HB 380

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 23, 2004

TO: House Health, Education, and Social Services Committee Members

FROM: Representative Kevin Meyer K

RE: HB 380 Aggravating Factors for Drug Overdose Sale

There were a few questions left over from the Thursday, February 19 committee hearing on HB 380 Aggravating Factors for Drug Overdose Sale. I would like to take this opportunity to answer these questions for the committee members.

1. A pharmacist that distributes the wrong medication or dosage to a person:
If the pharmacist is distributing illicit drugs to a person, for money, and it can be proven that this act is in violation of AS 11.71, and the consumer dies, this aggravator could be used if the pharmacist is convicted of the crime. In this case, criminal intent is necessary. It must be proven that the pharmacist was acting illegally and committing a crime under AS 11.71.

For example, if a pharmacist hands a consumer oxycotin instead of birth control pills, on accident, and the person dies, then it has to be proved that the pharmacist acted with criminal intent to commit a crime. A mistake doesn't necessarily constitute a crime. The burden would be on the State to provide evidence that the pharmacist was criminally negligent.

2. An accomplice in a crime under AS 11.71 who distributes drugs to a person and they die:
An accomplice in a crime may also receive an aggravated sentence if the accomplice is also convicted of a crime under AS 11.71. There was a question about whether there was a "dual standard" between the offender and an accomplice. If the accomplice is also convicted of a crime under AS 11.71, they may also receive an aggravated sentence.

Aggravators only apply if a defendant is convicted of a crime. The aggravator that is being proposed under HB 380 would only apply if a person were convicted of a crime under AS 11.71 Controlled Substances.

I hope that the information I have provided you answers the remaining questions from Thursday's committee hearing. If you have any other questions, or would like more information, please do not hesitate to contact my office.

Thank you for your time and consideration of this matter.

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REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HOUSE BILL 380 AGGRAVATING FACTORS FOR DRUG OVERDOSE SALE

"An Act relating to aggravating factors at sentencing."

House Bill 380 adds a sentencing aggravator for illegal drug sales that result in a fatal overdose. If a defendant is convicted of an offense specified under AS 11.71, then a judge may apply a sentence of no less than the presumptive term, and no more than the maximum term.

In a case last year, the Alaska Court of Appeals was asked to consider a case that involved a defendant who was convicted of selling heroine, a felony crime. The defendant later confessed to selling heroine to a person who was found dead by police from a drug overdose. The judge, during sentencing, determined that the death was a direct result of the criminal action, and applied a sentencing aggravator to the five-year presumptive term.

Current Alaska sentencing laws allow for increases (aggravators) and decreases (mitigators) in required sentences, if a judge finds an aggravator or a mitigator that justifies a deviation from the normal sentence. The aggravator that was used by the judge in the case of the convicted drug dealer says a defendant can be punished more severely if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct."

The question that faced the Alaska Court of Appeals was whether the death could be considered a direct result of the defendant's action. HB 380 would clarify this in statute. Under HB 380, the fatal overdose would be considered a direct result of the defendant's illegal action, and would permit a judge to increase a sentence for a crime involving the distribution of controlled substances.

If a defendant is convicted of felony charges for misconduct involving a controlled substance, then there should be an allowable deviation from the normal sentencing if the drugs that were sold were the cause of a death. HB 380 allows for a judge to decide if the sentencing for an illegal act should be increased because the result of the initial crime resulted in the death of a person.

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aggravating factors AS12.55.155

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Appeals court mulls role of dealer in drug death

OVERDOSE: At issue is sentence for selling to man who later died.

By SHEILA TOOMEY
Anchorage Daily News
(Published: May 11, 2003)

The Alaska Court of Appeals is not sure if a person who sells drugs to someone who ends up dead of an overdose should be held at all responsible for that death.

In a memorandum issued Wednesday, the three-judge appeals court returned the case of Shaun Whitesides to a Ketchikan judge with instructions to collect more information and send it back to them.

At issue is Whitesides' sentence for selling heroin, which included three years of suspended time tacked onto the required five-year prison term.

On July 11, 2000, Ketchikan police found Robert Glenn dead of a heroin overdose. Ten days later Whitesides admitted to police that she sold Glenn a gram of heroin for $150. A jury eventually convicted her of felony misconduct involving a controlled substance.

