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ATTACHMENT A

the 90 days after the date of the enactment of this Act [enacted Nov. 10, 1978] may submit such report any time up to 97 days after such date of enactment.

"(3) Until otherwise provided by the Attorney General by regulation, the information required to be reported by a person under section 310(a)(1) of the Controlled Substances Act (as added by section 202(a)(2) of this title) subsec. (a)(1) of this section with respect to the person's distribution, sale, or importation of piperidine shall—

"(A) be the information described in subparagraphs (A) and (B) of such section, and

"(B) except as provided in paragraph (2) of this subsection, be reported not later than seven days after the date of such distribution, sale, or importation.".

Regulations for piperidine reporting. Act Nov. 10, 1978, P. L. 95-633, Title II, § 203(b), 92 Stat. 3777, required the Attorney General to publish proposed interim regulations for piperidine reporting under subsec. (a) of this section not later than 30 days after enactment on Nov. 10, 1978, and final interim regulations not later than 75 days after enactment on Nov. 10, 1978, such final interim regulations to be effective on and after the 91st day after such enactment.

Report to President and Congress on effectiveness of 21 USCS §§ 801 et seq. Act Nov. 10, 1978, P. L. 95-633, Title II, § 203(c), 92 Stat. 3777, required the Attorney General to analyze and evaluate the impact and effectiveness of the amendments made by 21 USCS §§ 801 et seq. and report to the President and Congress not later than Mar. 1, 1980.

Repeal of this section. Act Sept. 26, 1980, P. L. 96-359, § 8(b), 94 Stat. 1194, deleted § 203(d) of Act Nov. 10, 1978, P. L. 95-633, 92 Stat. 3777, which would have repealed this section, effective Jan. 1, 1981.

OFFENSES AND PENALTIES

§ 841. Prohibited acts A

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 405 [21 USCS § 845], any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or

(d)-(f) [Unchanged]

(g) Change of address. Every registrant under this title shall be required to report any change of professional or business address in such manner as the Attorney General shall by regulation require.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch V, Part B, §§ 514, 515, 98 Stat. 2074.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Schedules II, III, IV, or V", referred to in this section are contained in 21 USCS § 812(c).

Amendments:

1984. Act Oct. 12, 1984, in subsec. (c)(1), substituted subpara. (A) for one which read: "with respect to any narcotic controlled substance in schedule II, III, IV, or V, to the prescribing or administering of such substance by a practitioner in the lawful course of his professional practice unless such substance was prescribed or administered in the course of maintenance treatment or detoxification treatment of an individual; or", and substituted subpara. (B) for one which read: "with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed;"; and added subsec. (g).

§ 841. Prohibited acts A

(a) [Unchanged]

(b) Penalties. Except as otherwise provided in section 405 or 405A [21 USCS § 845 or 845a], any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of--

(I) coca leaves;

(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(III) a substance chemically identical thereto;

(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

(iii) 500 grams or more of phencyclidine (PCP); or

(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than $500,000, or both[.]

(B) In the case of a controlled substance in schedule I or II, except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(C) In the case of less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $50,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

(d)-(f) [Unchanged]

(g) Change of address. Every registrant under this title shall be required to report any change of professional or business address in such manner as the Attorney General shall by regulation require.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch V, Part B, §§ 514, 515, 98 Stat. 2074.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Schedules II, III, IV, or V", referred to in this section are contained in 21 USCS § 812(c).

Amendments:

1984, Act Oct. 12, 1984, in subsec. (c)(1), substituted subpara. (A) for one which read: "with respect to any narcotic controlled substance in schedule II, III, IV, or V, to the prescribing or administering of such substance by a practitioner in the lawful course of his professional practice unless such substance was prescribed or administered in the course of maintenance treatment or detoxification treatment of an individual; or", and substituted subpara. (B) for one which read: "with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed;"; and added subsec. (g).

§ 841. Prohibited acts A

(a) [Unchanged]

(b) Penalties. Except as otherwise provided in section 405 or 405A [21 USCS § 845 or 845a], any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of—

(I) coca leaves;

(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(III) a substance chemically identical thereto;

(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

(iii) 500 grams or more of phencyclidine (PCP); or

(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than $500,000, or both[.]

(B) In the case of a controlled substance in schedule I or II, except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(C) In the case of less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $50,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United

States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $100,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $10,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $20,000, or both.

(4) Notwithstanding paragraph (1)(C) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 404 [21 USCS § 844(a), (b)].

(5) Notwithstanding paragraph (1), any person who violates subsection (a) by cultivating a controlled substance on Federal property shall be fined not more than—

(A) $500,000 if such person is an individual; and

(B) $1,000,000 if such person is not an individual.

(6) [Repealed]

(c) Special parole term. A special parole term imposed under this section or section 405[,] 405A [21 USCS §§ 845, 845a] may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 405[,] 405A [21 USCS §§ 845, 845a] shall be in addition to, and not in lieu of, any other parole provided for by law.

(d) [Unchanged]

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch. V, Subch. Part A, Subpart, §§ 502, 503(b)(1)(2), 98 Stat. 2068, 2070.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed concluding period is inserted in subsec. (b)(1)(A) as the punctuation probably intended by Congress.

The bracketed commas are inserted in subsec. (c) of this section as the probable intent of Congress in the amendment made by Act Oct. 12, 1984, 503(b)(2), see the 1984 Amendment note to this section.

Amendments:

1984. Act Oct. 12, 1984, in subsec. (b), in the introductory matter, inserted "or 405A", in para. (1), redesignated subparas. (A) and (B) as subparas. (B) and (C), added new subpara. (A), in subpara. (B) as so redesignated, substituted "except as provided in subparagraphs (A) and (C)", for "which is a narcotic drug", substituted "$125,000" for "$25,000", substituted "of a State, the United States, or a foreign country" for "of the United States", and substituted "$250,000" for "$50,000", in subpara. (C) as so redesignated, substituted

USCS § 843 for possession of devices capable of making ordinary drugs appear to be controlled substances. United States v Gesualdi (1981, CA2 NY) 660 F2d 59.

12. Appellate review

Several asserted but unsubstantiated errors in introducing communications obtained pursuant to federal wire interception statute do not require reversal of convictions under 21 USCS §§ 841, 843(b), 952. United States v Falcone (1974, CA3 NJ) 505 F2d 478, cert den 420 US 955, 43 L Ed 2d 43, 95 S Ct 1338, 95 S Ct 1339 and (disagreed with United States v Gigante (CA2 NY) 538 F2d 502 (disagreed with United States v Angelini (CA7 Ill) 565 F2d 469, cert den 435 US 923, 55 L Ed 2d 517, 98 S Ct 1487) and (disagreed with United States v Diana (CA4 SC) 605 F2d 1307, cert den 444 US 1102 62 L Ed 2d 787, 100 S Ct 1067)).

Permissible inconsistent verdict rule cannot operate to sustain conviction on charge of using telephone to facilitate conspiracy to possess cocaine with intent to distribute where defendant is acquitted of underlying conspiracy and where indictment charges specific conspiracy in one count and in separate count charges facilitation. United States v Brooks (1983, CA11 Ga) 703 F2d 1273, reh den (CA11 Ga) 712 F2d 1419.

§ 844. Simple possession

(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

(b) Conditional discharge and expunging of records for first offense. (1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this title or title III, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determin-

ing whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part [21 USCS §§ 841 et seq.] for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 404, 84 Stat. 1264.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title II of Act Oct. 27, 1970, P. L. 91-513, 84 Stat. 1242, which appears generally as 21 USCS §§ 801 et seq. For full classification of such Title, consult USCS Tables volumes.

