

SB

332

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 332

Revision Date: _____ Dept. Affected: Public Safety
 Title: Weight of Live Marijuana Plants BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: (S) JUD
 Requestor: (S) JUD COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURE	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

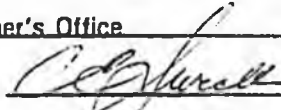
Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

No significant impact is anticipated on the Department of Public Safety.

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 Division: Commissioner's Office Date: 03/11/94
 Approved by Commissioner:  Date: 03/11/94
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March 10, 1994

To MEMBERS OF THE SENATE JUDICIARY COMMITTEE

There are two problems which may be addressed via legislation. Current law mandates that when a large growing operation is taken down, that all of the plants be groomed to the point of the accepted market product. This entails many personnel hours harvesting, hanging, drying and then plucking the marijuana buds and leaves from the stems.

In essence, police are being required to finish the illicit procedure of marijuana cultivation just to be able to charge the persons involved with the appropriate crime. Even then, if they stall the trial process, or even just waiting until the appeal process, the finished product has dried even beyond what would be a salable product on the streets and can be as much as half the weight loss of the original product.

In a smaller growing operation, this would come into play if the suspect were charged with Misconduct Involving a Controlled Substance in the Fourth Degree, which is a class C felony but requires a suspect to possess at least a pound of marijuana, AS 11.71.040(a)(3)(f). Depending on when the growing operation is taken down, the amount will vary. If the harvest has already been made, even a large operation may not yield a pound of processed and groomed marijuana. The other end of the spectrum is that we may interdict an operation just getting going with hundreds of starter plants which when combined would not amount to a pound.

It is a waste of enforcement time and resources to process marijuana and could be greatly simplified if the statute was changed to simply state that the weight of the cultivated marijuana will be calculated by weighing the plant after it has been severed from the root wad, at the time of seizure. This is the aggregate weight of the plant.

The other area of concern is that a Felony drug sale does not occur unless the product is more than an ounce. The drug dealers are aware of that and refuse to sell more than an ounce.

This can be addressed by adding a definition to the statute that the amount of marijuana weight as purported by the dealer will be the amount used to classify the offense. (If the dealer says it's an ounce and sells it as such, the dealer will be charged with selling an ounce.)

A two hundred mature marijuana plant growing operation took our narcotics enforcement team approximately 32 officer hours to process.

THE SOLUTION:

REPEAL: AS 11.71.080. AGGREGATE WEIGHT OF LIVE MARIJUANA PLANTS. For the purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be the weight of the marijuana when reduced to its commonly used form.


ENACT: AS 11.71.080. AGGREGATE WEIGHT OF LIVE MARIJUANA PLANTS. For the purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be the weight of the entire plant, excluding the root wad and any growing media attached to it, at the time of harvest or seizure. OR

AS 11.71.080. PRESUMPTION OF POSSESSION WITH INTENT TO DELIVER. As it is now against the law to possess any amount of marijuana, for the purposes of prosecution, any person who is found to be in possession of or growing marijuana plants shall be presumed to be growing marijuana for illicit purposes. On a case by case screening, based on probable cause and in accordance with current law, the District Attorney's office in the appropriate jurisdiction, may chose to prosecute the possession case as an intent to distribute case.

ENACT: NEW STATUTE AS 11.71.090. WEIGHT OF MARIJUANA FOR SALE. For the purposes of classifying the level of offense in this statute, the purported weight of marijuana as stated, implied or represented by the person distributing the substance shall be the weight of classification, for purposes of charging.* For the purposes of prosecution weight if the amount exceeds the statutory requirement, the weight as determined by the Department of Public Safety Crime Detection Laboratory shall be the determined weight.**

*(If a dealer sells an ounce that is intentionally short in an effort by the dealer trying to avoid felony amounts, he may still be charged with dealing an ounce of marijuana.)

** (If an ounce and a half is weighed by the crime lab and then just prior to trial as long as six months to a year later the weight has decreased due to dehydration over time to weigh under an ounce, the original weight should still be used as the charging weight.)


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