

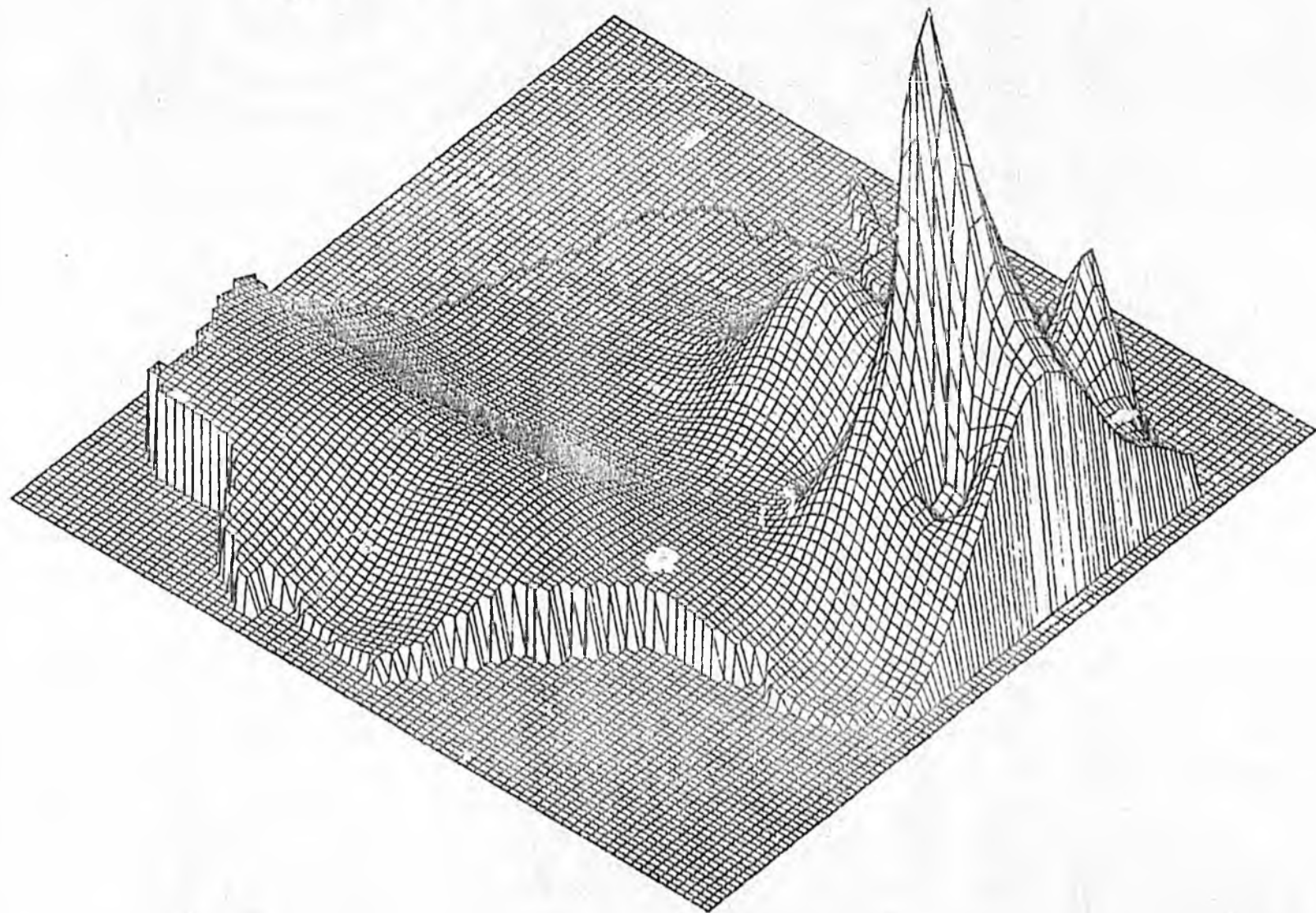
822

HHES

HB 479

822

DISTRIBUTION OF METHAQUALONE
1977
(503,400 s.d.u.'s)



DISTRIBUTION OF METHAQUALONE
1977
BY POPULATION DENSITY
(503,400 s.o.d.u.'s)

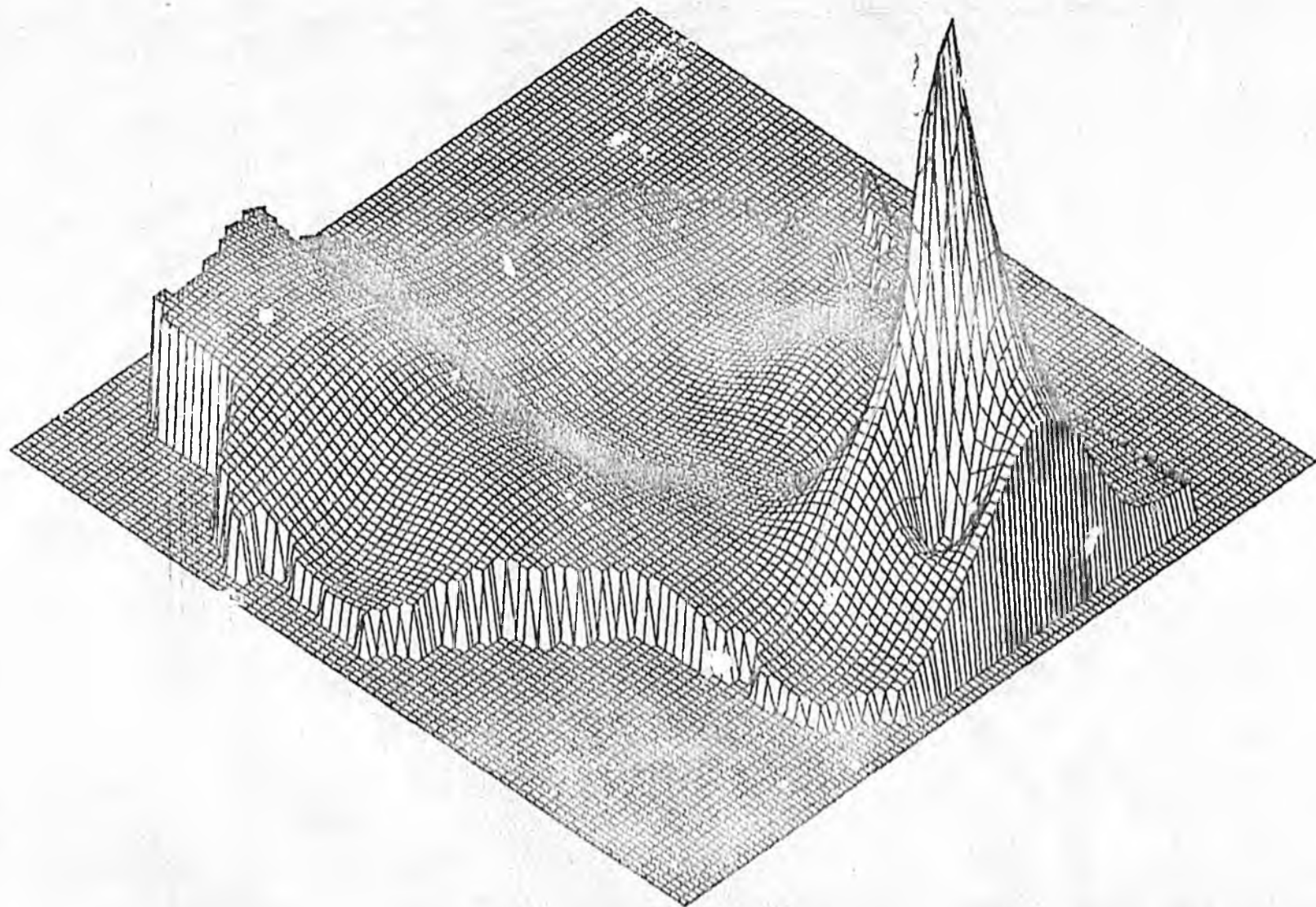


Figure 30

Pharmacy Purchases of
 Methaqualone, 1977
 Zip zone 549
 (42,300 s.o.d.u's)

SOLID
 DRUG
 USAGE
 UNITS

5,000



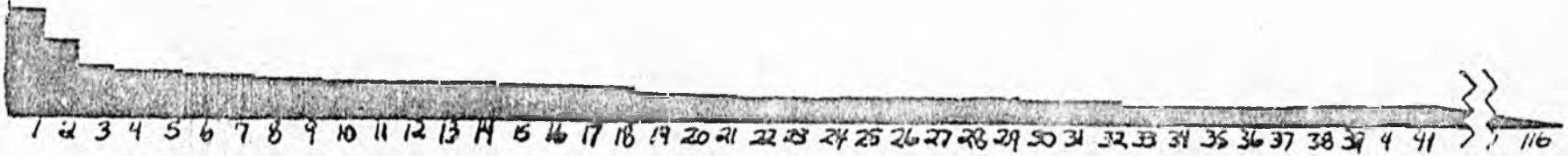
56 PHARMACIES

Pharmacy Purchases of
Methaqualone, 1977
zip zone 532
(61,100 s.o.d.u.'s)

15,000

10,000

5000



116 Pharmacies

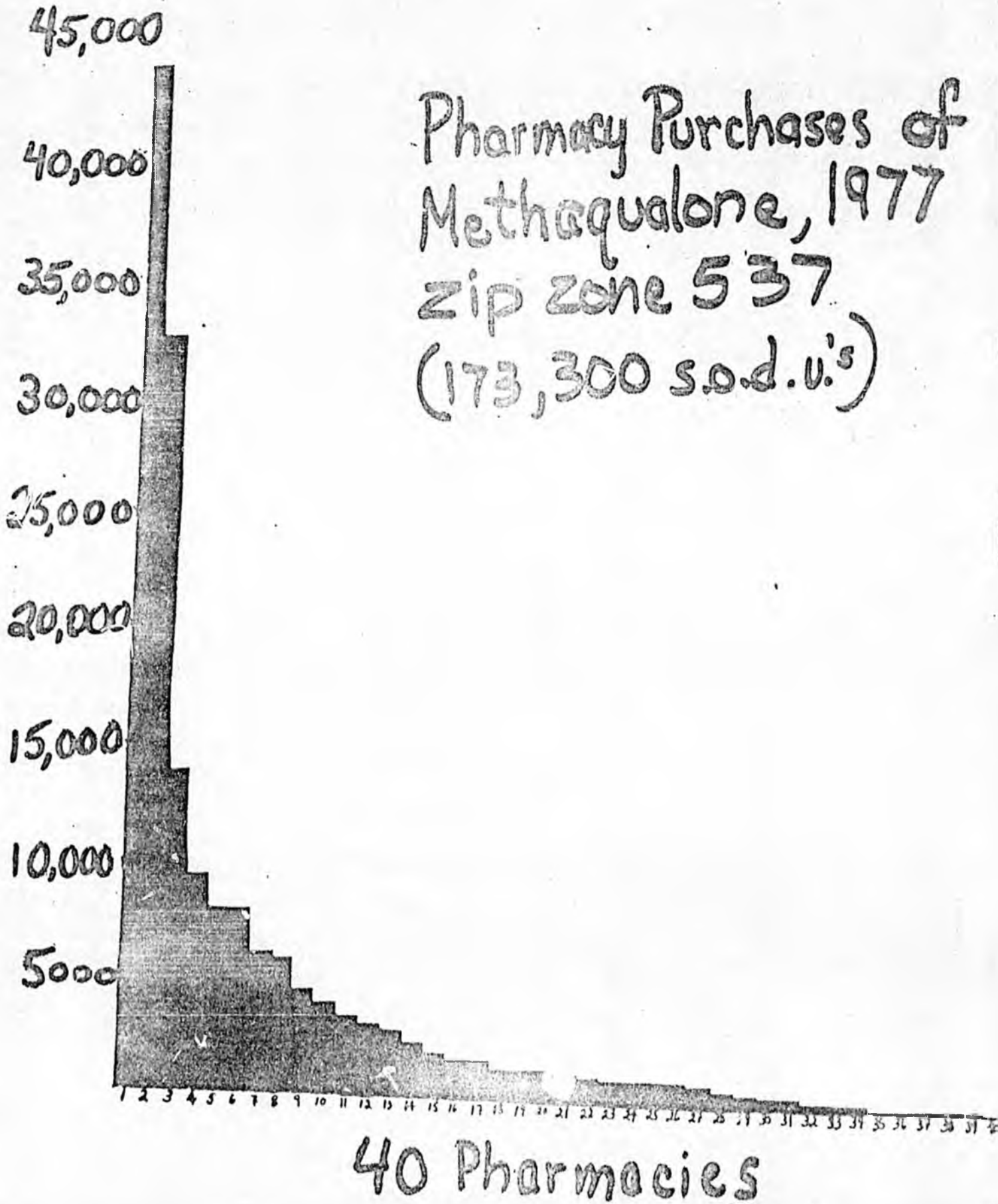
Pharmacy Purchases of
Methaqualone, 1977
Zip zone 548
(27,500 s.o.d.u.s)

SOLID
ORAL
DOSAGE
UNITS

5,000

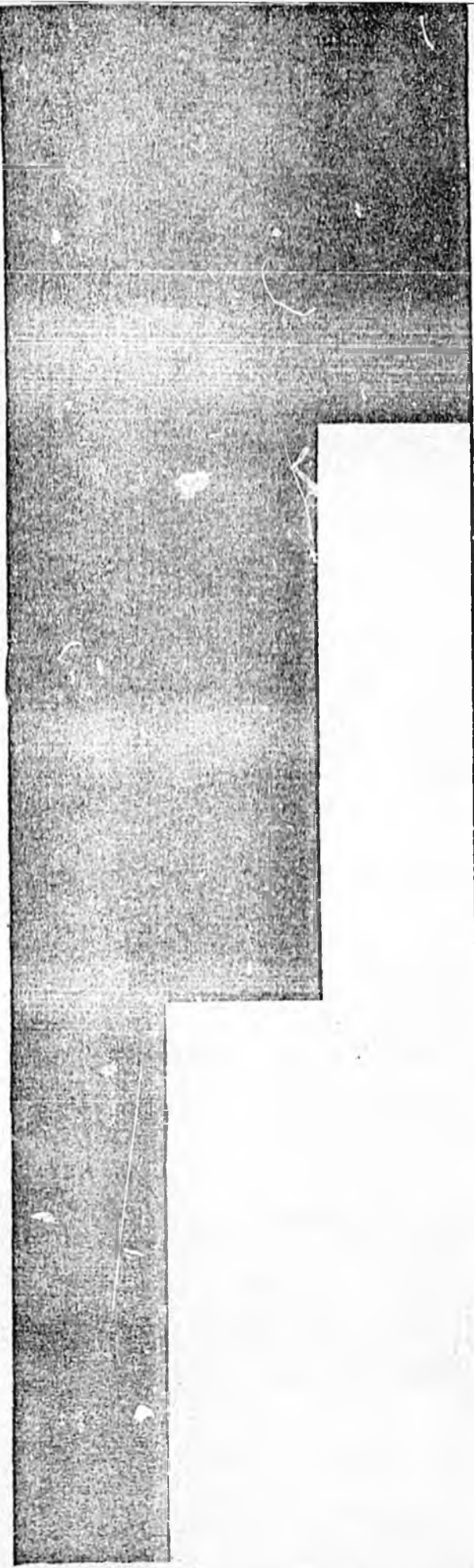
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22

22 PHARMACIES



GRAMS

5,000
10,000
15,000
20,000
25,000
30,000
35,000
40,000
45,000
50,000



Pharmacy Purchases
of Methadone,
300 mg., in Zip Code
Area 537 (Madison,
W.I.), 1975, 1976, 1977.

