year old neighbor boy or his parents would become a "bucket of worms" and I am not sure that we could ever reach a court proceeding at all.

Senator Glenn Hackney

February 6, 1979

Page -2-

About a week prior to Mr. Hergenreter's report, I had conversation with a person whose name I have forgotten; however, he is the owner of the Giant Grinder restaurants here in Fairbanks. He reported to me that his thirteen year old daughter was getting Marijuana at school and from a young man in the neighborhood. I explained the necessity for a statement from his daughter in an effort to obtain information that would allow us to prosecute or obtain a search warrant for this individual's residence. After a lengthy explanation of the requirements of the police, this individual was ready to take care of matters himself.

These types of complaints are very common and there is little that the police can do to assist in these frustrating situations. It is disheartening to have to inform parents that there is very little that can be done without statements from juveniles and a lengthy court process.

Our statistics on the use of Marijuana in the schools is limited because we have no means of monitoring the activities in the schools. Our officers are too old to fit in or around schools. Most surveillance efforts are useless as officers in the areas are soon detected. As a practical matter, very few cases that involve juveniles are prosecuted through the District Attorney's Office. It is required that most juvenile offenses are handled through the Juvenile Intake Office and in many cases, there is no actual criminal prosecution. In the event that there can be some sort of criminal prosecution on the part of the juvenile, there is a low priority with reference to Marijuana cases where juveniles are involved in the District Attorney's Office. There may be some prosecution, should we be involved, with an adult selling to juveniles however.

I understand the District Attorney's position in these matters as it is my experience that my office can provide felony cases involving the sale of Cocaine and Heroin involving adults with very little difficulty. It has been my experience that the Areawide Narcotics Team has effectively clogged the court calendar on numerous occasions in the last four years.

The decriminalization of Marijuana in 1975 has finally had an effect on the populace. It can be observed that there is a definite problem within the school systems because of this decriminalization. It is evident by the problem in the Anchorage area where the football coach quit because of the students involved in drugs in that school. I have recently heard, while in Juneau, legislators making the comment that this situation had been blown out of proportion and that they are taking an adverse reaction to the publicity that has been raised. It is my opinion that these particular individuals are irresponsible and it is a shame that they are representing people of Alaska in their positions as legislators.

Senator Glenn Hackney
February 6, 1979
Page -3-

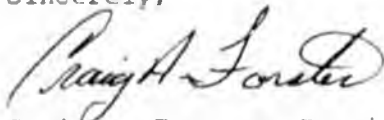
Prior to the decriminalization of Marijuana, a different set of circumstances existed concerning the involvement of juveniles with alcohol. During school hours, if a juvenile was involved with alcohol, it could be more easily detected than the use of Marijuana today. The individual who was intoxicated by alcohol could be identified by his particular actions and the strong odor of alcohol itself. It was also difficult to consume alcohol in the lavatories or other areas on the school grounds as the alcohol was not quite as easily concealed. Today, however, a "joint" of Marijuana or Marijuana cigarette can be easily concealed and quickly digested during a brief class break.

I feel that it is reasonable to assume that if Cocaine was decriminalized, it would be as prevalent in the schools as Marijuana is today. We already have a problem with Cocaine in our schools. I feel that the public is finally concerned that an action like this might happen. You should be aware that in the Supreme Court Decision in the Erickson Case, the Supreme Court suggested that the legislature take a closer look at the classification of Cocaine as there were some types of new scientific information that might lead one to believe that Cocaine was not as harmful as originally thought. I would submit that this was an irresponsible opinion by the Supreme Court in this matter. Once reading the Opinion, it is evident that the Supreme Court went beyond its duties of interpreting the law, but rather it suggested some liberal change in the law. It is also evident that the Supreme Court selected the scientists that would come up with findings that would satisfy the position they would like to take.

I believe that as time goes on, we will see that the Supreme Court will continue to circumvent the legislature and, therefore, continue the liberal decay in our criminal justice system.

Needless to say, I support SB 49 and any other legislation that would strictly prohibit possession of Marijuana. It would be appreciated if you would disseminate this letter amongst your colleagues. If I can be of any further assistance concerning this matter, please contact me and I will attempt to provide you with the necessary information.

Sincerely,



Craig A. Forster, President
Alaska Peace Officers Association
656 7th Avenue
Fairbanks, Alaska 99701

Board members ponder pot law

A resolution proposing that Alaska's marijuana possession law be tightened did not pass, but Alaskan school board members have expressed their concern about growing drug and alcohol abuse among youngsters.

The Association of Alaska School Board members voted on a variety of resolutions during their conference Sunday in Fairbanks.

Originally a proposed resolution urged the Legislature to make illegal all sale, use or possession of marijuana. State law provides a civil penalty for possessing up to one ounce in public.

While members supported resolutions expressing AASB concern

over drug and alcohol abuse, the change in marijuana laws was controversial.

Opponents said supporters were "moralizing" on that stand, and after a lengthy discussion the resolution was amended to drop the phrasing. Members from villages expressed concern about growing marijuana use in their areas.

In final form, the AASB "urges the Legislature to consider all possible means to reduce and eliminate drug and alcohol abuse particularly as it relates to schools."

Other resolutions include:

- Urging the Legislature to state that

borough assemblies have no powers with respect to education except those granted by statute.

- Supporting school board elections at-large rather than by district.

- Continued opposition to binding arbitration with teachers.

- Asking that workman's compensation laws exclude as cumulative injury claims ulcers, hypertension and heart-related diseases and nervous conditions.

- Asking the Legislature to more clearly define the process for recalling school board members, to include misconduct, incompetence and failure to perform as reasons for recall and to outline a procedure for the accused to respond.

- Supporting full state funding for busing and pupil transportation.

- Supporting a change in the state's formula for giving money to school districts and increasing those funds.

- Continued opposition to giving unemployment compensation benefits to professional and non-professional employees during the summer.

- Urging that teacher tenure in Alaska be increased from two years to three years.

- Asking the Department of Education to investigate self-insurance on a district-sharing basis or other alternatives to the increasing costs of insurance.

- Asking the department to train teachers of gifted students.

- Supporting a 30-day grace period for students to show proof or receive immunizations.

- Urging that general equivalency degree applicants be at least 18 years old and out of school at least six months. Applicants now must be at least 17.

Coach. respected

2577 Riverview Drive
Fairbanks, Alaska
Dec. 12, 1978

Dear Editor,

I recently read that the football coach of West Anchorage High School presented his letter of resignation to the district school board.

I, for one, am very proud of this man who is a very successful coach and who led his team to 11 winning seasons, yet is willing to give up a successful coaching job to point out to his school district and to the public that they have a serious drug problem in their school system.

He will not compromise his personal beliefs and principles regarding his athletes and is willing to resign. The only reply from the school superintendent, John Peper, is that there is no widespread use of drugs. Perhaps this would be an appropriate answer to protect his position and to take the heat from the district that might be generated from the parents, who just might wake up long enough to say "What's going on?" or "Why didn't someone tell us?"

Well, you have been told by a man who is willing to sacrifice his job for you!

No, either tell Superintendent John Peper, District Information Officer Bill Blessington and Principal Larry Graham to wake up and do their job along with the Anchorage School District or make some job changes. At first glance, I would send them packing because if you deny without considering the possibilities of a drug problem, then you are no use to anyone.

Parents, you are the ones to suffer along with your children. Don't let Coach Larson's sacrifice go for naught. It might be wise for our own school district to consider the possibilities of a drug problem. We might not have a person willing to sacrifice his job to tell the parents and public this fact.

Paul J. Wagner

Letters To The Editor

Coach Larson

Dear Editor:

Concerned parents here in Anchorage owe congratulations and thanks to Don Larson of West High. Because of his admirable dedication to athletic purity, a vicious, and heretofore latent cancer has been exposed. It is high time somebody stood up against those, young and adult, who in their sordid quest for a dollar, willingly savage the lives of our young people.

I played football under Coach Larson for three years at West and I am well aware of his outstanding contribution to the positive growth of so many young men. However, if he is convinced that drug use is pervasive among his athletes, then I support his decision to resign 100 percent. I'm convinced Larson's suspicions are accurate, having seen and heard much to support them.

Just as I am proud of Don Larson, I am disappointed with Superintendent Peper. The single fact that Dr. Peper has the utter audacity to imply that, by some stretch of the imagination, Larson has acted im-

properly, outrages my sense of ethics and fair play. In no way did Larson solicit the publicity his letter of resignation received. I know for a fact that it not been for the sensitive ear of a Times reporter, the reasons behind Larson's resignation might have gone unpublished.

Our school administration should thank Don Larson and do some serious soul searching in this matter. We need no-nonsense action, not defensive recrimination. Finally, we need coaches like Don Larson to help guide our young people.

John B. Thorsness
2315 Loussac Drive

The Anchorage Times welcomes letters from its readers on issues of the day. Letters must be exclusively addressed to the Anchorage Times and should be kept as brief as possible. All letters are subject to condensation. They must include signature and valid mailing address.

