

BILLS 1981 - 1982

HB 180 cont.

L. G. Finamore

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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NUMBER

I. REQUEST
Bill/Resolution No. HB 180 (No. 2)
Title An Act Revising the Drug Laws
Requested by House Judiciary Committee Date 1/8/82

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: if more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

HB 180 revises the drug laws of the state. There is no apparent fiscal impact from this bill on the Alaska Court System. Section 11.71.110 establishes a committee with several functions, one of which is to "recommend programs to the Alaska Court System to be instituted as alternatives to the prosecution or imprisonment of offenders..." The assumption in preparing this fiscal note is that these alternative programs will be funded or maintained by executive branch agencies, since all present alternatives to prosecution or imprisonment are housed in the executive branch.

IV. DATE 1/12/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 180

Title An Act revising the drug laws and making amendments to the criminal law

Requested by Governor Date of the state

II. FISCAL DETAIL

Agency Affected Public Safety

Program Category Affected Administration of Justice

BRU, Program, or Subprogram(s) Affected Detachments and CIB, Narcotics Unit

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		- 0 -	- 0 -	- 0 -		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The bill will not have fiscal impact upon the Department of Public Safety.

IV. DATE 2/6/81

PREPARED BY Walter P. Lawson

AGENCY Public Safety

PHONE 465-4336

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 180
 Title "An Act revising the Drug Laws"
 Requested by Governor's Office Date February 13, 1981

II. FISCAL DETAIL

Agency Affected Health & Social Services
 Program Category Affected Drug, Corrections, Public Health
 BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS. CLAIMS. ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0
	0	0	0	0	0	0

POSITIONS

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

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

As currently drafted, DHSS foresees no additional cost resulting from passage of this bill.

IV. DATE February 16, 1981 PREPARED BY Gail Shortell, Coordinator

AGENCY Health & Soc. Svcs. for Drug Abuse
 PHONE 465-3030

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

Handwritten signature and date: 2/17/81

Original Sponsor: Rules/Governor

Offered: 1/22/82
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 180 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act revising the drug laws and making amendments to
7 the criminal laws of the state; and providing for an
8 effective date."

9

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

10

* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. (a) The purposes of
11 this Act are to consolidate and revise Alaska's drug laws so that they are
12 patterned after the Uniform Controlled Substances Act and the Federal Con-
13 trolled Substances Act of 1970 and to enact uniform penalty provisions in
14 conformity with the 1978 revision of Alaska's criminal code to effectively
15 combat illicit trafficking in controlled substances.

16

(b) Two distinct, but interrelated, concerns are addressed in this Act.
17 The first concern is the detrimental effect on public safety created through
18 illicit trafficking in and use of drugs. A second, equally important concern
19 is the effect on public health created by the use and abuse of drugs. It is
20 the intent of the legislature that, in addressing public safety concerns,
21 uniform classification and penalty provisions be enacted which adopt an
22 approach reflecting law enforcement problems unique to Alaska. It is also
23 the intent of the legislature that in addressing public health concerns, a
24 statutory scheme be enacted which is patterned after federal law and that the
25 legitimate manufacture, distribution, prescription, and dispensing of con-
26 trolled substances be subject to a regulatory scheme regarding registration,
27 record keeping, order forms, and prescription requirements that is identical
28 to that provided under federal law.

29

* Sec. 2. AS 11 is amended by adding a new chapter to read:

1 CHAPTER 71. CONTROLLED SUBSTANCES.

2 ARTICLE 1. OFFENSES RELATING TO CONTROLLED SUBSTANCES.

3 Sec. 11.71.010. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE
4 FIRST DEGREE. (a) Except as authorized in AS 17.30, a person commits
5 the crime of misconduct involving a controlled substance in the first
6 degree if he

7 (1) delivers any amount of a schedule IA controlled substance
8 to a person under 19 years of age who is at least three years younger
9 than he; or

10 (2) engages in a continuing criminal enterprise.

11 (b) For purposes of this section, a person is engaged in a "con-
12 tinuing criminal enterprise" if

13 (1) he commits a violation of this chapter which is punish-
14 able as a felony; and

15 (2) that violation is a part of a continuing series of five
16 or more violations of this chapter

17 (A) which he undertakes in concert with at least five
18 other persons he organizes, supervises, or otherwise manages; and

19 (B) from which he obtains substantial income or re-
20 sources.

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

24 Sec. 11.71.020. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE
25 SECOND DEGREE. (a) Except as authorized in AS 17.30, a person commits
26 the crime of misconduct involving a controlled substance in the second
27 degree if he

28 (1) manufactures or delivers any amount of a schedule IA
29 controlled substance or possesses any amount of a schedule IA con-

1 trolled substance with intent to manufacture or deliver; or

2 (2) delivers any amount of a schedule IIA or IIIA controlled
3 substance to a person under 19 years of age who is at least three years
4 younger than he.

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

7 Sec. 11.71.030. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN
8 THE THIRD DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a
9 person commits the crime of misconduct involving a controlled substance
10 in the third degree if he

11 (1) manufactures or delivers any amount of a schedule IIA or
12 IIIA controlled substance or possesses any amount of a schedule IIA or
13 IIIA controlled substance with intent to manufacture or deliver;

14 (2) delivers any amount of a schedule IVA, VA or VIA con-
15 trolled substance to a person under 19 years of age who is at least
16 three years younger than he; or

17 (3) being 18 years of age or older, possesses any amount of
18 a schedule IA or IIA controlled substance within the grounds of or on a
19 parking lot immediately adjacent to a public or private preschool,
20 elementary, junior high, or secondary school.

21 (b) It is an affirmative defense to a prosecution under (a)(3)
22 of this section that at the time of the possession the school was
23 closed to any organized activity involving persons under 18 years of
24 age. Nothing in this subsection precludes a prosecution under any
25 other provision of this section or any other section of this chapter.

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

28 Sec. 11.71.040. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN
29 THE FOURTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35,

1 a person commits the crime of misconduct involving a controlled sub-
2 stance in the fourth degree if he

3 (1) manufactures or delivers any amount of a schedule IVA,
4 VA, or VIA controlled substance or possesses any amount of a schedule
5 IVA, VA, or VIA controlled substance with intent to manufacture or
6 deliver;

7 (2) possesses

8 (A) any amount of a schedule IA or IIA controlled sub-
9 stance;

10 (B) 25 or more tablets, ampules, or syrettes containing
11 a schedule IIIA or IVA controlled substance;

12 (C) one or more preparations, compounds, mixtures, or
13 substances of an aggregate weight of three grams or more contain-
14 ing a schedule IIIA or IVA controlled substance;

15 (D) 50 or more tablets, ampules, or syrettes containing
16 a schedule VA controlled substance;

17 (E) one or more preparations, compounds, mixtures, or
18 substances of an aggregate weight of six grams or more containing
19 a schedule VA controlled substance; or

20 (F) one or more preparations, compounds, mixtures, or
21 substances of an aggregate weight of one pound or more containing
22 a schedule VIA controlled substance;

23 (3) being 18 years of age or older, possesses a schedule
24 IIIA, IVA, VA, or VIA controlled substance within the grounds of or on
25 a parking lot immediately adjacent to a public or private preschool,
26 elementary, junior high, or secondary school;

27 (4) knowingly keeps or maintains any store, shop, warehouse,
28 dwelling, building, vehicle, boat, aircraft, or other structure or
29 place which is used for keeping or distributing controlled substances

1 in violation of this chapter or AS 17.30;

2 (5) makes, delivers, or possesses a punch, die, plate,
3 stone, or other thing which prints, imprints, or reproduces a trademark,
4 trade name, or other identifying mark, imprint, or device of another or
5 any likeness of any of these upon a drug, drug container, or labeling
6 so as to render the drug a counterfeit substance;

7 (6) knowingly uses in the course of the manufacture or dis-
8 tribution of a controlled substance a registration number which is
9 fictitious, revoked, suspended, or issued to another person;

10 (7) knowingly furnishes false or fraudulent information in
11 or omits material information from any application, report, record, or
12 other document required to be kept or filed under AS 17.30;

13 (8) obtains possession of a controlled substance by mis-
14 representation, fraud, forgery, deception or subterfuge; or

15 (9) affixes a false or forged label to a package or other
16 container containing any controlled substance.

17 (b) It is an affirmative defense to a prosecution under (a)(3) of
18 this section that at the time of the possession the school was closed
19 to any organized activity involving persons under 18 years of age.
20 Nothing in this subsection precludes a prosecution under any other pro-
21 vision of this section or any other section of this chapter.

22 (c) Nothing in (a)(4) or (5) of this section precludes a prosecu-
23 tion or civil proceeding brought under any other provision of this sec-
24 tion or any other section of this chapter or under AS 17.

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

27 Sec. 11.71.050. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN
28 THE FIFTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a
29 person commits the crime of misconduct involving a controlled substance

1 in the fifth degree if he

2 (1) possesses

3 (A) less than 25 tablets, ampules, or syrettes con-
4 taining a schedule IIIA or IVA controlled substance;

5 (B) one or more preparations, compounds, mixtures, or
6 substances of an aggregate weight of less than three grams con-
7 taining a schedule IIIA or IVA controlled substance;

8 (C) less than 50 tablets, ampules, or syrettes con-
9 taining a schedule VA controlled substance;

10 (D) one or more preparations, compounds, mixtures, or
11 substances of an aggregate weight of less than six grams con-
12 taining a schedule VA controlled substance; or

13 (E) one or more preparations, compounds, mixtures, or
14 substances of an aggregate weight of one-half pound or more con-
15 taining a schedule VIA controlled substance; or

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

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

20 Sec. 11.71.060. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN
21 THE SIXTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35, a
22 person commits the crime of misconduct involving a controlled substance
23 in the sixth degree if he

24 (1) uses or displays any amount of a schedule VIA controlled
25 substance or possesses one or more preparations, compounds, mixtures,
26 or substances of an aggregate weight of one ounce or more containing a
27 schedule VIA controlled substance on a public street or sidewalk or on
28 the premises of a public carrier or business establishment or in any
29 other public place;

1 (2) knowingly possesses any amount of a schedule VIA con-
2 trolled substance within his immediate control while operating a pro-
3 pelled vehicle;

4 (3) being under 19 years of age, possesses one or more
5 preparations, compounds, mixtures, or substances of an aggregate weight
6 of less than four ounces containing a schedule VIA controlled substance;

7 (4) possesses one or more preparations, compounds, mixtures,
8 or substances of an aggregate weight of four ounces or more containing
9 a schedule VIA controlled substance; or

10 (5) refuses entry into a premises for an inspection autho-
11 rized under AS 17.30.

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

14 Sec. 11.71.070. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN
15 THE SEVENTH DEGREE. (a) Except as authorized in AS 17.30 or AS 17.35,
16 a person commits the offense of misconduct involving a controlled
17 substance in the seventh degree if he possesses one or more prepara-
18 tions, compounds, mixtures, or substances of an aggregate weight of
19 less than one ounce containing a schedule VIA controlled substance on a
20 public street or sidewalk or on the premises of a public carrier or
21 business establishment or in any other public place.

22 (b) Misconduct involving a controlled substance in the seventh
23 degree is a violation.

24 ARTICLE 2. STANDARDS AND SCHEDULES.

25 Sec. 11.71.100. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a)
26 The Controlled Substances Advisory Committee is established in the
27 Department of Law. The committee consists of

28 (1) the attorney general or his designee;

29 (2) the commissioner of health and social services or his

1 designee;

2 (3) the commissioner of public safety or his designee;

3 (4) the chairman of the Board of Pharmacy or his designee who
4 shall also be a member of the Board of Pharmacy;

5 (5) a peace officer appointed by the governor after consul-
6 tation with the Alaska Association of Chiefs of Police;

7 (6) a physician appointed by the governor;

8 (7) a psychiatrist appointed by the governor; and

9 (8) two individuals appointed by the governor.

10 (b) Members of the committee appointed under (a)(5) - (8) of this
11 section serve terms of four years. A member of the committee receives
12 no salary but is entitled to per diem and travel expenses authorized by
13 law for boards and commissions under AS 39.20.180.

14 (c) The attorney general is the chairman of the committee.

15 (d) The committee meets at the call of the attorney general.

16 (e) The committee may not meet less than twice a year.

17 (f) Five members of the committee constitute a quorum, except that
18 a smaller number may adjourn a meeting in the absence of a quorum. A
19 quorum being present, a majority vote of the total membership is required
20 to take official action.

21 Sec. 11.71.110. DUTIES OF COMMITTEE. The committee shall

22 (1) determine the need to add substances to the schedules set
23 out in AS 11.71.140 - 11.71.190;

24 (2) advise the governor of the need to delete or reschedule
25 substances in the schedules in AS 11.71.110 - 11.71.190;

26 (3) recommend regulations for adoption by the Board of Phar-
27 macy to prevent excessive prescription of controlled substances and the
28 diversion of prescription drugs into illicit channels;

29 (4) evaluate the effectiveness of programs in the state

1 providing treatment and counseling for persons who abuse controlled
2 substances;

3 (5) recommend programs to the Alaska Court System to be in-
4 stituted as alternatives to the prosecution or imprisonment of offenders
5 who have no prior criminal record involving controlled substance of-
6 fenses and who are charged with crimes involving controlled substances;

7 (6) review and evaluate enforcement policies and practices of
8 the Department of Public Safety and the Department of Law with regard to
9 crimes involving controlled substances, and recommend modifications of
10 those policies and practices consistent with the committee's assessment
11 of the probable danger of particular controlled substances; and

12 (7) review budget requests and recommend amounts for appro-
13 priations to the governor and the legislature for departments and agen-
14 cies responsible for

15 (A) enforcing criminal laws pertaining to controlled
16 substances;

17 (B) providing treatment and counseling of persons who
18 abuse controlled substances; and

19 (C) regulating the legitimate handling of controlled
20 substances.

21 Sec. 11.71.120. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES. (a)
22 If, after considering the factors set out in (c) of this section, the
23 committee finds that a substance should be added to a schedule of con-
24 trolled substances under AS 11.71.140 - 11.71.190, the attorney general
25 shall adopt a regulation under the Administrative Procedure Act (AS 44.-
26 62) in accordance with the committee's findings. The committee shall
27 prescribe the effective date of a regulation adopted under this section.
28 This date may not be earlier than the 60th day of the next regular
29 session of the legislature following adoption of the regulation. Within

1 10 days after the convening of a regular session of the legislature, the
2 committee shall submit to the legislature a regulation adopted under
3 this section which has not taken effect and shall submit findings of
4 fact and other information which it considers appropriate. If the
5 legislature annuls a regulation adopted under this section by statute,
6 the regulation may not be readopted within three years after the annul-
7 ment.