Source: Drug
Enforcement
Administration

Figure 34

VII Summary of Reactor Panel
Afternoon General Discussion

- Reactor Panel:
- Darold Treffert, M.D., State Medical Society
 - Rudolph Link, M.D., Medical Examining Board
 - Paul Bjerke, Pharmacy Examining Board
 - Ralph Paulick, Wisconsin Pharmaceutical Association
 - Moderator: Karl Marquardt, R.Ph., Controlled Substances Board

Dr. Treffert's reactions to the morning presentation were in regard to the role the State Medical Society (SMS) should take (and is taking) as far as its physician members and the sedative-hypnotic issue. The three areas the SMS can take a part are:

- (1) Education - post-graduate alcohol and other drug abuse education for physicians, including contemporary approaches to insomnia
- (2) Encouragement of peer review/self-regulation as far as ethical considerations of prescribing sedative hypnotics
- (3) Specification of the indications for sedative-hypnotics.

Dr. Link explained that 1/3 of the Medical Examining Board (MEB) cases presently under investigation are related to prescribing of controlled substances. The MEB requires continuing medical education for physicians. Dr. Link would like to see the MEB assist the SMS in determining the appropriate uses of barbiturates (e.g., for epilepsy).

Several of the peaks seen in the data presented are already being looked into by the MEB. However, due process requires very careful investigation before legal action is taken.

Dr. Link asked the audience if anyone could tell him the proper medical usage of methaqualone. There seemed to be consensus that one could not be determined.

The Pharmacy Examining Board (PEB) is also a state regulatory board. Mr. Bjerke thinks the PEB should examine the top five pharmacies that distribute secobarbital. The pharmacist, like the physician, has a responsibility here; the pharmacist should not fill prescriptions known to be improperly prescribed or abused. For example, a pharmacist should not refill methaqualone prescriptions after two months. The "physician-patient-pharmacist" relationship is very important.

Mr. Bjerke stated that the medical practitioner should follow the same dispensing rules as does the pharmacist and the PEB should have the authority to conduct audits on dispensing physicians. This would probably eliminate the few practitioners involved in this unprofessional activity, he said.

According to Mr. Bjerke, the dispensing physicians should be examined just as pharmacies are investigated.

Mr. Paulick, Wisconsin Pharmaceutical Association, expressed his support of the PEB in their concern about these drugs and the continued monitoring of pharmacies.

A two-hour open discussion followed.

Mr. Angarola and Dr. Treffert explored the use of peer pressure and education of physicians.

Ms. Reddin (MEB) responded to Mr. Bjerke's remarks, and agreed that the PEB should regulate physician dispensing. She then asked about the legitimate medical use of barbiturates. Dr. Link explained that barbiturates are not effective except for short periods of time. Dr. Treffert and Dr. Link explained that this is a complex question. Some prescribe these drugs for insomnia and anxiety, and anesthesia is a common usage.

Mr. Marquardt stated that this is a much more complex problem than the amphetamine issue where obesity was clearly not considered a proper indication for amphetamines.

The complexity of this problem was reiterated by Dr. Dahl. She said that there are honest differences of opinion over the barbiturates and the other sedative-hypnotics; some success with the barbiturates has been observed. However, physicians must take a closer look at complaints of, for example, insomnia - if upon closer examination the patient complains of early morning awakening, the problem may be depression which calls for other treatment. Dr. Dahl also said that the sleep laboratory data unfortunately is obtained from an artificial situation.

Dr. Ferguson explained that Dalmane is the only sedative-hypnotic effective over a longer period of time. He also pointed out that the discoveries of practitioners are often not published or disseminated, so some known information may not be available to us.

Dr. Halikas referred to pages 4-5 of the NIDA report which describes the use of the central nervous system depressants for insomnia and emphasized the importance of diagnosis preceding treatment.

Dr. Dahl said that people must realize that anxiety and insomnia are normal reactions to some life situations. We are indoctrinated to turn to pills when something ails us and we need to realize that pharmacological solutions are not always necessary.

In conjunction with this, Dr. Ferguson pointed out that insomnia is a symptom, not a disease.

Dr. Cushman referred to page 93 of the NIDA report and noted the high purchase records. Dr. Ferguson explained that it is very difficult to relate Drug Abuse Warning Network (DAWN) data to prescription data. Dr. Cushman said it would be interesting to know if this same tendency is showing up at medical examiners. Dr. Ferguson then said that it is difficult to tell if the reduction of sedative-hypnotic cases at medical examiners is because of less use or less availability.

One drug abuse population that is presently underserved is women. Mr. Joranson brought up the benefits to women if less sedative-hypnotics are being prescribed. Dr. Treffert agreed that women will benefit more from a decline in use; however, he pointed out that more women are affected by this problem because there is an over-representation of women in the medical system. Dr. Ferguson agreed that the data regarding women and drug abuse must be evaluated carefully.

Mr. Liegel suggested that these drugs should not be stocked in oral dosage units in hospitals. For accreditation, hospitals must have pharmacy and therapeutics committees which monitor issues as this.

Dr. Link emphasized the importance of education for physicians and consumers, while Dr. Cushman and Dr. Dahl told of the importance of pharmacokinetics. Dr. Halikas would like to see continuing medical education (CME) credits specifically required in alcohol and other drug abuse.

Mr. Hannon commended the CSB for its extensive efforts on this and other projects.

Dr. Treffert brought up the regulatory implications of the data presented. Dr. Link emphasized the need for this sound data, rather than hearsay, before the MEB can revoke licenses.

Dr. Cushman pointed out that there are a variety of ways in which people decide what drugs to take and not to take, especially through media.

The problems of "package inserts" were discussed by Dr. Ferguson and Dr. Treffert.

Then, Dr. Treffert discussed the addicted physician. The practicing of prescribing for self and family is now illegal. Mr. Marquardt explained that there are federal and state regulations that prohibit anything other than prescribing in the "usual course of professional practice" and that it is up to the state regulatory boards to interpret the meaning of this. It was stated that a person may just go to a different pharmacy if a pharmacist hesitates to fill a prescription. Mr. Bjerke stated that the PEB should come out with a statement as to what action should be taken if unprofessional conduct is suspected by a pharmacist in regard to prescribing practices. Mr. Paulick explained that pharmacists are reluctant to not fill a prescription but when they have a rather good idea that something wrong is going on, they will call a physician.

Mr. Angarola said that at the federal level, a reduction has already been seen and cooperation exists, so the U.S. Food and Drug Administration will not be scheduling hearings on barbiturates in the near future. Previous to this, Dr. Treffert recommended not interfering since the use of barbiturates is decreasing anyway - there's been a 30% drop in the last year.

Mr. Angarola stated that the President's message expressed that these drugs have a high abuse potential. They are so dangerous that this is why so much time is being spent on them.

Dr. Dahl asked if abuse of methaqualone would continue if it is banned, because of drugs coming in from other countries. Mr. Andersen said that this would probably be the case.

Mr. Ferguson stated that a special NIDA panel on sedative-hypnotics was unwilling to recommend that any of these drugs be banned.

Dr. Treffert summarized the afternoon discussion. He said that there are still questions as to the extent of use, though it is known that this is decreasing. Dr. Treffert emphasized the importance of education and persuasion - or prosecution if necessary. Bans are not necessary at this point, he concluded, but he added that this could change. The Medical Society will continue to accelerate education, knowledge and awareness of barbiturates and sedative-hypnotics.

Dr. Treffert stated that the CSB will continue its annual symposiums, but that the topic of the next one is not yet known. His overall feeling from this meeting was that state agencies seem to be working well together.

Dr. Treffert expressed his appreciation to the federal representatives present.

POSITION PAPER
ON
HOUSE BILL NO. 479

"An act revising the drug laws of the state."

The Department of Health and Social Services endorses and supports the concept of the need to revise and update Chapter 17: Controlled Substances Act. The Department is pleased with the bill's similarity of the schedule of controlled substances in H.B. 479 with its federal counterpart.

The bill though appears to lack recognition of the public health aspects of drug addiction and use. Therefore, the Department would recommend that H.B. 479 could be strengthened by consideration of the following:

1. The bill does not address the matter of treatment. There is little doubt that many of the offenders who would be prosecuted under this legislation would be abusers of drugs in need of help. It would be appropriate to include provisions for such treatment of offenders while they are incarcerated and specially for counselling and treatment services after their confinement is completed. At present the Department of Health and Social Services, Division of Corrections, has little in the way of effective drug abuse treatment, due in part to fiscal constraints.
2. Include a mechanism whereby persons arrested under this act would be afforded an opportunity for pre-sentence screening and diagnosis to determine if habitual or chronic drug abuse or addiction was a contributing factor in the commission of the person's offense. If indicated, and depending upon the severity of the offense, and prior criminal record, the offender may be afforded treatment as a part of his or her sentence at some point while the person is in the custody of the State of Alaska.
3. Since data prepared in conjunction with the development of the Drug Abuse State Plan indicates Alaskans suffer more health problems and death from the abuse of prescription drugs rather than illicit drugs, perhaps H.B. 479 should set forth policies regarding monitoring the distribution of prescription drugs in Alaska paid by the State under Medicaid and General Relief-Medical programs to look for patterns of abuse or improper distribution. The states of Washington, California, Wisconsin, and Illinois have instituted such programs with significant success. Although the institution of such a system could possibly be done by administrative means, the Department sees placing it in law as an advantage for funding and enforcement purposes.
4. Since ethanol C_2H_5OH is the drug present in beverage alcohol - beer, wine, and liquor; and data indicates that alcohol abuse is

the major contributing factor to human suffering, and social costs in Alaska, consideration may be given to its inclusion in H.B. 479 as a Schedule VI Substance. Although regulation of beverage alcohol presently exists in Title 04, the educative value of its mention in the Controlled Substances Act as a potentially harmful drug appears worthwhile.

It would be desirable from the standpoint of public health be to include the recommendations listed above.

APPROVED BY:

Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health and Social
Services

1-21-80
DATE

POSITION PAPER/Department of Health & Social Services

Name	Address & Phone #	Organization	Bill No.
Helen D. Beirne	D H SS 465-3030	DNSS	# HB 479
Commissioner Nichols	Dept of Public Safety		HB 479
Rep Charlie Parr (sponsor)	House Judiciary		
Reggy Berck (Judiciary staff)	420 L St. Suite 502 Anchorage, Ak. 99501	Ak. Judicial Council	HB 479
Teri White (AHS)	279-2526		

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Amphetamines (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd. If no prior convictions conditional discharge is permitted.	0-1 yr. / \$10,000 - 1st. 0-2 yr. / \$10,000 - 2nd. \$2,000 presumptive for 1st. 3 months presumptive for 2nd.	0-1 yr. / \$1000	Misdemeanor	If 2 oz. or more: 20 yrs. / \$10,000 If 50 caps or more or 1/2 oz or more: 10 yrs. / \$10,000 If less than above: 5 yrs. / \$5000
Possession of Hallucinogens (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd. If no prior convictions conditional discharge is permitted.	0-1 yr. / \$2000 \$1,000 presumptive sentence	0-1 yr. / \$1000	Misdemeanor	SAME AS Amphetamines
Possession of Methamphetamines (Parr Sch. II)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd. If no prior convictions conditional discharge is permitted.			Misdemeanor	SAME AS Amphetamines
Possession of Valium (Parr Sch. IV)	0-1 yr. / \$1000	0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd. If no prior convictions conditional discharge is permitted.			Misdemeanor	If 400 caps or more: 20 yrs / \$10,000 If 50 caps or more: 10 yrs. / \$10,000 If less than above: 1 yr. / \$1000

Penalties	SB 65 (1979)	Federal Controlled Substances Act	H.B. 549 (1978)	Existing AK. LAW	Uniform Act	HAWAII LAW
Possession of Hash, Hash oil (Parr Sch. IV) (Hawaii-Sch. III)		0-1 yr. / \$5000 1st. 0-2 yr. / \$10,000 2nd. IF no prior convictions CONDITIONAL DISCHARGE is permitted.	0-1 yr. / \$2000 \$1,000 presumptive SENTENCE		Misdemeanor	If 400 or more cigs. OR 1 oz or more: 20 yrs / \$10,000 If 50 or more cigs. or 1/8 oz or more: 13 yrs / \$10,000 If less than above: 1 yr. / \$1,000

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

JAY S. HAMMOND, GOVERNOR

DIVISION OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

POUCH H 64 - JUNEAU 99811

January 23, 1980

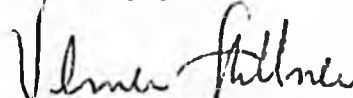
Honorable Thelma Buchholdt
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Document# 2-80

Dear Ms. Buchholdt:

I have compared the drugs listed in House Bill 479 and compared them to FDA Regulations 4/1/79, Chapter II, Drug Enforcement Administration, Department of Justice, § 1308.02, pages 85-90. You will find in the left hand margin of House Bill 479 where the drug is listed in the Federal Schedule if there is a difference. Best wishes in your hearings on House Bill 479.

Sincerely yours,



Verner Stillner, M.D., M.P.H.
Director

VS:prp

cc: Helen D. Beirne, Commissioner
Department of Health & Social Services

Enclosure

Name, address, and official title of the person or agency to whom the controlled drugs are to be delivered, including the name and quantity of the substances desired and the purpose for which intended. The delivery of such controlled drugs shall be ordered by the Administrator, if, in his opinion, there exists a medical or scientific need therefor.

EXCEPTED STIMULANT OR DEPRESSANT COMPOUNDS

- Sec.
1308.31 Application for exception of a stimulant or depressant compound.
1308.32 Excepted compounds.

HEARINGS

- 1308.41 Hearings generally.
1308.42 Purpose of hearing.
1308.43 Waiver or modification of Rules.
1308.44 Initiation of proceedings for rule-making.
1308.45 Request for hearing or appearance; waiver.
1308.46 Burden of proof.
1308.47 Time and place of hearing.
1308.48 Final order.
1308.49 Control required under international treaty.
1308.50 Control of immediate precursors.
1308.51 Pending proceedings.