Cocaine may remain an issue

AP News Analysis

JUNEAU—When Gov. Jay Hammond bowed to growing political pressure and withdrew his proposal for revising Alaska's drug laws, many members of the Legislature breathed a sigh of relief.

Most had concluded that the bill, which would have lowered the penalty for first-time possession of small amounts of cocaine from a felony to a misdemeanor, was too sensitive of an issue to tackle during the current election-year session.

However, Friday's state Supreme Court decision upholding the constitutionality of Alaska's cocaine laws raised the prospect of renewed debate on the whole drug question, including a fresh attack on a 1975 law legalizing the possession of marijuana in the home.

While holding that the Legislature was within its constitutional rights to outlaw possession of cocaine, the high court took an unusual step in urging state lawmakers to take a fresh new look at the issue.

In a caveat at the end of a 65-page opinion written by Chief Justice Robert Boochever, the justices said that despite their unanimous decision "we do recommend that the Legislature review its treatment of cocaine in light of modern scientific evidence."

"In our analysis," the court said, "we have emphasized the harmful effects of the drug, as we endeavored to ascertain whether the legislation could be sustained.

"Our overall impression is that cocaine as presently used is less harmful to the health and welfare of society than opiates (such as heroin) and also may be less harmful than barbitrates and amphetamines, alcohol and, as to the physical harm, tobacco."

Daniel Hickey, the Department of Law's chief prosecutor, called the Supreme Court recommendation a

"fairly strong statement for an appeals court" and "somewhat unusual in a criminal case."

"Every now and then you see a court express dissatisfaction on some state of affairs, but note that, as a matter of law, what they are concerned about is not something they cannot get involved in," Hickey said.

"That was our position throughout the entire matter," Hickey said. "The issue was not a judicial question but a matter of social policy."

Some House and Senate leaders reacted quickly to the decision, doubting the Supreme Court recommendation would prompt the Legislature to action. Others were reluctant to even discuss the issue.

"I think we'll follow the governor's lead and drop the whole thing," said Rep. Terry Gardiner, D-Ketchikan and chairman of the House Judiciary

Committee. "I think most legislators agree."

In the Senate, Judiciary Chairman George Hohman, D-Bethel, dismissed questions about the likelihood of legislative action on the high court recommendation with the observation that: "I'm not in a position to say one way or another."

Some legislators, however, said they were anxious to raise the drug issue again, but not along the lines suggested by the Supreme Court.

Rep. Ed Dankworth, R-Anchorage, said he was preparing legislation in cooperation with the Alaska Police Officers Association for a wholesale revision of the state's drug laws.

"It's designed to put us back in the drug enforcement business," said Dankworth, a former head of the Alaska State Troopers.

Seldovia Considers Toughening Drug Laws

By DON HUNTER
Times Staff Writer

Seldovia city officials, concerned about reports of increased marijuana use among school-aged children, are looking into ways to strengthen local laws.

Acting on suggestions from police chief Gary Gunkel, the Seldovia City Council Wednesday appropriated \$400 for a legal opinion on the chances for enacting local laws to better control the substance.

Gunkel argues that Seldovia's problem is rooted in state laws which make possession of up to one ounce of marijuana a misdemeanor punishable by a civil fine. And the state Supreme Court has ruled that possession of marijuana for personal use in the home is legal.

Some Seldovia residents grow marijuana plants in their greenhouses, which are burglarized by youngsters, Gunkel says.

The police chief believes that as many as "90 percent" of the school-age children "from the sixth grade on up" have at least experimented with the drug.

Gunkel feels that stricter local laws may be the answer.

At least one member of the city council disagrees, however. City Councilwoman Cheryl Reynolds says better education on drugs and drug use may be a better route.

Mrs. Reynolds cast the dissenting vote in the council's 4-1 decision to make the appropriation.

"Really, I feel quite mixed" about the police chief's argument, Mrs. Reynolds said. "I feel we're getting very emotional about an issue we should stay objective about.

"I don't think it is as serious as some people think," she said. "I haven't seen a major drug problem since I've been here." Gunkel's statistics are in her opinion "far out of line."

"Approaching it in a manner of making it illegal" may end up making criminals of people who really aren't criminals, Mrs. Reynolds said.

Council member Billy Kaho said Gunkel's report "was a bit of a shock to me."

The police chief "has come to the council three consecutive weeks" with reports of drug problems including "not only marijuana but also cocaine and other hard drugs," she said.

Mrs. Kaho compares the question of harsher local drug laws to the hours bars are allowed to stay open. State laws allow bars to stay open until 5 a.m., she said, but Seldovia's local laws require them to close at midnight.

She said the drug issue is a community concern, at least among her friends.

"I took a poll of my particular friends and they're scared to death for their kids," she said.

Hammond Changes On 'Grass' Stance

The Anchorage Times

This is another in a series of interviews with Alaska gubernatorial candidates and their stances on the state issues.

By RAY TYSON
Times Staff Writer

If he could do it over again, Gov. Jay Hammond says he would veto the liberal marijuana bill he let pass into law three years ago.

And, the incumbent Republican candidate for governor agrees with the Anchorage Parent-Teacher Association that proposed drug bills — one of which would make stiffer penalties for pushers — lack political support among lawmakers.

"Let me say that I have been disturbed over that same lack of action to date," Hammond said.

The parents' group was among eight organizations which submitted questions to the Anchorage Times for gubernatorial candidates.

The other organizations with spe-

cific concerns are the Alaska Bar Association, Older Persons Action Group, Anchorage Chamber of Commerce, Alaska Peace Officers Association and the Alaska Black Caucus.

"In regard to whatever drug abuse you're talking about, be it alcohol or other types of narcotics, I think there should be swift justice," Hammond said. "I don't care whether it is the bootlegger in the village or the guy who's hawking cocaine or smack on the street corner."

Hammond came under public criticism in 1975 when he declined to veto a legislative bill "decriminalizing" possession of marijuana. The law reduced the penalty for possession from a felony to a civil offense.

The Alaska Supreme Court later ruled the constitution guaranteed a person's right to smoke pot in the privacy of his home. Hammond suggested the public mistook that to mean the Legislature and governor

"legalized" marijuana.

"They (public) feel the current status quo is the result of legislative action," Hammond said. "Not so. The Legislature still had the use of marijuana (being) illegal."

"In other circumstances it prescribed civil penalties in those instances of private use and possession of a small quantity — but (it was) still illegal."

"Had I vetoed that bill you would have removed any question as to whether the state law accommodated private use of marijuana...because we would have had nothing in the statutes even suggesting it was a civil penalty. The veto would have further liberalized it."

Hammond also has said he felt obligated to support the pot bill because the Legislature made every amendment to the legislation he suggested.

(See Page 3, Col. 1)

Law Stand

Alaska Federation of Native

Hammond said subsistence should have first pick of Alaska and game when there is a and there are inadequate state

"That doesn't mean 'use,' Hammond said. "There is a priority when it conflict."

The governor defined subsistence as "that which sustains body and soul."

"It's a matter of degree. Who is most dependent on the body and soul? When the conflicts the least dependent be screened out."

"But I can't tell you what a guy who lives here in Anchorage would rather blow out his brain than hang up his fly rod should be chance to go down and catch a bow trout somewhere."

Hammond did not suggest a specific program to assure subsistence users get first choice of game.

"The state policy has been a number of years — as struck the fish and game board — subsistence as the priority. When such conflicts occur," he said.

How would you make subsistence more responsive to the press concerns of Alaska's population...as meaningful to the state decision-making process? — Alaska Black Caucus

The Alaska Black Caucus has accused Hammond of appointing minorities to making positions in state government.

And Hammond repeated his record on minority better than previous administrations.

"We have had a 30 percent increase in black hire since the start of this administration, and a 50 percent increase in female hire," Hammond said. "And while not particularly good, it's a vast improvement over previous actions."

Hammond said he offered minority deputy commissioner positions and two minority commissioner slots.

"They all refused them," Hammond said. "Now I can't deny, kicking and screaming, the problems is that many of them do not want to go to Juneau. There is not a significant black community there."

The governor said he had met with minority groups to get names to him for possible appointment to decision-making positions.

"I did this early on with appointing my cabinet."

community organizations.

Do you support Sen. John Huber's amendment to have judges and attorneys general elected? — Alaska Bar Association.

"At one time I thought this might have some merit," Hammond said. "But I do not favor it. It seems you would further politicize (the situation)."

"In many states which have had election (of attorneys general)...there has been a conflicting posture," where the attorney general competes with the governor for high office.

But Hammond suggested he would support placing an initiative on the ballot asking voters whether they support election of judges and attorneys general.

"I am a great supporter of the initiative process," Hammond said. "An initiative advisory would be helpful. I would welcome one."

Hammond said he personally supports the current system of selecting judges based on the lawyers' poll.

The poll provides the Judicial Council with possible candidates for judgeships. The nominees are submitted to the governor who makes

Extreme demands would be immediately rejected by the electorate. How can someone from New York tell whether or not...the administration or school teacher or electorate will be impacted?"

Representatives of the collective bargaining unit, administration and the general public could serve on an arbitration panel, the governor said. The panel would take the last, best offer of each side and then draft a final package to be submitted to the voters.