8 (b) If a substance is added as a controlled substance under federal
9 law and notice of the addition is given to the attorney general, the
10 committee shall give notice under AS 44.62.190 of proposed adoption of a
11 regulation making a corresponding change in the Alaska schedules and
12 shall hold a hearing under AS 44.62.210. The committee shall submit the
13 regulation to the legislature as provided in (a) of this section. If
14 the committee decides not to adopt the regulation, it shall file with
15 the lieutenant governor a notice of that decision along with findings of
16 fact.

17 (c) In making a determination regarding the addition of a sub-
18 stance under (a) of this section, or in advising the governor of the
19 need to delete or reschedule a substance, under AS 11.71.110(2), the
20 committee shall assess the danger or probable danger of the substance
21 after considering the following:

22 (1) the actual or probable abuse of the substance including:

23 (A) the history and current pattern of abuse both in
24 this state and in other states;

25 (B) the scope, duration, and significance of abuse;

26 (C) the degree of actual or probable detriment which may
27 result from abuse of the substance;

28 (D) the probable physical and social impact of wide-
29 spread abuse of the substance;

1 (2) the biomedical hazard of the substance including
2 (A) its pharmacology, the effects and modifiers of the
3 effects of the substance;

4 (B) its toxicology, the acute and chronic toxicity,
5 interaction with other substances, whether controlled or not, and
6 the degree to which it may cause psychological or physiological
7 dependence;

8 (C) the risk to public health and the particular sus-
9 ceptibility of segments of the population;

10 (3) whether the substance is an immediate precursor of a
11 substance already controlled under this chapter;

12 (4) the current state of scientific knowledge regarding the
13 substance, including whether there is any acceptable means to safely use
14 the substance under medical supervision;

15 (5) the relationship between the use of the substance and
16 other criminal activity, including

17 (A) whether persons engaged in illicit trafficking of
18 the substance are also engaged in other criminal activity;

19 (B) whether the nature and relative profitability of
20 manufacturing or delivering the substance encourages illicit traf-
21 ficking in the substance;

22 (C) whether the commission of other crimes is one of the
23 effects of abuse of the substance;

24 (D) whether addiction to the substance relates to the
25 commission of crimes to support the continued use of the substance.

26 (d) If the committee designates a substance as an immediate pre-
27 cursor of a controlled substance, a precursor of that immediate precursor
28 is not subject to control solely because it is a precursor of the immedi-
29 ate precursor.

1 (e) The committee has no authority over tobacco or alcoholic
2 beverages as defined in AS 04.21.080.

3 Sec. 11.71.130. NOMENCLATURE. Controlled substances are listed in
4 the schedules in AS 11.71.140 - 11.71.190 by official, common, usual,
5 chemical, or trade designation and by slang terms if applicable. In a
6 prosecution or other proceeding under this chapter, it is not a defense
7 and it is immaterial that a slang term is listed after more than one
8 controlled substance, that a slang term listed after a controlled sub-
9 stance is inaccurately applied to that controlled substance, that no
10 slang term is listed after a controlled substance, or that slang terms
11 other than those listed may apply to a controlled substance. The use of
12 a slang term is not required in a complaint, indictment, or information
13 charging a violation of this chapter, and the failure to specify a slang
14 term, or the use of an improper slang term in a complaint, indictment,
15 or information is not grounds for dismissal of the charging document, or
16 for an instruction directing an acquittal of the charge.

17 Sec. 11.71.140. SCHEDULE IA. (a) A substance shall be placed in
18 schedule IA if it is found under AS 11.71.120(c) to have the highest
19 degree of danger or probable danger to a person or the public.

20 (b) Schedule IA includes, unless specifically excepted or listed
21 in another schedule, any of the following substances whether produced
22 directly or indirectly by extraction from substances of vegetable origin,
23 or independently by means of chemical synthesis, or by a combination of
24 extraction and chemical synthesis:

25 (1) opium and opiate, and any salt, compound, derivative, or
26 preparation of opium or opiate, excluding apomorphine, dextrorphan,
27 nalbuphine, naloxone, and naltrexone, and their respective salts, but
28 including the following:

29 (A) raw opium;

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- (B) opium extracts;
- (C) opium fluid extracts;
- (D) powdered opium;
- (E) granulated opium;
- (F) tincture of opium;
- (G) codeine (slang term: school boy);
- (H) ethylmorphine;
- (I) etorphine hydrochloride;
- (J) hydrocodone;
- (K) hydromorphone;
- (L) metopon;
- (M) morphine;
- (N) oxycodone;
- (O) oxymorphone;
- (P) thebaine;

(2) any salt, compound, derivative, or preparation of a substance included in (b)(1) of this section which is chemically equivalent or identical to any of the substances referred to in (b)(1) of this section; however, these substances do not include the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) concentrate of poppy straw which is the crude extract of poppy straw in either liquid, solid, or powder form which contains the phennanthrine alkaloids of the opium poppy.

(c) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan

1 excepted:

- 2 (1) acetylmethadol;
3 (2) allylprodine;
4 (3) alphacetylmethadol;
5 (4) alphameprodine;
6 (5) alphamethadol;
7 (6) alphaprodine;
8 (7) anileridine;
9 (8) benzethidine;
10 (9) betacetylmethadol;
11 (10) betameprodine;
12 (11) betamethadol;
13 (12) betaprodine;
14 (13) bezitramide;
15 (14) clonitazene;
16 (15) dextromoramide;
17 (16) diampromide;
18 (17) diethylthiambutene;
19 (18) difenoxin;
20 (19) dihydrocodeine;
21 (20) dimenoxadol;
22 (21) dimepheptanol;
23 (22) dimethylthiambutene;
24 (23) dioxaphetyl butyrate;
25 (24) diphenoxylate;
26 (25) dipipanone;
27 (26) ethylmethylthiambutene;
28 (27) etonitazene;
29 (28) etoxeridine;

- 1 (29) fentanyl;
- 2 (30) furethidine;
- 3 (31) hydroxypethidine;
- 4 (32) isomethadone;
- 5 (33) ketobemidone;
- 6 (34) levomethorphan;
- 7 (35) levomoramide;
- 8 (36) levorphanol;
- 9 (37) levophenacymorphan;
- 10 (38) meperidine, also known as pethidine;
- 11 (39) metazocine;
- 12 (40) methadone;
- 13 (41) methadone-intermediate, 4-cyano-2-dimethylamino-4,
14 4-diphenyl butane;
- 15 (42) moramide-intermediate, 2-methyl-3-morpholino-1,
16 1-diphenylpropane-carboxylic acid;
- 17 (43) morpheridine;
- 18 (44) noracymethadol;
- 19 (45) norlevorphanol;
- 20 (46) normethadone;
- 21 (47) norpipanone;
- 22 (48) pethidine, also known as meperidine;
- 23 (49) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenyl
24 piperidine;
- 25 (50) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-
26 carboxylate;
- 27 (51) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-
28 carboxylic acid;
- 29 (52) phenadoxone;

- 1 (53) phenampromide;
- 2 (54) phenazocine;
- 3 (55) phenomorphan;
- 4 (56) phenoperidine;
- 5 (57) piminodine;
- 6 (58) piritramide;
- 7 (59) propheptazine;
- 8 (60) properidine;
- 9 (61) propiram;
- 10 (62) racemethorphan;
- 11 (63) racemoramide;
- 12 (64) racemorphan;
- 13 (65) trimeperidine.

14 (d) Schedule IA includes, unless specifically excepted or unless
15 listed in another schedule, any of the following opium derivatives,
16 their salts, isomers, and salts of isomers whenever the existence of
17 these salts, isomers, and salts of isomers is possible within the speci-
18 fic chemical designation:

- 19 (1) acetorphine;
- 20 (2) acetyldihydrocodeine;
- 21 (3) benzylmorphine;
- 22 (4) codeine methylbromide;
- 23 (5) codeine-n-oxide;
- 24 (6) cyprenorphine;
- 25 (7) desomorphine;
- 26 (8) dihydromorphine;
- 27 (9) drotebanol;
- 28 (10) etorphine, except hydrochloride salt;
- 29 (11) heroin;

- 1 (12) hydromorphenol;
- 2 (13) methyldesorphine;
- 3 (14) methyldihydromorphine;
- 4 (15) morphine methylbromide;
- 5 (16) morphine methylsulfonate;
- 6 (17) morphine-n-oxide;
- 7 (18) myrophine;
- 8 (19) nicocodeine;
- 9 (20) nicomorphine;
- 10 (21) normorphine;
- 11 (22) pholcodine;
- 12 (23) thebacon.

13 Sec. 11.71.150. SCHEDULE IIA. (a) A substance shall be placed in
14 schedule IIA if it is found under AS 11.71.120(c) to have a degree of
15 danger or probable danger to a person or the public which is less than
16 substances listed in schedule IA, but higher than substances listed in
17 schedule IIIA.

18 (b) Schedule IIA includes, unless specifically excepted or unless
19 listed in another schedule, any material, compound, mixture, or prepara-
20 tion which contains any quantity of the following hallucinogenic sub-
21 stances, or which contains any of its salts, isomers, whether optical,
22 position, or geometric, or salts of isomers whenever the existence of
23 these salts, isomers, or salts of isomers is possible within the speci-
24 fic chemical designation:

- 25 (1) 4-bromo-2, 5-dimethoxy-amphetamine, also known as
- 26 4-bromo-2,5-dimethoxy-a-methylphenethylamine and 4-bromo-2, DMA;
- 27 (2) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-
- 28 a-methylphenethylamine and 2,5-DMA;
- 29 (3) 4-methoxyamphetamine, also known as 4-methoxy-a-methyl-

1 phenethylamine and paramethoxyamphetamine, PMA;

2 (4) 5-methoxy-3,4-methylenedioxy-amphetamine;

3 (5) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-
4 methyl-2,5 - dimethoxy-a-methylphenethylamine (slang terms: DOM, MDA,
5 STP, serenity, tranquility, and peace, cone drug);

6 (6) 3,4-methylenedioxy amphetamine;

7 (7) 3,4,5-trimethoxy amphetamine;

8 (8) bufotenine, also known as 3-(8-dimethylaminoethyl)-5-
9 hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N, N-dimethylsero-
10 tonin; 5-hydroxy-N, N-dimethyltryptamine, and mappine;

11 (9) diethyltryptamine, also known as N,N-diethyltryptamine
12 and DET;

13 (10) dimethyltryptamine, also known as DMT (slang terms:
14 businessman's special, lunch-hour trip);

15 (11) ibogaine, also known as 7-ethyl-6, 6B, 7, 8, 9, 10, 12,
16 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1',2': 1, 2] azepino [5,
17 4-b] indole and tabernanthe iboga;

18 (12) lysergic acid diethylamide, also known as LSD;

19 (13) mescaline;

20 (14) n-ethyl-3-piperidyl benzilate;

21 (15) n-methyl-3-piperidyl benzilate;

22 (16) peyote;

23 (17) analogs of phencyclidine (PCP), including:

24 (A) ethylamine analog, also known by some trade or other
25 names as follows: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclo-
26 hexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine,
27 PCE;

28 (B) pyrrolidine analog, also known by some trade or
29 other names as follows: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPY,

1 PHP;

2 (C) thiophene analog, also known as 1-[1-(2-thienyl)
3 cyclohexyl] piperidine and 2-thienylanalog of phencyclidine, TCP,
4 and TCP;

5 (18) psilocybin;

6 (19) psilocyn.

7 (c) Schedule IIA includes cocaine or coca leaves, and any salt,
8 compound, derivative, mixture, isomer, ester, ether, or preparation of
9 cocaine or coca leaves produced directly or indirectly by extraction
10 from coca leaves, or independently by means of chemical synthesis, or by
11 a combination of extraction and chemical synthesis, including the iso-
12 mers, salts, and salts of isomers of cocaine and other derivatives of
13 coca leaves whenever the existence of these esters, ethers, isomers or
14 salts is possible, but does not include decocainized coca leaves or
15 extractions of coca leaves which do not contain cocaine or ecgonine.

16 (d) Schedule IIA includes, unless specifically excepted or unless
17 listed in another schedule, any material, compound, mixture, or prepara-
18 tion which contains any quantity of the following substances having a
19 depressant effect on the central nervous system, including their salts,
20 isomers, and salts of isomers whenever the existence of these salts,
21 isomers, and salts of isomers is possible within the specific chemical
22 designation:

23 (1) amobarbital;

24 (2) mandrix or mandrax;

25 (3) mecloqualone;

26 (4) methaqualone;

27 (5) pentobarbital;

28 (6) phencyclidine, also known as PCP;

29 (7) secobarbital.

1 (e) Schedule IIA includes, unless specifically excepted or unless
2 listed in another schedule, any material, compound, mixture, or prepara-
3 tion which contains any quantity of the following substances having a
4 stimulant effect on the nervous system:

5 (1) amphetamine, its salts, optical isomers, and salts of its
6 optical isomers;

7 (2) methamphetamine, its salts, isomers, and salts of its
8 isomers;

9 (3) methlyphenidate;

10 (4) phenmetrazine and its salts.

11 (f) Schedule IIA includes, unless specifically excepted or unless
12 listed in another schedule, any material, mixture, or preparation which
13 contains any quantity of the following substances:

14 (1) immediate precursor to amphetamine and methamphetamine:
15 phenylacetone, also known as phenyl-2-propanone; P2P; benzyl methyl
16 ketone; methyl benzyl ketone;

17 (2) immediate precursors to phencyclidine, also known as PCP:

18 (A) 1-phencyclohexylamine;

19 (B) 1-piperidinocyclohexanecarbonitrile, also known as
20 PCC.

21 Sec. 11.71.160. SCHEDULE IIIA. (a) A substance shall be placed
22 in schedule IIIA if it is found under AS 11.71.120(c) to have a degree
23 of danger or probable danger to a person or the public less than the
24 substances listed in schedule IIA but higher than substances listed in
25 schedule IVA.