AUTHORITY: Secs. 201, 202, 501(b), 84 Stat. 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1271, 21 U.S.C. 811, 812, 871(b).

SOURCE: 38 FR 8254, Mar. 20, 1973, unless otherwise noted. Redesignated at 38 FR 26609, Sept. 24, 1973.

NOMENCLATURE CHANGES: 38 FR 26609, Sept. 24, 1974.

SPECIAL EXEMPT PERSONS

§ 1307.31 Native American Church.

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

GENERAL INFORMATION

- Sec.
1308.01 Scope of Part 1308.
1308.02 Definitions.
1308.03 Administration: Controlled Substances Code Number.
1308.04 Submission of information by manufacturers.

SCHEDULES

- 1308.11 Schedule I.
1308.12 Schedule II.
1308.13 Schedule III.
1308.14 Schedule IV.
1308.15 Schedule V.

EXCLUDED NONNARCOTIC SUBSTANCES

- 1308.21 Application for exclusion of a non-narcotic substance.
1308.22 Excluded substances.

EXEMPT CHEMICAL PREPARATIONS

- 1308.23 Exemption of certain chemical preparations; application.
1308.24 Exemption chemical preparations.

GENERAL INFORMATION

§ 1308.01 Scope of Part 1308.

Schedules of controlled substances established by section 202 of the Act (21 U.S.C. 812), as they are changed, updated, and republished from time to time, are set forth in this part.

§ 1308.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substance Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "hearing" means any hearing held pursuant to this part for the issuance, amendment, or repeal of any rule issuable pursuant to section 201 of the Act.

(c) The term "isomer" means, except as used in § 1308.11(d), the optical isomer. As issued in § 1308.11(d), the term "isomer" means the optical, position or geometric isomer.

(d) The term "interested person" means any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act.

(e) The term "proceeding" means all actions taken for the issuance, amendment, or repeal of any rule issued pursuant to section 201 of the Act, commencing with the publication by the Administrator of the proposed rule, amended rule, or repeal in the FEDERAL REGISTER.

(f) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.02 of this chapter.

§ 1308.93 Administration Controlled Substances Code Number.

(a) Each controlled substance, or basic class thereof, has been assigned a "Administration Controlled Substances Code Number" for purposes of identification of the substances or class on certain Certificates of Registration issued by the Administration pursuant to § 1301.44 of this chapter and on certain order forms issued by the Administration pursuant to § 1305.05(d) of this chapter. Certain applicants for registration must include the appropriate numbers on the application as required in § 1301.32(d) and applicants for procurement and/or individual manufacturing quotas must include the appropriate number on the application as required in §§ 1303.12(b) and 1303.22(a).

(b) Except as stated in paragraph (a) of this section, no applicant or registrant is required to use the Administration Controlled Substances Code Number for any purpose.

§ 1308.01 Submission of information by manufacturers.

(a) Each person who manufactures, packages, repackages, labels, relabels, or distributes under his own label any product (including any compound, mixture, or preparation, diagnostic, reagent, buffer, or biological) containing any quantity of any controlled substance (whether such product is itself controlled or is excepted, exempted, or excluded from some or

all controls pursuant to § 1308.21-24 or § 1308.31-32) shall submit information required in paragraph (b) of this section for each such product being manufactured or sold on July 1, 1972. The information should be submitted by registered mail, return receipt requested, to the Assistant Director for Scientific Support, Attention: Label Project, Drug Enforcement Administration, Department of Justice, Washington, D.C. 28083, by August 31, 1972. In the case of new products manufactured after July 1, 1972, or new dosage forms or other unit forms manufactured after July 1, 1972, or changes in information submitted by August 31, 1972, the registrant shall submit the information regarding such item within 30 days after the date on which the manufacture commences or information change occurs. In the case of products, the manufacture of which is discontinued after July 1, 1972, the registrant shall submit notice of such discontinuance within 30 days after the date on which manufacture ceases. In the case of products the manufacture of which was discontinued before July 1, 1972, which are still being sold, the registrant shall submit a notice of such discontinuance with his initial submission.

(b) Two labels or other documents reflecting the following information shall be submitted with reference to each dosage form or other unit form of each item containing any quantity of any controlled substance:

(1) The trade name, brand name, or other commercial name of the product;

(2) The generic or chemical name and quantity of each active ingredient, including both controlled and noncontrolled substances (if any of this information is a proprietary trade secret, please indicate those portions);

(3) The National Drug Code Number assigned to the product, if any; and

(4) The weight (in metric measure) of each dosage unit or the weight (in metric measure) of the controlled substance per 100 grams of finished product for all items containing any quantity of any narcotic controlled substance in solid dosage forms.

SCHEDULES

§ 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Opiates. 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 such isomers, esters, ethers, salts is possible within the specific chemical designation:

(1) Acetylmethadol.....	9601
(2) Alfuprodine.....	9602
(3) Alphacetylmethadol.....	9603
(4) Alphameprodine.....	9604
(5) Alphamethadol.....	9605
(6) Benzethidine.....	9606
(7) Betacetylmethadol.....	9607
(8) Betameprodine.....	9608
(9) Betamethadol.....	9609
(10) Betaprodine.....	9611
(11) Clovazene.....	9612
(12) Dextromoramide.....	9613
(13) Dampremide.....	9615
(14) Diethylthambutene.....	9616
(15) Difenoxin.....	9618
(16) Dimenoxadol.....	9617
(17) Dimepheptandol.....	9618
(18) Dimethylthambutene.....	9619
(19) Dioxaphetyl butyrate.....	9621
(20) Dipipanone.....	9622
(21) Ethylmethylthambutene.....	9623
(22) Etorizene.....	9624
(23) Etoxeridone.....	9625
(24) Furethidine.....	9626
(25) Hydroxyphenidone.....	9627
(26) Ketobemidone.....	9628
(27) Levonoramide.....	9629
(28) Levopropietylmorphan.....	9631
(29) Morphinone.....	9632
(30) Noracetylmethadol.....	9633
(31) Norlevorphanol.....	9634
(32) Normethadone.....	9635
(33) Norpipanone.....	9636
(34) Phenadoxone.....	9637
(35) Phenampromide.....	9638
(36) Phenomorphan.....	9647
(37) Phenopropiandiol.....	9641
(38) Propiandiol.....	9642
(39) Proheptazine.....	9643
(40) Propidine.....	9644
(41) Propylm.....	9641
(42) Racemoramide.....	9645
(43) Trimepridine.....	9646

(c) *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphan.....	9319
(2) Acetylhydrotorphan.....	9051
(3) Benzylmorphine.....	9052
(4) Codeine methylbromide.....	9070
(5) Codeine-N-Oxide.....	9053
(6) Cyrenorphine.....	9054
(7) Desomorphine.....	9055
(8) Dihydromorphine.....	9145
(9) Drotebanol.....	9335
(10) Etorphine (except hydrochloride salt).....	9056
(11) Heroin.....	9700
(12) Hydromorphanol.....	9301
(13) Methylmorphine.....	9302
(14) Methylhydromorphan.....	9304
(15) Morphine methylbromide.....	9305
(16) Morphine methylsulfonate.....	9306
(17) Morphine-N-Oxide.....	9307
(18) Myrophine.....	9308
(19) Nicocodine.....	9309
(20) Nicomorphine.....	9312
(21) Normorphine.....	9313
(22) Pholcodine.....	9314
(23) Thebaine.....	9315

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine.....	7391
Some trade or other names: 4-bromo-2,5-dimethoxy- <i>o</i> -methylphenethylamine; 4-bromo-2,5-DMA.	
(2) 2,5-dimethoxyamphetamine.....	7396
Some trade or other names: 2,5-dimethoxy- <i>o</i> -methylphenethylamine; 2,5-DMA.	
(3) 4-methoxyamphetamine.....	7411
Some trade or other names: 4-methoxy- <i>o</i> -methylphenethylamine; paramethoxyamphetamine; PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine.....	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine.....	7395
Some trade and other names: 4-methyl-2,5-dimethoxy- <i>o</i> -methylphenethylamine; "DOM"; and "STP"	

(6) 3,4 - methylenedioxy amphetamine	7400
(7) 3,4,5-trimethoxy amphetamine	7390
(8) Bufotenin	7433
Some trade and other names: 3 - (β - Dimethylaminoethyl) - 5 - hydroxyindole, 3 - (2-dimethylaminoethyl) - 5 - indole, N, N - dimethylserotonin, 5 - hydroxy - N, N - dimethyltryptamine, mappino.	
(9) Diethyltryptamine	7434
Some trade and other names: N, N - Diethyltryptamine, DET.	
(10) Dimethyltryptamine	7435
Some trade or other names: DMT.	
(11) Ibogaine	7260
Some trade and other names: 7 - Ethyl - 6,6β,7,8,9,10,12,13 - octahydro - 2 - methyl-6,9-methano-5H-pyrido [1',2'] azepino [5,4-b] indole, Tabernanthe iboga.	
(12) Lysergic acid diethylamide	7315
(17) Marijuana	7360
(14) Mescaline	7381
(15) Peyote	7415
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii Lemay</i> , whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.	
(Interprets 21 U.S.C. 812(c), Schedule I(c) (12))	
(16) N-ethyl-3-piperidyl benzilate	7402
(17) N-methyl-3-piperidyl benzilate	7494
(18) Psilocybin	7437
(19) Psilocyn	7431
(20) Tetrahydrocannabinols	7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extracts of <i>Cannabis</i> , sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:	
Δ1 cis or trans tetrahydrocannabinol, and their optical isomers	
Δ6 cis or trans tetrahydrocannabinol, and their optical isomers.	
Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers	
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered)	
(21) Ethylamine analog of phencyclidine	7455
Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE.	
(22) Pyrrolidine analog of phencyclidine	7458
Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine, PCPy, PHP	
(23) Thiophene analog of phencyclidine	7470
Some trade or other names: 1-(1-(2-thienyl)cyclohexyl)pyrrolidine, 2-thienyl analog of phencyclidine, TPCP, TCP.	

(c) *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) mectloqualone	2572
(39 FR 22141, June 20, 1974, as amended at 40 FR 19613, May 7, 1975; 40 FR 28611, July 8, 1975; 41 FR 4016, Jan. 28, 1976; 41 FR 43401, Oct. 1, 1976; 42 FR 15679, Mar. 23, 1977; 43 FR 43295, Sept. 25, 1978)	

§ 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

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

1 Raw opium	9600
2 Opium extracts	9610
3 Opium fluid extracts	9620
4 Powdered opium	9639
5 Granulated opium	9640
6 Tincture of opium	9650
7 Codeine	9190
8 Ethylmorphine	9059
9 Etorphine hydrochloride	9191
10 Hydrocodone	9150
11 Hydromorphone	9260
12 Meperon	9300
13 Morphine	9143
14 Oxycodone	9652
15 Oymorphone	9331
16 Thebaine	

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine (9041) or ecgonine (9180).

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy), 9670.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine	9010
(2) Anileridine	9020
(3) Beztramide	9000
(4) Dihydrocodeine	9120
(5) Diphenoxylate	0170
(6) Fentanyl	0001
(7) Isonitrazodone	9226
(8) Levorphanol	9210
(9) Levorphanol	9220
(10) Melazocine	9240
(11) Methadone	9250
(12) Methadone intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane	9254
(13) Moramide intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid	9802
(14) Pethidine (meperidine)	9230
(15) Pethidine intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	9232
(16) Pethidine intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	9233
(17) Pethidine intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid	9234
(18) Phenazocine	9715
(19) Pimmedine	9730
(20) Racemorphan	9732
(21) Racemorphan	9733

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound,

mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers	1105
(3) Phenmetrazine and its salts	1631
(4) Methylphenidate	1724

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital	2125
(2) Methaqualone	2565
(3) Pentobarbital	2270
(4) Phencyclidine	7471
(5) Phencyclidine immediate form isomers	
(a) 1-phenylcyclohexylamine	7460
(b) 1-piperidinocyclohexanecarbonitrile (PCP)	8603
(6) Secobarbital	2515

[39 FR 22142, June 20, 1974, as amended at 40 FR 6780, Feb. 14, 1975; 40 FR 10456, Mar. 6, 1975; 41 FR 26568, June 28, 1976; 41 FR 43401, Oct. 1, 1976; 42 FR 15680, Mar. 23, 1977; 43 FR 21325, May 17, 1978]

§ 1308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1495
- (2) Benzphetamine..... 1228
- (3) Chlorphentermine..... 1645
- (4) Clortermine..... 1647
- (5) Mazindol..... 1605
- (6) Phendimetrazine..... 1615

(c) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
 - (i) Amobarbital..... 2125
 - (ii) Secobarbital..... 2315
 - (iii) Pentobarbital..... 2270
 or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
 - (i) Amobarbital..... 2125
 - (ii) Secobarbital..... 2315
 - (iii) Pentobarbital..... 2270
 or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

- (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof..... 2100
- (4) Chlorhexadol..... 2510
- (5) Glutethimide..... 2550
- (6) Lysergic acid..... 7300
- (7) Lysergic acid amide..... 7310
- (8) Mallypylon..... 2575
- (9) Sulfonethylnmethane..... 2600
- (10) Sulfonethylmethane..... 2605
- (11) Sulfonmethane..... 2610

(d) Nalorphine 9400.

(e) *Narcotics drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1.8 grams of cocaine per 100 milliliters or not more than 30 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium..... 9803

- (2) Not more than 1.8 grams of cocaine per 100 milliliters or not more than 30 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9804
- (3) Not more than 300 milligrams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium..... 9805
- (4) Not more than 300 milligrams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts..... 9806
- (5) Not more than 1.8 grams of dihydrocodonone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts..... 9807
- (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9808
- (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9809
- (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts..... 9810

[39 FR 22142, June 20, 1974, as amended at 41 FR 43401, Oct. 1, 1976; 43 FR 3359, Jan. 25, 1978]

§ 1308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1 milligram of difenoxin (DEA Drug Code No. 9618) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbitol.....	2145
(2) Chloral hydrate.....	2460
(3) Chloral hydrate.....	2465
(4) Chloridiazepoxide.....	2744
(5) Clonazepam.....	2737
(6) Clorazepate.....	2768
(7) Diazepam.....	2765
(8) Ethchlorvynol.....	2540
(9) Ethnamate.....	2545
(10) Flurazepam.....	2767
(11) Lorazepam.....	2005
(12) Mebutamate.....	2800
(13) Meprobamate.....	2820
(14) Methohexital.....	2264
(15) Methylphenobarbital (mephobarbital).....	2250
(16) Oxazepam.....	2835
(17) Paraldehyde.....	2505
(18) Petrichoral.....	2591
(19) Phenobarbital.....	2285
(20) Prazepam.....	2764

(d) *Fenfluramine.* Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(1) Fenfluramine.....	1670
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(e) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion.....	1600
(2) Phentermine.....	1640
(3) Pemoline (including organometallic complexes and chelates thereof).....	1530

(f) *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino - 1, 2 - diphenyl - 3 - methyl - 2 - propionoxybutane).....	8121
(2) Pentazocine.....	9709

[39 FR 22143, June 20, 1974; 40 FR 4150, Jan. 28, 1975, as amended at 40 FR 24001, June 4, 1975; 41 FR 43402, Oct. 1, 1976; 41 FR 55176, Dec. 17, 1976; 42 FR 8636, Feb. 11, 1977; 42 FR 54546, Oct. 7, 1977; 43 FR 38383, Aug. 28, 1978; 44 FR 2170, Jan. 10, 1979]

§ 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of diffenoxin (DEA Drug Code No. 961B) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Loperamide 8125.