But Hammond said public employees should be guaranteed certain basics, such as cost of living adjustments, before the issue goes on the ballot.

"I'm not saying this (arbitration) should be done," Hammond said. "But the question should be conveyed to the public."

The teachers' group also asked whether gubernatorial candidates favored 100 percent state funding of school operations and 80 percent funding of school construction.

"I introduced the bill for 80 percent funding," Hammond said. "As far as 100 percent funding, you bet I support it. It's constitutionally man-

group.

Hammond said he supports such state financed aid programs for Alaska's elderly "because most older persons groups I've spoken to agree such is the case."

Hammond said he has built five times more residential housing for the elderly than any administration since statehood and has bolstered nutrition programs.

And since he took office nearly four years ago, the governor said six multi-purpose senior centers have been built. He said he hopes to keep the pace up.

"My concern is that we have appropriate funds to provide for whatever programs," Hammond said. "I'm certainly willing to provide the services as long as we have the funds."

What is your position on repeal of the state business license gross receipts tax? — Anchorage Chamber of Commerce.

"It is certainly an unfair tax," Hammond said. "It is a hidden sales tax and doesn't necessarily relate to profits or earnings."

The state Senate repealed the tax after the Times interviewed Hammond. The House and governor are expected to uphold Senate action.

Hammond's only concern was to find a source of revenue to replace the gross receipts tax, which goes mostly to local municipalities through state revenue sharing programs.

"Otherwise, we would be throwing a real curve ball at municipal entities," Hammond said.

Incumbent Governor Changes Drug Law Stand

(Continued From Page One)

But because of his personal opposition to drugs and because of the "imagery involved," Hammond said he would veto the same marijuana bill today.

"Frankly, if I had to do it over again, to demonstrate clearly that, hey, if you guys want to liberalize marijuana put it on the ballot or something of that nature, but don't ask me to support something that I happen to be morally opposed to... I would have vetoed the bill."

On another issue of concern to the parents' group, Hammond agreed federally-mandated programs often do not include enough money for the state and local communities to administer them.

The governor said he has taken steps to get more federal support "through personal lobbying and correspondence and . . . resolutions emerging from the (Western) governors' conference."

Hammond also responded to questions drafted by seven other community organizations.

Do you support Sen. John Huber's amendment to have judges and attorneys general elected? — Alaska Bar Association.

"At one time I thought this might have some merit," Hammond said. "But I do not favor it. It seems you would further politicize (the situation).

"In many states which have had election (of attorneys general). . . there has been a conflicting posture," where the attorney general competes with the governor for high office.

But Hammond suggested he would support placing an initiative on the ballot asking voters whether they support election of judges and attorneys general.

"I am a great supporter of the initiative process," Hammond said. "An initiative advisory would be helpful. I would welcome one."

Hammond said he personally supports the current system of selecting judges — based on the lawyers' poll.

The poll provides the Judicial Council with possible candidates for judgeships. The nominees are submitted to the governor who makes

the final appointments.

"This is one means of determining qualifications," Hammond said.

Do you support legislation which would allow voters to choose either binding arbitration or a teacher's clear right to strike as a means of resolving impasse situations? — National Education Association of Alaska.

Hammond said he would support putting the labor questions to the public. And he said the public itself could serve as the arbitrator, or third party which settles contract disputes when labor and management cannot reach agreement.

"I think if you had the binding arbitration procedure you would very seldom have irrational demands," Hammond said. "I don't think you would ever be confronted with strike circumstances."

Extreme demands could be avoided if the public voted on the final wage package, Hammond said.

"They would assess what the true monetary impact would be," he said. "Extreme demands would be immediately rejected by the electorate. How can someone from New York tell whether or not...the administration or school teacher or electorate will be impacted?"

Representatives of the collective bargaining unit, administration and the general public could serve on an arbitration panel, the governor said. The panel would take the last, best offer of each side and then draft a final package to be submitted to the voters.

But Hammond said public employees should be guaranteed certain basics, such as cost of living adjustments, before the issue goes on the ballot.

"I'm not saying this (arbitration) should be done," Hammond said. "But the question should be conveyed to the public."

The teachers' group also asked whether gubernatorial candidates favored 100 percent state funding of school operations and 80 percent funding of school construction.

"I introduced the bill for 80 percent funding," Hammond said. "As far as 100 percent funding, I support it. It's constitutionally man-

dated."

The governor said the state constitution "says you have to give fair and equitable education to everyone."

"The best way you can determine that is to ask what is the average cost of providing education of the citizen of the state," he said. "And what ever that translates into is the basic need."

But Hammond said those "extra enrichments" beyond basic education, such as swimming pools, for example, should be paid for by local school districts.

"The obligation in the state constitution for basic education is 100 percent... (but that) doesn't mean everything the district might want..."

Do you believe money spent on home health-home support services would not only be better for Alaska's elderly but also would tend to reduce institutionalization and medical costs? What would you do to reduce such costs? — Older Persons Action Group.

Hammond said he supports such state financed aid programs for Alaska's elderly "because most older persons groups I've spoken to agree such is the case."

Hammond said he has built five times more residential housing for the elderly than any administration since statehood and has bolstered nutrition programs.

And since he took office nearly four years ago, the governor said six multi-purpose senior centers have been built. He said he hopes to keep the pace up.

"My concern is that we have appropriate funds to provide for whatever programs," Hammond said. "I'm certainly willing to provide the services as long as we have the funds."

What is your position on repeal of the state business license gross receipts tax? — Anchorage Chamber of Commerce.

"It is certainly an unfair tax," Hammond said. "It is a hidden sales tax and doesn't necessarily relate to profits or earnings."

The state Senate repealed the tax after the Times interviewed Hammond. The House and governor are expected to uphold Senate action.

Hammond's only concern was to find a source of revenue to replace the gross receipts tax, which goes mostly to local municipalities through state revenue sharing programs.

"Otherwise, we would be throwing a real curve ball at municipal entities," Hammond said.

The gross receipts tax will be replaced by an increased corporate tax on the oil industry, the Legislature

Alaska Federation of Native
Hammond said, subsistence

should have first pick of Alaska and game when there is... and there are inadequate...

"That doesn't mean... use," Hammond said. "There is a priority when it comes to conflict."

The governor defined subsistence as "that which sustains soul."

"It's a matter of degree. Who is most dependent on the body and soul? When it conflicts the least dependent should be screened out."

"But I can't tell you a guy who lives here in Anchorage would rather blow out his boat than hang up his fly rod should be a chance to go down and catch a trout somewhere."

Hammond did not suggest a specific program to assure subsistence users get first choice of game.

"The state policy has been to let the fish and game board — subsistence as the priority — such conflicts occur," he said.

How would you make the administration more responsive to the concerns of Alaska's population... as meaningful... in the state decision-making process? — Alaska Black Caucus.

The Alaska Black Caucus has accused Hammond of appointing minorities to making positions in state government.

And Hammond repeated his record on minorities is better than previous administrations.

"We have had a 90 percent increase in black hire since the start of this administration, and a 50 percent increase in female hire," the governor said. "And while it's not particularly good, it's a vast improvement over previous administrations."

Hammond said he offered minorities deputy commissioner positions and two minor commissioner slots.

"They all refused the positions," Hammond said. "Now I can't sit in, kicking and screaming, and saying the problems is that many of them do not want to go to Juneau. There is not a significant minority there."

The governor said he had talked with minority groups and gave names to him for possible appointment to decision-making positions.

"I did this early on with appointing my cabinet," Hammond said. "I got one black name and it was opposed by me."

"This is one means of determining qualifications," Hammond said.

Do you support legislation which would allow voters to choose either binding arbitration or a teacher's clear right to strike as a means of resolving impasse situations? — National Education Association of Alaska.

Hammond said he would support putting the labor questions to the public. And he said the public itself could serve as the arbitrator, or third party which settles contract disputes when labor and management cannot reach agreement.

"I think if you had the binding arbitration procedure you would very seldom have irrational demands," Hammond said. "I don't think you would ever be confronted with strike circumstances."

Extreme demands could be avoided if the public voted on the final wage package, Hammond said.

"They would assess what the true monetary impact would be," he said. "Extreme demands would be immediately rejected by the electorate. How can someone from New York tell whether or not the administration or school teacher or electorate will be impacted?"

Representatives of the collective bargaining unit, administration and the general public could serve on an arbitration panel, the governor said. The panel would take the last, best offer of each side and then draft a final package to be submitted to the voters.

But Hammond said public employees should be guaranteed certain basics, such as cost of living adjustments, before the issue goes on the ballot.

"I'm not saying this (arbitration) should be done," Hammond said. "But the question should be conveyed to the public."

The teachers' group also asked whether gubernatorial candidates favored 100 percent state funding of school operations and 80 percent funding of school construction.

"I introduced the bill for 90 percent funding," Hammond said. "As far as 100 percent funding, you bet I support it. It's constitutionally man-

The governor said the state constitution "says you have to give fair and equitable education to everyone."

"The best way you can determine that is to ask what is the average cost of providing education of the citizen of the state," he said. "And what ever that translates into is the basic need."