26 (b) Schedule IIIA includes, unless specifically excepted or unless
27 listed in another schedule, any material, compound, mixture, or prepara-
28 tion which contains any quantity of the following substances having a
29 stimulant effect on the central nervous system, including their salts,

1 isomers whether optical, position, or geometric, and salts of these
2 isomers whenever the existence of these salts, isomers, and salts of
3 isomers is possible within the specific chemical designation:

4 (1) benzphetamine;

5 (2) chlorphentermine;

6 (3) clortermine;

7 (4) mazindol;

8 (5) phendimetrazine;

9 (6) any compound, mixture, or preparation in dosage unit form
10 containing any stimulant substance listed in schedule IIA, which com-
11 pound, mixture, or preparation was listed on August 25, 1971, as an
12 excepted compound under 21 C.F.R. sec. 1308.32, and any other drug of
13 the quantitative composition shown in that list for those substances, or
14 which is the same except that it contains a lesser quantity of any
15 controlled substance.

16 (c) Schedule IIIA includes, unless specifically excepted or unless
17 listed in another schedule, any material, compound, mixture, or prepara-
18 tion which contains any quantity of the following substances having a
19 depressant effect on the central nervous system:

20 (1) amobarbital, secobarbital, or pentobarbital or any salt
21 of these substances, combined with one or more other active medicinal
22 ingredients which are not listed in any other schedule;

23 (2) amobarbital, secobarbital, or pentobarbital or any salt
24 of these substances, approved by the federal Food and Drug Administra-
25 tion for marketing only as a suppository;

26 (3) any substance which contains any quantity of a deri-
27 vative of barbituric acid or any salt of barbituric acid;

28 (4) chlorhexadol;

29 (5) glutethimide (slang terms: C.D., cibas);

- 1 (6) lysergic acid;
- 2 (7) lysergic acid amide;
- 3 (8) methyprylon;
- 4 (9) sulfondiethylmethane;
- 5 (10) sulfonethylmethane;
- 6 (11) sulfonmethane.

7 (d) Schedule IIIA includes nalorphine.

8 (e) Schedule IIIA includes, unless specifically excepted or unless
9 listed in another schedule, any material, compound, mixture, or prepara-
10 tion containing any of the following narcotic drugs or their salts
11 calculated as the free anhydrous base or alkaloid, in the following
12 quantities:

13 (1) not more than 1.8 grams of codeine per 100 milliliters or
14 not more than 90 milligrams per dosage unit, with an equal or greater
15 quantity of an isoquinoline alkaloid of opium;

16 (2) not more than 1.8 grams of codeine per 100 milliliters or
17 not more than 90 milligrams per dosage unit, with one or more active,
18 nonnarcotic ingredients in recognized therapeutic amounts;

19 (3) not more than 300 milligrams of dihydrocodeinone per 100
20 milliliters or not more than 15 milligrams per dosage unit, with a
21 fourfold or greater quantity of an isoquinoline alkaloid of opium;

22 (4) not more than 300 milligrams of dihydrocodeinone per 100
23 milliliters or not more than 15 milligrams per dosage unit, with one or
24 more active nonnarcotic ingredients in recognized therapeutic amounts;

25 (5) not more than 1.8 grams of dihydrocodeine per 100 milli-
26 liter, or not more than 90 milligrams per dosage unit, with one or more
27 active nonnarcotic ingredients in recognized therapeutic amounts;

28 (6) not more than 300 milligrams of ethylmorphine per 100
29 milliliters or not more than 15 milligrams per dosage unit, with one or

1 more active, nonnarcotic ingredients in recognized therapeutic amounts;
2 (7) not more than 500 milligrams of opium per 100 milliliters
3 or per 100 grams or not more than 25 milligrams per dosage unit, with
4 one or more active, nonnarcotic ingredients in recognized therapeutic
5 amounts;

6 (8) not more than 50 milligrams of morphine per 100 milli-
7 liters or per 100 grams, with one or more active, nonnarcotic ingredi-
8 ents in recognized therapeutic amounts.

9 (f) Schedule IIIA includes

- 10 (1) hashish;
11 (2) hash oil or hashish oil; and
12 (3) tetrahydrocannabinols.

13 Sec. 11.71.170. SCHEDULE IVA. (a) A substance shall be placed in
14 schedule IVA if it is found under AS 11.71.120(c) to have a degree of
15 danger or probable danger to a person or the public which is less than
16 the substances listed in schedule IIIA, but higher than the substances
17 listed in schedule VA.

18 (b) Schedule IVA includes, unless specifically excepted or unless
19 listed in another schedule, any material, compound, mixture, or prepara-
20 tion which contains any quantity of the following substances, including
21 their salts, isomers and salts of isomers whenever the existence of
22 these salts, isomers, and salts of isomers is possible within the speci-
23 fic chemical designation:

- 24 (1) barbital;
25 (2) chloral betaine;
26 (3) cloral hydrate;
27 (4) chlordiazepoxide;
28 (5) clonazepam;
29 (6) clorazepate;

- 1 (7) diazepam;
- 2 (8) ethchlorvynol;
- 3 (9) ethinamate;
- 4 (10) flurazepam;
- 5 (11) lorazepam;
- 6 (12) mebutamate;
- 7 (13) meprobamate;
- 8 (14) methohexital;
- 9 (15) methylphenobarbital, also known as mephobarbital;
- 10 (16) oxazepam;
- 11 (17) paraldehyde;
- 12 (18) petrichloral;
- 13 (19) phenobarbital;
- 14 (20) prazepam.

15 (c) Schedule IVA includes any material, compound, mixture or
16 preparation which contains any quantity of the following substances,
17 including their salts, isomers whether optical, position, or geometric,
18 and salts of these isomers, whenever the existence of these salts,
19 isomers, and salts of isomers is possible: fenfluramine.

20 (d) Schedule IVA includes, unless specifically excepted or unless
21 listed in another schedule, any material, compound, mixture, or prepara-
22 tion which contains any quantity of the following substances having a
23 stimulant effect on the central nervous system, including their salts,
24 isomers whether optical, position, or geometric, and salts of these
25 isomers whenever the existence of these salts, isomers, and salts of
26 isomers is possible within the specific chemical designation:

- 27 (1) diethylpropion;
- 28 (2) phentermine;
- 29 (3) pemoline, including organometallic complexes and chelates

1 of this substance.

2 (e) Schedule IVA includes, unless specifically excepted or unless
3 listed in another schedule, any material, compound, mixture, or prepara-
4 tion containing not more than 1 milligram of difenoxin and not less than
5 25 micrograms of atropine sulfate per dosage unit, or their salts calcu-
6 lated as the free anhydrous base or alkaloid.

7 (f) Schedule IVA includes, unless specifically excepted or unless
8 listed in another schedule, any material, compound, mixture or prepara-
9 tion which contains any quantity of the following substances, including
10 their salts:

11 (1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-
12 diphenyl-3-methyl-2-propionoxybutane);

13 (2) pentazocine;

14 (3) propoxyphene.

15 Sec. 11.71.180. SCHEDULE VA. (a) A substance shall be placed in
16 schedule VA if it is found under AS 11.71.120(c) to have a degree of
17 danger or probable danger to a person or the public which is less than
18 substances listed in schedule IVA, but higher than substances listed in
19 schedule VIA.

20 (b) Schedule VA includes any compound, mixture, or
21 preparation containing any of the following limited quantities of
22 narcotic drugs or their salts, calculated as the free anhydrous base or
23 alkaloid, in limited quantities as specified in (1) - (6) of this sub-
24 section, which includes one or more nonnarcotic active medicinal ingre-
25 dients in sufficient proportion to confer upon the compound, mixture,
26 or preparation valuable medicinal qualities other than those possessed
27 by schedule IA substances alone:

28 (1) not more than 200 milligrams of codeine per 100 milli-
29 liters or per 100 grams;

1 (2) not more than 100 milligrams of dihydrocodeine per 100
2 milliliters or per 100 grams;

3 (3) not more than 100 milligrams of ethylmorphine per 100
4 milliliters or per 100 grams;

5 (4) not more than 2.5 milligrams of diphenoxylate and not
6 less than 25 micrograms of atropine sulfate per dosage unit;

7 (5) not more than 100 milligrams of opium per 100 milliliters
8 or per 100 grams;

9 (6) not more than 0.5 milligrams of difenoxin and not less
10 than 25 micrograms of atropine sulfate per dosage unit.

11 (c) Schedule VA includes loperamide.

12 Sec. 11.71.190. SCHEDULE VIA. (a) A substance shall be placed in
13 Schedule VIA if it is found under AS 11.71.120(c) to have the lowest
14 degree of danger or probable danger to a person or the public.

15 (b) Marijuana is a Schedule VIA controlled substance.

16 Sec. 11.71.195. EXEMPTED DRUGS. A substance the manufacture,
17 distribution, dispensing, or possession of which is explicitly exempt
18 from criminal penalty under federal law is exempt from the application
19 of this chapter and AS 17.30. This exemption includes any substances
20 which may, under the federal Food, Drug, and Cosmetic Act (21 U.S.C.
21 sec. 301 et seq.) be lawfully sold over the counter without a prescrip-
22 tion. This exemption also includes those substances listed in 21 C.F.R.
23 sec. 1308.22 on April 1, 1980.

24 ARTICLE 3. MISCELLANEOUS PROVISIONS.

25 Sec. 11.71.300. PENALTIES UNDER OTHER LAWS. A penalty imposed for
26 violation of this chapter is in addition to, and not in place of, any
27 other civil or administrative penalty or sanction otherwise authorized
28 by law.

29 Sec. 11.71.310. BAR TO PROSECUTION. If a violation of this chap-

1 ter is a violation of a federal law or the law of another state, a
2 conviction or acquittal under federal law or the law of another state
3 for the same act is a bar to prosecution in this state.

4 Sec. 11.71.320. DEFENSES EXEMPTED. (a) In a prosecution for the
5 possession of a controlled substance under this chapter, it is not a
6 defense that the substance was possessed in less than a useable quan-
7 tity. It is sufficient to support a conviction that there is a suf-
8 ficient quantity of the substance to permit proper identification.

9 (b) In a prosecution for an offense involving a controlled sub-
10 stance under this chapter, it is not a defense that the substance is
11 misclassified under a subsection within a schedule.

12 Sec. 11.71.330. LIABILITY OF PUBLIC SERVANTS. No liability is
13 imposed by this chapter upon a public servant acting within the scope
14 and authority of his employment.

15 Sec. 11.71.340. OFFENSES DEFINED BY AMOUNTS. Whenever a provision
16 of this chapter defining an offense requires a determination of an
17 amount, it is not a defense to the lowest class of offense established
18 by the evidence that the amount in question was equal to or larger than
19 the amount which would make the offense a higher class of offense, and a
20 person may be charged and convicted accordingly.

21 Sec. 11.71.350. BURDEN OF PROOF. It is not necessary for the
22 state to negate an exemption or exception provided for in this chapter
23 in a complaint, information, indictment, or other pleading or at a
24 trial, hearing, or other proceeding under this chapter or AS 17.30. The
25 defendant has the burden of proving by a preponderance of the evidence
26 any exemption or exception claimed by him.

27 Sec. 11.71.360. UNPRIVILEGED COMMUNICATIONS. Information commu-
28 nicated to a physician or other licensed practitioner in an effort to
29 unlawfully procure a controlled substance or to unlawfully procure the

1 administration of a controlled substance is not a privileged communi-
2 cation.

3 ARTICLE 4. DEFINITIONS.

4 Sec. 11.71.900. DEFINITIONS. In this chapter, unless the context
5 clearly requires otherwise,

6 (1) "administer" means the direct application of a controlled
7 substance, whether by injection, inhalation, ingestion, or any other
8 means into the body of a patient or research subject by

9 (A) a practitioner or, in the practitioner's presence,
10 by his authorized agent; or

11 (B) the patient or research subject at the direction and
12 in the presence of a practitioner;

13 (2) "agent" means an authorized person who acts on behalf of
14 or at the direction of a manufacturer, distributor, or dispenser, but
15 does not include a common or contract carrier, public warehouseman, or
16 employee of the carrier or warehouseman;

17 (3) "committee" means the Controlled Substances Advisory
18 Committee established in AS 11.71.100;

19 (4) "controlled substance" means a drug, substance, or im-
20 mediate precursor included in the schedules set out in AS 11.71.140 -
21 11.71.190;

22 (5) "counterfeit substance" means a controlled substance
23 which, without authorization, bears the trademark, trade name, or other
24 identifying mark, imprint, number, or device of a manufacturer, distri-
25 butor, or dispenser other than the person or persons who in fact manu-
26 factured, distributed, or dispensed the substance and which falsely
27 purports or is represented to be the product of, or to have been distri-
28 buted by, the other manufacturer, distributor, or dispenser;

29 (6) "deliver" or "delivery" means the actual, constructive,

1 or attempted transfer from one person to another of a controlled sub-
2 stance whether or not there is an agency relationship;

3 (7) "dispense" means to deliver a controlled substance to an
4 ultimate user or research subject by or under the lawful order of a
5 practitioner, including the prescribing, administering, packaging, la-
6 beling, or compounding necessary to prepare the substance for that de-
7 livery; "dispenser" means a practitioner who dispenses;

8 (8) "distribute" means to deliver other than by administering
9 or dispensing a controlled substance, whether or not there is any money
10 or other item of value exchanged; it includes sale, gift, or exchange;
11 "distributor" means a person who distributes;

12 (9) "drug"

13 (A) means

14 (i) a substance recognized as a drug in the offi-
15 cial United States Pharmacopoeia, official Homeopathic Pharma-
16 copoeia of the United States, or official National Formulary,
17 or any supplement to these publications;

18 (ii) a substance intended for use in the diagnosis,
19 cure, mitigation, treatment, or prevention of disease in
20 humans or animals;

21 (iii) a substance, other than food, intended to
22 affect the structure or any function of the body of humans or
23 animals; and

24 (iv) a substance intended for use as a component of
25 any article specified in (i), (ii), or (iii) of this sub-
26 paragraph;

27 (B) does not include a device or its components, parts,
28 or accessories;

29 (10) "hashish" means the dried, compressed, resinous product

1 of the plant (genus) Cannabis;

2 (11) "hashish oil" means the viscous liquid concentrate of
3 tetrahydrocannabinols extracted from the plant (genus) Cannabis;

4 (12) "immediate precursor" means a substance which is by
5 statute or regulation designated as the principal compound commonly
6 used or produced primarily for use, and which is an immediate chemical
7 intermediary used or likely to be used in the manufacture of a con-
8 trolled substance, the control of which is necessary to prevent, cur-
9 tail, or limit manufacture of that controlled substance;

10 (13) "manufacture"