No one suggested Whitesides was criminally responsible for Glenn's death. He took the drug himself, and she apparently wasn't there when he did it. But Ketchikan Superior Court Judge Trevor Stephens concluded that Glenn died as "a direct result" of her conduct and increased her sentence by adding the three suspended years.

Stephens also sentenced Whitesides to two years with 11/2 years suspended for possession of methamphetamine.

Suspended time is held over the head of a defendant upon release from prison to encourage compliance with probation conditions. If found violating probation, a defendant can be returned to prison and forced to serve the suspended time.

Alaska sentencing law allows increases or decreases in required sentences if a judge finds "aggravators" or "mitigators" that justify deviation from the norm. The aggravator Stephens found says a defendant can be punished more severely if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct."

The question facing the appeals court is "When a defendant sells or otherwise furnishes illegal drugs to a willing consumer, and the consumer later dies of an overdose after taking these drugs, can this death be termed 'a direct result' of the defendant's conduct?"

Case law around the country is divided on this question, the court said. It instructed Stephens to either change Whitesides' sentence or get more substantial legal arguments from the lawyers involved and send back a written decision.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SHAUN M. WHITESIDES, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-8274 Trial Court No. 1KE-00-656 Cr MEMORANDUM OPINION [No. 4700 — May 7, 2003]

Appeal from the Superior Court, First Judicial District, Ketchikan, Trevor N. Stephens, Judge.

Appearances: Michael P. Heiser, Ketchikan, for Appellant. James Scott, Assistant District Attorney, Ketchikan, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

MANNHEIMER, Judge.

In this sentence appeal, we are asked to construe AS 12.55.155(c)(1), one of the statutory aggravating factors that authorize a sentencing judge to exceed the presumptive term of imprisonment in cases governed by presumptive sentencing. Subsection (c)(1) states that a defendant's presumptive term can be aggravated if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct". The question presented in this appeal is whether Subsection (c)(1)

applies when a defendant illegally sells drugs and one of the defendant's customers dies from an overdose.

For the reasons explained here, we decline to decide this question of statutory interpretation at the present time. Instead, we remand this case to the superior court for further consideration of this issue.

Underlying facts

On July 11, 2000, the Ketchikan police received a report of a drug overdose. When they arrived at the scene, they discovered that the victim, Robert Glenn, was dead. The State Medical Examiner concluded that Glenn's death was due to a heroin overdose.

Ten days later, the Ketchikan police received information that Shaun M. Whitesides was selling cocaine and was also using methamphetamine. Based on this information, the police obtained a search warrant for Whitesides's apartment.

During the execution of that warrant, the police found a small amount (.6 grams) of methamphetamine. While they were there, the police interrogated Whitesides about the report that she was selling drugs. Whitesides initially denied selling any drugs. But when the police informed Whitesides that Glenn was dead, and that he appeared to have died from a drug overdose, Whitesides began to cry. She then admitted that Glenn had come to her, looking for heroin, and that she had sold him a gram of heroin for $150.

Based on the foregoing, Whitesides was indicted for second-degree controlled substance misconduct (sale of heroin) and fourth-degree controlled substance misconduct (possession of methamphetamine).[1] She pleaded guilty to the methamphetamine possession charge, but she chose to go to trial on the sale of heroin charge. The jury found her guilty.

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[1] AS 11.71.020(a)(1) and AS 11.71.040(a)(3)(A), respectively.

Second-degree controlled substance misconduct is a class A felony.[2] Whitesides was a first felony offender for presumptive sentencing purposes, so her sentencing was governed by AS 12.55.125(c)(1)-(2). Under the pertinent portions of these two subsections of AS 12.55.125(c), Whitesides faced a 7-year presumptive term if she "caused serious physical injury during the commission of the offense"; otherwise, she faced a 5-year presumptive term. The prosecutor took the position that Whitesides's presumptive term was 5 years, and neither the defense attorney nor the sentencing judge disputed the prosecutor's legal conclusion.

Under Alaska Criminal Rule 32.1(c), after the pre-sentence report is distributed to the parties, the State must notify the defendant of any aggravating factors that the State intends to rely on at sentencing. And under Criminal Rule 32.1(d), after the defense attorney receives the State's notice, the defense attorney must similarly notify the State of any mitigating factors that the defendant intends to rely on. In Whitesides's case, the State did not propose any aggravating factors in advance of the sentencing hearing, nor the defense propose any mitigating factors in advance of the hearing.