But Hammond said those "extra enrichments" beyond basic education, such as swimming pools, for example, should be paid for by local school districts.

"The obligation in the state constitution for basic education is 100 percent... (but that) doesn't mean everything the district might want..."

Do you believe money spent on home health-home support services would not only be better for Alaska's elderly but also would tend to reduce institutionalization and medical costs? What would you do to reduce such costs? — Older Persons Action Group.

Hammond said he supports such state financed aid programs for Alaska's elderly "because most older persons groups I've spoken to agree such is the case."

Hammond said he has built five times more residential housing for the elderly than any administration since statehood and has bolstered nutrition programs.

And since he took office nearly four years ago, the governor said six multi-purpose senior centers have been built. He said he hopes to keep the pace up.

"My concern is that we have appropriate funds to provide for whatever programs," Hammond said. "I'm certainly willing to provide the services as long as we have the funds."

What is your position on repeal of the state business license gross receipts tax? — Anchorage Chamber of Commerce.

"It is certainly an unfair tax," Hammond said. "It is a hidden sales tax and doesn't necessarily relate to profits or earnings."

The state Senate repealed the tax after the Times interviewed Hammond. The House and governor are expected to uphold Senate action.

Hammond's only concern was to find a source of revenue to replace the gross receipts tax, which goes mostly to local municipalities through state revenue sharing programs.

"Otherwise, we would be throwing a real curve ball at municipal entities," Hammond said.

The gross receipts tax will be replaced by an increased corporate tax on the oil industry, the Legislature decided this week.

Should the first priority for fish and wildlife resources be for subsistence purposes? As governor, what would you do to assure that subsistence maintains a high priority? —

ADMINISTRATION OF NATIVE

Hammond said subsistence users should have first pick of Alaska's fish and game when there is a conflict, and there are inadequate stocks.

"That doesn't mean exclusive use," Hammond said. "It means there is a priority when there is a conflict."

The governor defined subsistence as "that which sustains body and soul."

"It's a matter of degree," he said. "Who is most dependent on sustaining body and soul? When there are conflicts the least dependent should be screened out."

"But I can't tell you whether a guy who lives here in Anchorage who would rather blow out his brains than hang up his fly rod should be denied a chance to go down and catch a rainbow trout somewhere."

Hammond did not suggest any specific program to assure subsistence users get first choice of fish and game.

"The state policy has been for a number of years — as structured by the fish and game board — to place subsistence as the priority use when such conflicts occur," he said.

How would you make your administration more responsive to express concerns of Alaska's minority population... as meaningful participants in the state decision-making process? — Alaska Black Caucus.

The Alaska Black Caucus repeatedly has accused Hammond of failing to appoint minorities to decision-making positions in state government.

And Hammond repeatedly has insisted his record on minority hire is better than previous administrations.

"We have had a 90 percent increase in black hire since the advent of this administration, and a 97 percent increase in female hire," the governor said. "And while that may not be particularly good, mind you it's a vast improvement over previous actions."

Hammond said he offered seven minorities deputy commissioner positions and two minorities commissioner slots.

"They all refused them," Hammond said. "Now I can't drag them in, kicking and screaming. One of the problems is that many of them do not want to go to Juneau because there is not a significant black community there."

The governor said he has pleaded with minority groups to submit names to him for possible appointment to decision-making posts.

"I did that early on when I was appointing my cabinet," Hammond said. "I got one black name proposed and it was opposed by more Blacks than it was supported by."

Craig A. Forster
656 7th Ave.
Fairbanks, Alaska 99701



Senator Glenn Hackney
Pouch V
Juneau, Alaska 99811

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K - STATE CAPITOL

JUNEAU 99801

July 22, 1975

Mr. Charles G. Anderson
Chief of Police
Anchorage Police Department
P.O. Box 400
Anchorage, Alaska 99510

Re: Enforcement and Prosecution of Marijuana Offenses

Dear Chief Anderson:

During the Crime Conference in Fairbanks last month, it was suggested that the Attorney General prepare and circulate a letter which outlines the department's interpretation of the recent Supreme Court decision in Ravin v. State, ___ P.2d ___, Opinion No. 1156 (Alaska 1975), as well as the recent amendments to AS 17.12.110, which now appear as ch 110 SLA 1975 and which will become effective on September 2, 1975. We have attempted to do so in this rather extensive letter. Please feel free to distribute the letter to whichever departments or individual officers you feel would benefit from it. I will, however, provide the Commissioner of Public Safety, as well as the District Attorneys throughout the State with a copy and will request that the District Attorneys forward copies to police agencies within their jurisdiction.

I realize that all of the law enforcement questions which might arise regarding possession of marijuana cannot be touched upon in this letter, but I will try to address those questions which arose in your discussion with the Attorney General as well as additional points that might not have been covered but which have come to our attention in recent weeks. The Department of Law through individual District Attorneys will, of course, be available to assist any police officer in a determination in a particular case.

I. Ch. 110 SLA 1975 (FCCS HCS SSSB 350)

The amendments to AS 17.12.110 can be broken into three basic areas each of which will be dealt with separately:

(1) Sale or Distribution: The above-referenced legislation does not affect statutes prohibiting the sale or distribution of marijuana. Sale of any amount of marijuana is still a felony and no modification of present enforcement

procedures should occur as a result of the amendments to AS 17.12.110.

(2) Possession for Purpose of Sale: Prior to enactment of the referenced amendments, possession for purpose of sale was a felony. In most respects, enforcement procedures should not be modified under the amendments. However, where marijuana is held for sale within a home, evidence of intent to sell must be strong in order to support an entry into a home solely to make an arrest or conduct a search for marijuana.

Courts in the past have decided on a case-by-case basis what amount of marijuana was sufficient to raise an inference that marijuana was possessed for purpose of sale. Any amount that a court decided was possessed for personal use constituted a misdemeanor. Any amount that a court decided was possessed for purpose of sale was a felony. That is still the law in spite of the recent amendments to AS 17.12.110, except that possession for personal use is no longer a misdemeanor offense under circumstances discussed below.

Confusion has apparently arisen over the provision in the act which states that possession or control of any amount in a private place for personal use is a civil offense. Commissioner Burton has inquired, for example, whether this gives an individual license to possess large quantities of marijuana in his own home. The answer is generally no. If a police officer has evidence which establishes that probable cause exists to believe that any amount of marijuana is being held anywhere for the purpose of sale, he should act just as he has in the past. Whether a given amount is possessed for purpose of sale will be determined by the same standards that have always been applied at trial, e.g., the actual amount possessed; the circumstances surrounding possession, such as possession of paraphernalia associated with the packaging, sale and distribution of marijuana (scales, baggies, etc.); whether the marijuana is already individually packaged for sale; and evidence of other sales contemporaneous with the charge under consideration.

(3) Possession for Personal Use: The major change made by ch. 110 SLA 1975 relates to possession or control of marijuana for personal use. It should be emphasized that public use of marijuana remains a misdemeanor offense. Consequently, when a police officer observes an individual smoking marijuana in public, an arrest may be made and a search of the arrestee and the area within his immediate control may lawfully be conducted as an incident to the arrest. Additionally, possession of any amount of marijuana by an individual while operating a motor vehicle or airplane continues to be a misdemeanor. A question has arisen with respect to the omission of the word "control" from the language of the act which continues to make it a misdemeanor to possess marijuana while operating a motor vehicle or airplane. That provision which is embodied in the statute as AS 17.12.110(d)(3) reads as follows:

(d) A person who: . . . (3) possesses any amount of marijuana while operating a motor vehicle or airplane . . . is, upon conviction, guilty of a misdemeanor. . . .

Different language is used in AS 17.12.110(d)(2) which provides that:

(d) A person who: . . . (2) possesses or controls more than an ounce of marijuana on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place . . . is, upon conviction, guilty of a misdemeanor. . . .

(emphasis added). The reference in AS 17.12.110(e), which is the subsection setting out those situations which give rise to a civil fine, is also to "possession or control". Furthermore, AS 17.12.010 continues to provide that:

Except as otherwise provided in this chapter, it is unlawful for a person to . . . possess, have under his control. . . a depressant, hallucinogenic or stimulant drug.

The only portion of the act that does not contain the dual reference to "possession or control" is that portion which preserves a misdemeanor offense for possession of marijuana while operating a motor vehicle or airplane. In that respect, it is instructive that the second to the last or fifth version of the bill out of a total of six, which appears as HCS SSSB 350 am II and which is the version that originally passed the Alaska House of Representatives, contained the following language.

(d) A person who: . . . (3) possesses any amount of marijuana on his person while operating a motor vehicle or airplane. . . .

(emphasis added). The underlined portion of the 5th proposed version of AS 17.12.110(d)(3) was specifically deleted from FCCS HCS SSSB 350, which now appears as ch. 110 SLA 1975, but the words "or control" were not inserted. The letter of legislative intent accompanying FCCS HCS SSSB 350 specifically addresses an aspect of this problem. In discussing the removal of the language "on his person" from the bill, the letter of intent stated that:

. . . The conferees feel that the the language "on his person" . . . should be omitted. Otherwise a person in violation of this section could be openly smoking marijuana while driving, and then could quickly place the marijuana cigarette in the ash tray of the automobile or on the seat or floor, when approached by a police officer. He would then argue that he was not in violation of this section.