11 (A) means the production, preparation, propagation,
12 compounding, conversion, growing, or processing of a controlled
13 substance, either directly or indirectly by extraction from sub-
14 stances of natural origin, or independently by means of chemi cal
15 synthesis, or by a combination of extraction and chemical syn-
16 thesis; however, the growing of marijuana for personal use is not
17 manufacturing;

18 (B) includes the preparation, compounding, packaging,
19 repackaging, labeling or relabeling of a controlled substance or
20 its container unless done in conformity with applicable federal
21 law

22 (i) by a practitioner as an incident to his admin-
23 istering or dispensing of a controlled substance in the
24 course of his professional practice; or

25 (ii) by a practitioner, or by his authorized agent
26 under his supervision, for the purpose of, or as an incident
27 to, research, teaching, or chemical analysis and not for
28 sale;

29 (14) "marijuana" means the leaves, stems, flowers, and seeds

1 of the plant (genus) Cannabis, whether growing or not; it does not
2 include the resin or oil extracted from any part of the plant, or any
3 compound, manufacture, salt, derivative, mixture, or preparation from
4 the resin or oil, including hashish, hashish oil, and natural or syn-
5 thetic tetrahydrocannabinol; it does not include the mature stalks of
6 the plant, fiber produced from the stalks, oil or cake made from the
7 seeds of the plant, any other compound, manufacture salt, derivative,
8 mixture, or preparation of the mature stalks, fiber, oil or cake, or
9 the sterilized seed of the plant which is incapable of germination;

10 (15) "opiate" means

11 (A) a substance having an addiction-forming or addic-
12 tion-sustaining capability similar to morphine or being capable of
13 conversion into a drug having addiction-forming or addiction-
14 sustaining capability;

15 (B) includes its racemic and levorotatory forms; and

16 (C) does not include, unless specifically designated as
17 controlled under AS 11.71.120 the dextrorotatory isomer of
18 3-methoxy-n-methylmorphinan and its salts (dextromethorphan);

19 (16) "opium poppy" means the plant of any species of Papaver
20 containing the phenanthrine alkaloids of opium, except its seeds;

21 (17) "peyote" means any part of the plant classified botani-
22 cally as Lophophora Williamsii Lemaire, whether growing or not, the
23 seeds of the plant, any extract from any part of the plant, and a
24 compound, manufacture, salt, derivative, mixture, or preparation of the
25 plant, its seeds or extracts, including mescaline;

26 (18) "poppy straw" means all parts, except the seeds, of the
27 opium poppy, after mowing;

28 (19) "practitioner" means

29 (A) a physician, dentist, veterinarian, scientific in-

1 investigator, or other person licensed, registered, or otherwise
2 permitted to distribute, dispense, conduct research with respect
3 to, or to administer or use in teaching or chemical analysis a
4 controlled substance in the course of professional practice or
5 research in the state;

6 (B) a pharmacy, hospital, or other institution licensed,
7 registered, or otherwise permitted to distribute, dispense, con-
8 duct research with respect to, or to administer a controlled sub-
9 stance in the course of professional practice or research in the
10 state;

11 (20) "sale" means to sell, barter, exchange, give, or dispose
12 of to another, or an exchange for a thing of value;

13 (21) "schedule IA controlled substance" means a controlled
14 substance included in the schedule in AS 11.71.140;

15 (22) "schedule IIA controlled substance" means a controlled
16 substance included in the schedule in AS 11.71.150;

17 (23) "schedule IIIA controlled substance" means a controlled
18 substance included in the schedule in AS 11.71.160;

19 (24) "schedule IVA controlled substance" means a controlled
20 substance included in the schedule in AS 11.71.170;

21 (25) "schedule VA controlled substance" means a controlled
22 substance included in the schedule in AS 11.71.180;

23 (26) "schedule VIA controlled substance" means a controlled
24 substance included in the schedule in AS 11.71.190;

25 (27) "ultimate user" means a person who lawfully possesses a
26 controlled substance for his own use or for the use of a member of his
27 household or for administering to an animal owned by him or by a member
28 of his household.

29 * Sec. 3. AS 17 is amended by adding a new chapter to read:

1 tributor, dispenser, or researcher of a controlled substance so long as
2 the possession is incidental to the usual course of his business or
3 employment;

4 (2) a common or contract carrier or warehouseman, or his
5 employee, whose possession of a controlled substance is in the usual
6 course of his business or employment;

7 (3) an ultimate user or a person in possession of a con-
8 trolled substance under a lawful order of a registered practitioner or
9 in lawful possession of a schedule VA controlled substance.

10 (d) The board may, by regulation, waive the requirement for
11 registration of certain manufacturers, distributors, or dispensers if
12 it finds it consistent with public health and safety.

13 (e) A separate registration is required for each principal place
14 of business or professional practice where the applicant manufactures,
15 distributes, or dispenses controlled substances.

16 (f) The board may inspect the establishment of a registrant or
17 applicant for registration in accordance with regulations adopted by
18 the board.

19 Sec. 17.30.030. REGISTRATION. (a) The board shall register an
20 applicant to manufacture, distribute, or dispense controlled substances
21 listed in the schedules established under federal law unless it finds
22 that the registration would be inconsistent with the public interest.
23 In determining the public interest, the board shall consider the follow-
24 ing factors:

25 (1) maintenance of effective controls against diversion of
26 controlled substances into other than legitimate medical, scientific,
27 or industrial channels;

28 (2) compliance with applicable state and local law;

29 (3) a conviction of the applicant under federal or state

1 laws relating to controlled substances;

2 (4) past experience in the manufacture, distribution, or
3 dispensing of controlled substances and the existence in the appli-
4 cant's establishment of effective controls against diversion of con-
5 trolled substances into other than legitimate medical, scientific, or
6 industrial channels;

7 (5) furnishing by the applicant of false information in an
8 application filed under this chapter;

9 (6) suspension or revocation of the applicant's federal
10 registration to manufacture, distribute, or dispense controlled sub-
11 stances as authorized by federal law; and

12 (7) any other factors relevant to and consistent with the
13 public health and safety.

14 (b) A practitioner registered under federal law to conduct re-
15 search with controlled substances shall be issued a registration to
16 conduct research with these substances in the state if the practitioner
17 furnishes the board with evidence of the federal registration.

18 (c) A manufacturer, distributor, or dispenser who complies with
19 federal law pertaining to registration requirements other than fees is
20 entitled to be registered under this chapter.

21 Sec. 17.30.040. DENIAL, REVOCATION AND SUSPENSION OF REGISTRA-
22 TION. (a) A registration applied for or issued under AS 17.30.030 to
23 manufacture, distribute, dispense, or conduct research with a control-
24 led substance may be denied, suspended, or revoked by the board upon a
25 finding that the registrant

26 (1) has furnished false or fraudulent material information
27 in an application filed under this chapter;

28 (2) has been convicted of a felony offense under state or
29 federal law; or

1 (3) has had his federal registration to manufacture, dis-
2 tribute, dispense, or conduct research with controlled substances
3 denied, suspended, or revoked.

4 (b) The board may limit the denial, revocation, or suspension of
5 a registration to a particular controlled substance with respect to
6 which grounds for denial, revocation, or suspension exist.

7 (c) If the board denies, suspends, or revokes a registration, all
8 controlled substances owned or possessed by the registrant at the time
9 of the denial or suspension or the effective date of the revocation
10 order may be placed under seal by the board or the Department of Public
11 Safety and remains in the custody of the department, subject only to
12 the orders and decrees of a court having jurisdiction over the property.
13 A disposition may not be made of substances under seal until the time
14 for taking an appeal has elapsed or until all appeals have been con-
15 cluded unless a court, upon application, orders the sale of perishable
16 substances and the deposit of the proceeds of the sale with the court.
17 After a revocation order is final, all controlled substances held by
18 the registrant are forfeited to the state.

19 (d) The board shall promptly notify the Drug Enforcement Admin-
20 istration of the United States Department of Justice of all orders
21 denying, suspending, or revoking registrations and of all forfeitures
22 of controlled substances.

23 Sec. 17.30.050. ORDER TO SHOW CAUSE. (a) Before denying, sus-
24 pending, or revoking a registration, or refusing a renewal of a regis-
25 tration, the board shall serve upon the applicant or registrant an
26 order to show cause why a registration should not be denied, revoked,
27 or suspended, or why a renewal should not be refused. The order to
28 show cause shall contain a statement of the basis for issuance of the
29 order and shall require the applicant or registrant to appear before

1 the board at a time and place not less than 30 days after the date of
2 service of the order. For a refusal of renewal of registration the
3 show cause order must be served not later than 30 days before the
4 expiration of the registration. These proceedings must be conducted in
5 accordance with procedures for administrative adjudication under AS 44.-
6 62.330 - 44.62.630 without regard to criminal prosecution or other
7 proceeding. Proceedings to refuse renewal of registration do not make
8 the existing registration void. The existing registration remains in
9 effect pending the outcome of the administrative hearing.

10 (b) The board may, without an order to show cause, suspend a
11 registration simultaneously with the institution of proceedings under
12 AS 17.30.040 if it finds that there is an imminent danger to the public
13 health or safety which warrants this action. The suspension continues
14 in effect until the conclusion of the proceedings, including judicial
15 review of the proceedings, unless withdrawn by the board or dissolved
16 by a court of competent jurisdiction.

17 Sec. 17.30.060. RECORDS OF REGISTRANTS. A person registered to
18 manufacture, distribute, dispense, or conduct research with controlled
19 substances under this chapter shall keep records and maintain invento-
20 ries in conformance with the record keeping and inventory requirements
21 of federal law and in conformance with additional regulations adopted
22 by the board.

23 Sec. 17.30.070. ORDER FORMS; PRESCRIPTIONS. (a) A controlled
24 substance may be distributed by one registrant to another registrant
25 only if the distribution is in accordance with federal requirements for
26 order forms.

27 (b) A controlled substance may not be dispensed by a practitioner
28 other than in accordance with federal requirements regarding prescrip-
29 tions for controlled substances.

1 (c) If the classification of a controlled substance in a schedule
2 set out in AS 11.71.140 - 11.71.190, or by a regulation adopted in ac-
3 cordance with AS 11.71.120(a), is different from its corresponding
4 classification under federal law, the requirements of (a) and (b) of
5 this section are determined by the classification of the substance un-
6 der federal law.

7 Sec. 17.30.080. UNLAWFUL ADMINISTRATION, PRESCRIPTION AND DIS-
8 PENSATION OF CONTROLLED SUBSTANCES. A controlled substance classified
9 under federal law or in a schedule set out in AS 11.71.140 - 11.71.190
10 or by regulations adopted in accordance with AS 11.71.120(a) may not be
11 administered, prescribed, dispensed, or distributed other than for a
12 medical purpose.

13 ARTICLE 2. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

14 Sec. 17.30.100. COOPERATIVE ARRANGEMENTS. (a) The commissioner
15 of public safety shall cooperate with other state and federal agencies
16 in the discharge of their responsibilities pertaining to illicit traffic
17 in controlled substances and in suppressing the abuse of controlled
18 substances. Under this section, the powers of the commissioner of
19 public safety include but are not limited to the following:

20 (1) arranging for the exchange of information among govern-
21 ment officials concerning illicit traffic in and abuse of controlled
22 substances;

23 (2) coordinating training programs pertaining to controlled
24 substances at both local and state levels; and

25 (3) cooperating with the Drug Enforcement Administration of
26 the United States Department of Justice by establishing a centralized
27 unit to accept, catalog, file, and collect statistics, including records
28 of persons who have violated the provisions of this chapter or AS 11.71
29 in the state and making the information available for federal, state,

1 and local law enforcement purposes.

2 (b) The commissioner of public safety may not furnish the name or
3 identity of a patient or research subject whose identity could not be
4 obtained under AS 17.30.150(b)..

5 Sec. 17.30.110. FORFEITURES. (a) The following may be forfeited
6 to the state:

7 (1) a controlled substance which has been manufactured,
8 distributed, dispensed, acquired, or possessed in violation of this
9 chapter or AS 11.71;

10 (2) raw materials, products, and equipment which are used or
11 intended for use in manufacturing, distributing, compounding, process-
12 ing, delivering, importing, or exporting a controlled substance which
13 is a felony under this chapter or AS 11.71;

14 (3) property which is used or intended for use as a container
15 for property described in (1) or (2) of this subsection;

16 (4) a conveyance, including but not limited to aircraft,
17 vehicles or vessels, which has been used or is intended for use in
18 transporting or in any manner in facilitating the transportation, sale,
19 receipt, possession, or concealment of property described in (1) or (2)
20 of this subsection in violation of a felony offense under this chapter
21 or AS 11.71; however,

22 (A) a conveyance may not be forfeited under this section
23 if the owner of the conveyance establishes, by a preponderance of
24 the evidence, at a hearing before the court as the trier of fact,
25 that use of the conveyance in violation of this chapter or AS 11.71
26 was committed by another person and that the owner was not a
27 consenting party nor privy to the violation;

28 (B) a forfeiture of a conveyance encumbered by a valid
29 security interest at the time of seizure is subject to the interest

1 of the secured party if the secured party establishes, by a prepon-
2 derance of the evidence, at a hearing before the court as the
3 trier of fact, that use of the conveyance in violation of this
4 chapter or AS 11.71 was committed by another person and that the
5 secured party was not a consenting party nor privy to the viola-
6 tion;

7 (5) books, records, and research products and materials,
8 including formulas, microfilm, tapes, and data which are used in vio-
9 lation of this chapter or AS 11.71;

10 (6) money, securities, negotiable instruments, or other
11 things of value used in financial transactions derived from activity
12 prohibited by this chapter or AS 11.71; and

13 (7) a firearm which is visible, carried during, or used in
14 furtherance of a violation of this chapter or AS 11.71.

15 (b) Property listed in (a) of this section may be forfeited to
16 the state either upon conviction of the defendant of a violation of
17 this chapter or AS 11.71, or upon judgment of a court in a separate
18 civil proceeding in rem. The court may order a forfeiture in the in
19 rem proceeding if it finds that an item specified in (a) of this section
20 was used during or in aid of a violation of this chapter or AS 11.71.

21 (c) It is not a defense in an in rem proceeding brought under
22 this section that

23 (1) a criminal proceeding is pending or has resulted in a
24 conviction, acquittal, or conviction of a lesser offense for a violation
25 of this chapter or AS 11.71;

26 (2) a criminal proceeding has been dismissed;

27 (3) the item has not been forfeited in a criminal proceeding;

28 or

29 (4) multiple actions are pending.