The events of the sentencing hearing

Because the parties proposed no aggravating or mitigating factors, it appeared that Whitesides would inevitably receive the unadjusted 5-year presumptive term. Nevertheless, when the sentencing hearing began, the prosecutor argued at length that the court should not reduce Whitesides's sentence below the 5-year presumptive term simply because her offense involved such a small amount of heroin.

After hearing the prosecutor's oration, the defense attorney allowed that there was one mitigator he should have mentioned: AS 12.55.155(d)(14) — that Whitesides's

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[2] AS 11.71.020(c).

offense involved only a small quantity of a controlled substance. The defense attorney apologized for not raising this mitigating factor earlier, but he pointed out that he had not been Whitesides's trial attorney and, because he came into the case late, he "[had not] know[n] all of [this] information".

Superior Court Judge Trevor N. Stephens agreed that the defense attorney had a good excuse for not raising this mitigating factor earlier. He told the defense attorney, "If you want [more] time to file mitigators, I'll give you [more time, because] you did come in late."

At this point, the prosecutor protested that the State was being prejudiced. He told Judge Stephens that the State had declined to propose any aggravating factors because the State was relying on the fact that the defense had proposed no mitigating factors.

This explanation holds no water. Under Criminal Rule 32.1, the State announces its proposed aggravators first, and then the defense attorney responds with proposed mitigators. Judge Stephens perceived this flaw in the prosecutor's argument. He told the prosecutor, "I have a hard time conceptualizing [your claim of prejudice] because ... , typically, you don't wait to see if a mitigator is filed before you file an aggravator." The prosecutor conceded that this was true. He nevertheless argued that if Whitesides was going to be allowed to argue mitigators, it was only fair to allow the State to argue aggravators.

Judge Stephens suggested that the defense attorney might not "[be] prepared to address aggravators today", but the defense attorney immediately responded, "I can address the aggravators, Your Honor." A few minutes later, the defense attorney reiterated that he "[felt] comfortable that [he was] prepared to do [the] sentencing". So the parties then argued aggravators and mitigators.

Whitesides's attorney argued "small quantity", and Judge Stephens found this mitigator. For his part, the prosecutor proposed two aggravating factors — both of which Judge Stephens rejected. But in an unusual turn of events, Judge Stephens then found an aggravating factor that the prosecutor had rejected — (c)(1): that a person, other than an accomplice, sustained physical injury as a direct result of Whitesides's conduct.

The prosecutor told Judge Stephens that the State had considered and rejected aggravator (c)(1) because the district attorney's office had concluded that "direct result" meant "without the independent action of another". Based on this reading of the statute, the prosecutor told Judge Stephens that aggravator (c)(1) did not apply to Whitesides's sale of heroin because "Mr. Glenn had a hand in his own death".

But Judge Stephens was not convinced by the prosecutor's argument:

> *The Court*: I don't agree at all that this aggravator can't apply to [a sale of controlled substances] such as this. Physical injury is not an element of the offense; [nor is it] a circumstance that would [trigger] a higher presumptive [term] .... And, just in quickly doing some research, I'm not aware of any cases that specifically define "a direct result of the defendant's conduct". ...
>
> In my view, there's clear and convincing evidence that the heroin that [Whitesides] provided [to Glenn] is [the heroin] which Mr. Glenn injected and which led to his death. And it might be [that] there is a difference between legal responsibility or culpability [for that death] and "a direct result". [Whitesides] ... was not charged, has never been charged with a crime that's tied directly to Mr. Glenn's death. She's not charged with any of the homicide offenses or anything like that. But in my view, that's a different set of circumstances [than] a "direct result", and I think [that] this aggravator applies.

Having found the "small quantity" mitigator and the "physical injury" aggravator, Judge Stephens concluded that "the aggravator far outweighs the mitigator". In fact, Judge Stephens declared that even if the aggravator had not been proved, he "wouldn't have mitigated the sentence" because Whitesides had poor prospects for rehabilitation.

(Even though Whitesides was technically a first felony offender for presumptive sentencing purposes, she had a prior conviction for a drug felony (sale of cocaine) — a conviction that was set aside after she successfully completed her suspended-imposition-of-sentence probation.)