Senate Journal, Alaska State Senate, May 15, 1975, at 1121. Thus, in terms of the operator, himself, it is clear that the act is designed to preserve the misdemeanor label for possession of marijuana beyond possession "on his

person" and is intended to extend to possession within the immediate reach of the operator. The question remains, however, whether the omission of the word "control" also restricts those situations under which a person can be charged with a misdemeanor as either the operator or a passenger in a motor vehicle or an airplane. I am of the view that it does and further, that its omission indicates a specific legislative intent to restrict the applicability of AS 17.12.110(d)(3) to factual situations where a person while actually operating a motor vehicle or an airplane either physically possesses marijuana on his person or possesses it within his immediate reach while operating the vehicle.

The term "possession" as used in the criminal law has traditionally been regarded as narrower than the term "control". Possession requires having a thing with you or within your immediate reach. "Control", on the other hand, is broader in scope and includes those situations where a person simply has "constructive possession" or the right and ability to exercise control or management over a thing not in his actual physical possession.

Consequently, under AS 17.12.110(d)(3), the following general principles are applicable: first, if marijuana is lawfully discovered in the actual physical possession of an individual while he is operating a motor vehicle or an airplane either on his person or within his immediate reach while operating, then he may be charged and prosecuted for the misdemeanor offense; second, if marijuana is lawfully discovered in his control while operating a vehicle, but outside of his person or the area within his immediate reach while operating the vehicle, then he is subject to a civil fine under AS 17.12.110(e); and third, if marijuana is lawfully discovered in the possession or control of a passenger in a motor vehicle or airplane, then he is also subject to a civil fine under AS 17.12.110(e).

Prior Alaska Supreme Court decisions have interpreted existing statutes prohibiting the possession of a substance to require proof beyond a reasonable doubt that an individual charged with a "possession" offense knew what the substance was and had the ability to exercise control over it. Within that context, I should emphasize that the rule set forth in Egner v. State, 495 P.2d 1271 (Alaska 1971), will continue to apply to the prosecution of marijuana offenses whether criminal or civil. Egner is, of course, on its facts, particularly applicable to the "possession in a motor vehicle" situation and holds that "mere presence at the scene" is insufficient to prove knowing possession or control of a prohibited substance. For example, if a quantity of marijuana has lawfully been discovered in the trunk of a motor vehicle, the State must still be able to prove beyond a reasonable doubt that the person charged knew or had reason to know (e.g., where the defendant is the owner and only he has access to the trunk) that the trunk contained marijuana and that he either exercised or had the right to exercise control over it.

Another question which has arisen under the language of the act applicable to motor vehicles and airplanes is what, if any, significance can be attached to the omission of vessels. Consistent with the discussion of Ravin v. State,

supra, in Part II of this letter, I am of the view that the Supreme Court would have upheld the preservation of a misdemeanor offense for possession of marijuana while operating a vessel if vessels had been included within AS 17.12.110(d)(3) because it represents that type of activity which potentially "interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare." An argument could have been made that there is a close and substantial relationship between the public interest in the safe operation of a vessel and the prohibition against possession of marijuana while operating a vessel when used as a vehicle for transportation. This argument is still applicable, however, because the omission of vessels under AS 17.12.110(d)(3) simply means that possession of marijuana in a vessel while it is operated as a vessel is subject to a civil fine under AS 17.12.110(e). Again, however, the limitations imposed through Egner will apply equally to possession or control of marijuana while operating a vessel.

The major change effectuated by the act addresses the private possession of marijuana for personal use in a purely non-commercial context. Under the act, possession or control of any amount of marijuana for personal use in a non-public place by a person eighteen years of age or older is subject to a civil fine of not more than \$100. The decision in Ravin, however, alters the thrust of this provision to a substantial extent. Consequently, I will reserve discussion of the question of private possession of marijuana until Part II of this letter.

The most difficult questions under the act and under Ravin concern possession in public. Under the act, possession or control of more than an ounce of marijuana "on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place" remains a misdemeanor offense. Possession of an ounce or less in a "public place" by a person 18 years of age or older is subject to a civil fine of not more than \$100. Under the legislative amendments to AS 17.12.110 a police officer who sees someone use marijuana in a "public place" may arrest the person for the misdemeanor offense of possession. If, on the other hand, he simply observes an individual in possession of an ounce or less, he may seize it and issue a civil citation, assuming that we are able to initiate a civil citation system in conjunction with the court system which will require some amendment to the Rules of Civil Procedure. Conversely, where a police officer observes an individual in possession of more than an ounce, he may arrest the person, seize the marijuana and conduct a search as an incident to the arrest as he would under present law. Thus, under both the recent amendments to AS 17.12.110 and Ravin v. State, supra, public use remains a misdemeanor, public possession of an ounce or less is subject to a civil penalty and public possession of more than an ounce remains a misdemeanor.

The above analysis, however, omits at least four commonly occurring factual variations. Under ch 110 SLA 1975, if a police officer discovers an ounce or less of marijuana in the possession of a person who has been arrested in a

public place for another offense or otherwise lawfully taken into custody, then that person would be subject to the civil penalty under AS 17.12.110 (e). Conversely, where a police officer lawfully discovers more than an ounce of marijuana in the possession of a person in a public place who has been arrested for another offense or otherwise lawfully taken into custody, then under the act that person would remain the subject of a misdemeanor prosecution for possession. However, if a police officer has not actually observed marijuana in an individual's possession, but has probable cause to believe that an individual possesses an ounce or less of marijuana on his person in a public place or that marijuana is possessed in an automobile either by a passenger or beyond the immediate reach of the operator, then a problem exists in terms of potential action that may be taken by an officer inasmuch as possession under these circumstances no longer constitutes a criminal offense. Consequently, a police officer may not arrest [which he presently cannot do for a misdemeanor not committed in his presence] and may not conduct a search unless he has independent justification to search. Furthermore, it will not be possible to obtain a search warrant, the subject of which is an ounce or less of marijuana possessed or controlled in other than a public place which gives rise to a civil penalty because AS 12.35.020 restricts the issuance of search warrants to essentially the recovery of evidence of a crime. On the other hand, when a police officer has not actually observed marijuana in an individual's possession, but has probable cause to believe that an individual possesses more than an ounce of marijuana on his person in a public place, then under the act the officer would proceed as he always has under existing law. The same, of course, holds true with respect to possession of marijuana for purpose of sale under any circumstances, as has been previously noted.

One final point should be noted with respect to ch. 110 SLA 1975. The letter of legislative intent accompanying FCCS HCS SSSB 350 specifically defines an "ounce" for purposes of the amendments to AS 17.12.110 as follows:

To avoid possible confusion, the conferees believe that one ounce should be considered 30 grams for the purpose of prosecutions under this Act.

II. Ravin v. State, ___ P.2d ___, Opinion No. 1156 (Alaska 1975)

On its face, the case of Ravin v. State, supra, applies to a very limited set of circumstances. Construed as narrowly as possible in its potential application, Ravin stands for the proposition that:

. . . [c]itizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

Ravin v. State, supra at 21. The court was careful to explain that its analysis focused not on any right to possess or use marijuana per se but rather, on the right to privacy found within Article I, Section 22 of the Alaska Constitution, particularly within the context of the home. The standard which the court has adopted in conducting this analysis is twofold.

. . . [W]hether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general in the interest of public welfare; and further whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

Id. at 22.

After a lengthy analysis of the effects of marijuana use and the arguments advanced by the State in support of a total prohibition, the court held as follows:

. . . Thus we conclude that no adequate justification for the states' intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific deicts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

Id. at 40. This grant of a right to privacy even in the home is not absolute, however. The majority opinion in Ravin carefully places two "important" restrictions upon it: first, the right to privacy remains absolute so long as it is a purely private, non-commercial expression of an Alaska citizen's individuality; second, the right to privacy "must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare." Id. at 21. The following language in this regard is, I think, instructive:

No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Indeed, one aspect of a private matter is that it is private, that is, that it does not adversely affect persons beyond the actor, and hence is none of their business.

Id. (emphasis added).

Throughout its analysis, the court went to great length to explain the limited nature of its holding which does not afford "protection for the buying or selling of marijuana" [Id. at 40]; nor protection for possession at home or anywhere else "of amounts of marijuana indicative of [an] intent to sell" [Id. at 41]; nor protection for possession or use while operating a motor vehicle [Id. at 33, 37-39]; nor protection for possession or use by adolescents [Id. at 40]; nor "absolute protection for its use or possession in public." [Id. at 40-41. (emphasis added)].

Thus, the court specifically recognized that the right to privacy contained within the Alaska Constitution is not absolute; that there are specific limitations upon the purely private, non-commercial possession or use of marijuana; and that an individual's right to privacy will sometimes yield to a legitimate exercise of the State's police power where the State can show a close relationship between the prohibition in question and the health, safety, rights and privileges of others or the public welfare. The court emphasized that by its holding it did not intend to condone the use of marijuana but rather, of freedom from state intrusion into an individual's strictly private affairs where no legitimate public purpose is being served. In this regard, the court recognized that:

The State has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problems of driving while under the influence of marijuana.