"Title III", referred to in this section, is Title III of Act Oct. 27, 1970, P. L. 91-513, 84 Stat. 1285, which appears generally as 21 USCS §§ 851 et seq. For full classification of such Title, consult USCS Tables volumes.

Effective date of section:

Act Oct. 27, 1970, P. L. 91-513, Title II, Part G, § 704(a), 84 Stat. 1284, which appears as 21 USCS § 801 note, provided that this section is effective on the first day of the seventh calendar month that begins after the day immediately preceding enactment on Oct. 27, 1970.

CROSS REFERENCES

This section is referred to in 21 USCS §§ 841, 885.

RESEARCH GUIDE

Am Jur:

25 Am Jur 2d, Drugs, Narcotics, and Poisons §§ 37, 39, 45.

Forms:

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

Annotations:

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana. 96 ALR3d 225.

Texts:

Bailey and Rothblatt, Handling Narcotic and Drug Cases.

Law Review Articles:

McLaughlin, Cocaine: The History and Regulation of a Dangerous Drug. 58 Cornell L Rev 537.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

There is no difference in requisite mental capacity ("knowingly or intentionally") for mere possession (21 USCS § 844(a)) or for possession with intent to distribute (21 USCS § 841(a)). United States v Trujillo (1974, CA10 NM) 497 F2d 408.

Key word in 21 USCS § 844(a) is "unless"; possession is unlawful unless accused obtained possession of controlled substance pursuant to valid prescription; in order to establish defense set out in "unless" clause, it is not enough for defendant to show that original issuance of drug was pursuant to valid prescription, he must also show that his possession was pursuant to prescription. United States v Forbes (1975) 169 App DC 217, 515 F2d 676.

21 USCS § 844(a), insofar as it prohibits possession of marijuana, does not violate individual's constitutional right of privacy. Frazier v State (1977, Alaska) 566 P2d 1023.

2. Applicability

Person who was in status of addict, i. e., unable to resist compulsive urge to take narcotic drugs, would lack requisite mens rea to be responsible criminally for simple non-trafficking possession of narcotic drug for his own use. United States v Linosey (1971, DC Dist Col) 324 F Supp 55, affd in part without op and vacated in part without op on other grounds 159 App DC 57, 486 F2d 1317.

3. Possession, generally

Possession of confederate was possession of defendant. Willsman v United States (1923, CA8 Mo) 286 F 852.

Defendant using tools for cutting morphine was in possession of such morphine as adhered to tools. United States v Adelman (1939, CA2 NY) 107 F2d 497.

Possession for use does not differ, in legal effect, from possession for any other illegitimate purpose, such as for sale or distribution. Pitta v United States (1947, CA9 Cal) 164 F2d 601.

Defendant did not "have possession" of narcotic drugs within meaning of predecessor to 21 USCS § 844 when he had neither personal physical custody nor control over drugs, although he had engaged in common scheme or plan with third person, not on trial, who did have such personal custody or control of narcotic drugs. Hernandez v United States (1962, CA9 Cal) 300 F2d 114.

Casual facilitator of sale, who knew that given principal possessed and traded in narcotics but who lacked working relationship with that prin-

cipal that enabled assurance of delivery, could not be held to have dominion and control over drug delivered and could not be said to have possession of it. United States v Jones (1962, CA2 NY) 308 F2d 26.

Constructive possession might be established by showing dominance and control over the narcotics, although actual control remained in someone else. United States v Rosario (1964, CA2 NY) 327 F2d 561.

Possession adequate to convict under 21 USCS § 844(a) may be constructive rather than actual if jury reasonably believes driver knew marijuana was concealed in truck or if driver of car that served to direct truck knew truck contained marijuana, there is constructive possession of drug, but mere presence near truck or in yard of home to which truck was driven does not give rise to constructive profession. United States v Maspero (1974, CA5 Tex) 496 F2d 1354.

Joint purchasers and possessors of controlled substance who intend to share it between themselves as users can not be found guilty of felony possession with intent to distribute within meaning of 21 USCS § 841(a)(1), as distinguished from misdemeanor simple possession in violation of 21 USCS § 844. United States v Swiderski (1977, CA2 NY) 548 F2d 445.

4. —Quantity of drug possessed

"Usable quantity" doctrine is neither applicable nor appropriate for use in connection with prosecutions under 21 USCS § 844(a). United States v Jeffers (1975, CA7 Ind) 524 F2d 253.

Defendant can properly be convicted under 21 USCS § 844 for possession of .289 grams of marijuana despite his contention that statute should not be interpreted to permit convictions based upon so small amount of drug that it could not be used for its common purpose; under federal law, conviction will be upheld where any measureable amount of any controlled substance is found, and § 844 makes no distinction between relative harmfulness of drug involved, but prohibits possession of any controlled substance with no usability test recognized. United States v Harold (1979, CA5 Fla) 588 F2d 1136.

5. Probable cause for search and arrest

In prosecution for violating narcotic laws, remark by defendant, that "I don't sell bundles at a discount", together with agents' observation of two suspects in apartment believed to be addicts, sufficiently establishes probable cause for defendant's arrest. United States v Wilkes (1971, CA2 NY) 451 F2d 938.

Suspicious circumstances involving observation by narcotics agent of surreptitious transfer of package into airplane apparently owned by person suspected of narcotics traffic, failure of defendant pilot to answer truthfully agent's questions about his employment, expiration of medical certificate for aviation, license which does not permit defendant to pilot type of plane he is piloting, and fear of agent that pilot or his companion may be armed, permit detention of airplane at gunpoint by narcotics agent prior to actual discovery of contraband and later arrest of defendant; search is reasonable and made with probable cause such that no constitutional guarantee of Fourth Amendment is violated. United States v Richards (1974, CA9 Cal) 500 F2d 1025, cert den 420 US 924, 43 L Ed 2d 393, 95 S Ct 1118.

Evidence of "detail corroboration" in search warrant application which is limited to affiant's verification that house where informant personally observed marijuana belonged to defendant, without more, lacks probative value. United States v Schmidt (1981, CA8 Minn) 662 F2d 498.

Tip by caller that contained information that defendant is illegal alien but carries "green card", though not entirely correct, is sufficiently correct to support search and subsequent arrest for illegal possession of opium where other information given in tip is corroborated by defendant's acts and surrounding circumstances. United States v Ho Yee Bon (1974, SD NY) 378 F Supp 582.

6. Separate offenses

Possession of several kinds of drugs at same time did not constitute separate and distinct offense as to each kind. Braden v United States (1920, CA8 Minn) 270 F 441.

Offense of selling was separate from that of possession and conviction of both was not double jeopardy. De Bellis v United States (1927, CCA7 Ill) 22 F2d 948, cert den 276 US 634, 72 L Ed 743, 48 S Ct 420.

Purchase, possession and sale of drugs were separate offenses and subject to separate penalties. Walsh v White (1929, CA8 Kan) 32 F2d 240.

Test of whether single transaction violates two separate statutory provisions is whether each provision requires proof of fact that other does not, and so indictment charging, in two counts, unlawful possession and unlawful sale of narcotics states two offenses and consecutive sentences imposed on conviction on both counts did not violate Fifth Amendment's prohibition against double jeopardy [Const Amend 5]. United States v Johnson (1956, CA7 Ill) 235 F2d 159, cert den 352 US 1006, 1 L Ed 2d 551, 77 S Ct 567.

ATTACHMENT B

duct involving a controlled substance in the third degree were excessive where defendant, a first offender, was more properly classified as a courier of drugs and low level employee rather than a titan of the narcotics business. Marin v. State, Ct. App. Op. No. 475 (File No. A-556), 699 P.2d 886 (1985).