At the same time, Judge Stephens declared that he would not increase Whitesides's time to serve based on the aggravating factor. Rather, he added 3 years of suspended imprisonment to Whitesides's 5-year presumptive term. That is, Whitesides received 8 years with 3 years suspended for the crime of second-degree controlled substance misconduct. [3]

For the remaining offense (possession of methamphetamine), Judge Stephens sentenced Whitesides to a consecutive term of 2 years with 1½ years suspended (six months to serve). Thus, Whitesides's composite sentence for her two offenses is 10 years' imprisonment with 4½ years suspended — 5½ years to serve.

Does aggravator (c)(1) apply to the facts of Whitesides's case?

Whitesides raises a number of claims in this sentence appeal, but all of these claims ultimately turn on, or are substantially affected by, Judge Stephens's ruling that

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[3] In their briefs to this Court, both Whitesides and the State incorrectly declare that Whitesides received a sentence of 8 years with 5 years suspended (*i.e.*, 3 years to serve). This is wrong. Both the sentencing transcript and the written judgement confirm that Whitesides received a sentence of 8 years with 3 years suspended — 5 years to serve.

Whitesides's case is aggravated under AS 12.55.155(c)(1). We therefore turn our attention to this ruling.

Whitesides challenges the superior court's ruling on two grounds. First, she contends that the State is estopped from defending the court's ruling — *i.e.*, estopped from arguing in favor of aggravator (c)(1) on appeal — because the prosecutor did not argue for this aggravator at the sentencing hearing.

But Judge Stephens was authorized to find this aggravator despite the contrary positions of the parties. [4] And, on appeal, it is the State's duty to either support the superior court's ruling or concede that the ruling is erroneous. Apparently, the State is now persuaded that Judge Stephens was correct and that the district attorney's narrower interpretation of the aggravator was wrong. The State may therefore properly argue in favor of Judge Stephens's ruling in this appeal.

Whitesides's second argument is that Judge Stephens misinterpreted AS 12.55.155(c)(1). This argument is more difficult to resolve.

As explained above, AS 12.55.155(c)(1) declares that a felony is aggravated if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct". The question presented by Whitesides's case is this: When a defendant sells or otherwise furnishes illegal drugs to a willing consumer, and the consumer later dies of an overdose after taking these drugs, can this death be termed "a direct result" of the defendant's conduct?

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[4] *See Hartley v. State*, 653 P.2d 1052, 1055-56 (Alaska App.1982) (holding that a sentencing judge is authorized to take notice of potential aggravators and mitigators *sua sponte*, even when these factors are not presented by the prosecutor or the defense attorney, but requiring the judge to give the parties notice and an opportunity to be heard before the judge rules on these proposed sentencing factors). *See also Wylie v. State*, 797 P.2d 651, 662 n. 9 (Alaska App. 1990).

In his sentencing remarks, Judge Stephens declared that he did not quarrel with the State's conclusion that Whitesides was not criminally responsible for Glenn's death. That is, the judge agreed that Whitesides should not be charged with criminal homicide on account of Glenn's death. But Judge Stephens then concluded that Glenn's death could be considered a "direct result" of Whitesides's criminal conduct (for purposes of assessing aggravator (c)(1)) even though Whitesides was not criminally responsible for Glenn's death. Judge Stephens offered no legal authority in support of this conclusion, and we are not sure that it is correct.

Normally, a person who commits a criminal act can be held responsible for an ensuing result if the person's criminal conduct was a "substantial factor" in causing that result. *See State v. Malone*, 819 P.2d 34, 36 (Alaska App. 1991); Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* (3rd edition 1982), pp. 779-780. Aggravator (c)(1) does not use the "substantial factor" test. Rather, aggravator (c)(1) requires proof that the prohibited result — physical injury — was a "direct result" of the defendant's conduct.

As Judge Stephens noted, there is no case law defining the phrase "direct result". Further, there appears to be no legislative commentary to help us determine what the legislature intended this phrase to mean. However, based purely on the wording of aggravator (c)(1), there is good reason to believe that Judge Stephens was wrong when he concluded that the aggravator could be proved even in instances when the defendant could not be held criminally responsible for the victim's physical injury.