Id. at 40.

A number of very difficult legal and practical enforcement questions arise under Ravin, particularly when it is viewed with the recently enacted amendments to AS 17.12.110. First, under the statutory amendments, private possession of any amount possessed for personal use gives rise to a civil penalty. Under Ravin, however, possession of marijuana by adults in a home for personal use is protected from any state interference under the Alaska Constitution. Consequently, as an initial matter, Ravin invalidates that portion of the new statute which makes private possession under these circumstances a civil offense.

A second problem involves the use of the word "home" within the context of the decision. I have advised prosecutors in the Department of Law to interpret the word "home" to mean any place that would be so defined within the meaning of the provisions of the Fourth Amendment to the United States Constitution and Article I, Section 14, of the Constitution of the State of Alaska relating to the law

of search and seizure. Essentially, if officers are in doubt, they should ask themselves whether they would regard a particular place as a residence where, for example, they were attempting to obtain evidence of a crime. If they concluded, for instance, that they would have to obtain a search warrant because it was a "home", then they should treat it as a "home" within the context of Ravin. At the least, Ravin will apply to any private place which is used as a dwelling, even if it happens to be a tent or a hotel room.

This question gets quite difficult in situations involving campers and vessels. However, the law of search and seizure provides, I think, a useful and workable frame of reference. One of the specifically recognized exceptions to the general rule that a warrant must first be secured before a search may be conducted into an area where an individual holds an expectation of privacy is that a search of a motor vehicle may be conducted without a warrant if a police officer has probable cause to believe that the vehicle contains contraband or evidence of a crime and further, if the vehicle is mobile when the officer first comes into contact with it. In other words, the facts of each particular situation will define whether a camper or a vessel is a "home" within the context of Ravin. If it is being used as a dwelling when encountered, then it should be treated as a "home" under Ravin. If, on the other hand, it is being used as transportation and would be a proper subject of a search without a warrant given the existence of probable cause, then it should not be regarded as a "home". This analysis, however, must be read together with the discussion in Part I of this letter pertaining to the private possession of marijuana for personal use in a motor vehicle, airplane or vessel under ch. 110 SLA 1975. In some instances, marijuana found in a camper, even if used as transportation, may only give rise to a civil penalty.

It is obvious that both Ravin and ch. 110 SLA 1975 have a rather substantial effect on the laws of arrest, search and seizure in regard to the enforcement of marijuana laws. As noted in Part I of this letter, under Ravin probable cause that marijuana is to be found in a particular place will no longer support an entry into a "home" to either effectuate an arrest or conduct a search unless probable cause exists to believe that marijuana is possessed for purpose of sale. Furthermore, in situations where possession of marijuana for personal use gives rise only to a civil penalty, an officer will not be able to arrest an individual and will not be able to specifically search for marijuana with or without a warrant.

A third and very specific question that arises under Ravin is whether marijuana should continue to be treated as contraband when it is found in a "home" during the course of a lawful intrusion for a valid independent reason and under circumstances that do not establish possession for purpose of sale. The more I reflect on this question, the more I am convinced that marijuana possessed within the home for personal use should probably not be treated as contraband, unless

officers want to embroil themselves in the federal process which will, I think, be unduly complicated. In this respect, Ravin creates a unique situation. Under federal law marijuana possessed in any amount under any circumstances remains unlawful and thus contraband. Under state law, however, the private possession of marijuana in a "home" for personal use is constitutionally protected and thus cannot be regarded as contraband. If officers under authority of federal law seize marijuana in a "home" discovered during the course of a lawful intrusion then they are inevitably going to become involved in federal case. There also arises the distinct possibility of civil rights actions brought by individuals who feel that their state constitutional rights have been invaded. This will particularly be the case in situations which suggest that the entry into a "home" was a result of a predesigned pretext to seize marijuana possessed for personal use. I am confident that such suits against officers will not be successful, but there remains the question whether the time and effort expended can be justified when small amounts of marijuana are involved. In basic terms it seems to me we will have enough trouble keeping up with the enforcement of State laws without looking specifically to get involved in federal activity.

A remaining question that has arisen under both Ravin and ch 110 SLA 1975 is whether the word "marijuana" as used in both the act and the decision includes all derivatives of the plant Cannabis sativa L. Ch 110 SLA 1975 does not address this issue and a definition of "marijuana" is not contained in AS 17.12. However, the court in Ravin makes it clear that the decision is restricted to "marijuana" which it defines as:

. . . [T]he common term for dried leaves or stalk of the plant Cannabis sativa L. The primary psychoactive ingredient in the plant is delta-9-tetrahydrocannabinol (THC). Most marijuana available in the United States has a THC content of less than one percent. Other cannabis derivatives with a higher THC content, such as hashish are available in the United States although much less common than is marijuana.

Id. at 23-24 (emphasis in original). Thus, I think it is clear that the applicability of both Ravin and ch 110 SLA 1975 is restricted to "marijuana" in the form of leaves, stalk and seeds from the plant Cannabis sativa L., along with the plant itself, and does not include derivatives such as hashish or hash oil with a higher THC content.

To summarize, the court decision together with the recent statutory amendments give rise to the following conclusions:

(1) Under both Ravin and ch 110 SLA 1975 sale or distribution of marijuana and the possession of any amount for purpose of sale remain felonies. No modification of present enforcement procedures should occur except that in order to obtain a search warrant to search a "home" for marijuana, probable cause must exist to believe that marijuana is being possessed for purpose of sale.

(2) Public use of marijuana remains a misdemeanor offense.

(3) Possession of any amount of marijuana by an individual while operating a motor vehicle or airplane or possession within the area of his immediate reach while operating remains a misdemeanor offense.

(4) Possession of any amount of marijuana by a passenger in a motor vehicle or airplane or possession by an operator beyond the area of his immediate reach while operating is subject to a civil penalty.

(5) Possession of any amount in a vessel or any other non-public place except a "home" is subject to a civil penalty.

(6) Public possession of an ounce or less of marijuana is subject to a civil penalty.

(7) Public possession of more than one ounce of marijuana remains a misdemeanor offense.

(8) Possession in a public place of an ounce or less of marijuana is subject to a civil penalty.

(9) Possession in a public place of more than an ounce of marijuana remains a misdemeanor offense.

(10) Possession or use of marijuana for personal use in a "home" is constitutionally protected and may not be made the subject of either a criminal or civil offense under the laws of the State of Alaska.

Again, I realize that it is undoubtedly not possible to touch upon all of the potential law enforcement questions that will arise as a result of the aforementioned changes in the law regarding possession or control of marijuana. I trust, however, that this analysis will be of some value in an effort to develop a rational and common sense enforcement pattern, particularly until future Supreme Court decisions clarify both the court's initial holding in Ravin and ch 110 SLA 1975. As soon as these decisions occur, we will, of course, transmit our comments on them. In the meantime, however, if you or any individual officer has a particular question, forward them to us and we will do our best to respond.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:



Daniel W. Hickey
Deputy Attorney General
Criminal Division

doubts as to the safety of marijuana demonstrate a sufficient justification for the prohibition found in this section as an exercise of the state's police power for the public welfare. *Ravin v. State*, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975).

Possession of marijuana by adults at home for personal use is constitutionally protected. *Ravin v. State*, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975).

Citizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, noncommercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest. *Ravin v. State*, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975).

No adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. *Ravin v. State*, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975).

For discussion of marijuana, its incidence and effects, see *Ravin v. State*, Sup. Ct. Op. No. 1156 (File No. 2135), 537 P.2d 494 (1975).

Delay between offense and formal charge. — Some delay between offense and formal charge is clearly justified in cases involving drug undercover agents. *McKay v. State*, Sup. Ct. Op. No. 729 (File No. 1284), 489 P.2d 145 (1971).

Where the circumstances surrounding the drug transaction render the identification of the defendant unreliable, the disabilities inherent in a long delay between the date of the offense and the formal charge become manifestly prejudicial to the defendant. *McKay v. State*, Sup. Ct. Op. No. 729 (File No. 1284), 489 P.2d 145 (1971).

The time between the acts charged (July 8 and 16, 1969) and the indictment (Sept. 25, 1969) was not unreasonable and did not constitute a denial of due process in that the delay was purposeful, unjustifiable, and prejudiced his ability to prepare a defense. *McKay v. State*, Sup. Ct. Op. No. 729 (File No. 1284), 489 P.2d 145 (1971).

A seven month interval from the alleged drug sale until arrest was an unreasonable delay denying accused due process. *McKay v. State*, Sup. Ct. Op. No. 729 (File No. 1284), 489 P.2d 145 (1971).

Dismissal of the criminal proceedings under this section was constitutionally mandated where eight months had elapsed between the occurrence of the alleged sale and the filing of the indictment. *Marks v. State*, Sup. Ct. Op. No. 787 (File No. 1414), 496 P.2d 66 (1972).