Nonpresumptive sentences of four years on each of three counts involving a controlled substance in the third degree were made consecutive to each other for a total sentence of 12 years, with six years suspended; and the defendant was placed on probation for five years; this was excessive. Stuart v. State, Ct. App. Op. No. 464 (File No. A-276), 698 P.2d 1218 (1985).

Sentence for one count of misconduct involving a controlled substance under AS 11.71.040 (a)(3)(A) and five counts under AS 11.71.030 (a)(1) totaling eight years with four years suspended was excessive; the court of appeals remanded for resentencing not to exceed six years with two years suspended where the defendant had a favorable criminal record, a good employment history, and was a good prospect for rehabilitation. The court of appeals also believed that the presumptive sentences established by the revised criminal code for the defendant's most serious offense should constitute a ceiling on his sentence. Rivas v. State, Ct. App. Op. No. 539 (File No. A-671), 706 P.2d 1202 (1985).

Stated in Bush v. State, Ct. App. Op. No. 350 (File Nos. 7277, 7302), 678 P.2d 423 (1984).

Cited in Resek v. State, Ct. App. Op. No. 597 (File No. A-787), 715 P.2d 1188 (1986).

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

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

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

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

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

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

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

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

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

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

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

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

(7) knowingly uses in the course of the manufacturer or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

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

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; or

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

(b) It is an affirmative defense to a prosecution under (a)(4) of this section that at the time of the possession the school was closed to any organized activity involving persons under 18 years of age. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

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

(d) Misconduct involving a controlled substance in the fourth degree is a class C felony. (§ 2 ch 45 SLA 1982; am § 9 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsection (a).

NOTES TO DECISIONS

Required marijuana content. — In order to be charged with misconduct involving a controlled substance involving marijuana, a person must be in possession of a substance that contains its seeds, leaves, buds or flowers; merely possessing stalks, fibers or sterilized seeds would not be enough. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

Aggregate weight. — In order to be convicted of misconduct involving a controlled substance, defendant need only to have delivered a combination of ingredients that included marijuana; it is the total weight of the entire substance delivered that determines the degree of the offense. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

The weight of marijuana should be determined absent stalks, fiber and sterilized seeds. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

Offenses violating same societal interest. — Trial judge erred in concluding

that misdemeanor forgery and obtaining a controlled substance by forgery are separate offenses which in an appropriate case permit separate sentences; the two offenses violate the same societal interest, namely the regulation of the availability of harmful drugs. Alley v. State, Ct. App. Op. No. 498 (File No. A-368), 704 P.2d 233 (1985).

Convictions and sentences for misconduct involving cocaine affirmed. — See Adams v. State, Ct. App. Op. No. 525 (File No. A-450), 706 P.2d 1183 (1985).

Sentence for possession of marijuana with intent to distribute. — See Fleener v. State, Ct. App. Op. No. 396 (File No. A-9), 686 P.2d 730 (1984).

Sentence excessive. — Sentence for one count of misconduct involving a controlled substance under AS 11.71.040(a)(3)(A) and five counts under AS 11.71.030(a)(1) totaling eight years with four years suspended was excessive; the court of appeals remanded for resentencing not to exceed six years with two years suspended where the defendant had a favorable criminal record, a good employment history, and was a good prospect for rehabilitation. The court of appeals also believed that the presumptive sentences established by the revised criminal code for the defendant's most serious offense should constitute a ceiling on his sentence. Rivas v. State, Ct. App. Op. No. 539 (File No. A-671), 706 P.2d 1202 (1985).

Cited in Hodsdon v. State, Ct. App. Op. No. 467 (File No. A-241), 698 P.2d 1224 (1985); Pooley v. State, Ct. App. Op. No. 505 (File No. A-310), 705 P.2d 1293 (1985).

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

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

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

(3) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than three grams containing a schedule IIIA or IVA controlled substance;

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

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

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

(b) Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor. (§ 2 ch 45 SLA 1982; am § 10 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsection (a).

NOTES TO DECISIONS

Required marijuana content. — In order to be charged with misconduct involving a controlled substance involving marijuana, a person must be in possession of a substance that contains its seeds, leaves, buds or flowers; merely possessing stalks, fibers or sterilized seeds would not be enough. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

Aggregate weight. — In order to be convicted of misconduct involving a controlled substance, defendant need only to have delivered a combination of ingredients that included marijuana; it is the total weight of the entire substance delivered that determines the degree of the offense. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

The weight of marijuana should be determined absent stalks, fiber and sterilized seeds. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

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

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

(2) knowingly possesses any amount of a schedule VIA controlled substance within the immediate control of that person while operating a propelled vehicle;

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

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

(5) refuses entry into a premises for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the sixth degree is a class B misdemeanor. (§ 2 ch 45 SLA 1982; am § 11 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsecton (a).

Sec. 11.71.070. Misconduct involving a controlled substance in the seventh degree. (a) Except as authorized in AS 17.30, a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

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

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable as authorized in AS 12.55, except that if a fine is imposed it shall not be more than $100. (§ 2 ch 45 SLA 1982; am § 12 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment, effective June 11, 1986, deleted "or AS 17.35" following "AS 17.30" in the introductory language of subsection (a).

Sec. 11.71.080. Aggregate weight of live marijuana plants.

NOTES TO DECISIONS

Applicability of definition. — The definition in this section did not apply where the marijuana was already dried and processed. Gibson v. State, Ct. App. Op. No. 621 (File No. A-917), 719 P.2d 687 (1986).

Article 2. Standards and Schedules.

Section
120. Authority to schedule controlled substances

Sec. 11.71.120. Authority to schedule controlled substances. (a) If, after considering the factors set out in (c) of this section, the committee decides to recommend that a substance should be added to, deleted from, or rescheduled in a schedule of controlled substances under AS 11.71.140 — 11.71.190, the governor shall introduce legislation in accordance with the recommendation of the committee.

(b) If a substance is added as a controlled substance under federal law, the governor shall introduce legislation in accordance with the federal law.

ATTACHMENT C

or to any property, including fishing rights, the right or title to which may be held by for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

Consent to Act of Admission

SECTION 13. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

ARTICLE XIII

AMENDMENT AND REVISION

Amendments

SECTION 1. Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor". The second amendment to this section, approved by the voters August 27, 1974 and effective October 12, 1974, changed "statewide" to read "general" in the second sentence.)

Convention

SECTION 2. The legislature may call constitutional conventions at any time.

Call by Referendum

SECTION 3. If, during any ten-year period a constitutional convention has not been held, the lieutenant governor shall place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election. The lieutenant governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Power

SECTION 4. Constitutional Conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

ATTACHMENT D

Introduced: 2/19/85
Referred: Health, Education & Social Services
and Judiciary

IN THE SENATE

BY P.FISCHER, FERGUSON AND FAIKS

SENATE JOINT RESOLUTION NO. 16

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska providing that an individual's right of privacy does not extend to the unlawful possession or use of cocaine, heroin, marijuana, or other controlled substances.

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

* Section 1. Article I, sec. 22, Constitution of the State of Alaska, is amended to read:

SECTION 22. RIGHT OF PRIVACY. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. <u>The right of privacy does not extend to the unlawful possession or use of cocaine, heroin, marijuana, or other controlled substances as defined in the criminal law of the state.</u>

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Irwin RAVIN, Petitioner,
v.
STATE of Alaska, Respondent.
No. 2135.

Supreme Court of Alaska.
May 27, 1975.
As Amended May 28, 1975.