If anything, aggravator (c)(1)'s requirement of "direct result" suggests a stricter connection between the defendant's conduct and the ensuing injury than the "substantial factor" test that is employed to assess criminal responsibility. [5] That is, even

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[5] The most attenuated physical injury discussed in published Alaska appellate opinions is found in *Marker v. State*, 829 P.2d 1191 (Alaska App. 1992). In *Marker*, the defendant and an accomplice sexually assaulted a woman in a baseball field. When the

when a defendant can be held criminally accountable for the victim's injury (because the defendant's conduct was a substantial factor in causing that injury), the government would have to prove something more in order to establish the aggravator.

But even if we construed "direct result" as shorthand for the "substantial factor" test, the proper application of the aggravator to Whiteside's case would still be unclear — because, even under the "substantial factor" test, it is unclear whether Whitesides's sale of heroin to Glenn was a legal cause of his death.

As already explained, the district attorney's office concluded that Whitesides could *not* be held criminally responsible for Glenn's death, and Judge Stephens accepted this conclusion. Thus, this issue — whether the sale of a controlled substance should be considered a "substantial factor" in causing a later death by overdose — was not actively litigated in Whitesides's case. Case law from around the country is split as to whether Whitesides could be convicted of criminal homicide in connection with Glenn's death under the facts of this case.

Several state courts have held that a seller of controlled substances will normally be criminally liable for an ensuing death caused by the ingestion of those controlled substances. *See Commonwealth v. Vaughn*, 687 N.E.2d 270, 272-73 (Mass. App. 1997); *State v. Wassil*, 658 A.2d 548, 555-56 (Conn. 1995) (seemingly); *Shirah v. State*, 555 So.2d 807, 811 (Ala. Crim. App. 1989); *Heacock v. Commonwealth*, 323 S.E.2d 90, 95 (Va. 1984); *State v. Thomas*, 288 A.2d 32, 33 (N.J. App. 1972).

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victim saw a car coming down an adjacent street, she ran out into the street in an attempt to get help, and she was struck by the car. The sentencing judge found that the woman's injury was "a direct result" of the sexual assault, and thus Marker's crime was aggravated under AS 12.55.155(c)(1). *Id.* at 1192. Although our opinion in *Marker* mentions the sentencing judge's ruling, that ruling was not challenged on appeal, so we did not decide whether aggravator (c)(1) was properly applied to these facts.

On the other hand, many courts have adopted the view that the seller will be criminally responsible for a drug-user's death only if the seller was aware of special circumstances that made ingestion of the drug especially dangerous — aware, for instance, that the victim intended to ingest a potentially lethal amount of the drug, or that the victim had previously suffered a severe adverse reaction to the drug, or that the drug itself was tainted or abnormally powerful. *See Hulme v. State*, 544 S.E.2d 138, 141 (Ga. 2001); *Lofthouse v. Commonwealth*, 13 S.W.3d 236, 241-42 (Ky. 2000); *Palmer v. State*, 871 P.2d 429, 433 (Okla. Crim. App. 1994); *State v. Theriault*, (unpublished), 1993 WL 499096, *6 (Conn. Super. 1993), *reversed on other grounds*, 663 A.2d 423 (Conn. App. 1995); *State v. Randolph*, 676 S.W.2d 943, 947-48 (Tenn. 1984); *Sheriff of Clark County v. Morris*, 659 P.2d 852, 859 (Nev. 1983); *State v. Mauldin*, 529 P.2d 124, 126-27 (Kan. 1974); *People v. Cruciani*, 353 N.Y.S.2d 811, 812-13 (N.Y. App. 1974); *Commonwealth v. Bowden*, 309 A.2d 714, 718 (Pa. 1973).

We cite this case law, not in an effort to resolve this question of law, but rather to point out the difficulty of ascertaining whether, as a matter of law, Whitesides's act of selling heroin to Glenn was even a "substantial factor" in causing Glenn's death, much less the direct cause of that death.

The parties to this appeal have not advanced our inquiry. Both the attorney representing the State and the attorney representing Whitesides devote only one paragraph of their briefs to this issue, and neither lawyer cites any legal authority in support of their competing arguments.

Given these circumstances, we decline to resolve whether Glenn's death was a "direct result" of Whitesides's sale of heroin. That is, we decline to resolve whether Judge Stephens was correct when he found that aggravator (c)(1) had been proved by clear and convincing evidence. Instead, we vacate Judge Stephens's ruling on this issue, and we remand Whitesides's case to the superior court so that this issue can be revisited.