Sufficiency of indictment. — Indictment held insufficient to charge accused with the sale of depressant, stimulant or hallucinogenic drugs in violation of this section. *Burkholder v. State*, Sup. Ct. Op. No. 753 (File No. 1346), 491 P.2d 754 (1971).

The state must demonstrate knowing possession. *Bell v. State*, Sup. Ct. Op. No. 1005 (File No. 1717), 519 P.2d 804 (1974).

Evidence sufficient to prove knowing possession. — Evidence was sufficient to establish that defendant was aware that he possessed an illicit drug. *Bell v. State*, Sup. Ct. Op. No. 1005 (File No. 1717), 519 P.2d 804 (1974).

Mere presence at the scene, alone, is insufficient to prove knowing control of the prohibited substance. *Egner v. State*, Sup. Ct. Op. No. 784 (File No. 1443), 495 P.2d 1272 (1972).

Cross-examination is permissible to show that a witness was under the influence of a drug at the time of the events to which he is testifying at trial. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

A child who sells LSD is a "delinquent minor" under AS 47.13.290(2), because the sale of LSD is a crime under this section. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

And may be incarcerated until age 19. — A child adjudicated delinquent for selling LSD may be incarcerated until age 19, which may be many years, possibly even in a city jail. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

In order to constitute a valid arrest under AS 12.25.030 (1), the misdemeanor of possessing hashish be committed in the presence of the arresting officers. *Howes v. State*, Sup. Ct. Op. No. 846 (File No. 1443), 503 P.2d 1055 (1972).

Applied in *Meyers v. State*, Sup. Ct. Op. No. 726 (File No. 1491), 488 P.2d 713 (1971); *Gravel v. State*, Sup. Ct. Op. No. 819 (File No. 1502), 499 P.2d 1022 (1972); *Wright v. State*, Sup. Ct. Op. No. 833 (File No. 1288), 501 P.2d 1360 (1972); *Howes v. State*, Sup. Ct. Op. No. 846 (File No. 1443), 503 P.2d 1055 (1972); *Erickson v. State*, Sup. Ct. Op. No. 868 (File Nos. 1521, 1542), 507 P.2d 508 (1973); *Coger v. State*, Sup. Ct. Op. No. 988 (File No. 1766), 517 P.2d

1403 (1974); Op. No. 995 (1974); Gray (File No. 204) Quoted in No. 725 (F (1971).

Cited in

Sec. 17 possess a prescribe (1) for (2) for his house (3) des institutio analysis; from the which is the perm necessar 1968)

Sec. and stim possesse in the or

(1) a conform compou prepari distribu direct st agencies prescrip licensed professi institut (2) a referred (3) a conform compou supplyi public pharma of prac course



Alaska State Legislature

Senate

Committee on

Health, Education & Social Services

Official Business

Pouch V
State Capitol
Juneau, Alaska 9 911

Glenn Hackney, Chairman
Frank Ferguson, Vice Chairman
Mike Colletta
Bettye Fahrenkamp
Arliss Sturgulewski

BUTROVICH ROOM, 207 CAPITOL BUILDING

Friday, February 9

3:30 PM

SB 40 -- An Act relating to the possession
and control of marijuana; BRADLEY

Notified

John Coffee - Sup. of Schools (cannot attend today)

Chief Barkley, J.P.D.

Craig Forster, Alaska Peace Officers' Assoc.

Dept. of HSS

Dan Hekey, Alaska Chief Prosecutor

Louis Bernardino, Chief of Seward P.C. (Police Officers' Assoc.)

Sen Bradley

Sen Secretary

CRT

Commissioner Nix

CITY OF SEWARD



P. O. BOX 337
SEWARD, ALASKA 99664

CITY MANAGER	224-5214
COMPTROLLER	224-5216
INFORMATION	224-5215
CITY POLICE	224-5201

January 31, 1979

The Honorable Glenn Hackney
Pouch V
Juneau, Alaska 99811

Sir:

In response to your telephone call of January 30th anent Senate Bill 49, I wish to thank you for keeping me posted on this pending legislation. Unfortunately, pressing duties here in Seward preclude my attendance.

As you may be aware, my thinking is that possession of Marijuana in any amount should, at the least, be classified as a misdemeanor, and any cultivation or marketing of this substance on a large scale should be classified as a felony.

I realize this may be a bit much to wish for, given the present weight of the pro-marijuana forces.

I trust you are aware of research results now surfacing indicating that marijuana contains most or all of the carcinogenic agents found in tobacco plus many other suspected carcinogenic agents. It follows that while the office of H.E.W. is spending millions to persuade Americans not to smoke, it would be the sheerest lunacy to encourage marijuana smoking by legislating it.

Many traffic accidents not involving the drinking driver are attributed to driver-inattention or falling asleep, when in reality the driver was high on marijuana. These are extremely difficult cases to prosecute, because marijuana cannot be detected by a breathalyzer, nor can police do a car search, or a blood test without permission of the individual (who is incompetent to give informed consent, if he indeed under the influence of marijuana). Obtaining a court warrant under these circumstances is another can of worms entirely, to be opened as a last resort.

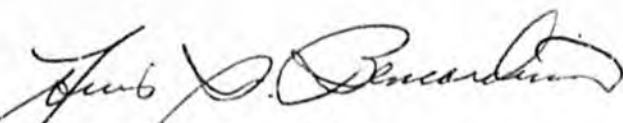
Legalize marijuana and you guarantee it's use will become as common among children as cigarette smoking is at present.

I know that you and most of the legislature will give this question the closest scrutiny. I know you will not leave Law Enforcement beleaguered by this aberrant statute.

I want to be on record as being categorically opposed to the legalization of marijuana. If this sounds regressive or reactionary, so be it. I can live with that. It will be a lot better than living in a society of apathetic, spaced-out paranoids.

Thank you for soliciting the views of those of us in Law Enforcement.

Sincerely,



Louis A. Bencardino
President
Chiefs of Police Association

LAB:dw

cc: Senator Ferguson
Senator Fahrenkamp
Senator Sturgulewski
Senator Colletta

Sec. 17.12.080. Persons exempted. The provisions of this chapter restricting the possessing and control of depressant, hallucinogenic and stimulant drugs do not apply to

- (1) a common carrier or to a warehouseman, while engaged in lawfully transporting or storing these drugs;
- (2) an employee of a common carrier or warehouseman while acting within the scope of his employment in lawfully transporting or storing these drugs;
- (3) a public officer or his employee in the performance of his official duties requiring possession or control of these drugs;
- (4) temporary, incidental possession by an employee or agent of a person lawfully entitled to possession; or
- (5) temporary, incidental possession by a person whose possession is for the purpose of aiding a public officer in performing his official duties. (§ 2 ch 225 SLA 1968)

Sec. 17.12.090. Exempted drugs. Depressant, hallucinogenic or stimulant drugs exempted under federal law or under regulations promulgated by the commissioner are exempted from the application of this chapter. (§ 2 ch 225 SLA 1968)

Sec. 17.12.100. Exemptions and exceptions not required to be negated. In a complaint, information, or indictment, and in an action or proceeding brought for the enforcement of any provision of this chapter, it is not necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of an exception, excuse, proviso, or exemption is upon the defendant. (§ 2 ch 225 SLA 1968)

Sec. 17.12.110. Penalties. (a) A person who violates a provision of this chapter relating to the possession or control of depressant, hallucinogenic and stimulant drugs, other than marijuana, when his possession or control is for his own use, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

(b) A person who violates a provision of this chapter other than one mentioned in (a) of this section, or a person who violates a provision of this chapter relating to the possession or control of depressant, hallucinogenic and stimulant drugs, when his possession or control is for the purpose of sale or other disposal to another person, is guilty of a felony and upon conviction is punishable as follows:

- (1) for the first offense, by imprisonment for not more than 25 years, or by a fine of not more than \$20,000, or by both;
 - (2) for the second and subsequent offenses, by imprisonment for any term of years or life, or by a fine of not more than \$25,000, or by both.
- (c) A person who violates a provision of this chapter by selling or otherwise disposing of a depressant, hallucinogenic or stimulant drug to a person less than 19 years of age is guilty of a felony and upon

conviction or by a fine

(d) A person on the public other public marijuana carrier or possesses an airplane, of any amount punishable

(e) A person possession public place possession punishable this subsection The court

(f) In the public ownership 1968; am

Effect of amendment marijuana subsections

Legislative report on SSSB 350 695; 1975 H

Inference are extreme court has in maximum that the offenses to State, Sup 501 P.2d 13

Standard - In the Op. No. supreme court imposition cases. Mey 720 (File N

The judicial groups of are in des smuggling narcotics for sale; quantities small quantities narcotics marijuana

conviction is punishable by imprisonment for any term of years or life, or by a fine of not more than \$25,000, or by both.

(d) A person who: (1) uses marijuana on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place, or (2) possesses or controls more than an ounce of marijuana on a public street or sidewalk or on the premises of a public carrier or business establishment or any other public place, or (3) possesses any amount of marijuana while operating a motor vehicle or airplane, or (4) while under the age of 18, possesses, controls or uses any amount of marijuana is, upon conviction, guilty of a misdemeanor punishable by a fine of not more than \$1,000.