(39 FR 22143, June 20, 1974, as amended at 42 FR 25499, May 18, 1977; 43 FR 38383, Aug. 28, 1978)

EXCLUDED NONNARCOTIC SUBSTANCES

§ 1308.21 Application for exclusion of a nonnarcotic substance.

(a) Any person seeking to have any nonnarcotic substance which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, excluded from any schedule, pursuant to section 201(g) (1) of the Act (21 U.S.C. 811 (g) (1)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537.

(b) An application for an exclusion under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the substance for which exclusion is sought; and

(3) The complete quantitative composition of the substance.

(c) Within a reasonable period of time after the receipt of an application for an exclusion under this section, the Administrator shall notify the applicant of his acceptance or non-acceptance of his application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth as to be readily understood.

If the applicant desires, he may amend the application to meet the requirements of paragraph (b) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the FEDERAL REGISTER his order on the application, which shall include a reference to the legal authority under which the order is issued and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the FEDERAL REGISTER. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(d) The Administrator may at any time revoke any exclusion granted pursuant to section 201(g) of the Act (21 U.S.C. 811(g)) by following the procedures set forth in paragraph (c) of this section for handling an application for an exclusion which has been accepted for filing.

§ 1308.22 Excluded substances.

The following nonnarcotic substances which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, are excluded from all schedules pursuant to section 201(g) (1) of the Act (21 U.S.C. 811(g) (1)):

To: Representative Charlie Parr, Chairman
House Judiciary Committee
From: Margaret W. Berck, Administrative Assistant *MWB*
House Judiciary Committee
Date: August 2, 1979

OVERVIEW OF HB 479

Introduction

Generally, the bill incorporates the basic principles established in the Federal Controlled Substances Act of 1970 and the Uniform Controlled Substances Act adopted for consideration by the various states by the Uniform Commissioners of State Laws. Similar drug legislation has been passed by some 44 states.

The basic goals and elements of this legislation are: (1) to list all the substances which require control and to divide them into several categories according to their dangers to society; (2) to establish a committee to factually determine the need for adjusting these schedules when, for example, new scientific information becomes available and/or new substances are discovered; (3) to provide the most serious penalties for illicit trafficking in drugs, particularly in connection with distribution to minors while classifying simple use possession of all substances as a misdemeanor; (4) closely regulate the legitimate drug industry to prevent diversion of controlled substances into illicit markets; and (5) promote research into drug issues in general and education of society on the dangers of drug abuse.

HB 479 differs from the federal and model state legislation in two primary respects. First, in determining the penalty to be given in either a possession or distribution offense, the quantity of the controlled substances involved is a decisive factor. The larger the amount possessed or distributed, the higher the penalty. In addition, the bill does not establish a separate offense for possession with intent to distribute. Because of difficulties of proof, the offense of intent to sell was eliminated in favor of establishing varying penalties based on the amount of the controlled substance possessed. Second, HB 479 sets out slang terms for included controlled substances to help lay persons understand the legislation. However, the use of slang terms has no effect on the prosecution of a particular drug offense. Another key feature of HB 479 is the fact that it ties its terminology and penalty system into the new criminal code.

Key Provisions

1. Controlled Substances Advisory Committee: HB 479 establishes a committee in the Department of Law with the *Chairman*. This provision follows

the federal law in which a similar committee is established in the U.S. Justice Department with the U.S. Attorney General serving as Chairman. Under HB 479, other members of the committee are the Commissioner of Public Safety, the Commissioner of Health and Social Services, a private pharmacist and a private criminal defense attorney, both of which are to be appointed by the governor.

Decisions of the committee are subject to close legislative scrutiny. Any regulation sought to be adopted by the committee would have to be submitted to the legislature which then would have 56 days to annul the proposed regulation through the passage of a bill. Without passage of a bill by both the House and Senate, the proposed regulation would become effective. However, once a proposed regulation was annulled by the legislature, the committee would be prohibited from raising the same issue again for three years. Finally, any change in the scheduling of controlled substances contained in the federal law would not automatically become law in the State of Alaska. In cases of changes in the federal schedules, the state advisory committee would have to hold hearings to determine whether a similar change would be appropriate for Alaska. And if the committee adopted the federal alteration, the proposed regulation would have to receive the same legislative oversight as outlined previously.

2. Criteria for Scheduling of Substances: HB 479 establishes six categories of controlled substances. These categories are enumerated as Schedule I through Schedule VI. Except for Schedule VI, which includes only marijuana, each schedule contains numerous substances. The most dangerous substances are contained in Schedule I, less dangerous substances are contained in Schedule II, and so on down to Schedule VI. The schedule assigned to a particular controlled substance is significant in determining the penalty for any drug offense. The higher the schedule, the greater the penalty.

Since future adjustments to the schedules are to be determined by the advisory committee with legislative oversight, HB 479 sets forth specific criteria for making such decisions. The bill specifies the "danger or probable danger" of any substances as the predominant criteria with a number of sub-criteria similar to but more inclusive than those in the uniform act. But unlike the uniform act, which follows a medical classification system HB 479 adopts a more simple public safety classification system much like the State of Hawaii.

Under this classification system, a separate schedule was created for marijuana. Such an approach was thought more logical than the five-schedule system utilized in the federal and uniform act, in which marijuana, heroin and LSD are contained in the same schedule because they lack any acceptable medical use. But because of this placement, both the federal and uniform acts must ultimately distinguish among the narcotic,

non-narcotic and hallucinogenic substances contained in the same schedule. However, in the public safety classification approach, the necessity of further classifying substances into such categories is avoided. Aside from these variations, the schedules provided in HB 479 are substantially the same as those established in the federal and uniform acts.

3. Offenses and Penalties: HB 479 establishes four basic drug offenses, including distribution of a controlled substance to a minor, manufacturing of a controlled substance, distribution of a controlled substance to an adult and possession of a controlled substance. Additionally, the bill creates certain other offenses such as possession of marijuana while operating a motor vehicle, maintaining a shop or airplane for use in drug trafficking and obtaining possession of a controlled substance by misrepresentation or fraud.

The most severe penalties contained in HB 479 would be levied against those over 18 years of age who distribute controlled substances to anyone under 18, reflecting society's special interest in protecting the young from those who encourage or induce them to experiment with drugs. In each category, the offense of distributing to a minor receives the most serious sanctions, except that the recipient must be at least three years younger than the distributor. The three-year difference was included to prevent imposition of stiffer penalties in a case where, for example, a 19-year-old college student gives marijuana cigarettes to his 17-year-old roommate. In this situation, it was felt there was not the element of seduction so often found in cases where the distributor and recipient were far apart in age.

Both the federal law and the uniform act include the offense of manufacturing a controlled substance together with distribution and possession with intent to distribute a controlled substance for penalty purposes. Hence, the penalty is the same with regard to manufacturing or distributing a particular substance. However, HB 479 treats the manufacturing offense separately and subjects manufacturing to stiffer penalties because of the particular dangers associated with illicit drug laboratories and the substances involved. But in order to justify these heavier penalties, the offense of manufacturing set forth in HB 479 is limited to those who manufacture for other than their own personal use. The offense, however, does include cultivation of marijuana for other than personal use.

Under HB 479 the offenses of distribution to an adult and simple possession have varying penalties dependant upon the amount of the controlled substance involved in the offense. Current Alaska law, the Federal Controlled Substances Act, and the Uniform Act make no such differentiations. The approach taken in HB 479 attempts to provide some indicia of the defendant's role in the drug world. This approach permits more severe sanctions to be applied to the drug dealers involved in large scale trafficking operations. A similar

emphasis is also achieved by making simple possession of small amounts of each particular controlled substance a misdemeanor. Under both the Federal Controlled Substances Act and the Uniform Act, simple possession of any amount of a controlled substance is a misdemeanor. Unlike those acts, HB 479 establishes both felony and misdemeanor offenses for simple possession dependant upon the amount of the controlled substance involved in the offense.

4. Regulation of Legitimate Drug Industry: HB 479 requires the same reporting information by the drug industry as currently mandated by the federal law. Even though it was felt that the state has an interest in obtaining even more information, it was not believed necessary to demand additional reporting requirements. Under HB 479, reporting information must be submitted to the Commissioner of Health and Social Services. Existing Alaska law lodges regulatory responsibility with the Commissioner of Health and Social Services for depressant, hallucinogenic and stimulant drugs and gives the Board of Pharmacy responsibility for narcotic drugs. It was felt that this monitoring could more efficiently be done by one agency.



CITY of BETHEL

P. O. Box 388 • Bethel, Alaska 99559

543-2297 — Area Code 907

Robert Buttane
Phillip's Alcoholism Treatment Center

January 23, 1980

Commissioner Helen Beirne
Dept. of Health and Social Services
Pouch H-01
Juneau, Alaska 99811

Dear Dr. Beirne,

I am writing to express my appreciation for the remarks you made to the legislature on HB-479. Your desire to include provisions for treatment and rehabilitation services to those incarcerated for drug related offenses in this bill has my full support.

An effective program of diagnosis, counseling and rehabilitation would provide a valuable supplement to the states effort to control the problems of drug abuse.

Sincerely,

Robert Buttane
Program Director

cc: Representative Charlie Parr
Representative Thelma Buchholdt.

RB/mh



Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

January 25, 1980

FAIRBANKS LEGISLATIVE
INFORMATION OFFICE
Room 250, Building F
101 College Road
Fairbanks, Alaska 99701
(907) 452-4448

Rep. Thelma Bucholdt
Chairperson: H.E.S.S.

Enclosed is the copy of Mr. Strauss's speech that you requested on the teleconference concerning the drug bill #HB479.

Sincerely,

A handwritten signature in cursive script that reads "Maxine".

Maxine Walton
Moderator FBX/LIO

January 25, 1980

Joe H. Strauss
1 mile Persinger Dr.
Fairbanks, Alaska

House Bill 479

I would like to begin by saying that House bill 479 is, in my opinion, a superior bill to the present legislation concerning drugs in this state. However being better does not make it perfect and I feel that there are ambiguities and inconsistencies and in my opinion outright mistakes in this bill. I will try to address these in the order they appear in the bill.

It is my understanding of the bill that the classification of drugs into sections 1-6 basically follows guidelines and standards set up by the Federal Government. However I feel that there is something inconsistent about classifying the compound T.H.C. as as schedule II substance and hashish as a schedule IV substance when marijuana is classified as a schedule VI substance. This apperas to be the only case in which the derivitives of a ^{substance} drug are classified as more dangerous than the ^{substance.} ~~compound~~ they are derived from.

Also it would appear that marijuana is classed by itself as the least dangerous of classified substances. However I have with me an article which appeared in the Fairbanks Daily News Miner only tuesday of this week which indicates that in the minds of many of our countrys best medical people, marijuana may be much more dangerous than some people now contend. Wouldn't it be much better to classify it as a more dangerous drug until we know for sure? And at least as dangerous as T.H.C., the active compound found in marijuana?

Thirdly, while the stated goal of this bill is to provide more stringent penalties for distribution of drugs. It classifies distribution of small amounts of marijuana in the most common amount found in the distribution of this drug as only a class B misdemeanor essentially giving the common pusher a free hand.

Fourth, it is the stated purpose and accomplished fact of this bill to make possession of small amount of any drug a misdemeanor. I don't think I need to remind our legislators of the effect the common possession of drugs by large segments of a society has on the society as a whole. They need only look to countries where the possession of drugs has been tolerated in the past to see this effect. Do we really wish this sort of thing on ourselves as a whole? At least when a substance is controlled its effects can be contained in a small segment of society.

This bill also makes it completely legal, as I read it, for a person to possess any amount of marijuana up to one pound. I don't know if Mr. Parr was aware of how much a pound of marijuana is when he wrote this bill, but it is my understanding that this is far more than what the average user of marijuana would consume in a month. Ladies and Gentlemen, few of us keep more food in our homes than we can consume in a month, yet this bill makes it legal to keep more of a drug classed as dangerous in our homes that would be consumed in a month. Does this seem resonable or responsible?

On the humorous side, it might be noted that while this bill would make it legal to posses up to a pound of marijuana - if a person who did so owned a home where he kept said marijuana (section 17. 17. 380) makes owning that home a felony. Another inconsistency.

Sixth. This bill makes the possession or use of any amount of marijuana while operating a vehicle illegal and this is good. However, I believe more strict penalties should be designated for this and it should at least carry the same mandatory sentencing as OMVI does.

Seventh. While this bill does make the public display or use of marijuana and the possession of it by a minor illegal, in neither case does it classify the violation or provide a penalty for it. To me this is like telling your child not to do something but not punishing him when he does. Or perhaps a better illustration would be to compare it to Salt 2.

In conclusion let me reiterate that while we feel that this bill is better than the drug laws we have at present we still feel that if we are to prevent the moral degeneration of our society, we must have more stringent penalties for the possession and distribution of all drugs.

Doctors debate marijuana dangers

By JANET STAIHAR
Associated Press Writer

WASHINGTON—People who smoke marijuana are endangering their brain, lungs and reproductive and immune systems, says a Columbia University medical professor. But a Harvard professor argues frequent marijuana use does not seriously damage the mind or body.

The two were appearing today before a Senate subcommittee, examining the health effects of marijuana.

The hearing of the Judiciary Committee's subcommittee on criminal justice was called by Sen. Charles McC. Mathias Jr., R-Md., who is re-evaluating his past support for a Senate move to lessen the criminal penalties for marijuana possession. A Mathias spokesman, asking not to be named, said the senator feels that in the past few years, there has been new medical evidence on marijuana's health hazards.

Dr. Gabriel G. Nahas, professor of anesthesiology at the Columbia University College of Physicians and Surgeons, said in prepared testimony that marijuana harms the brain, the reproductive system, the lungs and the body's immune system.

"In man, marijuana smoking decreases sperm production . . . and is associated with an increased incidence of abnormal forms of sperm," said Nahas.

"In women," he said, "marijuana smoking is associated with a higher incidence of shorter menstrual cycles . . . and a cycle without an ovum."

Nahas said children and teen-agers are the most vulnerable to marijuana's harmful effects because their brain and hormone system are still developing.

The Columbia doctor said at least five groups of people should be warned against using marijuana: people with lung or heart disorders, adolescents, women of child-bearing age, epileptics, and people with a tendency toward schizophrenia and mental illness.