If, on reconsideration, Judge Stephens again concludes that aggravator (c)(1) has been proved, he shall issue a written decision explaining his legal reasoning and shall forward a copy of that decision to this Court. The parties will then have 30 days to file memoranda responding to Judge Stephens's decision.

On the other hand, if Judge Stephens concludes that aggravator (c)(1) has not been proved by clear and convincing evidence, he shall re-sentence Whitesides. Under these circumstances, one mitigator (the "small quantity" mitigator) will have been proved, but no aggravators. Judge Stephens shall forward a copy of the revised judgement to this Court.

If Whitesides is re-sentenced, and if Whitesides wishes to appeal the revised sentence, Whitesides shall have 30 days to file a supplemental sentencing memorandum. The State shall have 30 days thereafter to file a responding sentencing memorandum.

Conclusion

Whitesides's sentence is VACATED, and this case is REMANDED to the superior court for further proceedings in accordance with this opinion.

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
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AS 12.55.125. Sentences of imprisonment for felonies

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;
(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;
(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;
(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, four years;
(2) if the offense is a third felony conviction, six years.
(3) [Repealed, Sec. 6 ch 6 SLA 1996].

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;
(2) if the offense is a third felony conviction, three years.
(3) [Repealed, Sec. 6 ch 6 SLA 1996].
(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720 (a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080 ;
(2) imposition of sentence may not be suspended under AS 12.55.085 ;
(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 ;
(2) imposition of sentence may not be suspended under AS 12.55.085 ;
(3) terms of imprisonment may not be otherwise reduced.

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
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House HESS Committee Hearing
February 12, 2004

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;
(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
(3) if the offense is a second felony conviction, 15 years;
(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010 , or (2) definite term of imprisonment under (1) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;
(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155 (c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165 .

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
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(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080 ;

(2) imposition of sentence may not be suspended under AS 12.55.085 ;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

Alaska Statute 12.55.155 Factors in Aggravation and Mitigation
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AS 12.55.155. Factors in aggravation and mitigation.

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125 :

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together

in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145 (a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110 (2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470 .

Alaska Statute 12.55.155 Factors in Aggravation and Mitigation
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(d) The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125 :

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 - 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 - 11.41.470, the victim provoked the crime to a significant degree;

(8) [Repealed, Sec. 42 ch 143 SLA 1982].

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA

controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f).

Alaska Statute 11.71 Controlled Substances
HB 380 Aggravating Factors for Drug Overdose Sale
House HESS Committee Hearing
February 12, 2004

Chapter 11.71 CONTROLLED SUBSTANCES

AS 11.71.010. Misconduct involving a controlled substance in the first degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the first degree if the person

(1) delivers any amount of a schedule IA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;
(2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or
(3) engages in a continuing criminal enterprise.

(b) For purposes of this section, a person is engaged in a "continuing criminal enterprise" if

(1) the person commits a violation of this chapter which is punishable as a felony; and
(2) that violation is a part of a continuing series of five or more violations of this chapter

(A) which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person; and
(B) from which the person obtains substantial income or resources.

(c) Misconduct involving a controlled substance in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

AS 11.71.020. Misconduct involving a controlled substance in the second degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;
(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or
(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(3) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; or
(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or
(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomer.

(b) In this section, "listed chemical" means a chemical described under AS 11.71.200 .

(c) Misconduct involving a controlled substance in the second degree is a class A felony.

AS. 11.71.030. Misconduct involving a controlled substance in the third degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS 11.71.020 (a)(2) - (4), manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;
2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or
(3) possesses any amount of a schedule IA or IIA controlled substance
(A) with reckless disregard that the possession occurs
(i) on or within 500 feet of school grounds; or
(ii) at or within 500 feet of a recreation or youth center; or
(B) on a school bus.

(b) It is an affirmative defense to a prosecution under (a)(3)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school grounds or recreation or youth center, and that the prohibited conduct did not involve distributing, dispensing, or possessing with the intent to distribute or dispense a controlled substance for profit. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Misconduct involving a controlled substance in the third degree is a class B felony.