Proceeding was instituted on defendant's motion to dismiss charge of violation of statute proscribing possession of marijuana. The District Court, Third Judicial District, Anchorage, Dorothy D. Tyner, J., denied motion to dismiss and the superior court affirmed and petition for review from the superior court's affirmance was granted. The Supreme Court, Rabinowitz, C. J., held that need for control of drivers under influence of marijuana and existing doubts as to safety of marijuana demonstrate a sufficient justification for statutory proscription of possession of marijuana, and thus an individual's right to possess or ingest marijuana while driving is subject to statute proscribing possession of marijuana; and that no adequate justification exists for State's intrusion into citizen's right of privacy by its prohibition of possession of marijuana by an adult for personal consumption in home, and thus possession of marijuana by adults at home for personal use is constitutionally protected.

Remanded for further proceedings.

Boochever and Connor, JJ., filed specially concurring opinions.

1. Criminal Law ⇐1030(2)

Issue of cruel and unusual punishment in application of statute proscribing possession of marijuana to possession of marijuana for personal use was not considered by Supreme Court, since issue was not raised below or in petition for review to Supreme Court. Rules of Appellate Procedure, rule 24(c); AS 17.12.010, 17.12.150.

2. Constitutional Law ⇐82

Once a fundamental right under State Constitution has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, government must come forward and meet its substantial burden of establishing that abridgment in question was justified by a compelling governmental interest.

3. Constitutional Law ⇐82

When governmental action interferes with an individual's freedom in an area which is not characterized as fundamental, a less stringent test is ordinarily applied and, in such cases, court's task is to determine whether legislative enactment has a reasonable relationship to a legitimate government purpose, and under this "rational basis" test state need only demonstrate existence of facts which can serve as a rational basis for belief that measure would properly serve public interest.

4. Constitutional Law ⇐82

If governmental restrictions interfere with individual's right to privacy, court will require that relationship between means and ends be not merely reasonable but close and substantial.

5. Constitutional Law ⇐82

Federal right to privacy arises only in connection with other fundamental rights, such as the grouping of rights which involve the home, and even in connection with penumbra of home-related rights, right of privacy in sense of immunity from prosecution is absolute only when private activity will not endanger or harm the general public. Const. art. 1, § 22; U.S.C.A. Const. Amends. 1, 3–5, 14.

6. Constitutional Law ⇐82
Drugs and Narcotics ⇐41

Right to privacy amendment to Alaska Constitution cannot be read so as to make the possession or ingestion of marijuana itself a fundamental right. Const. art. 1, § 22.

7. Constitutional Law ⇐82

Privacy amendment to Alaska Constitution was intended to give recognition and protection to the home. Const. art. 1, § 22.

8. Constitutional Law ⇐82

Privacy in the home is a fundamental right. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

9. Constitutional Law ⇐82

Right of privacy in the home must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

10. Constitutional Law ⇐82

No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Const. art. 1, § 22; U.S.C.A. Const. Amend. 4.

11. Constitutional Law ⇐82

Right of privacy in home is limited in that possession of substances is guaranteed only for purely private, noncommercial use in home. Const. art. 1, § 22; U.S.C.A. Const. Amend. 4.

12. Constitutional Law ⇐70.1(10)

In determining validity of legislative proscription of possession of marijuana, it is not function of court to reassess scientific evidence in the manner of a legisla-

13. Constitutional Law ⇐82

State cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals.

14. Constitutional Law ⇐82

The right of an individual to do as he pleases is not absolute and it can be made to yield when it begins to infringe on the rights and welfare of others.

15. Constitutional Law ⇐81

Authority of state to control activities of its citizens is not limited to activities which have a present and immediate impact on public health or welfare.

16. Constitutional Law ⇐82

State is under no obligation to allow otherwise "private" activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare.

17. Health and Environment ⇐20

Statutes designed to protect the public health will receive a liberal construction.

18. Health and Environment ⇐20

There is a presumption in favor of public health measures.

19. Health and Environment ⇐20

When there is substantial doubt as to safety of a given substance or situation of public health, controls intended to obviate the danger will usually be upheld.

20. Automobiles ⇐332

Need for control of drivers under influence of marijuana and existing doubts as to safety of marijuana demonstrate a sufficient justification for statutory proscription of possession of marijuana; and thus an individual's right to possess or ingest marijuana while driving is subject to statute proscribing possession of marijuana. AS 05.25.060, 17.12.010, 17.12.150, 28.-35.030; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 14.

21. Drugs and Narcotics ⇐43

No adequate justification exists for State's intrusion into citizen's right of privacy by its prohibition of possession of marijuana by an adult for personal consumption in home, and thus possession of marijuana by adults at home for personal use is constitutionally protected. AS 17.-12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

22. Constitutional Law ⇐82

Privacy of individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest.

23. Drugs and Narcotics ⇐62, 68

Neither federal nor Alaska Constitution affords protection for the buying or selling of marijuana, nor absolute protection for its use or possession in public. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

24. Drugs and Narcotics ⇐66

Possession at home of amounts of marijuana indicative of intent to sell rather than possession for personal use is unprotected. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

25. Constitutional Law ⇐250.1(2)
Drugs and Narcotics ⇐43

Statute proscribing possession of marijuana is not violative of equal protection on ground that other commonly used recreational drugs, such as alcohol and tobacco, are not proscribed, even though they may inflict more damage on user than does marijuana. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amend. 1, 14.

26. Health and Environment ⇐20

It is not irrational for legislature to regulate those public health areas where it can do so, when other areas exist where controls are less feasible.

27. Drugs and Narcotics ⇐43

Fact that marijuana may be the least harmful of drugs covered by statute proscribing possession is not alone sufficient to make classification of marijuana with other drugs covered irrational. AS 17.10.010 et seq., 17.12.010, 17.12.150(3); U.S.C.A.Const. Amends. 1, 14.

28. Constitutional Law ⇐70.3(12)

Wisdom of statute proscribing possession of marijuana was for legislature, rather than judiciary. AS 17.10.010 et seq., 17.12.010, 17.12.150(3).

R. Collin Middleton and Robert H. Wagstaff, Anchorage, for petitioner.

Stephen G. Dunning, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for respondent.

OPINION

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

RABINOWITZ, Chief Justice.

The constitutionality of Alaska's statute prohibiting possession of marijuana is put in issue in this case. Petitioner Ravin was arrested on December 11, 1972 and charged with violating AS 17.12.010.[1] Before trial Ravin attacked the constitutionality of AS 17.12.010 by a motion to dismiss in which he asserted that the State had violated his right of privacy under both the federal and Alaska constitutions, and further violated the equal protection provisions of the state and federal constitutions. Lengthy hearings on the questions were held before District Court Judge Dorothy D. Tyner, at which testimony from several expert witnesses was received. Ravin's motion to dismiss was denied by Judge Tyner. The superior court then granted review and after affirmance by the superior court, we, in turn, granted Ravin's petition for review from the superior court's affirmance.

[1] Here Ravin raises two basic claims: first, that there is no legitimate state interest in prohibiting possession of marijuana by adults for personal use, in view of the right to privacy; and secondly, that the statutory classification of marijuana as a dangerous drug, while use of alcohol and tobacco is not prohibited, denies

1. AS 17.12.010 provides:
Except as otherwise provided in this chapter, it is unlawful for a person to manufacture, compound, counterfeit, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, a depressant, hallucinogenic or stimulant drug.
AS 17.12.150 defines "depressant, hallucinogenic, or stimulant drug" to include all parts of the plant *Cannabis Sativa L.*

him due process and equal protection of law.[2]

We first address petitioner's contentions that his constitutionally protected right to privacy compels the conclusion that the State of Alaska is prohibited from penalizing the private possession and use of marijuana. Ravin's basic thesis is that there exists under the federal and Alaska constitutions a fundamental right to privacy, the scope of which is sufficiently broad to encompass and protect the possession of marijuana for personal use. Given this fundamental constitutional right, the State would then have the burden of demonstrating a compelling state interest in prohibiting possession of marijuana. In light of these controlling principles, petitioner argues that the evidence submitted below by both sides demonstrates that marijuana is a relatively innocuous substance, at least as compared with other less-restricted substances, and that nothing even approaching a compelling state interest was proven by the State.