But Dr. Lester Grinspoon, associate professor of psychiatry at Harvard Medical School, said, "The chronic use of marijuana does not do serious damage to the body or mind."

In prepared testimony, he said marijuana is "markedly safe" compared with alcohol and drugs. He also discounted researchers who say it permanently alters the mind or personality.

The Senate will likely vote this year on an overall proposal to revise the federal criminal code, part of which contains a section softening the penalties for the possession of small amounts of marijuana.

Under current law, possession of small amounts of marijuana is punishable by up to a year in prison plus a \$5,000 fine for the first offense. Subsequent offenses may bring up to two years in prison and a maximum \$10,000 fine.

MRS. BUCHHOLDT/MR. CHATTERTON

I WAS THE THIRD FAIRBANKS PERSON TO TESTIFY AT THE HEARING TODAY, AND I MUST APOLOGIZE FOR MY INCOHERENT TESTIMONY. I'M NEW AT SPEAKING, BUT I WILL SOON BE BETTER.

THERE ARE SEVERAL PROVISIONS IN THIS BILL THAT I WOULD LIKE TO ADDRESS. FIRST, I DO NOT LIKE THE IDEA OF GRADUATING SENTENCES TO MATCH GROWING STOCKPILES OF DRUGS. IS IT REALLY RESPONSIBLE TO SAY THAT 'X' AMOUNT IS REAL BAD, BUT THAT 'Y' AMOUNT IS JUST BAD. YOU ARE DEALING WITH THE LIMITS A ILLEGAL OPERATION WILL OPERATE IN. THAT OPERATION WILL NOT CEASE, BUT WILL CHOOSE THE AVENUE OF LEAST RESISTANCE. I WOULD LIKE TO SEE THE SOURCE OF THE PRODUCT DRIED UP, WITHOUT TOO MUCH HARM TO THE CONSUMER.

I RECOMMEND THAT THERE SHOULD LEGALLY BE TWO AMOUNTS ASSIGNED TO A GIVEN DRUG. ONE AMOUNT BEING DEFINED AS THE AMOUNT OF NORMAL CONSUMPTION AND THE OTHER BEING DEFINED AS ANY AMOUNT OVER THE PREVIOUS AMOUNT. A BY-PRODUCT OF THIS SYSTEM IS THE FACT THAT A PERSON WOULD NO LONGER HAVE TO PROVE INTENT TO SALE. A PERSON ARRESTED WITH ANY AMOUNT OVER THE AMOUNT OF CONSUMPTION WOULD BE GUILTY OF A CLASS C FELONY. WITH THE STIPULATION THAT THAT PERSON SERVE A MANDATORY FIVE YEARS. A PERSON ARRESTED WITH THE DEFINED AMOUNT OF CONSUMPTION WOULD RECEIVE A LIGHT SENTENCE, SAY A CLASS B MISDEMEANOR. A SECOND OFFENDER WOULD HAVE TO DEALT WITH HARSHER IN BOTH CASES. I REALIZE THAT THIS MAY SOUND SOMEWHAT HYPOCRITICAL IN VIEW OF THE ABOVE PARAGRAPH. BUT I DO NOT HONESTLY PERCEIVE OF A ORGANIZATION PUSHING A PRODUCT ONE OR TWO PILLS AT A TIME. HOPEFULLY, AS A BY-PRODUCT OF INCREASED RESTRICTIVENESS AND THE SLOWER TIME OF MOVEMENT FOR THE PRODUCT, THE COST WOULD ALSO RISE. THIS COULD FORCEFULLY ASSIST SOME OF OUR GOOD PEOPLE OUT OF THE DRUG CULTURE.

SECONDLY, I WOULD LIKE TO ADDRESS SEC. 17.17.200. THIS MINOR PROVISION IS DEFINITELY A PAPER TIGER. THIS BILL, UNDER SECTION 17.17.900 DEFINES A

OUR CURRENT DRUG PROBLEM COULD BE A BY-PRODUCT OF THE BIGGEST PROBLEM THAT OUR INCREASED TECHNOLOGY HAS GIVEN US...TIME.

IN CLOSING, LET US LOOK TO THE FUTURE. DOES NOT THE USE OF DRUGS TO ESCAPE REALITY REVEAL A DETERIORATION OF OUR SOCIETY. IS IT INDICATIVE OF A WEAKENING OF OUR NATIONS CHARACTER AND FORTITUDE, NOT ALONE TURNING AWAY FROM OUR CREATOR DRUG ABUSE IS NOT ENLIGHTENMENT, IT IS ESCAPISM. TO PUT IT IN PERSPECTIVE, MY QUESTION IS, WHAT HAPPENS AFTER I EXERCISE MY RIGHT TO INGEST A DRUG? DO I STILL KNOW THE DISTINCTION BETWEEN GOOD AND EVIL NOW THAT MY JUDGEMENT IS IMPAIRED? AM I EVEN CAPABLE OF DETERMINING IF MY JUDGEMENT IS IMPAIRED? YET, IF I'M NOT CAPABLE OF REASON AND JUDGEMENT, THEN I'M NO LONGER SUPERIOR TO A COMMON ANIMAL. IN OUR HEARTS WE KNOW THE ANSWER.

THE LORD GAVE US A DECENT PLACE TO LIVE, LET US KEEP IT THAT WAY.

SINCERELY,

RIC L. ADAMS

415 LAKEVIEW TRAILER COURT
FAIRBANKS, ALASKA 99701
HOME PHONE #456-8078

THANKFULLY IT IS NOT NEEDED, THE OFFENSES ARE DEFINED BY THE AMOUNTS IN PREVIOUS PROVISIONS.

I DO HAVE TWO OTHER RECOMMENDATIONS: ONE; A RIDER, SIMILAR TO PRESENT FISH AND GAME REGULATIONS, BE INSERTED TO ALLOW FOR FORFEITURE OF PERSONAL PROPERTY THAT WAS USED WHILE ENGAGED IN ILLEGAL DRUG ACTIVITIES. TWO; A SECOND RIDER, SIMILAR TO SEC. 17.12.120, REHABILITATION, BUT REVISED TO ADDRESS ONLY ADDICTS SERVING THEIR DRUGS. THIS PROVISION SHOULD ALLOW FOR A MEDICALLY PROVEN ADDICT TO BE PUT IN THE CARE OF A DRUG REHABILITATION CENTER. UPON GRADUATION, SAID PERSON SHOULD BE REWARDED WITH THE ERASING OF THE RECORD OF THE ARREST THAT ORIGINALLY PUT HIM IN THE CENTER. THIS PERSON WOULD THEN HAVE THE HELP NEEDED TO BREAK HIS HABIT IF HE WANTED TO. IF NOT, SAID PERSON IS A THREAT AND SHOULD BE DEALT WITH ACCORDINGLY.

IN RETROSPECT LET ME SAY THAT WHEN I SPEAK OF DRUGS I INCLUDE MARIJUANA. I RECOGNIZE THAT GRASS IS THE LESSER OF THE EVILS. AT ONE TIME IN MY LIFE I SMOKED QUITE A BIT OF GRASS, AND PLAYED WITH OTHER DRUGS AS WELL. TO ANSWER MR. CHATTERTON'S QUESTION, A OUNCE IS WHAT WE WOULD ALWAYS BUY FOR PERSONAL USE. WHEN WE WOULD GET LOW ON OUR SUPPLY WE WOULD BUY ANOTHER OUNCE, ECT.

THE BIGGEST EVIL IN MARIJUANA IS ITS WIDESPREAD ACCEPTANCE AND THE PROBLEMS OF ENFORCEMENT THAT ACCOMPANY THAT ACCEPTANCE. I BELIEVE THAT GRASS IN ITSELF IS NO GREAT DANGER, BUT IT PUTS YOU IN A ENVIRONMENT WITH DIFFERENT PEOPLE WHO COULD BE A DANGER TO YOU. MRS. JAN TAYLOR'S TESTIMONY ABOUT THE CHILD WHO HAD STARTED TO SMOKE GRASS AND THE RESULTING DROP IN HIS ACADEMIC ACHIEVEMENT, IS INDICATIVE OF WHAT I'M TRYING TO SAY. I DO NOT BELIEVE THAT THE GRASS ITSELF WAS THE CAUSE OF HIS LOWER SCORES, BUT THE ATTITUDE THAT COMES WITH THE DRUG. FOR LACK OF A BETTER DEFINITION, I WILL CALL IT A SEMI-REBELLIOUS, CARE-FREE ATTITUDE. THE SWORD OF PEER PRESSURE CUTS A BIG SWATH AMONG PEOPLE. PEOPLE DO NOT NEED GRASS AND IT SHOULD BE ABLISHED.

MINOR AS A PERSON UNDER 18 YEARS OF AGE. WE CAN ALMOST REST EASY, KNOWING THAT A INTELLIGENT DISTRIBUTOR CAN FIND SOMEONE IN HIS SUB-CULTURE OF A AGE YOUNG ENOUGH TO NOT ONLY SUPERSEDE THIS PARER BARRIER, BUT TO DO IT LEGALLY. HERE AGAIN IS IT RESPONSIBLE TO SAY, (FOR EXAMPLE) THAT IT IS WRONG FOR A 30 YEAR OLD MAN TO SELL DRUGS TO A HIGH SCHOOL STUDENT. BUT THEN TURN A-ROUND AND ALLOW THIS SAME 30 YEAR OLD MAN DELEGATE HIS OBJECTIVE TO SOMEONE YOUNGER.

I HAVE A RECOMMENDATION, WE SHALL DRAW A LINE. FIRST, LET US REDEFINE THE AGE OF A MINOR. THIS NEW BRACKET WOULD BE "UNDER 19 YEARS OF AGE". HOPEFULLY THIS WOULD PLACE ALL HIGH SCHOOL STUDENTS IN THE CATEGORY OF MINOR FOR THE CONSIDERATION OF THIS CHAPTER. NOW, ANY ADULT, SELLING TO ANY MINOR A CONTROLLED SUBSTANCE, WILL BE GUILTY OF A CLASS B FELONY. WITH A FIDEI STIPULATING A MANDATORY 7 YEARS.

WE MUST REMEMBER THAT THE YOUTH MARKET IS A GROWING (sic) MARKET. HABITS AND PREFERENCES DEVELOPED NOW CAN LAST A LIFETIME. IT MUST BE STOPPED.

THIRD, I WOULD LIKE TO ADDRESS SEC. 17.17.400 OFFENSES DEFINED BY AMOUNTS. IN RESPECT TO THIS BILL, THIS PROVISION DEFINITELY NEEDS CLARIFICATION. YOU CANNOT PLEAD A LOWER CLASS OF OFFENSE THAN THAT OFFENSE WHICH IS ESTABLISHED BY THE EVIDENCE. BECAUSE IT IS THE EVIDENCE THAT ESTABLISHES THE OFFENSE, PERIOD. AND IN DIRECT REBUTTAL TO THE WORDING OF THAT SECTION, IF A LOWER CLASS OF OFFENSE IS ESTABLISHED BY THE EVIDENCE, THE AMOUNT IN QUESTION (READ EVIDENCE) CANNOT BE LARGER THAN THE AMOUNT WHICH WOULD MAKE THE OFFENSE A HIGHER CLASS OF OFFENSE, BECAUSE IT ESTABLISHED THE LOWER CLASS OF OFFENSE. (IN THE FIRST PLACE). I HAD THE HARDEST TIME TRYING TO LOGICALLY DECIPHER THIS PROVISION UNTIL I REALIZED THAT IT IS IMPOSSIBLE. THIS PROVISION MUST BE ABOLISHED, IF FOR NO OTHER REASON THAN THE CONFUSION IT WILL INITIATE.


HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM

February 26, 1980

TO: Representative Thelma Buchholdt
Chairperson, HESS

Committee Members Munson, Hurlbert, Miles, Barnes,
Beirne and Chatterton

FROM: Jan Erickson  Issues Analyst

RE: California Drug Laws
Research Request No. 47

Enclosed please find as requested a summary of the California drug laws (California Uniform Controlled Substances Act, Sections 11000 - 11835, with amendments). Schedules for the drugs as well as key definitions are included with the attached relevant statutes.

A summary of the 1972 act is also included for comparison with the amended version of 1977-78. The amendments significantly alter the earlier act insofar as penalties are often not specified, nor is there much distinction for repeat offenses. Additional minor amendments from 1979 are being sent from the California Attorney General's office. (A single reference copy of the Act and amendments has been placed with the staff for your use.)

If you should have any questions concerning these materials, please do not hesitate to contact me.

JF/bf
Encls.

CALIFORNIA UNIFORM CONTROLLED SUBSTANCES ACT

PENALTIES FOR CERTAIN OFFENSES*

Brief Summary

1. Unlawful Possession.

- A. Heroin -- Punishment by imprisonment, no specified terms.
(HS 11350) No distinction as to repeat offenders. Fine:
up to \$50,000.
- B. Cocaine -- Punishment by imprisonment, no specified terms.
(HS 11350) No distinction as to repeat offenses and penal-
ties.
- C. Marijuana -- Possession of any amount of concentrated cannabis,
(HS 11357) not less than one year in county jail or \$500 fine
or both. Possession of less than 1 oz. of mari-
juana \$500 fine and release, repeat offenders
rehabilitated.
- D. Amphetamines -- Not more than 1 year county jail or state prison.
(HS 11377)
- E. Barbiturates -- Not more than 1 year county jail or in state
(HS 11377) prison.

2. Unlawful Possession for Sale.

- A. Heroin -- Punishment by imprisonment for 2, 3 or 4 years.
(HS 11351) No distinction for repeat offenses and specific
penalties. Fine of up to \$50,000.
- B. Cocaine -- Punishment by imprisonment for 2, 3, or 4 years.
(HS 11351) No distinction for repeat offenses.
- C. Marijuana -- Punished by imprisonment, no specified terms.
(HS 11359)
- D. Amphetamine -- Punishment by imprisonment, no specific terms.
(HS 11378)
- E. Barbiturate -- Punished by imprisonment, no specified terms.
(HS 11378)

3. Unlawful Transportation, Sale, Administration, etc.

- A. Heroin -- Punished by imprisonment for 3, 4, or 5 years.
(HS 11352) Fine of up to \$50,000 imposed in addition.
- B. Cocaine -- Punishment by imprisonment for 3, 4, or 5 years.
(HS 11352)
- C. Marijuana -- Punishment by imprisonment for any amount 2, 3
(HS 11360) or 4 years. Less than 1 oz. fine of \$100 and
released.

* In addition to terms of imprisonment, trial court may impose a fine up to \$20,000 for each offense under Sections 11350, 11351, 11353, 11355, 11359, 11360, 11361.