1 (d) Property listed in (a) of this section may be seized by a
2 peace officer upon an order issued by a court having jurisdiction over
3 the property upon a showing of probable cause that the property may be
4 forfeited under (a) of this section. Seizure without a court order may
5 be made if

6 (1) the seizure is incident to a valid arrest or a search
7 under a valid search warrant;

8 (2) the property subject to seizure has been the subject of
9 an earlier judgment in favor of the state in a criminal proceeding or
10 civil proceeding in rem under this chapter or AS 11.71; or

11 (3) there is probable cause that the property was used, is
12 being used, or is intended for use, in violation of this chapter or
13 AS 11.71 and the property is easily movable; property seized under this
14 paragraph may not be held for more than 48 hours without a court order
15 obtained to continue its detention.

16 (e) Property taken or detained under (d) of this section shall be
17 held in the custody of either the commissioner of public safety or a
18 municipal law enforcement agency authorized by the commissioner of
19 public safety to retain custody of property listed in (a) of this
20 section subject only to the orders and decrees of the court having
21 jurisdiction over any forfeiture proceedings. If property is seized
22 under this chapter, the commissioner of public safety or an authorized
23 municipal law enforcement agency may

24 (1) place the property under seal;

25 (2) remove the property to a place designated by the court;

26 or

27 (3) take custody of the property and remove it to an appro-
28 priate location for disposition in accordance with law.

29 (f) Within 10 days after a seizure under this section, the commis-

1 sioner of public safety shall make an inventory of any property seized,
2 including controlled substances, and shall appraise the value of any
3 items seized other than controlled substances.

4 (g) Within 20 days after a seizure under this section, the commis-
5 sioner of public safety shall, by certified mail, notify any person
6 known to have an interest in an item with an appraised value of \$500 or
7 more, or who is ascertainable from official registration numbers,
8 licenses, or other state, federal or municipal numbers on the item.
9 Additionally, the commissioner of public safety shall publish notice of
10 forfeiture action of an item valued at \$500 or more in a newspaper of
11 general circulation in the judicial district in which the seizure was
12 made, or if no newspaper is published in that district, in a newspaper
13 published in the state and distributed in that district. The notice
14 shall be published once each week during four consecutive calendar
15 weeks. The requirements of this subsection do not apply to the for-
16 feiture of controlled substances which have been manufactured, distri-
17 buted, dispensed, or possessed in violation of this chapter or AS 11.71,
18 regardless of their value.

19 (h) Upon service or publication of notice of commencement of an
20 action under this section, a person claiming interest in the property
21 shall file within 20 days after the service or publication, a notice of
22 claim setting out the nature of his interest, the date it was acquired,
23 the consideration paid, and an answer to the state's allegations. If a
24 claim and answer is not filed within the time specified, the property
25 described in the state's allegation must be ordered forfeited to the
26 state without further proceedings or showings.

27 (i) Questions of fact or law raised by a notice of claim and
28 answer of a claimant in an action commenced under this section must be
29 determined by the court sitting without a jury. This proceeding may be

1 held in abeyance until conclusion of any pending criminal charges
2 against the claimant under this chapter or AS 11.71.

3 (j) A claimant under (h) of this section may at any time petition
4 for release of a seized item as follows:

5 (1) to a court in which a warrant for seizure has been
6 issued;

7 (2) to a court in which a criminal or civil action alleging
8 forfeiture of the item has been filed; or

9 (3) before an action is filed, or if no seizure warrant was
10 issued, to a court in the judicial district in which the violation took
11 place.

12 (k) An item may not be released by the court under (j) of this
13 section unless the claimant gives adequate assurance that the item will
14 remain subject to the court's jurisdiction and

15 (1) the court finds that the release is in the best interests
16 of the state; or

17 (2) the claimant provides a bond or other valid and equiva-
18 lent security equal to twice the assessed value of the item.

19 (l) A claimant may petition the court for sale of an item before
20 final disposition of court proceedings. The court shall grant a peti-
21 tion for sale upon a finding that the sale is in the best interests of
22 the state and the preservation and maintenance of the item seized.
23 Proceeds from the sale plus interest to the date of final disposition
24 of the court proceedings become the subject of the forfeiture action.

25 (m) Property forfeited under this section other than controlled
26 substances shall be disposed of by the commissioner of administration
27 in accordance with applicable law. The commissioner of administration
28 may

29 (1) destroy property harmful to the public;

1 (2) sell the property and use the proceeds for payment of
2 all proper expenses of the proceedings for forfeiture and sale, includ-
3 ing expenses of seizure, custody, and court costs;

4 (3) take custody of the property and authorize its use in
5 the enforcement of this chapter or AS 11.71, or transfer it to another
6 agency of the state or a political subdivision of the state for a use
7 in furtherance of the administration of justice;

8 (4) take custody of the property and remove it for disposi-
9 tion in accordance with law; or

10 (5) forward it to the Drug Enforcement Administration of the
11 United States Department of Justice for disposition.

12 (n) Upon a showing that a claimant is entitled to remittance in
13 accordance with this section, the court shall order that

14 (1) if the item may be used for a valid state purpose, it
15 shall be delivered to the commissioner of administration and the com-
16 missioner shall remit to the claimant the value of the claimant's in-
17 terest at the time of seizure; or

18 (2) the item may be sold at public auction to the highest
19 bidder under the following conditions:

20 (A) the claimant has a right of first refusal;

21 (B) the sale proceeds shall be used to satisfy the
22 claimant's interest at the time of seizure; and

23 (C) the balance remaining after (B) of this paragraph
24 is complied with shall be deposited in the general fund.

25 (o) An offender who used an item subject to remission in viola-
26 tion of this chapter or AS 11.71 shall be assessed a fine which may not
27 be less than the cost of any lien payment or remittance made by the
28 state plus the reasonable costs of the seizure.

29 (p) A controlled substance manufactured, possessed, transferred,

1 sold, or offered for sale in violation of this chapter or AS 11.71 is
2 contraband and must be seized and summarily forfeited to the state.
3 The commissioner of public safety or his designee, including a municipal
4 law enforcement agency authorized under (e) of this section to retain
5 custody of controlled substances, is responsible for the disposal of
6 controlled substances which have been forfeited. The controlled sub-
7 stances shall be disposed of in accordance with procedures and require-
8 ments prescribed by the commissioner.

9 (q) Plants from which controlled substances may be derived and
10 which have been planted or cultivated in violation of this chapter or
11 AS 11.71, or which are grown in the wild, may be seized and summarily
12 forfeited to the state.

13 Sec. 17.30.130. JUDICIAL REVIEW. A final determination, finding,
14 or conclusion of the board under this chapter or a regulation adopted
15 under it is a final decision of the matter involved. A person aggrieved
16 by a decision may obtain review of the decision in the superior court
17 in accordance with AS 44.62.560 - 44.62.570. However, a person is not
18 entitled to a hearing de novo in the superior court.

19 Sec. 17.30.140. EDUCATION AND RESEARCH. (a) The commissioner of
20 health and social services shall provide for educational programs
21 designed to prevent and deter the abuse of controlled substances. In
22 connection with these programs, the commissioner may

23 (1) assist the regulated industry and interested groups and
24 organizations in contributing to the reduction of abuse of controlled
25 substances;

26 (2) promote better recognition of the problems surrounding
27 abuse of controlled substances within the regulated industry and among
28 interested groups and organizations;

29 (3) consult with interested groups and organizations to aid

1 them in solving administrative and organizational problems;

2 (4) evaluate procedures, projects and techniques conducted
3 or proposed as part of educational programs on abuse of controlled
4 substances;

5 (5) disseminate the results of research on abuse of con-
6 trolled substances to promote a better public understanding of the
7 problems which exist and their solutions; and

8 (6) with the cooperation of the Department of Law, assist in
9 the education and training of state and local law enforcement officials
10 in their efforts to prevent illicit traffic in and abuse of controlled
11 substances.

12 (b) The commissioner of health and social services shall encourage
13 research on controlled substances and may

14 (1) establish methods to assess the effects of controlled
15 substances and identify and characterize those with potential for
16 abuse;

17 (2) make studies and undertake research to

18 (A) develop new or improved approaches, techniques,
19 systems, equipment, and devices to strengthen the enforcement of
20 this chapter;

21 (B) determine patterns of abuse of controlled sub-
22 stances and their social effects; and

23 (C) improve methods for preventing, predicting, and un-
24 derstanding the abuse of controlled substances;

25 (3) enter into contracts with public agencies, institutions
26 of higher education, and private organizations or individuals for con-
27 ducting research, demonstrations, or special projects which bear
28 directly on abuse of controlled substances and for related research and
29 educational activities.

1 Sec. 17.30.150. CONFIDENTIALITY. (a) Results, information, and
2 evidence received from the Drug Enforcement Administration of the
3 United States Department of Justice relating to the regulatory func-
4 tions of this chapter, including results of inspections conducted by it
5 may be relied on and acted on by the board in the exercise of its
6 regulatory functions under this chapter.

7 (b) A practitioner engaged in medical practice or research may
8 not furnish the name or identity of a patient or research subject to
9 the board. The practitioner may not otherwise disclose the name or
10 identity of an individual that he is required to keep confidential
11 unless ordered by a court to disclose it within the context of a crim-
12 inal investigation or proceeding.

13 Sec. 17.30.160. DEFINITIONS. (a) Unless the context clearly
14 requires otherwise, the definitions set out in AS 11.71.900 apply to
15 this chapter.

16 (b) In this chapter, "board" means the Board of Pharmacy provided
17 for in AS 08.80.010.

18 * Sec. 4. AS 17 is amended by adding a new chapter to read:

19 CHAPTER 35. ALASKA THERAPEUTIC RESEARCH ACT.

20 Sec. 17.35.010. LEGISLATIVE PURPOSE. The legislature finds that
21 recent research has shown that the use of marijuana may alleviate the
22 nausea and ill effects of cancer chemotherapy and radiology, and,
23 additionally, may alleviate the ill effects of glaucoma. The legis-
24 lature further finds that there is a need for further research and
25 experimentation regarding the use of marijuana under strictly con-
26 trolled circumstances.

27 Sec. 17.35.020. THERAPEUTIC RESEARCH PROGRAM. (a) A therapeutic
28 research program is established in the Board of Pharmacy. The program
29 shall be administered by the board. The board shall adopt regulations

1 necessary for the proper administration of this chapter. Before adopt-
2 ing regulations, the board shall take into consideration pertinent
3 regulations adopted by the Drug Enforcement Administration of the
4 United States Department of Justice, the federal Food and Drug Adminis-
5 tration, and the National Institute on Drug Abuse.

6 (b) Except as provided in AS 17.35.030(e), the therapeutic re-
7 search program is limited to cancer chemotherapy and radiology patients
8 and glaucoma patients, who are certified to the Patient Qualification
9 Review Committee by a practitioner. A patient may not be admitted to
10 the therapeutic research program without full disclosure by the practi-
11 tioner of the experimental nature of this program and of the possible
12 risks and side effects of the proposed treatment.

13 (c) The board shall provide by regulation for a program of regis-
14 tration of therapeutic research projects.

15 Sec. 17.35.030. PATIENT QUALIFICATION REVIEW COMMITTEE. (a) The
16 board shall appoint a Patient Qualification Review Committee to serve
17 at its pleasure. The committee shall consist of four members with the
18 following qualifications:

19 (1) two physicians licensed to practice medicine in the
20 state, one of whom specializes in the practice of ophthalmology;

21 (2) a physician licensed to practice medicine in the state
22 and specializing in the practice of psychiatry; and

23 (3) a physician licensed to practice medicine in the state
24 who specializes in the practice of radiology.

25 (b) Members of the Patient Qualification Review Committee receive
26 no salary but are entitled to per diem for travel and expenses autho-
27 rized by law for boards and commissions.

28 (c) The Patient Qualification Review Committee shall review all
29 applicants for the therapeutic research program and their licensed

1 practitioners and certify their participation in the program.

2 (d) The Patient Qualification Review Committee and the board shall
3 protect the privacy of individuals who participate in the therapeutic
4 research program by withholding the names and other identifying charac-
5 teristics of those individuals from all persons who are not connected
6 with the research. Persons authorized to engage in research under the
7 therapeutic research program may not be compelled in any civil, criminal,
8 administrative, legislative, or other proceeding to identify the indivi-
9 duals who are the subjects of research for which the authorization was
10 granted unless necessary to permit the board to determine whether the
11 research is being conducted in accordance with the authorization.

12 (e) The Patient Qualification Review Committee may include other
13 disease groups for participation in the therapeutic research program.
14 However, a practitioner must present pertinent medical data to both the
15 committee and the board before a disease group may be added. The parti-
16 cipation of a disease group must be approved by the board consistent
17 with applicable regulations adopted by the Drug Enforcement Administra-
18 tion of the United States Department of Justice, the federal Food and
19 Drug Administration, and the National Institute on Drug Abuse.

20 Sec. 17.35.040. SOURCES, DISTRIBUTION AND POSSESSION OF MARIJUANA.

21 (a) A patient who is certified to participate in the therapeutic re-
22 search program by the Patient Qualification Review Committee may obtain
23 and possess marijuana, its derivatives, or its active ingredients,
24 whether synthetic or natural, for his own use.

25 (b) The board shall establish procedures by which a person author-
26 ized under this section to possess marijuana, its derivatives or active
27 ingredients, whether synthetic or natural, may do so, subject to applic-
28 able regulations adopted by the Drug Enforcement Administration of the
29 United States Department of Justice, the United States Food and Drug

1 Administration, and the National Institute on Drug Abuse.

2 Sec. 17.35.050. REPORT TO THE GOVERNOR AND LEGISLATURE. The
3 board, in conjunction with the Patient Qualification Review Committee,
4 shall report its findings and recommendations to the governor and the
5 legislature regarding the effectiveness of the therapeutic research
6 program by March 1, 1984.

7 Sec. 17.35.060. DEFINITIONS. In this chapter

8 (1) "board" means the Board of Pharmacy;

9 (2) "marijuana" has the meaning set out in AS 11.71.900(14);

10 (3) "practitioner" means a physician authorized to practice
11 medicine in the state under AS 08.64.

12 * Sec. 5. AS 08.64.380(3)(B) is amended to read:

13 (B) habitual overuse of alcoholic beverages or con-
14 trolled substances [DEPRESSANT, HALLUCINOGENIC OR STIMULANT DRUGS,]
15 as defined in AS 11.71.900(4) [AS 17.12.150(3), OR ADDICTION TO THE
16 USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

17 * Sec. 6. AS 08.80.040 is amended by adding a new paragraph to read:

18 (10) provide for the regulation of controlled substances
19 under AS 17.30.