Ravin's arguments necessitate a close examination of the contours of the asserted right to privacy and the scope of this court's review of the legislature's determination to criminalize possession of marijuana.

[2] We have previously stated the tests to be applied when a claim is made that state action encroaches upon an individual's constitutional rights. In *Breese v. Smith*, 501 P.2d 159 (Alaska 1972), we had before us a school hairlength regulation which encroached on what we determined to be the individual's fundamental right to determine his own personal appearance. There we stated:

> Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgement in question was justified by a compelling governmental interest.[3]

This standard is familiar federal law as well. As stated by the United States Supreme Court:

> Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling.[4]

The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy."[5]

[3] When, on the other hand, governmental action interferes with an individual's freedom in an area which is not characterized as fundamental, a less stringent test is ordinarily applied. In such cases our task is to determine whether the legislative enactment has a reasonable relationship to a legitimate governmental purpose.[6] Under this latter test, which is sometimes referred to as the "rational basis" test, the State

2. In his briefs before this court, Ravin also attempts to raise the issue of cruel and unusual punishment in the application of AS 17.12.010 to possession of marijuana for personal use. Because this issue was not raised below or in the petition for review to this court, we decline to consider the issue in this proceeding. *See* Appellate Rule 24(c). *Cf.* Moran v. Holman, 501 P.2d 769, 770 n. 1 (Alaska 1972).

3. 501 P.2d at 171. *See* State v. Wylie, 516 P.2d 142 (Alaska 1973); State v. Van Dort, 502 P.2d 453 (Alaska 1972); Gray v. State, 525 P.2d 524, 527 (Alaska 1974); Gilbert v. State, 526 P.2d 1131, 1133 (Alaska 1974); State v. Adams, 522 P.2d 1125 (Alaska 1974).

4. Bates v. Little Rock, 361 U.S. 516, 524, 80 S.Ct. 412, 417, 4 L.Ed.2d 480, 486 (1960). *See* Roe v. Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d 147, 178 (1973).

5. McLaughlin v. Florida, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222, 231 (1964), quoted in the concurrence of Mr. Justice Goldberg in Griswold v. Connecticut, 381 U.S. 479, 497, 85 S.Ct. 1678, 14 L.Ed.2d 510, 523 (1965).

6. *See* Concerned Citizens v. Kenai Peninsula Borough, 527 P.2d 447, 452 (Alaska 1974); Mobil Oil Corp v. Local Boundary Comm'n, 518 P.2d 92, 101 (Alaska 1974); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L. Ed. 1042 (1923).

need only demonstrate the existence of facts which can serve as a rational basis for belief that the measure would properly serve the public interest.

In our recent opinion in *Lynden Transport, Inc. v. State*, 532 P.2d 700 (Alaska 1975), we recognized the existence of considerable dissatisfaction with the fundamental right-compelling state interest test. There we said:

> It has been suggested that there is mounting discontent with the rigid two-tier formulation of the equal protection doctrine, and that the United States Supreme Court is prepared to use the clause more rigorously to invalidate legislation without expansion of "fundamental rights" or "suspect" categories and the concomitant resort to the "strict scrutiny" tests. We are in agreement with the view that the Supreme Court's recent equal protection decisions have shown a tendency towards less speculative, less deferential, more intensified means-to-end inquiry when it is applying the traditional rational basis test and we approve of this development. *See* Gunther, *Forcward: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 Harv.L.Rev. 1 (1972). *See, e. g.*, James v. Strange, 407 U.S. 128, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972); Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

[4] This court has previously applied a test different from the rigid two-tier formulation to state regulations. In *State v. Wylie*,[7] we tested durational residency requirements for state employment by both the compelling state interest test and a test which examined whether the means chosen suitably furthered an appropriate governmental interest.[8] It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear a substantial relationship to the legislative purpose. If governmental restrictions interfere with the individual's right to privacy, we will require that the relationship between means and ends be not merely reasonable but close and substantial.

Thus, our undertaking is two-fold: we must first determine the nature of Ravin's rights, if any, abridged by AS 17.12.010, and, if any rights have been infringed upon, then resolve the further question as to whether the statutory impingement is justified.

As we have mentioned, Ravin's argument that he has a fundamental right to possess marijuana for personal use rests on both federal and state law, and centers on what may broadly be called the right to privacy. This "right" is increasingly the subject of litigation and commentary and is still a developing legal concept.[9]

In Ravin's view, the right to privacy involved here is an autonomous right which gains special significance when its situs is found in a specially protected area, such as the home. Ravin begins his privacy argument by citation of and reliance upon *Griswold v. Connecticut*,[10] in which the Supreme Court of the United States struck down as unconstitutional a state statute effectively barring the dispensation of birth control information to married persons. Writing for five members of the Court, Mr. Justice Douglas noted that rights protected by the Constitution are not limited to those specifically enumerated in the

7. 516 P.2d 142 (Alaska 1973).

8. *Id.* at n. 16.

9. The right to privacy was recently made explicit in Alaska by an amendment to the state constitution. Alaska Const. Art. I, § 22.

10. 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

Constitution. In order to secure the enumerated rights, certain peripheral rights must be recognized. In other words, the "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[11] Certain of these penumbral rights create "zones of privacy", for example, First Amendment rights of association, Third and Fourth Amendment rights pertaining to the security of the home, and the Fifth Amendment right against self-incrimination. The Supreme Court of the United States then proceeded to find a right to privacy in marriage which antedates the Bill of Rights and yet lies within the zone of privacy created by several fundamental constitutional guarantees. It was left unclear whether this particular right to privacy exists independently, or comes into being only because of its connection with fundamental enumerated rights.

The next important Supreme Court opinion regarding privacy is *Stanley v. Georgia*,[12] in which a state conviction for possession of obscene matter was overturned as violative of the First and Fourteenth Amendments. The Supreme Court had previously held that obscenity is not protected by the First Amendment.[13] But in *Stanley* the Count made a distinction between commercial distribution of obscene matter and the private enjoyment of it at home. The Constitution, it said, protects the fundamental right to receive information and ideas, regardless of their worth. Moreover, the Supreme Court said,

> . . . in the context of this case - a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.[14]

The Supreme Court concluded that the First Amendment means a state has no business telling a man, sitting alone in his own home, what books he may read or what films he may watch. The Court took care to limit its holding to mere possession of obscene materials by the individual in his own home. It noted that it did not intend to restrict the power of the state or federal government to make illegal the possession of items such as narcotics, firearms, or stolen goods.

The Stanley holding was subsequently refined by a series of cases handed down in 1973. In *Paris Adult Theatre I v. Slaton*,[15] the Supreme Court rejected the claim of a theater owner that his showing of allegedly obscene films was protected by *Stanley* because his films were shown only to consenting adults. The Court explicitly rejected the comparison of a theater to a home and found a legitimate state interest in regulating the use of obscene matter in local commerce and places of public accommodation. It apparently found no fundamental right involved in viewing obscene matter under these conditions, for it noted that the right to privacy guaranteed by the Fourteenth Amendment extends only to fundamental rights. The protection offered by *Stanely*, the Supreme Court stated, was restricted to the home, and it explicitly refused to say that all activities occurring between consenting adults were beyond the reach of the government.[16]

11. 381 U.S. at 484, 85 S.Ct. at 1681, 14 L.Ed.2d at 514.