3. Unlawful Transportation, Sale, Administration, etc. (Con't.)

D. Amphetamines -- Same as barbiturates.
(HS 11352)

E. Barbiturates -- Punishment by imprisonment 2, 3, or 4 years.
(HS 11379)

4. Adult Influence a Minor.

A. Heroin -- Punishment by imprisonment, no specified terms.
(HS 11353)

B. Cocaine -- Same as heroin.
(HS 11353)

C. Marijuana -- Punishment by imprisonment for 3, 4, or 5 years.
(HS 11361)

D. Amphetamines -- Punishment by imprisonment 3, 4, or 5 years.
(HS 11380)

E. Barbiturates -- Punishment by imprisonment 3, 4, or 5 years.
(HS 11380)

5. Miscellaneous.

Minor Influence a -- Punishment by imprisonment - no specified terms.
Minor (Jurisdiction maintained in juvenile court.)
(HS 11354)

Paraphernalia -- Unlawful to possess instrument, paraphernalia,
(HS 11364) etc. for injection or smoking substances. No
penalty prescribed.

Education -- Trial court shall as condition of probation
(HS 11376) for anyone convicted of possession of controlled
substance, Sched. I & II, order education or
treatment. In case of juveniles, parents or
guardians to participate.

Unlawful Presence -- Unlawful to visit or be present in any room
(HS 11365) where any controlled substance or narcotic drugs
are being unlawfully smoked or used. No penalty
specified.

CALIFORNIA UNIFORM CONTROLLED SUBSTANCES ACT

PENALTIES FOR CERTAIN OFFENSES*

Brief Summary

1. Unlawful Possession.

- A. Heroin -- (HS 11350) First: 2-10, elig. parole/release after 2 yrs.
Second: 5-20, elig. parole/release after 5 yrs.
Third or more: 15-life, elig. parole after 15 yrs.
- B. Cocaine -- (HS 11350) First: 5-15, elig. parole/release after 2½ yrs.
Second: not less than 10, elig. parole/release 6 yrs
Third or more: not less than 15 yrs., elig. parole/release after 15 yrs.
- C. Marijuana -- (HS 11357) First: Possession of any amount, not less than 1 yr. in county jail or more than 10 in state prison.
Second: 2-20, elig. parole/release after 2 yrs.
Third or more: 5-life, elig. parole/release 5 yrs.
- D. Amphetamines-- (HS 11377) First: Not more than 1 yr., county jail, to 10 yrs. state prison.
Second: 2-20, elig. parole/release after 5 yrs.
- E. Barbiturates -- (HS 11377) First: Not more than 1 yr. county jail, to 10 yrs. in state prison.
Second: 2-20, elig. parole /release after 2 yrs.

2. Unlawful Possession for Sale.

- A. Heroin -- (HS 11351) First: 5-15, elig. parole /release after 2½ yrs.
Second: not less than 10, elig. parole /rel. 6 yrs.
Third or more: not less than 15 yrs., elig. parole /release after 15 yrs.
- B. Cocaine -- (HS 11351) Same as heroine.
- C. Marijuana -- (HS 11359) First: 2-10, elig. parole/release after 2 yrs..
Second: 5-15, elig. parole/release after 3 yrs.
Third or more: 10-life, elig. parole/release 6 yrs
- D. Amphetamine -- (HS 11378) Same as barbiturates.
- E. Barbiturate -- (HS 11378) First: 2-10, elig. parole / release after 2 yrs.
Second: 5-15, elig. parole /release after 3 yrs.
Third or more: 10-life, parole /release after 6 yrs

3. Unlawful transportation, sale, administration, etc.

- A. Heroin -- (HS 11352) First: 5-life, elig. parole/release after 3 yrs.
Second: 10-life, elig. parole/release after 10 yrs
Third or more: 15-life, elig. parole/release 15 yr
- B. Cocaine (HS 11352) Same as heroin.

*In addition to terms of imprisonment, trial court may impose a fine up to \$20,000 for each offense under Sections 11350, 11351, 11353, 11355, 11359, 11360, 11361.

3. Unlawful transportation, sale, administration, etc. (Con't.)

- C. Marijuana -- First: 5-life, elig. parole/release after
(HS 11360) 3 yrs.
Second: 5-life, elig. parole/release after
5 yrs.
Third or more: 10-life, elig. parole/release
after 10 yrs.
- D. Amphetamines -- Same as barbiturates.
(HS 11352)
- E. Barbiturates -- First: 5-life, elig. parole/release after 3 yrs.
(HS 11379) Second: 5-life, elig. parole/release after 5 yrs.
Third or more: 10-life, elig. parole/release after
10 yrs.

4. Adult Influence a Minor.

- A. Heroine -- First: 10-life, elig. parole/release after 5 yrs.
(HS 11353) Second: 10-life, elig. parole/release after 10 yrs.
Third or more: 15-life, elig. parole/release
after 15 yrs.
- B. Cocaine -- Same as heroin.
(HS 11353)
- C. Marijuana -- First: 10-life, elig. parole/release after 5 yrs.
(HS 11361) Second: 10-life, elig. parole/release after 10 yrs.
Third or more: 15-life, elig. parole/release after
15 yrs.
- D. Amphetamines -- First: 10-life, elig. parole/release after 5 yrs.
(HS 11380) Second: 10-life, elig. parole/release after 10 yrs.
Third or more: 15-life, elig. parole/release after
15 yrs.
- E. Barbiturates -- First: 10-life, elig. parole/release after 5 yrs.
(HS 11380) Second: 10-life, elig. parole/release after 10 yrs.
Third or more: 15-life, elig. parole/release after
15 yrs.

5. Miscellaneous.

Minor Influence A Minor--

- Specified controlled Substances and Narcotic Drugs (HS11354) First: Not less than 5 yrs.
Second: Not less than 10 yrs.
(Jurisdiction maintained in juvenile court.)

Paraphernalia --
(HS 11364)

Unlawful to possess instrument, paraphernalia,
etc. for injection or smoking substances.
No penalty prescribed.

Education --
(HS 11376)

Trial court shall as condition of probation
for anyone convicted of possession of control-
led substance, Sched. I & II, order education
or treatment. In case of juveniles, parents
or guardians to participate.

Unlawful Presence --
(HS 11365)

Unlawful to visit or be present in any room
where any controlled substance or narcotic
drugs are being unlawfully smoked or used.
No penalty specified.

HOUSE BILL 479 REVISION STATE DRUG LAWS

The advisory committee is composed of five members. I suggest two additional members for better representation: #6 Physician Appointed by Governor

#7 Citizen Appointed by Governor

The majority of the Committee have special expertise in dealing with drugs. A public member would insure an opportunity for Citizen participation.

We cannot understand what the author had in mind when he wrote this bill. It's okay for adults to have a pound of marijuana and children cannot. If this bill passes, it tells children it's alright for parents to sneak out and find his pusher, obtain at least a pound of marijuana, then sneak home again and then the parent is legal. Again it's obvious misinterpretation by young people. One ounce of marijuana will provide 40 to 50 marijuana cigarettes.

This bill makes possession of one fourth ounce of cocaine a misdemeanor. I can not believe anyone would give a serious thought to passing a law like this. We have had two suicides of 17 and 18 year olds, cocaine connected. Cocaine should continue to be a felony.

We feel the penalties in this bill changed on each classification from the criminal code detracts and will continue to be confusing. We also feel when a person is convicted of a drug related arrest of furnishing, they should not be able to bail out of jail.

The Citizens of Kodiak feel the intent of a drug bill should discourage narcotics trafficking. Therefore, we recommend you do not pass House Bill No. 479.

I sincerely believe if you give a pass on House Bill No. 479 you will set a course that will profoundly affect the quality of life for hundreds of your fellow Alaskans.

James L. Rhines
Chief of Police
Box 509
Kodiak 99615

HOUSE BILL 479 REVISION STATE DRUG LAWS

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James L. Rines
Chief of Police
Box 509
Kodiak 99615

Name	Address and Phone	Organization/Self	For/Against or Observing
1/ DAN Hickey		att general off.	
2/			
3/ Mr. McConele		Pharmacist w/ Bd of Pharm	would like to testify
4/ DAN Hickey			mace
5/ Frank Gold	3098 Airport Way Ft. Belknap, AK 99701	Kila, Inc. Ft. Belknap Drug Treatment Center	"addiction"
6/			
7/			
8/			
9/			
10/			
11/			
12/			
13/			

TO: Thelma Buchholdt, Chairman, and members of
the House HESS Committee

FROM: Margaret W. Berck, Counsel to House Judiciary
Committee

TITLE: HOUSE BILL NO. 479 .

1. CONTROLLED SUBSTANCES ADVISORY COMMITTEE
2. SCHEDULES
3. OFFENSES AND PENALTIES
 - A. DISTRIBUTING CONTROLLED SUBSTANCES TO MINORS
 - B. DISTRIBUTING CONTROLLED SUBSTANCES TO ADULTS
 - C. MANUFACTURING CONTROLLED SUBSTANCES
 - D. POSSESSION OF CONTROLLED SUBSTANCES
 - E. MARIJUANA OFFENSES
 - a. POSSESSION OF MARIJUANA WHILE OPERATING A MOTOR VEHICLE, VESSEL, OR AIRCRAFT
 - b. PUBLIC DISPLAY OR USE OF MARIJUANA
 - c. POSSESSION OF MARIJUANA BY A MINOR
4. REGULATION OF LEGITIMATE DRUG INDUSTRY
5. FORFEITURES
6. EDUCATION AND RESEARCH

①
Commissioner Nick
testimony
on HB 479 Dept of
Public Safety

I appreciate the opportunity to give testimony before this Committee concerning the importance of revising the State's Drug Laws.

Our Department's statutory responsibilities deal primarily with the enforcement activity of Legislation passed by you. My testimony today is directed at that aspect of HB 479.

I am very encouraged at this Bills attempt to modernize Alaska's Drug Laws. The consolidation of existing laws and tying those into the sentencing structure of the new Criminal Code are major steps in discouraging illicit drug trafficking and the use of drugs. There has obviously been a great deal of work and expertise in developing this bill.

There are certain provisions on HB 479 that I would like to address from strictly a law enforcement view.

In HB 479 the responsibility for scheduling/rescheduling controlled substances is vested in a controlled substances committee.

The criteria whether a drug should be controlled basically follows the Federal Controlled Substances Act, which I feel could be greatly improved upon if additional criteria were added. Such as, the relationship between the use of the substance and other criminal activity including:

Whether a persons engaged in illicit trafficking are also engaged in other criminal activities.

Whether the nature of the relative profitability of the substance encourages illicit trafficking in the substance.

Whether the commission of other crimes is one of the effects of the use of the substance.

Whether addiction to the substance relates to the commission of other crimes related to the continued use of the substance.

We feel strongly that this additional criteria should be used in controlling and scheduling drugs. Where drugs are placed on the schedule which ties them to the sentencing scheme, directly affects the use and trafficking of drugs.

There is a direct relationship between use, abuse, and other criminal activities. For instance, as the popularity of cocaine as a recreational drug increased so did our homicide rate. From 1976 through 1979 we are aware of 29 homicide cases in Alaska, directly related to drug trafficking with cocaine being the primary drug involved.

The penalty provisions of the Bill appear reasonable. However, I am concerned with the manner in which possession of specific amounts are tied to the penalty provisions.

In the Bill it refers to exact amounts, be it in the form of capsules, tablets, syrettes, or bulk. But as I read the Bill it does not address the size of the container, or the purity of the substance. This raises

(3)

some very interesting problems in prosecuting defendants, which will be addressed by the Department of Law. It raises some serious problems for the enforcement person, such as, field testing for small amounts, expending our limited resources on apprehending drug traffickers where there are only trace amounts involved. Such as, the State vs. Davis Stone. *Corle*

HB 479 makes the possession of 0 to ²⁵~~29~~ capsules, etc. or 1/8th or less of an ounce of heroin a misdemeanor. If the contents of the 25 capsules is more than 1/8th of an ounce, is it still a misdemeanor? 1/8th of an ounce of pure heroin would produce approximately 1/2 pound of heroin for street use, worth between 36/40 K. Another example is cocaine, 1/4 oz. of pure coke in possession would produce 1 oz. for street ^{use} or 28 slips or approximately 56 hits. In the past, we have found that persons trafficking drugs are as versed in the law as we are, and will adjust their business accordingly. So, may I suggest that we will seldom find a vendor with more than enough in their possession, at first blush anyway, to warrant a felony charge. I believe the same holds true for any substance contained in Schedule I or II as presently written in HB 479.

In summary, I would like to again express my thoughts, or concern if you will, over certain provisions in HB 479.

1. The criteria for deciding whether a drug should be controlled and the criteria for deciding in which Schedule a drug should be classified should include factors concerning the relationship between use of the drug and other criminal activities.
2. The association between penalties and specific amounts of controlled substances listed in Schedule I and II creates serious if not

insurmountable problems for law enforcement.

I would like to mention that Governor Hammond will introduce to this Legislature a Drug Bill which ~~will~~ addresses the concerns expressed by me today.



January 25, 1980

Thelma Buchholdt, Chairman
House H.E.S.S. Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Chairman Buchholdt and other Committee members;

In regard to HB 479, you have already heard from AKEELA HOUSE via teleconference public testimony. This letter reiterates the basic points which we wished to make at that time:

1.) Sec. 17.17.010 outlines the creation and composition of a Controlled Substances Advisory Committee. It is our belief that this Committee should include an expert in the field of addiction rehabilitation, someone with a professional background and a successful track record in getting criminal abusers back into society as law-abiding citizens. The occupational history of this person might include counseling, psychology, or administrative work in such a program. Such a person could assist the Committee in determining the association between specific drugs, use and abuse patterns, and criminal or anti-social behavior, as well as the general mechanics of the considerations spelled out in Sec. 17.17.020 (c).

2.) Sec. 17.17.020 (e) states that the Controlled Substances Advisory Committee has no jurisdiction over alcohol. It is our hope that this provision will be given careful reconsideration by you. There is no question that alcohol is Alaska's most serious drug problem and that tighter controls on alcohol as a substance should be investigated. The physical, psychological, and social damage resulting from alcohol is many times greater than all other controlled substances combined. The situation, if left unaddressed, is especially dangerous for our native populations; the latest statistics strongly indicate that our native people will join the ranks of the Mandans and other extinct groups of indigenous Americans if measures are not taken, soon, to reverse the trend of alcoholism, alcohol-related deaths, and infant alcohol syndrome.

3.) Sec. 17.17.780 refers to education. We ask the Committee to consider strengthening this section to include rehabilitation as an alternative to or in addition to use-related incarceration and fines. We respectfully remind the Committee of the success rate of our kind

(Continued)

of program (@ 60%) versus the success rate of the corrections system (@ 20-30%), as well as the cost difference between our program and the prisons. We believe that the taxpayer realizes a more efficient use of public monies and a more crime-free society over all when every option and avenue of genuine rehabilitation is utilized.