20 * Sec. 7. AS 08.80.470 is amended to read:

21 Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends,
22 modifies, repeals or otherwise changes any provision of AS 11.71,
23 AS 17.30, [THE UNIFORM NARCOTIC DRUG ACT (AS 17.10)] or the Alaska
24 Food, Drug and Cosmetic Act (AS 17.20).

25 * Sec. 8. AS 08.80.480(20) is repealed and reenacted to read:

26 (20) "controlled substance" has the same meaning set out in
27 AS 11.71.900(4).

28 * Sec. 9. AS 11.31.100(d)(1) is amended to read:

29 (1) class A felony if the crime attempted is an unclassified

1 felony [MURDER IN ANY DEGREE OR KIDNAPPING];

2 * Sec. 10. AS 11.31.110(c)(1) is amended to read:

3 (1) class A felony if the crime solicited is an unclassified
4 felony [MURDER IN ANY DEGREE OR KIDNAPPING];

5 * Sec. 11. AS 11.81.900(b)(4) is amended to read:

6 (4) "cannabis" has the meaning ascribed to it in AS 11.71.-
7 900(10), (11), and (14) [AS 17.12.150];

8 * Sec. 12. AS 11.81.900(b)(6) is repealed and reenacted to read:

9 (6) "controlled substance" has the meaning ascribed to it in
10 AS 11.71.900(4);

11 * Sec. 13. AS 11.81.900(b)(16) is repealed and reenacted to read:

12 (16) "drug" has the meaning ascribed to it in AS 11.71.-
13 900(9);

14 * Sec. 14. AS 12.30.040(b) is repealed and reenacted to read:

15 (b) Notwithstanding the provisions of (a) of this section, if a
16 person has been convicted of an offense which is an unclassified felony
17 or a class A felony, he may not be released on bail either before
18 sentencing or pending appeal.

19 * Sec. 15. AS 12.45 is amended by adding a new section to read:

20 Sec. 12.45.155. LABORATORY REPORT OF CONTROLLED SUBSTANCES. (a)
21 In a prosecution under AS 11.71.010 - 11.71.070, a complete copy of an
22 official laboratory report from the Department of Public Safety or a
23 laboratory operated by another law enforcement agency is prima facie
24 evidence of the content, identity, and weight of a controlled sub-
25 stance. The report must be signed by the person performing the anal-
26 ysis and must state that the substance which is the basis of the alleged
27 offense has been weighed and analyzed. In the report, the author shall
28 state with specificity his findings of the content, weight, and identity
29 of the substance.

1 (b) A sworn statement prepared by the author of the report pro-
2 vided for in (a) of this section must be attached to the report. The
3 statement must set out the identity of the author and include a state-
4 ment that he is an employee of the laboratory issuing the report and
5 that performing the analysis is a part of his regular duties. The
6 statement must also include an outline of his education, training, and
7 experience for performing an analysis. The author shall state that
8 scientifically accepted tests were performed with due caution, and
9 whether to his knowledge the evidence was handled in accordance with
10 established and accepted procedures while in the custody of the labora-
11 tory.

12 (c) The prosecuting attorney shall serve a copy of the report on
13 the attorney of record for the accused, or on the defendant if he has
14 no attorney, not later than 20 days before a proceeding in which the
15 report is to be used against the accused. However, at a preliminary
16 hearing or grand jury proceeding, the report may be used without having
17 previously been served upon the accused.

18 (d) The accused or his attorney may demand the testimony of the
19 person signing the report, by serving a written demand showing cause
20 upon the prosecuting attorney within seven days from receipt of the
21 report.

22 (e) A report issued for use under this section must contain
23 notice of the right of the accused to demand the testimony of the
24 person signing the report.

25 * Sec. 16. AS 12.55.035(b)(1) is amended to read:

26 (1) \$75,000 for murder in the first or second degree, [OR]
27 kidnapping, or misconduct involving a controlled substance in the first
28 degree;

29 * Sec. 17. AS 12.55.125(b) is amended to read:

1 (b) A defendant convicted of murder in the second degree, [OR]
2 kidnapping, or misconduct involving a controlled substance in the first
3 degree shall be sentenced to a definite term of imprisonment of at
4 least five years but not more than 99 years.

5 * Sec. 18. AS 12.55.155(c) is amended by adding new paragraphs to read:

6 (19) the defendant is convicted of an offense specified in
7 AS 11.71 and the offense involved the delivery of a controlled sub-
8 stance under circumstances manifesting an intent to distribute the
9 substance as part of a commercial enterprise;

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

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

16 (22) the defendant is convicted of an offense specified in
17 AS 11.71 and the offense involved the distribution of a controlled
18 substance that had been adulterated with a toxic substance.

19 * Sec. 19. AS 12.55.155(d) is amended by adding new paragraphs to read:

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

23 (15) the defendant is convicted of an offense specified in
24 AS 11.71 and the offense involved the distribution of a controlled
25 substance, other than a schedule IA controlled substance, to a personal
26 acquaintance who is 19 years of age or older for no profit;

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

1 * Sec. 20. AS 28.35.030(a)(1) is amended to read:

2 (1) while under the influence of intoxicating liquor, or any
3 controlled substance listed [DEPRESSANT, HALLUCINOGENIC, STIMULANT OR
4 NARCOTIC DRUGS AS DEFINED] in AS 11.71.140 - 11.71.190 [AS 17.10.230-
5 (13) AND AS 17.12.150(3)];

6 * Sec. 21. (a) Prosecution for a violation of law occurring before
7 January 1, 1983, is not affected or abated by this Act. Violation of any
8 law repealed by this Act may still be prosecuted and brought to a final
9 determination in accordance with the laws and regulations in effect at the
10 time of the violation.

11 (b) This Act does not apply to a civil seizure, forfeiture, or injunc-
12 tive proceeding commenced before January 1, 1983.

13 (c) Administrative proceedings pending under a law repealed or amended
14 by this Act shall be continued and brought to a final determination in
15 accordance with the laws and regulations in effect before January 1, 1983.

16 (d) The Board of Pharmacy shall permit persons who own or operate an
17 establishment engaged in the manufacture, distribution, or dispensing of a
18 controlled substance to register before January 1, 1983.

19 (e) This Act applies to violations of law, seizures, forfeitures,
20 injunctive proceedings, administrative proceedings, and investigations which
21 occur after December 31, 1982.

22 * Sec. 22. Orders issued and regulations adopted under a law amended or
23 repealed by this Act and in effect on January 1, 1983, and not in conflict
24 with this Act continue until amended or repealed.

25 * Sec. 23. The members of the Controlled Substance Advisory Committee
26 first appointed under AS 11.71.100(a)(5) - (8) shall serve terms as follows:

- 27 (1) one member for two years;
28 (2) two members for three years; and
29 (3) two members for four years.

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* Sec. 24. AS 17.10, AS 17.12, and AS 17.15 are repealed.

* Sec. 25. This Act takes effect on January 1, 1983.

DIVISION OF ADULT CORRECTIONS
CAPACITY OF CORRECTIONAL CENTERS
FEBRUARY 1982

<u>STATE INSTITUTIONS</u>	<u>NORMAL OPERATING CAPACITY</u>	<u>EMERGENCY OPERATING CAPACITY</u>	<u>01/27/82 PRISONER COUNTS</u>
Anchorage - 3rd Ave.	70	80	81
Anchorage - 6th Ave.	100	115	133
Eagle River	80	100	112
Alaska Women's Fac/ER	28	30	21
Palmer	113	113	107
Ridgeview Post #6	50	50	46
Fairbanks	110	118	164
Juneau	90	100	111
Ketchikan	22	30	21
Nome	30	34	32
<hr/>			
DAC Inst. Capacity			
* Totals In-State	693	770	828
<hr/>			
Alaska Prisoners in Federal Institutions			190
Prisoners Housed in Contract Community Facilities (Halfway Houses)			63
<hr/>			
Total Number of Prisoners In-State & Federal Institutions			1081

*In March 1982 additional beds will be available as follows:

- Ridgeview Post #6 - 40 new beds for a 90 bed capacity
- Palmer (existing facility) - 24 new beds for a 137 bed capacity
- Palmer Addition (new facility) - 100 new beds

In-State confinement capacity by March 1982:

<u>NORMAL OPERATING CAPACITY</u>	<u>EMERGENCY OPERATING CAPACITY</u>
857	934

DIVISION OF ADULT CORRECTIONS

SUMMARY OF CAPITAL PROJECTS AFFECTING BED SPACE
(DOES NOT INCLUDE CORRECTIONAL INDUSTRIES, CODE UPGRADE OR RELATED PROJECTS)

FUNDED PROJECTS:

<u>Bed Space Increase</u>	<u>Project</u>
-0-	<u>Ketchikan Correctional Center</u> - Scheduled Completion 9-1-82. New Institution, 30 single rooms. Current Status - ahead of schedule - Contractor's estimated completion - 4-30-82. Staffing Available to operate 9-1-82. Since this is a replacement facility no system increase will result.
180	<u>Anchorage Pre-Trial</u> - Scheduled Completion - 12-31-82. New Institution, 180 single rooms. Current Status - ahead of schedule - Contractor's estimated completion 12-1-82.
60	<u>Eagle River Correctional Center Expansion</u> - Scheduled Completion 7-31-82. New single rooms = 80 - Post Construction Capacity = 180. Current Status - ahead of schedule - Contractor's estimated completion - 7-1-82. Upon completion of this project, it will be necessary to remove 20 inmates from 3rd Avenue in order to approach compliance. Therefore, the system capacity in August will only increase by 60, rather than by a full 80 beds.
100	<u>Palmer Addition</u> - Scheduled Completion - 3-1-82. New Institution, 100 single rooms. Current Status - nearly completed - Contractor's estimated completion date - 3-1-82.
40	<u>Juneau Expansion</u> - Scheduled Completion - October 1983. New single rooms = 56, Post Construction Capacity = 130. Current Status - on schedule - In design development stage.
67	<u>Fairbanks Expansion</u> - Scheduled Completion - October 1983. New single rooms = 77, Post Construction Capacity = 177.
Between 4 and 22	<u>Nome Replacement</u> - Scheduled Completion - Fall of 1983. New Institution, 32-50 single rooms, Post Construction Capacity = 32-50. Now in design phase. This project replaces 28 beds, so system increase will be minimal.
-0-	<u>Bethel Jail</u> - Scheduled Completion - Fall of 1983. New Institution, 40 single rooms, Post Construction Capacity = 40. Current Status - Now in design phase. While Bethel beds will be new to the DOAC system, we will also be assuming the current local jail function. No system increase will be realized.

FY'83 PROJECT REQUESTS AFFECTING BED SPACE:

<u>Bed Space Increase</u>	<u>Project</u>
300	<u>Long-Term Facility</u> - Secure institution for sentenced male felons to be located in Southcentral Alaska. \$41 million has been requested for this 300 bed facility with a core capacity enabling future expansion to not more than 400 beds. Through P.F.P.F. funds, an architectural firm has been selected to begin planning and preliminary design. Completion is projected for early 1985.
80	<u>Fairbanks Addition</u> - Minimum to medium custody facility to be located adjacent to the existing Fairbanks Correctional Center. This facility would be similar to the new Palmer Addition and would permit those requiring less secure conditions of confinement to remain in the Northern Region.

SUMMARY OF BED SPACE INCREASES

451 Beds - Funded projects under design or construction
380 Beds - FY'83 Capital Request
831 Beds - Funded or Requested

INSTATE BED CAPACITY COMPARED WITH PROJECTED PRISONER POPULATION

<u>Facility</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Ketchikan	30	30	30	30	50
Juneau Men's	90	130	130	130	130
Juneau Women's	3	3	3	3	3
Fairbanks	110	177	177	177	177
3rd Avenue	50	50	50	50	50
6th Ave. Men's & Women's	100	100	100	100	100
Ridgeview Men's	90	-0-	-0-	-0-	-0-
Eagle River Men's	160	160	160	160	160
Eagle River Women's	28	28	28	43	43
Palmer	237	237	237	237	237
Post Road	-0-	180	180	180	180
Nome	28	32	32	32	32
Bethel	-0-	40	40	40	40
Long Term Fac. Southcentral	-0-	-0-	-0-	300	300
Fairbanks Addition	-0-	-0-	-0-	80	80
INSTATE BED TOTAL	896	1,167	1,167	1,562	1,582
Projected Inmate Populations	1,112	1,281	1,450	1,620	1,790
Range of Expected High/Low	to	to	to	to	to
Counts	1,022	1,191	1,360	1,530	1,700

Summary: The difference between "Instate Bed Totals" and "Projected Inmate Populations" is that number that must be addressed through placement in the Federal Prison System, placement in contract community facilities, or by additional construction.

PROPOSED COMMENTARY AND SECTIONAL ANALYSIS FOR THE
1982 REVISION OF ALASKA'S
CONTROLLED SUBSTANCES LAWS

CS HOUSE BILL 180

January ²²~~18~~, 1982

INTRODUCTION

This legislation implements a comprehensive statutory scheme to control the possession, use, sale, and distribution of illicit drugs in the state through a logical classification and penalty scheme consistent with the revised criminal code which took effect on January 1, 1980.

The legislation is patterned after the federal Controlled Substances Act of 1970 (P.L. 91-513) and the Uniform Controlled Substances Act, adopted by the National Conference of Commissioners on Uniform State Laws. It is designed to provide for relative uniformity among the laws of the states and the federal government. The federal and uniform acts have served as models for 44 states which have revised their outdated drug laws over the last decade.

The main objective and advantage of the uniform act and of this legislation is to create a single coordinated statutory system of drug control similar to that now in effect at the federal level and in most other states.

The legislation establishes seven degrees of offenses involving controlled substances in chapter 71 of the revised criminal code. Each offense is entitled Mischief Involving a Controlled Substance, with the degree of the offense designating the relative seriousness of the prohibited conduct. The first degree crime is the most serious offense, while the seventh degree offense is the least serious.

Each offense is classified under the classification structure of the revised criminal code. Sentencing

will occur pursuant to AS 12.55 with the presumptive sentencing provisions of that chapter applying to eligible offenders. Consequently, a judge's discretion in sentencing a defendant convicted of a felony drug offense who has previously been convicted of any other felony offense will be substantially restricted. This sentencing structure is designed to provide emphasis on the more serious offenses under the legislation including the delivery of a controlled substance to a minor and the commercial sale of heroin, cocaine, LSD and amphetamines.