AS 11.71.040. Misconduct involving a controlled substance in the fourth degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;
(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;
(3) possesses
(A) any amount of a schedule IA or IIA controlled substance;
(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of three grams or more containing a schedule IIIA or IVA controlled substance;
(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance;
(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more containing a schedule VIA controlled substance; or
(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance
(A) with reckless disregard that the possession occurs
(i) on or within 500 feet of school grounds; or
(ii) at or within 500 feet of a recreation or youth center; or
(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;
(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing which prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;
(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;
(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;
(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; or
(10) affixes a false or forged label to a package or other container containing any controlled substance.

(b) It is an affirmative defense to a prosecution under (a)(4)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school grounds or recreation or youth center. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Nothing in (a)(5) or (6) of this section precludes a prosecution or civil proceeding brought under any other provision of this section or any other section of this chapter or under AS 17.

(d) Misconduct involving a controlled substance in the fourth degree is a class C felony.

AS 11.71.050. Misconduct involving a controlled substance in the fifth degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fifth degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half ounce or more containing a schedule VIA controlled substance;
(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance, for remuneration;
(3) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;
(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than three grams containing a schedule IIIA or IVA controlled substance;
(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;
(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or
(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half pound or more containing a schedule VIA controlled substance; or

(4) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30.

(b) Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor.

AS 11.71.060. Misconduct involving a controlled substance in the sixth degree.
(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half pound containing a schedule VIA controlled substance; or
(2) refuses entry into a premise for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the sixth degree is a class B misdemeanor.

AS 11.71.140 Schedule IA

A Substance shall be placed in Schedule IA if it is found under AS 11.71.120 to have the highest degree of danger or probable danger to a person or the public. Schedule IA inlcudes the following substances whether produced directly, by chemical synthesis, or by a combination of both.

Opium and its salts, compounds, or preparations	Opiates			Opium Derivatives
Raw opium	Acetylmethadol	Hydroxpethidine	Propiram	Acetorphine
Opium extract	Allylprodine	Isomethadone	Racemethorphan	Acetyldihydrocodeine
Opium fluid extract	Alphacetylmethadol	Ketobemidone	Racemoramide	Benzylmorphine
Powdered opium	Alphameprodine	Levomethorphan	Racemorphan	Codeine Methylbromide
Granulated Opium	Alphamethadol	Levomoramide	Trimeperidine	Codeine-n-oxide
Incture of Opium	Alphaprodine	Levorphanol	Alfentanil	Cyprenorphine
Codeine	Anileridine	Levophenacylmorphan	Alpha-methylfentanly	Desomorphine
Ethylmorphine	Benzethidine	MPPP	Bulk dextropropoxyphene	Dihydromorphine
Etorphine hydrochloride	Betacetylmethadol	PEPAP	Carfentanil	Drotebanol
Hydrocodone	Betameprodine	Meperidine	Sufentanil	Etorphine
Hydromorphone	Betamethadol	Metazocine	Tilidine	Heroin
Metopon	Betaprodine	Methadone	Para-fluorofentanyl	Hydromorphinol
Morphine	Bezitramide	Methadone-intermediate	3-methylfentanyl	Methyldesorphinol
Oxycodone	Clonitazene	Moramide-intermediate	Acetyl-alpha-methylfentanyl	Methyldesorphine
Oxymorphine	Dextromoramide	Morpheridine	Alpha-methylthiofentanyl	Methyldihydromorphine
Thebaine	Diampromide	Noracymethadol	Beta-hydroxyfentanyl	Morphine Methylsufonate
Opium poppy	Diethylthiambutene	Norlevorphanol	3-methylthiofentanyl	Morphine-n-oxide
Poppy straw	Difenoxin	Normethadone	Thiofentanyl	Myrophine
Concentrate of poppy straw	Dihydrocodeine	Norpipanone	Piminodine	Nicocodeine
Methcathinone	Dimenoxadol	Pethidine	Piritramide	Nicomorphine
	Dimepheptanol	Pethidine-intermediate	Propheptazine	Normorphine
	Dimethylthiambutene	Phenadoxone	Properidine	Normorphine
	Dioxaphetyl butyrate	Phenampromide	Phenazocine	Pholcodine
	Diphenoxylate	Ethylmethythiamutene	Phenomorphan	
	Dipipanone	Etonitazene	Phenoperidine	
	Etoxeridine	Fentanyl	Furethidine	

AS 11.71.150 Schedule IIA

A substance shall be placed in schedule IIA if is found to have a degree of danger or probable danger to a person or the public which is less than substances listed in s IIA includes any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances.