12. 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969).

13. *See* Roth v. U. S., 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957).

14. 394 U.S. at 564, 89 S.Ct. at 1247, 22 L.Ed.2d at 549.

15. 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973). *See also* United States v. Orito, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513 (1973); United States v. 12 200-Ft. Reels, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

16. In a companion case, *United States v. Orito*, 413 U.S. 139 93 S.Ct. 2674, 37 L.Ed. 2d 513 (1973), the Supreme Court observed

[5] These Supreme Court cases indicate to us that the federal right to privacy arises only in connection with other fundamental rights, such as the grouping of rights which involve the home. And even in connection with the penumbra of home-related rights, the right of privacy in the sense of immunity from prosecution is absolute only when the private activity will not endanger or harm the general public.

The view is confirmed by the Supreme Court's abortion decision, *Roe v. Wade*.[17] There appellant claimed that her right to decide for herself concerning abortion fell within the ambit of a right to privacy flowing from the federal Bill of Rights. The Court's decision in her favor makes clear that only personal rights which can be deemed "fundamental" or "implicit in the concept of ordered liberty" are protected by the right to privacy. The Supreme Court found this right "broad enough to encompass a woman's decision whether or not to terminate her pregnancy," but it rejected the idea that a woman's right to decide is absolute. At some point, the state's interest in safeguarding health, maintaining medical standards, and protecting potential life becomes sufficiently compelling to sustain regulations. One does not, the Supreme Court said, have an unlimited right to do with one's body as one pleases.

The right to privacy which the Court found in *Roe* is closely akin to that in *Griswold*; in both cases the zone of privacy involves the area of the family and procreation,[18] more particularly, a right of personal autonomy in relation to choices affecting an individual's personal life.

In Alaska this court has dealt with the concept of privacy on only a few occasions. One of the most significant decisions in this area is *Breese v. Smith*,[19] where we considered the applicability of the guarantee of "life, liberty, the pursuit of happiness" found in the Alaska Constitution,[20] to a school hairlength regulation. Noting that hairstyles are a highly personal matter in which the individual is traditionally autonomous, we concluded that governmental control of personal appearance would be antithetical to the concept of personal liberty under Alaska's constitution. Since the student would be forced to choose between controlling his own personal appearance and asserting his right to an education if the regulations were upheld, we concluded that the constitutional language quoted above embodied an affirmative grant of liberty to public school students to choose their own hairstyles, for "at the core of [the concept of liberty] is the notion of total personal immunity from government control: the right 'to be let alone.'"[21] That right is not absolute, however; we also noted that this "liberty" must yield where it "intrude[s] upon the freedom of others."[22]

Subsequent to our decision in *Breese*, a right to privacy amendment was added to the Alaska Constitution. Article I, section 22 reads:

> The right of the people to privacy is recognized and shall not be infringed. The

that the *Stanley* right to possess obscene matter in the home is limited to the home and does not create a right to transport, receive, or distribute the matter. The Supreme Court further said that it is not true that a zone of constitutionally protected privacy follows such materials when they are moved outside the home. *See* United States v. 12 200-Ft. Reels, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

17. 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

18. *Cf.* Eisenstadt v. Baird, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1972) where the Supreme Court said in part:

> If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

19. 501 P.2d 159 (Alaska 1972).

20. Alaska Const. Art. I, § 1

21. 501 P.2d at 168.

22. 501 P.2d at 170, quoting Bishop v. Colaw, 450 F.2d 1069, 1077 (8th Cir. 1971).

legislature shall implement this section. The effect of this amendment is to place privacy among the specifically enumerated rights in Alaska's constitution. But this fact alone does not, in and of itself, yield answers concerning what scope should be accorded to this right of privacy.[23] We have suggested that the right to privacy may afford less than absolute protection to "the ingestion of food, beverages or other substances".[24] For any such protection must be limited by the legitimate needs of the State to protect the health and welfare of its citizens.[25]

Although a number of other jurisdictions have considered the privacy issue as it applies to marijuana prosecutions, they provide little help in defining the scope of article I, section 22 of Alaska's constitution. In Hawaii, whose constitution also contains an express guarantee of the right to privacy,[26] the supreme court has faced a similar issue. In *State v. Kantner*,[27] the Supreme Court of Hawaii upheld a conviction for possession of marijuana by a 3-2 vote, with one member of the majority concurring only because he thought the constitutional issue had not been properly raised. A majority rejected the claim that application of the statute violated guarantees of equal protection and due process, and two members of the court rejected the claim of violation of "fundamental liberty" based on *Griswold*. In dissent, Justice Levinson emphasized the guarantees of privacy and personal autonomy which he found in both the Hawaii Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. He found that the right to privacy "guarantees to the individual the full measure of control over his own personality consistent with the security of himself and others."[28] The experiences generated by use of marijuana are mental in nature, he wrote, and thus among the most personal and private experiences possible. So long as conduct does not produce detrimental results, the right of privacy protects the individual's conduct designed to affect these inner areas of the personality. The state failed to show, he found, any harm to the user or others from the private, personal use of marijuana, and so the statute infringed on the right to personal autonomy.

In a Michigan case the same year, a conviction for possession of marijuana was overturned by a unanimous court, though for a variety of reasons. One of the justices in *People v. Sinclair*,[29] Justice T. G. Kavanagh, rested his opinion squarely on the basic right of the individual to be free from government intrusions. He found the marijuana possession statute to be "an

23. For a discussion of the origins and scope of a similar constitutional guarantee of privacy, in the Hawaii Constitution, Art. I, § 5, see *State v. Kantner*, 53 Haw. 327, 493 P.2d 306 (1972), particularly n. 4 in the dissent of Justice Levinson at p. 314. This court has, in the area of searches and seizures, attempted to define the right of privacy. *See, e.g.*, Erickson v. State, 507 P.2d 508 (Alaska 1973); Mattern v. State, 500 P.2d 228 (Alaska 1972); Davis v. State, 499 P.2d 1025 (Alaska 1972); Ellison v. State, 383 P.2d 716 (Alaska 1963); Rubey v. City of Fairbanks, 456 P.2d 470 (Alaska 1969); Sleziak v. State, 454 P.2d 252 (Alaska 1969).

24. Gray v. State, 525 P.2d 524, 528 (Alaska 1974). In *Gray* we said:
> There is no available recorded history of this amendment, but clearly it shields the ingestion of food, beverages or other substances. But the right of privacy is not absolute. Where a compelling state interest is shown, the right may be held to be subordinate to express constitutional powers such as the authorization of the legislature to promote and protect public health and provide for the general welfare.

25. *Id.* If the State were required, for instance, to carry the extremely heavy burden of showing a compelling state interest before it could regulate the purity of foodstuffs and medicines, the result would be a practical inability to protect the public from health threats which consumers could neither know about nor protect themselves against.

26. Hawaii Const. Art. I, § 5.

27. 53 Haw. 327, 493 P.2d 306 (1972).

28. 493 P.2d at 315.