Also, pursuant to a request by members of your committee, AKEELA HOUSE staff has obtained copies of SB 65 and HB 101, and reviewed these bills. Our observations are:

- 1.) That HB 479 evidences greater care in preparation, pharmacology, and ascertaining the sociological implications of substance abuse. The language of this bill, also, is easier for the layman to understand.
- 2.) SB 65 and HB 101--the two are for all practical purposes identical--make no reference to rehabilitation or education and do not provide for an advisory board to respond to new developments such as: the discovery and entry into the market of new substances, new research data about existing substances, or on-going social realities of substance use/abuse. These bills appear to have been written to address the concerns only of some law enforcement personnel without considering the impact and implications to the social order as a whole; and because of the complexity of language, these bills present a greater risk of being disproportionately applied to less advantaged members of the Alaskan population than does HB 479.
- 3.) The difference in penalties dictated between the various bills will probably have no impact on the problem of substance abuse as it currently exists. No evidence exists to suggest that the degree of punishment has any measurable impact on illicit use of controlled substances.

We appreciate being given the chance to present our views to the Committee. If you would like us to make any further comments, we will be glad to do so.

Yours for a drug-free lifestyle,

Sincerely,



Joseph C. DiMatteo
Executive Director

HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM

January 28, 1980

TO: Representative Charles Parr

FROM: Jack Fagnoli, Issues Analyst
House Research Agency

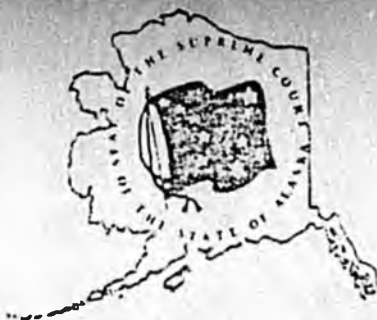
RE: Research Request No. 23
(Drug Possession and Sales: Hawaii)

Prosecutor Lee Nakamura of the Prosecutor's Office, Department of the Attorney General in Honolulu, confirmed in a January 25 telephone conversation that the purity or concentration of controlled substances is not addressed specifically in Hawaii statutes and that, further, it is not considered as a factor in enforcement or in judicial proceedings. The purity or concentration of a drug is not used as the basis for determining the "amount" of a drug held in possession, as described in the Hawaii statutes; nor is it used as a basis in decisions to prosecute or in setting criminal sentences. However, occasionally a decision not to proceed with prosecution is reached in cases where extremely small, i.e., "trace," amounts of a controlled substance have been found in a mixture.

Mr. Nakamura informed us that all decisions to prosecute in Hawaii drug cases are made on a case by case basis, and that to date the question of drug purity has not produced any problems (or even been raised as an issue) in the federal courts. Should the courts object in the future, he said, adjustments would be made in the statutes; he did not view this as likely to occur, however.

Please let us know if you have any additional questions.

/dp



Alaska Judicial Council

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LAY MEMBERS
KENNETH L. BRADY
JOHN E. LONGWORTH
ROBERT W. MOSS

LAW MEMBERS
MARCUS R. CLAPP
MICHAEL M. HOLMES
JOSEPH L. YOUNG

CHAIRMAN EX OFFICIO
JAY A. RABINOWITZ
CHIEF JUSTICE
SUPREME COURT

January 23, 1980

MEMORANDUM

TO: MARGARET BERCK, STAFF COUNSEL
HOUSE JUDICIARY COMMITTEE

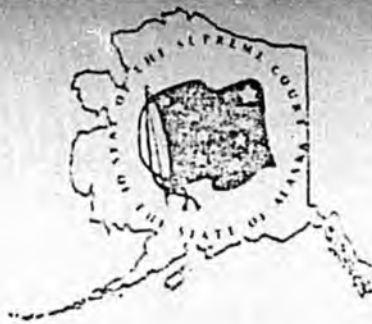
FROM: MICHAEL L. RUBINSTEIN, EXECUTIVE DIRECTOR
ALASKA JUDICIAL COUNCIL

RE: STATISTICS ON DRUGS

I hope the enclosed memo is useful. If you need more information, please call. If you give me a week's notice, Nick Maroules, who prepared the statistics, can testify.

M. L. R.

Enclosure



Alaska Judicial Council

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CHIEF JUSTICE
SUPREME COURT

January 23, 1980

M E M O R A N D U M

TO: MICHAEL L. RUBINSTEIN

FROM: NICK MAROULES

RE: HOUSE JUDICIARY COMMITTEE DATA REQUEST

This memo is in response to the House Judiciary Committee's request of October, 1979 for empirical information regarding drug offenses. The data upon which this analysis is predicated consists of 1901 felony convictions rendered in all ten Superior Court locations from July, 1976 to July, 1979. The first part of the analysis concerns the relationship of drug and alcohol use to crime. The request deals in part with the use of cocaine in relation to other criminal behavior. Unfortunately, our data sources (including court case files and pre-sentence reports) did not include systematic information concerning the specific type of past drug use. We do have general information, however, concerning drug and/or alcohol addiction and heavy drug use. The analysis here presented should facilitate some understanding of the relationship of drug/alcohol use and crime. The request also concerned the relationship between the use of one drug, particularly marijuana, and other drugs. Again, our data is not amenable to this issue.

The second part of this analysis concerns the range of drug quantities typically involved in sale and possession offenses and corresponding penalties.

I. RELATIONSHIP OF DRUG AND ALCOHOL USE TO CRIME

Our new felony sentencing data contains information from pre-sentence reports about drug and alcohol use. The information includes (1) indications of past (or ongoing) drug and/or alcohol addiction, (2) drug and/or alcohol use at the time of the offense, and (3) the defendant's record of previous (or current) treatment for drug and/or alcohol problems.

Table I, below, indicates that a significant positive relationship exists between drug or alcohol addiction and severity of the defendant's prior record. Specifically, those defendants identified by the presentence reporter as having had alcohol or drug problems also had substantially more serious criminal histories than those without such problems.

TABLE I

	<u>Severity of Prior Record By</u> <u>Drug/Alcohol Addiction</u> (N=1669) *		
	<u>Drug Addiction</u> <u>History</u>	<u>Alcohol Addiction</u> <u>History</u>	<u>Neither</u>
<u>No Prior</u> <u>Record</u>	12.8%	14.0%	49.6%
<u>Misdem.</u> <u>Only</u>	37.6%	52.0%	30.7%
<u>One Prior</u> <u>Felcny</u>	25.2%	21.1%	13.7%
<u>Two/More</u> <u>Felonies</u>	<u>24.3%</u> 100.0% (218)	<u>12.9%</u> 100.0% (450)	<u>6.1%</u> 100.0% (1001)

Significant at .001

*(There were 232 cases for which information of past drug/alcohol use was unavailable.)

The above contingency distributions indicate that defendants with no histories of drug or alcohol problems were four times more likely to have been first offenders than those with a history of drug/alcohol abuse. Nearly half of those with no histories of substance abuse were first offenders, compared to 12.8% and 14.0%, respectively, for those with drug and alcohol problems. At the other end of the scale, those with a drug or alcohol problem were substantially more likely to have prior felony convictions than those with no such history. These observed differences are statistically significant at the .001 level which means that there is only one chance in a thousand that the differences were due to chance.

Table I represents the overall relationship between prior record and drug/alcohol use for all defendants without regard to the type (or class) of their offense. Table A, in the appendix to this memorandum sets forth the relationship between these two variables for each of five broad classes of offense--violent felonies, property felonies (burglary, larceny, etc.), frauds/forgeries/embezzlements, drug crimes, and "morals" offenses. An examination of these tables reveals that the relationship observed in Table I persists among all offense classes.

As noted above, our data also includes information on drug or alcohol use at the time of the offense. Table II, below, indicates the proportion of cases in which the defendant was reported to have used drugs, drugs in combination with alcohol, or alcohol alone at the time of his offense, for each of four classes of offenses (drug offenses are eliminated from this aspect of the analysis).

TABLE II

Frequency of Use of Drugs and Alcohol
At Time of Offense for Four Offense Classes*

	<u>Total</u> <u>Cases</u>	<u>Used</u> <u>Drugs</u>	<u>Used Drugs</u> <u>& Alcohol</u>	<u>Used</u> <u>Alcohol</u>
<u>Violent</u> <u>Offenses</u>	(N=586)	3.2% (19)	4.9% (29)	56.3% (330)
<u>Property</u> <u>Offenses</u>	N=729)	4.0% (29)	4.4% (32)	39.2% (286)
<u>Forgery/Fraud</u> <u>Offenses</u>	(N=264)	2.7% (7)	0.8% (2)	9.1% (24)
<u>"Morals"</u> <u>Offenses</u>	(N=91)	1.1% (1)	9.9% (9)	46.2% (42)

* (Percents indicate proportion of all cases within class.)

Table II shows that alcohol use is much more often associated with criminal behavior than is drug use. The magnitude of alcohol use is staggering in comparison with drugs. It should be mentioned, however, that the relative difficulty in detecting drug intoxication as compared with alcohol use probably accounts for at least a portion of the difference.

II. DRUG QUANTITIES AND SENTENCES FOR SALE AND POSSESSION

Table III, below, reflects a distribution of drug types and amounts for possession and sale offenses. The proportion of cases within each amount-group receiving probation (or no active jail sentence) and the corresponding mean sentence (computed only for those with an active sentence) is also included.

TABLE III

Quantities and Sentences for
Possession and Sale Offense Convictions

I. POSSESSION OF NARCOTIC

	<u>N of Cases</u>	<u>Proportion Probation</u>	<u>Mean* Sentence (In Months)</u>
TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Less than 1 gm.</u>	15	53.3%	3.24 (7)
- <u>1 to 14 gms.</u>	12	75.0%	15.00 (3)
- <u>Over 14 gms.</u>	7	57.1%	24.08 (3)
<u>Heroin</u> - <u>Less than 1 gm.</u>	6	33.3%	24.75 (4)
- <u>1 to 7 gms.</u>	6	33.3%	54.00 (4)
- <u>Over 7 gms.</u>	5	20.0%	124.50 (4)
	N=51		

II. SALE OF NARCOTIC

TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Less than 1 gm.</u>	11	36.4%	8.34 (7)
- <u>1 to 14 gms.</u>	40	40.0%	26.58 (24)
- <u>Over 14 gms.</u>	10	20.0%	39.85 (8)
<u>Heroin</u> - <u>Less than 1 gm.</u>	2	0.0%	30.00 (2)
- <u>1 to 14 gms.</u>	3	33.3%	46.00 (6)
- <u>Over 14 gms.</u>	4	25.0%	24.00 (3)
	N=76		

III. POSSESSION SALE HDS **

TYPE AND AMOUNT OF DRUG:			
<u>Cocaine</u> - <u>Over 14 gms.</u>	(1)	0.0%	36.00 (1)
<u>Marijuana</u> - <u>Over 2 #s</u>	(10)	50.0%	16.80 (5)
	N=11		

TABLE III (CON'T)

IV. SALE OF HDS

	<u>N of Cases</u>	<u>Proportion Probation</u>	<u>Mean* Sentence</u> (In Months)
TYPE AND AMOUNT OF DRUG:			
<u>Marijuana</u> - <u>Less than 2 oz.</u>	4	0.0%	15.25 (4)
- <u>2 oz. to 2 #</u>	8	87.5%	48.00 (1)
- <u>Over 2 #</u>	6	33.3%	34.00 (4)
<u>Amph-Barb.</u> - <u>Less than 100</u>	2	0.0%	7.00 (2)
- <u>100 to 999</u>	1	100.0%	----
- <u>Over 1000</u>	1	0.0%	1.00 (1)
<u>Hallu-</u> <u>cinogens</u> - <u>Less than 20</u>	7	57.1%	6.11 (3)
- <u>20 - 99</u>	--	--	--
- <u>Over 100</u>	1	0.0%	12.00 (1)
	N=30		

* Mean sentences calculated excluding straight probation, or no time to serve.

** Three cases involving amphetamines or hallucinogens not included.

According to Table III, of N=51 convictions for Possession of a Narcotic (A.S. 17.10.200), 15 involved less than 1 gram of cocaine. Of these 15 cases, 53.3% received straight probation (or no active jail sentence). The mean sentence for the 7 defendants actually sentenced to jail time was 3.24 months.

Among narcotic offenses, cases involving heroin generally received longer (mean) sentences and were less likely to receive probation than those involving cocaine. Offenses involving cocaine received more severe penalties when the conviction was for sale rather than possession.

The opposite was true for heroin: possession offenses were sentenced more severely than sale offenses. This was especially surprising because often the amounts of heroin possessed were equal to or smaller than the amounts sold, but the sentences imposed were still longer.

N. M.

APPENDIX

TABLE A

SEVERITY OF PRIOR RECORD BY PAST
DRUG/ALCOHOL USE FOR EACH OFFENSE CLASS

I. <u>Violent Felonies</u>	(N=586)		
	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	9.3%	16.0%	47.1%
<u>Misdmsrs. Only</u>	40.0%	53.1%	28.6%
<u>One Felony</u>	16.0%	17.8%	16.8%
<u>Two/More Felonies</u>	34.7%	13.1%	7.6%
	100.0%	100.0%	100.0%
	(75)	(213)	(238)
	(60 Missing Cases)*		
	<u>Significant at .001</u>		

II. <u>Burqlary, Larceny Offenses</u>	(N=729)		
	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	7.1%	10.9%	54.8%
<u>Misdmsrs. Only</u>	27.1%	52.4%	28.5%
<u>One Felony</u>	40.0%	23.8%	11.4%
<u>Two/More Felonies</u>	25.7%	12.9%	5.3%
	100.0%	100.0%	100.0%
	(70)	(147)	(376)
	(136 Missing Cases)*		
	<u>Significant at .001</u>		

TABLE A, (Cont.)

III. Fraud, Forgery, Embezzlement Offenses (N=264)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	26.1%	10.3%	49.2%
<u>Misdmsrs. Only</u>	39.1%	35.9%	26.0%
<u>One Felony</u>	26.1%	35.9%	17.7%
<u>Two/More Felonies</u>	8.7%	17.9%	7.2%
	100.0%	100.0%	100.0%
	(23)	(39)	(181)

(21 Missing Cases)*
Significant at .001

IV. Drug Offenses (N=231)

	<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>	23.8%	7.1%	41.3%
<u>Misdmsrs. Only</u>	50.0%	64.3%	41.9%
<u>One Felony</u>	11.9%	21.4%	12.0%
<u>Two/More Felonies</u>	14.3%	7.1%	4.8%
	100.0%	100.0%	100.0%
	(42)	(14)	(167)

(8 Missing Cases)*
Significant at .05

TABLE A, (Cont.)