Hallucinogenic Substances	Depressant Substances	Stimulant Substances
4-bromo 2, 5-dimethoxyamphetamine	amobarbital	Amphetamine
2, 5-dimethoxyamphetamine	mandrix	Methamphetimine
4-methoxyamphetamine	mandrax	Phenmetrazine
5-methoxy-3, 4-methylenedioxy-amphetamine	mecloqualone	Fenethylline
4-methyl-2, 5-dimethoxy-amphetamine	methaqualone	N-ethylamphetamine
3,4-methylendedioxy amphetamine	pentobarbital	3,4-methylenedioxy-N-ethylamphentamine
3,4,5-trimethoxy amphetamine	phencyclidine (PCP)	N-hydroxy-3,4-methylenedioxyamphentamine
Bufotenine	Secobarbital	4-methylaminorex
Diethyltryptamine (DET)		N,N-dimethylamphetamine
Dimethyltryptamine (DMT)		
Ibogaine		
Lysergic acid diethylamide (LSD)		
Mescaline		
n-ethyl-3-piperidyl benziliate		
n-methyl-3-piperidyl benzilate		
Peyote		
Analogs of phencyclidine (PCP)		
Ethylamine analog		
Pyrrolidine analog (PCPY, PHP)		
Thiophene analog (TPCP, TCP)		
TCPy		
Psilocybine		
Psilocyn		
3,4-methylenedioxymethamphetamine (MDMA)		
Cocaine		

AS 11.71.160 Schedule IIIA

A substance shall be placed in Schedule IIIA if it is found to have a degree of danger or probable danger to a person or the public less than the substances listed in Schedule IIA.

Depressant Substances

Amobarbital, secobarbital, or pentobarbital, combined with one or more other active medicinal ingredients.

Amobarbital, secobarbital, or pentobarbital, approved by the Federal Food and Drug Adminstration for marketing only as a suppository.

Any substnce which contains any quantity of a derivative of barbituric acid.

Chlorhexadol	sulfondiethylmethane
Glutethimide	sulfonmethane
Lysergic acid	tiletamine
Lysergic acid amide	zolazepam
Methyprylon	nalorphine

Narcotics

Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

No more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

AS 11.71.170 Schedule IVA

A substance shall be placed in Schedule IVA if it is found to have a degree of danger or probable danger to a person or the public which is less than the substances listed in schedule IIIA.

Any material, compound, mixture, or preparation which contains any quantity of the following substances:		Any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or their salts calculated as the free anhydrous base or alkaloid.	
Barbital	Methohexital	Diethylpropion	Fencamfamin
Cholral betaine	Oxazepam	Phentermine	Fenproporex
Chloral hydrate	Paraldehyde	Pemoline	Mefenorex
chlordiazepoxide	Petrichloral	Mazindol	Dextropropoxyphene
Clonazepam	Phenobarbital	Pipradol	Pentazocine
Clorazepate	Prazepam	SPA	Propoxphene
Diazepam	Alprazolam	Cathine	
Ethclorvynol	Halazepam		
Ethinamate	Triazolam		
Flurazepam	Midazolam		
Lorazepan	Quazepam		
Mebutamate	Flunitrazepam		
Meprobamate	gamma-Hydroxybutyrate		
Ketamine hydrochloride	fenfluramine		

AS 11.71.180 Schedule VA

A substance shall be placed in Schedule VA if it is found to have a degree of danger or probable danger to a person or the public which is less than substances listed in Schedule IVA

Schedule VA includes any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or their salts:	Schedule VA includes any material, compound, mixture or preparation that contains any quantity of the narcotic drug Buprenorphine and its salts.	ScheduleVA includes any material, compound, mixture, or preparation which contains any of the following substances:
Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams. Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.		Propylhexedrine, except when contained in a Benzedrex inhaler. Pyrovalerone

AS 11.71.190 Schedule VIA

A substance shall be placed in Schedule VIA if it is found to have a degree of danger or probable danger to a person or the public which is less than substances listed in Schedule VA.

Marijuana is a Schedule VIA controlled substance.