In addition to providing penalties for unlawful acts involving controlled substances, the bill establishes a closed regulatory system for legitimate handlers of controlled substances to curtail drug diversion into illegitimate channels. This system requires, for example, registration, maintenance of records, and the use of uniform order forms. Compliance with federal requirements satisfies state law, so that pharmacists, doctors, researchers, and manufacturers of controlled substances are not subjected to conflicting state and federal requirements pertaining to registration, recordkeeping, order forms, and prescriptions.

COMMENTARY AND SECTIONAL ANALYSIS

Sec. 1. DECLARATION OF LEGISLATIVE PURPOSE

This section states the purpose of the comprehensive revision of Alaska's drug laws and highlights the two concerns that are addressed in the legislation. The purpose of the revision is the enactment of legislation

patterned after federal law and the uniform act containing penalty provisions in conformity with the revised criminal code to effectively combat illicit trafficking in controlled substances. The legislation addresses both public safety and public health concerns associated with controlled substances. The revisions to Title 11 address public safety concerns by providing penalties for unlawful acts involving controlled substances, while the revision to Title 17 addresses public health concerns by regulating the legitimate handling of controlled substances to prevent diversion of drugs to illicit channels.

AS 11.71. CONTROLLED SUBSTANCES

Secs. 11.71.010--11.71.900 add a new chapter to the revised criminal code containing articles that define prohibited conduct involving controlled substances, establish the Controlled Substances Advisory Committee, classify controlled substances into six schedules and define terms used throughout the chapter.

ARTICLE 1. OFFENSES RELATING TO CONTROLLED SUBSTANCES

This article defines the seven offenses involving controlled substances. Each offense is classified under the general classification scheme applicable to the revised criminal code. See AS 11.81.250, Classification of Offenses. The penalties for each offense are specified in AS 12.55. A chart showing the classification and

penalty for each offense appears as APPENDIX A. The general provisions of the revised criminal code, including the rules on culpability, are also applicable to these crimes.

It should also be noted that each of the seven offenses provides in the introductory clause in subsection (a), that if the otherwise prohibited conduct is authorized by AS 17.30 or AS 17.35, a violation has not occurred. Those chapters regulate the legitimate handling of controlled substances by persons such as manufacturers and pharmacists.

Sec. 11.71.010. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE.

This crime defines the most serious conduct prohibited by this legislation. The offense is an unclassified felony, and under AS 12.55.125(b) is punishable by a term of imprisonment of at least five years but not more than 99 years. Two forms of conduct are prohibited: (1) the delivery of a schedule IA controlled substance to a person under 19 who is at least three years younger than the defendant; and (2) engaging in a "continuing criminal enterprise."

For all offenses involving the "delivery" (defined in sec. 11.71.900(6)) of a controlled substance to a minor, (secs. 11.71.010(a)(1); 11.71.020(a)(2); 11.71.030(a)(2)) the ages of both the defendant and the victim are of importance. The victim must be under 19 and

the defendant must be at least three years older than the victim. The purpose of this age differential is to prevent the imposition of aggravated penalties in a case, where, for example, a 19-year-old shares a controlled substance with a 17-year-old friend. Statutes in several other states, as well as the Uniform Controlled Substances Act, contain a similar three-year age difference requirement. The cut-off age of 19 has been selected in order to be consistent with laws involving alcohol in Title 04. However, a person 18 or older who possesses a controlled substance on school grounds can be prosecuted and convicted of an aggravated possession offense. See secs. 11.71.030(a)(3); 11.71.040(a)(3).

Schedule IA substances are listed in sec. 11.71.040 and are discussed in the commentary accompanying that section. Heroin and opium are two examples of schedule IA controlled substances. As with all other offenses involving the delivery of controlled substances, this provision requires that "any amount" of the substance be involved. Consequently, the purity of the substance is irrelevant in determining whether an offense has been committed. The legislation continues the requirement that a sufficient amount of the substance be available to insure proper identification. See AS 11.71.320(a) and accompanying commentary.

Since no culpable mental state is specified in sec. 11.71.010(a)(1) the defendant must act at least recklessly as to the age of the victim. See

AS 11.81.610(b)(2). As with all offenses in this chapter, the defendant is not required to act with any culpable mental state regarding the classification of a substance or the fact that possession of the substance is prohibited by law. See AS 11.86.620(a). The defendant, of course, must know that he possesses the substance.

Sec. 11.71.010(a)(2), which prohibits engaging "in a continuing criminal enterprise," is patterned after a similar federal law defined in 21 U.S.C. §848(b). In paralleling the federal statute to a significant degree, it is expected that federal case law will be of assistance to the Alaska courts in applying the provision.

The definition of "continuing criminal enterprise" in subsection (b) contains a requirement that the current offense be part of a continuing series of five or more violations of the chapter. A particular number of violations is not specified in the federal statute. The term "violation" does not mean "conviction". See generally, United States v. Michel, 588 F.2d 986 (5th Cir. 1979); cert. den. 444 U.S. 825, 62 L.Ed.2d 32; United States v. Fry, 413 F. Supp. 1269, 1272 (E.D. Mich. 1976) ("series means three or more related acts"; emphasis added). This offense is not an "habitual" or "repeat" offender statute nor do all the violations necessarily have to be felony offenses. But see sec. 11.71.101(b)(1).

The purpose of the "continuing criminal enterprise" provision is "to punish and take out of circulation persons who are engaged in the manufacture and sale of

drugs primarily for the profits to be derived therefrom." United States v. Jeffers, 532 F.2d 1101, 1110 (7th Cir. 1976), aff'd in part, vacated in part on other grounds, 432 U.S. 137, 53 L.Ed.2d 168, reh. den. 434 U.S. 880, 54 L.Ed.2d 164. See also United States v. Valenzuela, 596 F.2d 1361 (9th Cir. 1979) cert. den. 444 U.S. 865, 62 L.Ed.2d 88. United States v. Bolts, 558 F.2d 316 (5th Cir. 1977), cert. den. 434 U.S. 930, 54 L.Ed.2d 290; United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974), cert. den. 420 U.S. 962, 43 L.Ed.2d 439; United States v. Bergdoll, 412 F. Supp. 1308 (D. Del. 1976).

Sec. 11.71.020. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SECOND DEGREE.

This offense, a class A felony punishable by a maximum of 20 years imprisonment, prohibits two forms of conduct: (1) manufacturing (defined in sec. 11.71.900(13)) or delivering any amount of a schedule IA controlled substance, or possessing (defined in sec. 11.81.900(b)(41)) such a substance with intent to manufacture or deliver; and (2) delivering any amount of a schedule IIA (including LSD and Cocaine) or schedule IIIA substance (including hashish and barbiturates) to a person under 19 who is at least three years younger than the defendant.

Under subsection (a)(1), the defendant need not actually deliver the substance. Possession of the substance with that intent is sufficient to support a convic-

tion. The definition of "deliver" in sec. 11.71.900(6) does not require that the transfer constitute a sale. Merely transferring the substance, or attempting to do so, would constitute a "delivery" under the statute, without regard to remuneration.

Sec.11.71.030. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE THIRD DEGREE.

This section, a class B felony punishable by a maximum sentence of 10 years, prohibits three forms of conduct: (1) manufacturing or delivering a schedule IIA or IIIA substance or possessing any of those substances with intent to manufacture or deliver; (2) delivering a schedule IVA (including tranquilizers such as valium), VA, or VIA (marijuana) controlled substance to a person under 19 who is at least three years younger than the defendant; and (3) being 18 or older, possessing any amount of a schedule IA or IIA substance within the grounds of a school or on a parking lot immediately adjacent to the school.

The conduct prohibited by paragraphs (1) and (2) of this statute has been discussed in the commentary accompanying the first and second degree offenses. The only difference between these sections and the comparable provisions in the more serious crimes is, of course, the schedule of the substance involved.

Sec. 11.71.030(a)(3) (as well as its companion provision in sec. 11.71.040(a)(3) which applies to

schedule IIIA--VIA controlled substances) is an aggravated possession offense intended to deter persons from being in or near schools and schoolchildren while possessing a controlled substance. The protection of this provision extends to public and private schools, up to and including high schools. The requirement that the defendant be 18 or older is consistent with the general treatment of an 18-year-old as an adult when he or she commits an offense.

The "affirmative defense" (defined in AS 11.81.900(b)(1)) specified in subsection (b) (and the companion provision in sec. 11.71.040(b)) prevents conviction under an aggravated possession offense of a class of persons who unlawfully possess controlled substances and are prosecutable under other sections in this chapter, but do not pose a serious hazard to children. The burden of proof is upon the defendant by a preponderance of the evidence to show he meets the requirements of the defense. An example would be the night watchman who at 2:00 a.m. possesses, while in a school, marijuana cigarettes for his own use. Successfully raising the affirmative defense does not permit the defendant to escape criminal liability; the defendant could still be convicted of possession of the controlled substance under other statutes as a lesser-included offense. The night watchman in the example above could be convicted of Misconduct Involving a Controlled Substance in the Seventh Degree, sec. 11.71.070(a), for possessing less than one ounce of a substance containing marijuana while in a

public place.

As used in the affirmative defense, the phrase "any organized activity" includes school as well as non-school activities, so long as the activities involve persons under 18. Finally, it is important to note that if the circumstances of the possession reveal an intent to deliver the substance to another person, the defendant can be prosecuted for a more serious crime, for example, Misconduct Involving a Controlled Substance in the Second Degree under sec. 11.71.020(a)(1).

Sec. 11.71.040. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE.

This offense, a class C felony punishable by a maximum term of imprisonment of five years, prohibits nine forms of conduct.

Paragraph (1), in part, prohibits the delivery of any amount of marijuana, a schedule VIA substance. As with other sections in this chapter, it is irrelevant whether the defendant received remuneration for the delivery. However, sec. 19 of the bill adds a new mitigating factor to AS 12.55.155(d) that the defendant delivered a small amount of a schedule IIA - VIA controlled substance to an adult for no remuneration.

Paragraph (2) prohibits the mere possession of various amounts of controlled substances. Strict liability is intended to be applied to the element of the defendant's awareness of the amount of the substance pos-

sessed in this and all other crimes involving possession of a specific amount of a controlled substance. See AS 11.81.600(b). For example, if a person possesses 30 tablets of a schedule IIIA controlled substance, a class C felony, it is irrelevant--and not a defense that he thought he possessed less than 25 tablets, which would have made his conduct a class A misdemeanor. If the circumstances of the conduct showed beyond a reasonable doubt that the defendant possessed the substance with an intent to deliver, prosecution could be brought under the more serious offenses prohibiting that conduct. Possession of controlled substances in amounts less than those specified in paragraph (2) are covered by the fifth and sixth degree crimes. The distinction between felony and misdemeanor possession offenses (which does not apply to the possession of a schedule IA or IIA substance which is classified as a felony regardless of the amount possessed) is intended to deter the possession of larger amounts of a controlled substance through imposition of felony penalties, while treating the person who possesses a smaller amount of a controlled substance (which is consistent with personal use) less severely.

The legislation adopts an "aggregate weight" test for determining the weight of the controlled substance when the weight of the substance possessed is determinative of the degree of the offense. See secs. 11.71.040(a)(2)(C), (E), (F); 11.71.050(a)(1)(B), (D), (E); 11.71.060(a)(1),(3), (4); 11.71.070(a). Under the

"aggregate weight" test, the total weight of the preparation, compound, or mixture is the weight of the substance for purposes of prosecution and conviction, so long as some amount of a controlled substance is present. The purity of the substance is irrelevant in determining weight.

For example, the definition of "marijuana" in sec. 11.71.900(14) provides that some parts of the plant *cannabis sativa* (those which contain the active ingredient "THC", such as leaves, stems, flowers and seeds) are "marijuana", while some parts (such as mature stalks) are not. Under sec. 11.71.040(a)(2)(F), if a person possesses one pound of mature stalks, he does not commit a crime. But if he possesses 10 ounces of leaves, stems, flowers or seeds and 10 ounces of mature stalks all mixed together, he possesses one pound or more of marijuana for purposes of prosecution.

The reason for the adoption of the "aggregate weight" standard, rather than a "pure weight" standard, is that it would be almost impossible for law enforcement officials or chemists to separate out all the individual pieces of marijuana from non-marijuana, or to separate out grains of a controlled substance which has been "cut" with a similar appearing non-controlled substance, and then to test chemically each of the individual pieces or grains. The State of New York encountered such enforcement problems when it revised its statutes relating to marijuana in 1977, changing from an aggregate weight basis to one of

pure weight. The problems surfaced in the case of People v. Davis, 408 N.Y.S.2d 748 (N.Y. 1978). There, the defendant was charged with violating one of the marijuana laws when New York had the pure weight test. The chemist who testified at the Davis trial, although competent, could not, "to a reasonable degree of scientific certainty, rule out the presence or gauge the amount of non-marijuana" within the 9.3 pounds of green vegetable matter contained in 20 bags which had been seized from the defendant. 408 N.Y.S.2d at 750. At that time, New York's definition of marijuana was similar to that in sec. 11.71.900(14) insofar as some parts of the plant were marijuana, and other parts were not. The use of the aggregate weight test is intended to eliminate this potential enforcement problem.

In addition to classifying the possession of a substance of one pound or more containing marijuana as a class C felony in sec. 11.71.040(a)(2)(F), this legislation imposes class A misdemeanor penalties when the substance containing marijuana weighs one-half pound or more (sec. 11.71.050(a)(1)(E)) and class B misdemeanor penalties when four ounces or more are possessed (sec. 11.71.060(a)(4)).

This classification structure clarifies the definition of "a small amount" of marijuana, the possession of which by an adult is protected under Alaska's constitutional right to privacy. Ravin v. State, 537 P.2d 494 (Alaska 1975). The legislature has implicitly defined

"a small amount" to be less than four ounces of a substance containing marijuana. sec. 11.71.060(a)(4). Increasingly more severe penalties are provided for the possession of one-half pound and one pound or more of marijuana. Possession of any amount of marijuana by a person under 19 is, however, prohibited under sec. 11.71.060(a)(3). Other acts involving any amount of marijuana, such as delivery to a minor, possession with intent to deliver, and possession on school grounds, are also treated more severely in this legislation. See, e.g., secs. 11.71.030(a)(2); 11.71.040(a)(1), (3).