29. 387 Mich. 91, 194 N.W.2d 878 (1972).

impermissible intrusion on the fundamental rights to liberty and the pursuit of happiness, and is an unwarranted interference with the right to possess and use private property." [30] He noted the basic freedom of the individual to be free to do as he pleases so long as his actions do not interfere with the rights of his neighbor or of society. ". . . 'Big Brother' cannot, in the name of *Public* health, dictate to anyone what he can eat or drink or smoke in the *privacy* of his own home." [31]

Generally, however, privacy as a constitutional defense in marijuana cases has not met with much favor. It was rejected, for instance, by the Massachusetts Supreme Judicial Court in *Commonwealth v. Leis*,[32] where the court held that there was no constitutional right to smoke marijuana, that smoking marijuana was not fundamental to the American scheme of justice or necessary to a regime of ordered liberty, and that smoking marijuana was not locatable in any "zone of privacy". Furthermore, the court said, there is no constitutional right to become intoxicated.[33]

[6] Assuming this court were to continue to utilize the fundamental right-compelling state interest test in resolving privacy issues under article I, section 22 of Alaska's constitution, we would conclude that there is not a fundamental constitutional right to possess or ingest marijuana in Alaska. For in our view, the right to privacy amendment to the Alaska Constitution cannot be read so as to make the possession or ingestion of marijuana itself a fundamental right. Nor can we conclude that such a fundamental right is shown by virtue of the analysis we employed in *Breese*. In that case, the student's traditional liberty pertaining to autonomy in personal appearance was threatened in such a way that his constitutionally guaranteed right to an education was jeopardized. Hairstyle, as emphasized in *Breese*, is a highly personal matter involving the individual and his body. In this sense this aspect of liberty-privacy is akin to the significantly personal areas at stake in *Griswold* and *Eisenstadt v. Baird*. Few would believe they have been deprived of something of critical importance if deprived of marijuana, though they would if stripped of control over their personal appearance. And, as mentioned previously, a discrete federal right of privacy separate from the penumbras of specifically enumerated constitutional rights has not as yet been articulated by the Supreme Court of the United States. Therefore, if we were employing our former test, we would hold that there is no fundamental right, either under the Alaska or federal constitutions, either to possess or ingest marijuana.

The foregoing does not complete our analysis of the right to privacy issues. For in *Gray* we stated that the right of privacy amendment of the Alaska Constitution "clearly it shields the ingestion of food, beverages or other substances", but that this right may be held to be subordinate to public health and welfare measures. Thus, Ravin's right to privacy contentions are not susceptible to disposition solely in terms of answering the question whether there is a general fundamental constitutional right to possess or smoke marijuana. This leads us to a more detailed examination of the right to privacy and the relevancy of where the right is exercised. At one end of the scale of the scope of the right to privacy is possession or ingestion

30. 191 N.W.2d at 896.

31. *Id.*

32. 243 N.E.2d 898 (Mass.1969).

33. The privacy argument has been rejected in several other cases. Miller v. State, 458 S.W.2d 69 (Tex.Crim.App.1970); *In re* Klor, 64 Cal.2d 816, 51 Cal.Rptr. 903, 415 P.2d 791 (1966); People v. Aguiar, 257 Cal. App.2d 597, 65 Cal.Rptr. 171 (1968); United States v. Drotar, 416 F.2d 914 (5th Cir. 1969), *vacated on other grounds*, 402 U.S. 939, 91 S.Ct. 1628, 29 L.Ed.2d 107 (1971); Borras v. State, 229 So.2d 244 (Fla.1969); Raines v. State, 225 So.2d 330 (Fla.1969). *See* Scott v. United States, 129 U.S.App.D.C. 396, 395 F.2d 619 (1968).

in the individual's home. If there is any area of human activity to which a right to privacy pertains more than any other, it is the home. The importance of the home has been amply demonstrated in constitutional law. Among the enumerated rights in the federal Bill of Rights are the guarantee against quartering of troops in a private house in peacetime (Third Amendment) and the right to be "secure in their . . . houses . . . against unreasonable searches and seizures . . ." (Fourth Amendment). The First Amendment has been held to protect the right to "privacy and freedom of association in the home." [34] The Fifth Amendment has been described as providing protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." [35] The protection of the right to receive birth control information in *Griswold* was predicated on the sanctity of the marriage relationship and the harm to this fundamental area of privacy if police were allowed to "search the sacred precincts of marital bedrooms." [36] And in *Stanley v. Georgia*,[37] the Court emphasized the home as the situs of protected "private activities". The right to receive information and ideas was found in *Stanley* to take on an added dimension precisely because it was a prosecution for possession in the home: "For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." [38] In a later case, the Supreme Court noted that *Stanley* was not based on the notion that the obscene matter was itself protected by a constitutional penumbra of privacy, but rather was a "reaffirmation that 'a man's home is his castle.'" [39] At the same time the Court noted, "the Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, child rearing, and education." [40] And as the Supreme Court pointed out, there exists a "myriad" of activities which may be lawfully conducted within the privacy and confines of the home, but may be prohibited in public.[41]

[7] In Alaska we have also recognized the distinctive nature of the home as a place where the individual's privacy receives special protection. This court has consistently recognized that the home is constitutionally protected from unreasonable searches and seizures, reasoning that the home itself retains a protected status under the Fourth Amendment and Alaska's constitution distinct from that of the occupant's person.[42] The privacy amendment to the Alaska Constitution was intended to give recognition and protection to the

34. Moreno v. United States Dep't of Agriculture, 345 F.Supp. 310, 314 (D.D.C.1972), *aff'd*, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973).

35. Boyd v. U. S., 116 U.S. 616, 630, 6 S.Ct. 524, 29 L.Ed. 746, 751 (1886).

36. 381 U.S. at 486, 85 S.Ct. at 1682, 14 L.Ed.2d at 516.

37. 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969).

38. 394 U.S. at 564, 89 S.Ct. at 1247, 22 L.Ed.2d at 549.

39. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 63, 93 S.Ct. 2628, 2640, 37 L.Ed.2d 446, 462 (1973).

40. U. S. v. Orito, 413 U.S. 139, 142, 93 S.Ct. 2674, 2677, 37 L.Ed.2d 513, 517 (1973). *See* U. S. v. 12 200-Ft. Reels, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

41. U. S. v. Orito, 413 U.S. 139, 142–143, 93 S.Ct. 2674, 37 L.Ed.2d 513, 518 (1973).

42. State v. Spietz, 531 P.2d 521 (Alaska 1975); Ferguson v. State, 488 P.2d 1032 (Alaska 1971). *See* cases cited *supra* at n. 21. The home receives special attention in other areas of Alaska's laws, e. g., the homestead exemption in relation to execution sales, AS 09.35.090; the justifiable homicide defense pertaining to the prevention of a felony in the home, AS 11.15.100; and the distinction between burglary in a dwelling house and burglary in other structures, AS 11.20.080–.100.

home. Such a reading is consonant with the character of life in Alaska. Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states.

[8–11] The home, then, carries with it associations and meanings which make it particularly important as the situs of privacy. Privacy in the home is a fundamental right, under both the federal and Alaska constitutions. We do not mean by this that a person may do anything at anytime as long as the activity takes place within a person's home. There are two important limitations on this facet of the right to privacy. First, we agree with the Supreme Court of the United States, which has strictly limited the *Stanley* guarantee to possession for purely private, noncommercial use in the home. And secondly, we think this right must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Indeed, one aspect of a private matter is that it *is* private, that is, that it does not adversely affect persons beyond the actor, and hence is none of their business. When a matter does affect the public, directly or indirectly, it loses its wholly private character, and can be made to yield when an appropriate public need is demonstrated.