V. <u>"Morals" Offenses</u>	(N=91)			
		<u>Past Drug Problem</u>	<u>Past Alcohol Problem</u>	<u>Neither</u>
<u>No Priors</u>		0%	21.6%	51.3%
<u>Misdmsrs. Only</u>		37.5%	56.8%	38.5%
<u>One Felony</u>		50.0%	13.5%	5.1%
<u>Two/More Felonies</u>		12.5%	8.1%	5.1%
		<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>
		(8)	(37)	(39)

Significant at .01

* Cases noted as missing from the breakdown analysis concern theft for which past drug/alcohol histories or prior record information was unascertainable.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

February 28, 1980

TO: Charlie Parr, Chairman, House Judiciary Committee
FROM: Margaret W. Berck, Staff
SUBJECT: Sectional Analysis of HB 479

I. STANDARDS AND PROCEDURES.

*Section 1

Sec. 17.17.010. This section establishes a Controlled Substances Advisory Committee in the Department of Law. The members of the Committee are the Attorney General, Commissioners of Health and Social Services and Public Safety, a pharmacist and a criminal defense attorney. The latter two members are appointed by the Governor. All members serve without pay, but are entitled to travel expenses and per diem.

Sec. 17.17.020. This section defines the authority of the Controlled Substances Advisory Committee. The Committee is empowered to add, delete or re-schedule substances. All such actions must be adopted under the Administrative Procedures Act and in accord with the "public safety" criteria contained in this section. Should there be a change in the Federal schedules, the Committee is required to consider a similar change to Alaska law. The Committee is free to determine that such a Federal change is not warranted in Alaska, but must report such a decision, together with findings of fact, to the Lieutenant Governor.

Decisions by the Committee have no legal effect until the Legislature is given an opportunity to review them. Committee decisions must be submitted to the Legislature within the first 10 days of a session. The Legislature must act by the 56th day of the session if it wants to annul a proposal. All legislative annulments must take place in the form of a bill. Should the Legislature reject a proposal by

the Committee, the Committee cannot re-assert such a proposal to the Legislature for three years.

The Committee has no authority over tobacco or alcohol.

Sec. 17.17.030. This section provides that the inclusion of slang terms for drugs to assist the layperson in identifying controlled substances, has no bearing or effect in a criminal prosecution.

Sec. 17.17.040 - Sec. 17.17.090. These sections establish six schedules of controlled substances. The most dangerous substances are contained in Schedule I, while the least dangerous, marijuana, is contained in Schedule VI.

II. OFFENSES AND PENALTIES.

Sec. 17.17.200. This section creates a criminal offense and provides penalties for distributing a controlled substance to a minor. Although the penalties vary depending upon the schedule classification of the particular controlled substance distributed, all violations of this section would constitute a felony.

This section is designed to impose stiffer penalties on those persons over 18 years of age who distribute controlled substances to persons under 18 years of age. However, the recipient must be at least three years younger than the distributor before this section comes into effect. If the three-year age differential does not exist, the distributor would be subject to prosecution under the general distribution offenses.

This scheme was taken from the Uniform Controlled Substances Act and their rationale is as follows: "The three-year age differential is included to prevent imposition of the stiffer penalties in a case such as where a 19-year-old college student distributes two or three marijuana cigarettes to his 17-year-old roommate. In this situation, there is not the element of seduction so often found in cases where the distributor and recipient are far apart in age."

Sec. 17.17.210. This section creates a criminal offense and provides penalties for manufacturing a controlled substance. Although the penalties vary depending upon the schedule classification of the particular controlled substance manufactured, all violations of this section would constitute a felony. The definition of "manufacture" (Sec. 17.17.900(14))

includes propagation of certain of the substances, such as marijuana. In order to comply with the Alaska Constitution as interpreted in Ravin, and in order to justify the stiffer penalties for this offense, the definition of "manufacture" excludes manufacturing for personal use. A person manufacturing controlled substances for his personal use would be subject to prosecution under possession offenses.

Sec. 17.17.220 - Sec. 17.17.270. These sections create a criminal offense and provide penalties for distributing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Despite penalty variations, distribution of any amount of a Schedule I, II, III, or IV substance would constitute a felony offense. Distributions of small amounts of a Schedule V or a Schedule VI substance would constitute a Class A misdemeanor. Furthermore, a "non-remuneration defense" is provided for the distribution of an ounce or less of a Schedule VI substance (marijuana). If the distributor is successful in providing that such a distribution was made for no remuneration to a person 18 years of age or older, the penalty is reduced from a Class A misdemeanor to a Class B misdemeanor. This provision is compatible with Federal law which provides that a person who distributes a small amount of marijuana for no remuneration is guilty of a misdemeanor rather than a felony. (21 USCA 841) Furthermore under Federal law (21 USCA 844), if such a person has never been previously convicted of a drug offense, the court may place the person on probation and subsequently dismiss the criminal charge against the person if he does not violate his parole. Under this Federal provision, the person would not acquire a criminal record.

Sec. 17.17.280 - Sec. 17.17.330. These sections create a criminal offense and provide penalties for possessing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Possession of small amounts of any substance would constitute a Class A misdemeanor. This provision is compatible with Federal law which establishes misdemeanor penalties for simple possession of any controlled substance. Unlike the Federal law, however, HB 479 would establish felony offenses for the possession of large amounts of any controlled substance. This scheme was adopted in HB 479, in order to facilitate the capture of drug dealers who are not caught in the act of distribution. Traditionally, these individuals have been prosecuted under a "possession with intent to sell" offense. But due to the difficulties in prosecuting "intent to sell"

offenses, HB 479 eliminates that type of offense and looks strictly to the amount possessed in determining appropriate penalties.

In order to comply with the Alaska Constitution as interpreted in Raven, possession of less than a pound of marijuana by an adult would not constitute a criminal offense.

Sec. 17.17.340. This section makes it a Class B misdemeanor to possess any amount of marijuana in your immediate control while operating a motor vehicle, vessel, or aircraft. Under existing law, the maximum punishment for this type of offense is a \$1,000 fine. Under HB 479 an offender is subject to a 90 day jail sentence, or a \$1,000 fine, or both.

Sec. 17.17.350. This section makes it a violation (a fine of up to \$300) to display or use any amount of marijuana in a public place.

Sec. 17.17.360. This section makes it unlawful for a minor to possess any amount of marijuana. A minor who violates this section is guilty of a violation.

Sec. 17.17.370. This section is directed at the legitimate drug industry. It makes it a Class B misdemeanor for a person to refuse or fail to make or keep all records required by this Act.

Sec. 17.17.380. This section also is directed at the legitimate drug industry. It makes it a Class C felony to do any of the following: (1) to keep or maintain any structure for storing or selling controlled substances in violation of this Act; (2) to use a registration number that is fictitious, revoked or suspended; (3) to obtain a controlled substance by fraud, forgery or deception; (4) to make, distribute, or possess a die to print a trademark upon a drug or container so as to render a drug a counterfeit substance; and (5) to furnish false or fraudulent information on any record required to be made and kept by this Act.

Sec. 17.17.390. This section provides for the creation of a three-year felony offense for certain possession and distribution offenses. In order to graduate the penalties in relation to type of offense, substance classification and quantities, an additional felony offense to those established in the new criminal code was required.

Sec. 17.17.400. This section provides that in those offenses which require the consideration of an amount for determining

appropriate penalties, it is no defense to a prosecution that the amount was in fact larger than that required for the offense charged.

Sec. 17.17.410. This section provides that a penalty imposed under this law is in addition to other civil or administrative penalties imposed by law.

Sec. 17.17.420. This section prohibits the prosecution of an individual under this law, if the individual's act constituted an offense under Federal law or the law of another state and the individual was convicted or acquitted under those laws.

III. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 17.17.550. This section empowers the Commissioner of Health and Social Services to adopt regulations under the Administrative Procedure Act and to establish reasonable fees relating to the regulation of the legitimate drug industry.

Sec. 17.17.560. This section requires any person who manufactures, distributes, or dispenses controlled substances in this State to register annually with the Commissioner of Health and Social Services. Certain individuals, such as employees of registered dispensers or common carriers, need not register. Furthermore, the commissioner may inspect the establishment of a registrant or applicant.

Sec. 17.17.570. This section establishes the standards whereby the Commissioner of Health and Social Services may grant or deny registration. A person is entitled to registration if he complies with Federal registration requirements.

Sec. 17.17.580. This section establishes the standards whereby the Commissioner of Health and Social Services may revoke or suspend a registration to manufacture, distribute, or dispense a controlled substance.

Sec. 17.17.590. This section provides for the due process rights of an individual whose registration is the subject of a denial, suspension, or revocation. Prior to taking action, the Commissioner of Health and Social Services must serve the individual with a factual statement on which the proposed action is based. The individual is entitled to an adjudication under the Administrative Procedure Act. The commissioner may suspend the registration during the administrative proceedings only if he finds there is an imminent danger to the public.

Sec. 17.17.600. This section requires a registrant to keep and maintain records in conformance with the requirements of Federal law and with the additional requirements the commissioner may adopt.

Sec. 17.17.610. This section provides that the distribution of controlled substances must conform to Federal requirements regarding order forms and prescriptions.

IV. ENFORCEMENT AND ADMINISTRATION.

Sec. 17.17.750. This section requires the Commissioner of Public Safety, the Attorney General, and all law enforcement officers of the State to cooperate with drug enforcement agencies of the United States and other states.

Sec. 17.17.760. This section provides for the forfeiture of various items of property utilized in violation of this Act. Aircraft, motor vehicles and vessels are not subject to forfeiture if their use was committed by a person other than the owner or secured party unless such owner or secured party was privy to the violation.

Such property may be forfeited to the state upon a criminal conviction of the defendant or upon a judgment of a court in a civil proceeding against the property.

The property may be seized by the Commissioner of Public Safety upon an order issued by a court finding that probable cause exists that the property is subject to forfeiture. Seizure without a court order may be made if: (1) it is incident to a valid arrest or valid search warrant; (2) it has been the subject of a prior judgment in favor of the State in either a criminal or civil proceeding; or (3) there is probable cause that the property was or is being used in a drug violation and the property is easily movable. Property seized under this last provision, may not be held over 48 hours or until an order may be applied for and issued by a court, whichever is earlier.

Property forfeited under this section shall be disposed of according to court order.

Sec. 17.17.770. This section provides that the burden of proof is on the State to prove by clear and convincing evidence that the property in question is subject to forfeiture. Liability is not imposed upon a State or local officer engaged in the lawful performance of his duties.

Sec. 17.17.780. This section requires the Commissioner of Health and Social Services to provide educational programs designed to prevent and deter abuse of controlled substances. Additionally, the commissioner shall encourage research on controlled substances.

V. GENERAL PROVISIONS.

Sec. 17.17.900. This section provides the definitions of various terms used in this Act.

Sec. 17.17.990. This section provides that the Act may be cited as the Controlled Substances Act.

*Section 2 and *Section 3.

These sections amend existing statutes that refer to current drug titles that would be repealed by this Act.

*Section 4.

This section amends AS 12.55.155(c) to provide additional aggravating sentencing factors to be utilized in drug offenses. These additional factors are: (1) smuggling a controlled substance into the State; (2) the commission of an offense involving large quantities of controlled substances; and (3) the commission of an offense involving the distribution of a controlled substance adulterated with a toxic substance.

*Section 5.

This section amends AS 12.55.155(d) to provide additional mitigating sentencing factors to be employed in drug offenses. Those additional factors are: (1) the commission of an offense involving small quantities of controlled substances; (2) the commission of an offense involving the distribution of a controlled substance for no remuneration to a personal acquaintance 19 years of age or older; and (3) the commission of an offense involving the possession of a controlled substance for personal use in the defendant's home.

*Section 6.

This section amends existing law regarding the duties of the Department of Health and Social Services.

Section 7.

This section provides for the continuation of various proceedings commenced prior to the effective date of this Act.

*Section 8.

This section provides for the continuation of orders and regulations not in conflict with this Act until modified, superseded, or repealed.

*Section 9.

This section provides for the repeal of existing drug statutes.

MWB:vc

Button manville folder - Reg By chart of Calif Law

- # 1 Sec. analysis - Peggy Berch
- # 2 ~~letter~~ memo to Rep Parr from H. Research re: purity of controlled ~~substance~~ substance.
- # 3. DATA ^(Drug Tables) Requested by This Committee from AK Judicial Council (Drug Tables.)
- #4. Comparison of HB 479 w/ FOA reqs. by D. Verner Stillner.
5. letter from Kenai Police chief
6. letter from exec. direct. of Rural exp
7. letter from ~~exec~~ program direct. Akeela House
8. letter from ~~exec~~ program direct Phillips alcoholism treatment center.
9. Copy of teleconference testimony Mr. Joe Strausville as requested by committee.
10. copy of testimony from Mr. Ric Adams FHS.
11. folder

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 19, 1980

SUBJECT: CS for HB 479

TO: Representative Thelma Buchholdt, Chairman
House Health, Education and Social Services
Committee
Attn: Shannon Garrett, A.A.

FROM: Thomas A. Sofo
Legislative Counsel *AS*

The attached committee substitute for House Bill 479 contains the additions which you requested from the governor's bill (HB 628). There are several problems which remain in this most recent version of the bill. First, it should be noted that the "advisory" committee which we have created seems to possess some powers in excess of those typically held by a committee whose function is merely advisory. The committee substitute allows the advisory committee to adopt regulations at least so far as they pertain to the addition of controlled substances to the various schedules in this Act. This quasi-lawmaking authority probably serves to take the committee out of the advisory category.

Secondly, the membership of the committee includes a legislator. Although that legislator is a non-voting member, there are several potential problems raised by his presence on the committee. There is the practical problem of having the governor appoint a legislator to such a committee. There is possibly a more serious problem of constitutional dimensions in having a legislator serve on a committee which exercises executive functions. Even though he may not be drawing a salary or allowed to vote on committee business, the presence of a legislator on such a committee is open to attack on the grounds that his mere presence alone will in some way affect the decisions which the committee reaches. If this were not so, we would not have placed such an individual on the committee. There is also a possible additional argument regarding the constitutional provision against dual office holding by legislators. The latter concern may be satisfied by reference to the fact that the legislator will not be drawing any salary for his service on the committee.

Representative Thelma Buchholdt
Page 2
March 19, 1980

I would suggest that the committee consider changing the title of this advisory committee by deleting the adjective "advisory". The bill would also be stronger if we could eliminate the legislative member on the committee. I would be happy to discuss the above points with you at your convenience.

TAS:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 19, 1980

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TO: Representative Thelma Buchholdt, Chairman
House Health, Education and Social Services
Committee
Attn: Shannon Garrett, A.A.

FROM: Thomas A. Sofo
Legislative Counsel *TS*

Amended

The attached committee substitute for House Bill 479 contains the additions which you requested from the governor's bill (HB 628). There are several problems which remain in this most recent version of the bill. First, it should be noted that the "advisory" committee which we have created seems to possess some powers in excess of those typically held by a committee whose function is merely advisory. The committee substitute allows the advisory committee to adopt regulations at least so far as they pertain to the addition of controlled substances to the various schedules in this Act. This quasi-lawmaking authority probably serves to take the committee out of the advisory category.

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