(e) A person 18 years of age or older who violates this chapter by possession or control of any amount of marijuana in other than a public place, when his possession or control is for his own use, or by possession of one ounce or less of marijuana in a public place, is punishable by a civil fine of not more than \$100. Punishment under this subsection shall be initiated only by civil complaint or citation. The court may establish procedures for payment of fines by mail.

(f) In this section, "public place" means a place which is either in public ownership or a place available to public access. (§ 2 ch 225 SLA 1968; am § 1 ch 110 SLA 1975)

Effect of amendment. — The 1975 amendment inserted "other than marijuana" in subsection (a) and added subsections (d), (e) and (f).

Legislative committee report. — For report on ch. 110, SLA 1975 (FCCS HCS SSSB 350), see 1975 Senate Journal, p. 695; 1975 House Journal, p. 1263.

Inference that offenses under section are extremely serious. — The supreme court has inferred from the severity of the maximum punishment under this section that the legislature considers such offenses to be extremely serious. *Wright v. State*, Sup. Ct. Op. No. 833 (File No. 1288), 501 P.2d 1360 (1972).

Standards for imposition of sentence. — In the case of *Waters v. State*, Sup. Ct. Op. No. 681, 483 P.2d 199 (1971), the supreme court set forth standards for the imposition of sentence in drug offense cases. *Meyers v. State*, Sup. Ct. Op. No. 720 (File No. 1491), 488 P.2d 713 (1971).

The judge should take account of four groups of drug offenders whose crimes are in descending order of seriousness: (1) smuggling or sale of large quantities of narcotics or possession of large quantities for sale; (2) smuggling or sale of small quantities of narcotics, or possession of small quantities for sale; (3) possession of narcotics without intent to sell; (4) marijuana offenses. *Meyers v. State*, Sup.

Ct. Op. No. 720 (File No. 1491), 488 P.2d 713 (1971).

Courts intended to have broad discretion in imposing sentence. — The declaration of intent preceding this chapter when enacted clearly indicates the legislature's intent to vest, and recognition that it has in fact vested, broad discretion in the courts in imposing sentence for violations of the drug laws set forth in this chapter. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973).

This reading is strengthened by the omission from this chapter of mandatory minimum sentences. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973).

Furthermore, AS 17.12.120 makes specific provision for rehabilitative treatment in lieu of imprisonment in certain cases. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973).

An eight-year sentence with two years suspended was not outside the zone of reasonableness. *Meyers v. State*, Sup. Ct. Op. No. 720 (File No. 1491), 488 P.2d 713 (1971).

Principles in undertaking sentencing review. — In the case of *State v. Chaney*, Sup. Ct. Op. No. 653, 477 P.2d 441 (1970), the supreme court set forth the various principles in undertaking sentencing

Senator ^{Kept in} Bills, 2-12-79

Re: SB 49 ^{7th Rev} /

The attached was received after
the hearing Friday - Feb. 9th.

Please read and return to
Hess Committee that it may be put
in your file folder - and available
when SB 49 comes before the
Committee again. Thank you.

Mary Jesses AA
Sen Hochney

ALASKA PEACE OFFICERS ASSOCIATION



February 6, 1979

Senator Glenn Hackney
Pouch "V"
Juneau, Alaska 99811

Dear Senator Hackney:

In response to your message informing me of the Hess Meeting on SB 49, I sincerely appreciate your keeping me informed of this Hearing. Unfortunately, I will not be able to attend; however, I am attempting to locate an APOA member that can make the meeting and testify on behalf of the Alaska Peace Officers Association.

Aside from being the President of the Alaska Peace Officers Association, I am a Detective with the Fairbanks Police Department and Supervisor of the Areawide Narcotics Team.

Just today, officers under my supervision were successful in obtaining a Grand Jury indictment for an individual that has been a Marijuana dealer in the Fairbanks area for a large number of years. During the Grand Jury proceedings, a young man, eighteen years old, testified to having assisted the Areawide Narcotics Team in purchasing Marijuana from this dealer and obtaining needed information for a search warrant. During his testimony, a Grand Jury member asked the young man why he was motivated to help the police. The young man stated that he could see that the use of Marijuana was ruining his life and that since he had been using Marijuana, he found himself to be lazy and run-down.

Approximately three weeks ago, a Mr. Joe Hergenreter, of 515 7th Avenue, Fairbanks, Alaska 99701, came to my office and reported that his seven and nine year old sons were using Marijuana. He reported that they were getting the Marijuana from a nine year old neighbor boy whose parents permitted the use of Marijuana. I explained the difficulty in prosecuting any violations under these circumstances to Mr. Hergenreter. As you can see, there would be no effective way to handle this case without the involvement of Mr. Hergenreter and his two sons. Mr. Hergenreter may, himself, be willing to assist by testifying; however, he was not willing to subject his children to court proceedings. As you can see, an attempt to investigate and prosecute either the nine year old neighbor boy or his parents would become a "bucket of worms" and I am not sure that we could ever reach a court proceeding at all.

Senator Glenn Hackney

February 6, 1979

Page -2-

About a week prior to Mr. Hergenreter's report, I had conversation with a person whose name I have forgotten; however, he is the owner of the Giant Grinder restaurants here in Fairbanks. He reported to me that his thirteen year old daughter was getting Marijuana at school and from a young man in the neighborhood. I explained the necessity for a statement from his daughter in an effort to obtain information that would allow us to prosecute or obtain a search warrant for this individual's residence. After a lengthy explanation of the requirements of the police, this individual was ready to take care of matters himself.

These types of complaints are very common and there is little that the police can do to assist in these frustrating situations. It is disheartening to have to inform parents that there is very little that can be done without statements from juveniles and a lengthy court process.

Our statistics on the use of Marijuana in the schools is limited because we have no means of monitoring the activities in the schools. Our officers are too old to fit in or around schools. Most surveillance efforts are useless as officers in the areas are soon detected. As a practical matter, very few cases that involve juveniles are prosecuted through the District Attorney's Office. It is required that most juvenile offenses are handled through the Juvenile Intake Office and in many cases, there is no actual criminal prosecution. In the event that there can be some sort of criminal prosecution on the part of the juvenile, there is a low priority with reference to Marijuana cases where juveniles are involved in the District Attorney's Office. There may be some prosecution, should we be involved, with an adult selling to juveniles however.

I understand the District Attorney's position in these matters as it is my experience that my office can provide felony cases involving the sale of Cocaine and Heroin involving adults with very little difficulty. It has been my experience that the Areawide Narcotics Team has effectively clogged the court calendar on numerous occasions in the last four years.

The decriminalization of Marijuana in 1975 has finally had an effect on the populace. It can be observed that there is a definite problem within the school systems because of this decriminalization. It is evident by the problem in the Anchorage area where the football coach quit because of the students involved in drugs in that school. I have recently heard, while in Juneau, legislators making the comment that this situation had been blown out of proportion and that they are taking an adverse reaction to the publicity that has been raised. It is my opinion that these particular individuals are irresponsible and it is a shame that they are representing people of Alaska in their positions as legislators.

Senator Glenn Hackney
February 6, 1979
Page -3-

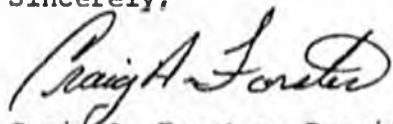
Prior to the decriminalization of Marijuana, a different set of circumstances existed concerning the involvement of juveniles with alcohol. During school hours, if a juvenile was involved with alcohol, it could be more easily detected than the use of Marijuana today. The individual who was intoxicated by alcohol could be identified by his particular actions and the strong odor of alcohol itself. It was also difficult to consume alcohol in the lavatories or other areas on the school grounds as the alcohol was not quite as easily concealed. Today, however, a "joint" of Marijuana or Marijuana cigarette can be easily concealed and quickly digested during a brief class break.

I feel that it is reasonable to assume that if Cocaine was decriminalized, it would be as prevalent in the schools as Marijuana is today. We already have a problem with Cocaine in our schools. I feel that the public is finally concerned that an action like this might happen. You should be aware that in the Supreme Court Decision in the Erickson Case, the Supreme Court suggested that the legislature take a closer look at the classification of Cocaine as there were some types of new scientific information that might lead one to believe that Cocaine was not as harmful as originally thought. I would submit that this was an irresponsible opinion by the Supreme Court in this matter. Once reading the Opinion, it is evident that the Supreme Court went beyond its duties of interpreting the law, but rather it suggested some liberal change in the law. It is also evident that the Supreme Court selected the scientists that would come up with findings that would satisfy the position they would like to take.

I believe that as time goes on, we will see that the Supreme Court will continue to circumvent the legislature and, therefore, continue the liberal decay in our criminal justice system.

Needless to say, I support SB 49 and any other legislation that would strictly prohibit possession of Marijuana. It would be appreciated if you would disseminate this letter amongst your colleagues. If I can be of any further assistance concerning this matter, please contact me and I will attempt to provide you with the necessary information.

Sincerely,



Craig A. Forster, President
Alaska Peace Officers Association
656 7th Avenue
Fairbanks, Alaska 99701