While the definition of "manufacture" in sec. 11.71.900(13) specifically excludes the growing of marijuana for personal use, a person who grows marijuana is still subject to prosecution under the possession offenses if the total amount grown is more than four ounces. Further, nothing in the crimes prohibiting possession precludes a prosecution for "possession with the intent to manufacture or deliver", under sec. 11.71.040(a)(1), if that intent is present.

Subsection (a)(4) prohibits the keeping or maintaining of a building, vehicle or other place which is used for keeping or distributing of a controlled substance in violation of AS 11.71 or AS 17.30. This provision, for example, would include the landlord of a warehouse who knowingly rents to a person who uses the structure for manufacturing or distributing controlled substances illegally.

The remaining sections of this statute prohibit various unlawful acts involving controlled substances, including using a revoked registration number while distributing a controlled substance, submitting false information in reports required to be filed under AS 17.30 and obtaining a controlled substance by deception.

Sec. 11.71.050. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE

This section, a class A misdemeanor punishable by a maximum sentence of one year, prohibits the possession of schedule IIIA--VIA controlled substances in amounts less than those specified in the fourth degree crime, as well as failing to make, keep, or furnish information required under AS 17.30. As discussed in the commentary accompanying sec. 11.71.040, the "aggregate weight" standard is used in determining the weight of the substance.

Sec. 11.71.060. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SIXTH DEGREE

This crime, a class B misdemeanor punishable by a maximum term of imprisonment of 90 days, prohibits five acts, four of which involve marijuana.

The use or display of any amount of marijuana or the possession of one ounce or more of a substance containing marijuana in public is prohibited by paragraph (1) while the possession of marijuana within the immediate control of a person operating a propelled vehicle is

covered by paragraph (2).

While a person under 19 can be prosecuted for possessing less than four ounces of a substance containing marijuana under paragraph (3), this provision does not preclude prosecution of a juvenile for other offenses involving marijuana. The prohibition in paragraph (3) codifies an holding implicit in Ravin v. State, supra, that the protection afforded to adults in possessing small amounts of marijuana in the home for personal use does not apply to minors.

Paragraph (4) is discussed in the commentary accompanying sec. 11.71.050, while paragraph (5) is directed at the legitimate industry involved in the handling and delivery of controlled substances.

Sec. 11.71.070. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE

This offense, a violation punishable by a maximum fine of \$300 (AS 11.81.900(b)(55); 12.25.180(b); 12.55.140), prohibits the possession of less than one ounce of marijuana in public. Because the offense is a violation, the prohibited conduct does not indicate criminality. There is no requirement under this section, however, that the marijuana be used or displayed in public.

ARTICLE 2. STANDARDS AND SCHEDULES

Sec. 11.71.100. CONTROLLED SUBSTANCES ADVISORY COMMITTEE

This section establishes the nine-member Controlled Substances Advisory Committee in the Department of

Law, sets forth the membership of the committee, specifies terms of appointment and compensation, designates the attorney general as the chairman and provides that five members are necessary to constitute a quorum.

Sec. 11.71.110. DUTIES OF THE COMMITTEE

This section specifies the duties of the Controlled Substances Advisory Committee. The most significant duties of the committee are specified in paragraphs (1) and (2): the ability to add new substances to the controlled substances schedules by regulation and the duty to advise the governor of the need to delete or reschedule substances by statute. Both of these duties are discussed in the commentary accompanying sec. 11.71.120.

Sec 11.71.120. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES

This section establishes the criteria to be considered by the committee in making a determination regarding the addition, deletion or rescheduling of controlled substances, establishes the procedures for adoption of regulations adding substances to the six schedules, and provides a mechanism whereby the Committee may advise the governor of the need to submit legislation deleting or rescheduling controlled substances. While the Committee has authority to cause the attorney general to adopt regulations consistent with its findings adding new substances to the schedules, substances may only be deleted or rescheduled by statute and not by regulation.

The criteria which must be assessed when the Committee considers the scheduling, rescheduling, or removal of a controlled substance from the schedules, are set forth in APPENDIX C, along with a comparison with the criteria required under federal law. These criteria include: (1) the actual or probable abuse of a substance; (2) the biomedical hazard of a substance; (3) whether a substance is an immediate precursor of a substance already controlled; (4) the current state of scientific knowledge concerning a substance; and (5) the relationship between use of a substance and other criminal activity.

Scheduling decisions are based on findings made under these criteria viewed as a whole without necessarily any of the criteria being given more weight than any other.

The specified criteria differ from federal law in two major ways. First, in Alaska, the same criteria are considered with respect to each controlled substance. In contrast, federal law contains different criteria for different schedules. See 21 U.S.C. §812(b)(1)-(5). Second, while the criteria in paragraphs (1)-(4) are similar or identical to some criteria included in federal law, (21 U.S.C. §811(c)), the criterion specified in paragraph (5), "the relationship between the use of the substance and other criminal activity," is not found in federal law. By adoption of this factor, the legislature has specifically found that there is or may be a relationship between the use of certain controlled substances and other criminal activity, including but not

limited to those factors in subsections (A)-(D).

The "danger or probable danger of the substance" determines the schedule in which it is placed. The degree of danger or probable danger of any substance is relative to all of the other controlled substances. Substances having the highest degree of danger or probable danger are placed in schedule IA, while those with lower degrees of danger or probable danger, in relationship to other substances, are placed in descending schedules.

Sec. 11.71.130. NOMENCLATURE

This section emphasizes that the inclusion of slang terms in the description of particular controlled substances is merely for informational purposes and has absolutely no bearing on any of the procedures associated with a criminal prosecution.

Secs. 11.71.140--11.71.190. SCHEDULES

All controlled substances are classified into one of six schedules, which are labeled schedules IA through VIA. The scheduling of substances is patterned after federal law, which classifies substances into five schedules, labeled I through V. 21 U.S.C. §812; 21 C.F.R. §§1308.11-.15. Alaska has adopted the letter "A" after its numbered schedules to clearly distinguish between state and federal schedules. Additionally, because of factors unique to the state, a sixth schedule containing only the controlled substance of marijuana is created.

The schedules are largely self-explanatory. A chart showing the classification of major categories of controlled substances within the six schedules is included as APPENDIX B. A comparison of the scheduling of controlled substances under the Alaska statutes with federal law is contained in APPENDIX D.

Sec. 11.71.140. SCHEDULE IA.

This section establishes Schedule IA substances as those having the highest degree of danger. Schedule IA includes, among others, opium, codeine, heroin, morphine, and their derivatives, dilaudid, percodan and methadone.

Sec. 11.71.150. SCHEDULE IIA.

This section provides that Schedule IIA substances are those less dangerous than substances classified in Schedule IA and more dangerous than those in other schedules. - Schedule IIA presently includes amphetamines, cocaine, LSD, mescaline, methamphetamines, PCP and the more serious depressants including methaqualone. The definition of cocaine and coca leaves includes both natural and synthetic cocaine, the so-called "D-cocaine" isomer of natural, or "L-cocaine."

Sec. 11.71.160. SCHEDULE IIIA.

This section establishes Schedule IIIA substances as those more dangerous than substances classified in Schedule IVA but not as dangerous as the substances

included in Schedule IIA. Schedule IIIA presently includes barbiturates and their derivatives, am-, seco-, and pentobarbital; moderately serious stimulants and depressants; hashish and hashish oil; and small amounts of codeine, morphine, and opium combined with other ingredients in recognized therapeutic amounts.

It should be noted that the classification of hashish, hashish oil and tetrahydrocannabinols as schedule IIIA substances is a classification that is higher than the classification of marijuana as a schedule VIA substance. This classification distinction has been made because hash and hashish oil are more compact and are generally of higher potency than marijuana. This fact encourages smuggling of these substances and makes their relative dangerousness significantly greater than marijuana. See sec. 11.71.120(c)(5)(B).

Sec. 11.71.170. SCHEDULE IVA.

This section provides that Schedule IVA substances are less dangerous than Schedule IIIA substances but more dangerous than substances included in Schedule VA. Schedule IVA includes less serious depressants and stimulants including barbitol, phenobarbital, and valium, which are often obtained by prescription.

Sec. 11.71.180. SCHEDULE VA.

This section provides that Schedule VA substances

included in Schedule IIA. Schedule IIIA presently includes barbiturates and their derivatives, am-, seco-, and pentobarbital; moderately serious stimulants and depressants; hashish and hashish oil; and small amounts of codeine, morphine, and opium combined with other ingredients in recognized therapeutic amounts.

It should be noted that the classification of hashish, hashish oil and tetrahydrocannabinols as schedule IIIA substances is a classification that is higher than the classification of marijuana as a schedule VIA substance. This classification distinction has been made because hash and hashish oil are more compact and are generally of higher potency than marijuana. This fact encourages smuggling of these substances and makes their relative danger significantly greater than that of marijuana. See sec. 11.71.120(c)(5)(B).

Sec. 11.71.170. SCHEDULE IVA

This section provides that Schedule IVA substances are less dangerous than Schedule IIIA substances but more dangerous than substances included in Schedule VA. Schedule IVA includes less serious depressants and stimulants including barbital, phenobarbital, and tranquilizers such as valium, which are often obtained by prescription.

Sec. 11.71.180. SCHEDULE VA

This section provides that Schedule VA substances

are less dangerous than Schedule IVA substances but more dangerous than substances included in Schedule VIA. Schedule VA includes very small amounts of codeine, morphine sulphate and opium combined with other ingredients in recognized therapeutic amounts with medicinal qualities. These substances generally are cough syrups obtained by prescription or requiring the purchaser's signature.

Sec. 11.71.190. SCHEDULE VIA

This section establishes Schedule VIA as the least dangerous of the controlled substances and includes marijuana.

Sec. 11.71.195. EXEMPTED DRUGS

This section attempts to ensure consistency with federal law by providing that any substance which is specifically exempt from criminal penalty under federal law is exempt from control under this chapter and AS 17.30. The list of exempted drugs under federal law can be found at 21 C.F.R. §1308.22, as of April 1, 1980. This section is intended to include substances which are subsequently exempted under federal law.

ARTICLE 3. MISCELLANEOUS PROVISIONS

Sec. 11.71.300. PENALTIES UNDER OTHER LAWS

This section emphasizes that the criminal penalties imposed by this chapter are in addition to, and

not in place of, civil or administrative penalties applicable to the prohibited conduct.

Sec. 11.71.310. BAR TO PROSECUTION

When read in conjunction with the previous section, this provision makes clear that while a person cannot receive multiple criminal penalties for the same conduct under state and federal law, the person can be penalized criminally, civilly and/or administratively for the same conduct.

Sec. 11.71.320. DEFENSES EXEMPTED

Subsection (a) codifies the law established in Lee v. State, 511 P.2d 1076 (Alaska 1973), that in a prosecution for possession of a controlled substance the state need not prove that the defendant possessed the substance in a "useable quantity" so long as there is a sufficient quantity of the substance to permit proper identification, except in circumstances such as in Howard v. State, 496 P.2d 657 (Alaska 1972).

Subsection (b) expands on the holding of State v. Erickson, 574 P.2d 1 (Alaska 1978). In that case the legislative classification of cocaine as a narcotic was held not to be violative of equal protection or due process, upon evidence which showed that cocaine is not a narcotic pharmacologically. This subsection provides that it is not a defense to a charge that a substance may be misclassified within a particular schedule; for example,

as a depressant, when scientific evidence may show it is an hallucinogen. The prosecution can proceed under the degree of the offense applicable to the act and placement of that substance within a schedule, without regard to labeling under subsections within a schedule.

Sec. 11.71.330. LIABILITY OF PUBLIC SERVANTS

This section makes it clear that a public servant acting within the scope and authority of his or her employment is not criminally or civilly liable for misconduct involving a controlled substance. However, the conduct in question must be within the scope and authority of employment.

Sec. 11.71.340. OFFENSES DEFINED BY AMOUNTS

This section provides that, in a prosecution where an offense is determined by the amount of the substance possessed, it is not a defense to a lower class of offense that the amount of the controlled substance possessed was equal to or larger than the amount which would make the offense a higher class of crime. In short, it is not a defense to a crime that the defendant actually committed a higher class of crime. This section is intended to have the same effect on controlled substances offenses that AS 11.81.615 has on theft offenses.

Sec. 11.71.350. BURDEN OF PROOF

This section provides that it is the defendant's

burden to prove, by a preponderance of the evidence, any exemption or exception claimed by him. The state is not required to disprove, beyond a reasonable doubt, any exemption or exception provided for under AS 11.71 or AS 17.30.

Sec. 11.71.360. UNPRIVILEGED COMMUNICATIONS

This section adopts former AS 17.10.170(b), which pertained only to narcotics, and expands it to all controlled substances. It provides that communications between a person and a physician or other licensed practitioner in an attempt to commit a crime involving a controlled substance are not privileged communications. Therefore, the physician or other practitioner will be able to testify about the communications. A defendant or witness who is not a practitioner would not be able to claim the physician-patient privilege, and could also be forced to testify regarding these communications. See generally Alaska Rule of Evidence 504(d)(2) and (7).

ARTICLE 4. DEFINITIONS

Sec. 11.71.900. DEFINITIONS.

This section defines words and phrases that are used throughout AS 11.71. Many of these definitions are similar or identical to those contained in the federal Controlled Substances Act of 1970. The definitions generally appear at 21 U.S.C. §802. Some of the definitions distinguish between acts performed by practitioners

in the course of their medical practice and acts performed by persons who are not authorized to manufacture, distribute, or dispense controlled substances. For example, the words "administer" and "dispense" refer to acts performed by a practitioner; "deliver" is the "actual, constructive, or attempted transfer from one person to another of a controlled substance," and "distribute" is the delivery of a controlled substance by a person other than a practitioner who dispenses or administers.

The definition of "manufacture" specifically excludes "the growing of marijuana for personal use." The definition of "marijuana" includes "leaves, stems, flowers, and seeds of the plant (genus) Cannabis," and is not limited to the plant Cannabis Sativa L.

CONTROLLED SUBSTANCES

ARTICLE I. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION AND DISPENSING OF CONTROLLED SUBSTANCES.

This chapter generally places within the Board of Pharmacy the responsibility for regulating the legitimate industry which is involved in the manufacture, distribution, and dispensing of controlled substances. Prior Alaska law in AS 17.10 and 17.12 placed responsibility for this duty jointly in the Board of Pharmacy for narcotic drugs, and with the Commissioner of Health and Social Services for non-narcotic drugs. The intent of this chapter is to focus responsibility for regulation within one agency, and to cause state regulations to be consis-