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

This leads us to the second facet of our inquiry, namely, whether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general in the interest of public welfare; and further, whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

[12] The evidence which was presented at the hearing before the district court consisted primarily of several expert witnesses familiar with various medical and social aspects of marijuana use.[43] Numer-

43. Among the works we have examined in addition to the testimony below are the following: Marihuana: A Signal of Misunderstanding, the First Report of the National Commission on Marihuana and Drug Abuse (March 1972); Drug Use in America: Problem in Perspective, the Second Report of the National Commission on Marihuana and Drug Abuse (March 1973); Drug Use in Anchorage, Alaska, 223 J.Am.Med. Ass'n 657 (1971). G. Nahas, Marihuana: Deceptive Weed (1973); Nahas *et al*, Inhibition of Cellular Mediated Immunity in Marihuana Smokers, 193 Science 419 (1974); L. Grinspoon, Marihuana Reconsidered (1971); Hearings before the U. S. Senate Subcommittee on Internal Security, May 1974; Nahas & Greenwood, The First Report of the National Commission on Marihuana (1972): Signal of Misunderstanding or Exercise in Ambiguity, draft of article to be published in Bulletin of N. Y. Academy of Medicine; Marihuana and Health: Fourth Annual Report to the U. S. Congress from the Secretary of Health, Education, and Welfare (1974); Silverstein & Tessin, Normal Skin Test Responses in Chronic Marihuana Users, 186 Science 740 (1974): Marihuana: The Grass May No Longer Be Greener, 185 Science 683 (1974); Marihuana (II): Does it Damage the Brain?, 185 Science 775 (1974); Depression of Plasma Testosterone Levels After Chronic Intensive Marihuana Use, 290 N.Engl.J.Med. 872 (1974); Plasma Testosterone Levels Before, During and After Chronic Marihuana Smoking, 291 N.Engl.J.Med. 1051 (1974); Marijuana Survey-State of Oregon, Drug Abuse Council (1974).

ous written reports and books were also introduced into evidence.[44]

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

According to figures published by the National Commission on Marihuana and Drug Abuse[45] in 1973, an estimated 26 million Americans have used marijuana at least once. The incidence generally cuts across social and economic classes, though use is greatest among young persons (55% of 18-21 year-olds have used it). Only about 2% of the adults who have used it were classified by the National Commission as "heavy users" (more than once daily). The experience in Alaska seems to be similar. A report published in the Journal of the American Medical Association in 1971 indicated that 24% of Anchorage school children in grades six through twelve had used marijuana, as had 46% in grades eleven and twelve.[46]

Scientific testimony on the physiological and psychological effects of marijuana on humans generally stresses the variability of effects upon different individuals and on any one individual at different times. The setting and psychological state of the user can affect his responses. Responses also vary with the amount of marijuana one has used in the past. A new user, for instance, often feels no effects at all.

44. It is not the function of this court to reassess the scientific evidence in the manner of a legislature. *See U. S. v. Thorne*, 325 A.2d 764 (D.C.App.1974), where an attack on the constitutionality of the District of Columbia marijuana statutes was made. There the court said:

> In our opinion the court below misconceived its function in its approach to the constitutionality of the statutory proscription of the possession and use of marijuana. In deciding that this drug has virtually no harmful effects upon the human system, the court had occasion to consider the testimony of four expert witnesses and a voluminous mass of documentary studies. The court weighed this evidence and resolved the conflict to its own satisfaction. If this were a hearing or a trial turning upon the determination of facts upon which there was conflicting testimony, such procedure was, of course, correct.
>
> But a holding that a legislative enactment is invalid cannot rest upon a judicial determination of a debatable medical issue. Any party assailing the constitutionality of a statute has the heavy burden of demonstrating that it has no rational basis.
>
> . . . . . .
>
> . . . It is apparent from the record in this case that the question decided by the court below after the hearing on the pretrial motions was "at least debatable." Hence, under the tests set forth in *Carolene Products*, the court should have deferred to congressional judgment.

Similarly the Supreme Judicial Court of Massachusetts in Commonwealth v. Leis, 243 N.E.2d 898, 901-02 (1969) said:

> We know of nothing that *compels* the Legislature to thoroughly investigate the available scientific and medical evidence when enacting a law. The test of whether an act of the Legislature is rational and reasonable is not whether the records of the Legislature contain a sufficient basis of fact to sustain that act. The Legislature is presumed to have acted rationally and reasonably. See Commonwealth v. Finnigan, 328 Mass. 378, 379, 96 N.E.2d 715; Coffee-Rich, Inc. v. Commissioner of Pub. Health, 348 Mass. 414, 422, 204 N.E.2d 281. "Unless the act of the Legislature cannot be supported upon any rational basis of fact that reasonably can be conceived to sustain it, the court has no power to strike it down as violative of the Constitution." Sperry & Hutchinson Co. v. Director of the Div. on the Necessaries of Life of Commonwealth, 307 Mass. 408, 418, 30 N.E.2d 269, 274, 131 A.L.R. 1254. See United States v. Carolene Prod. Co., 304 U.S. 144, 151, 58 S.Ct. 778, 82 L.Ed. 1234.

Justice Kirk, in his concurring opinion in *Leis*, also explains the question of legislative judgment and the range of judicial cognizance.

45. Drug Use in America: Problem in Perspective, the Second Report of the National Commission on Marihuana and Drug Abuse (March 1973) at 64.

46. Drug Use in Anchorage, Alaska, 223 J. Am.Med.Ass'n 657 (1971).

The short-term physiological effects are relatively undisputed. An immediate slight increase in the pulse, decrease in salivation, and a slight reddening of the eyes are usually noted. There is also impairment of psychomotor control. These effects generally end within two to three hours of the end of smoking.

Long-term physiological effects raise more controversy among the experts. The National Commission on Marihuana and Drug Abuse reported that among users "no significant physical, biochemical, or mental abnormalities could be attributed solely to their marijuana smoking." [47] Certain researchers have pointed to possible deleterious effects on the body's immune defenses,[48] on the chromosomal structures of users,[49] and on testosterone levels in the body.[50] The methodology of certain of these studies has been extensively criticized by other qualified medical scientists, however. These studies cannot be ignored. It should be noted that most of the damage suggested by these studies comes in the context of intensive use of concentrated forms of THC. It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco. But the studies suggesting dangers in intensive cannabis use do raise valid doubts which cannot be dismissed or discounted.

The immediate psychological effects of marijuana are typically a mild euphoria and a relaxed feeling of well-being. The user may feel a heightened sensitivity to taste and to visual and aural sensations, and his perception of time intervals may be distorted. A desire to become high can lead to a greater high; fear of becoming high or general nervousness can cause the user to fail to experience any high at all. In rare cases, excessive nervousness or fear of the drug can even precipitate a panic reaction. Occasionally a user will experience a negative reaction such as anxiety or depression, particularly when he takes in more of the substance than needed to achieve the desired high. However, in smoking marijuana, the usual method of taking it in this country, the user can self-titrate, or control the amount taken in, since the effect builds up gradually.

Additional short-term effects are an impairment of immediate-past-memory facility and impairment in performing psychomotor tasks. Experienced users seem less impaired in this regard than naive users.

In extremely rare instances, use of marijuana has been known to precipitate psychotic episodes; however, the consensus of the experts seems to be that the potential for precipitating psychotic episodes exists only for a limited number of prepsychotic

47. Marihuana: A Signal of Misunderstanding, First Report of the National Commission on Marihuana and Drug Abuse (March 1972), p. 61.

48. *See* Nahas, et al. Inhibition of Cellular Mediated Immunity in Marihuana Smokers, 183 Science 419 (1974). *But cf.* Normal Skin Test Responses in Chronic Marijuana Users, 186 Science 740 (1974).

49. *See* Stenchever, Statement before the Senate Subcommittee on Internal Security, May 16, 1974. The National Institute on Drug Abuse, in Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare, states in part:

> The preclinical findings of greatest interest and potential significance during the past two years have been a series of studies indicating that delta-9-THC (and possibly other marihuana constituents) have an effect upon certain basic cellular mechanisms which involve the uptake of amino acids and the nucleotides into primary nuclear components such as DNA. Since this may interfere with basic biological processes, the preliminary data raises the possibility that the effects of marihuana, under some circumstances, may be more widespread on the organism than has been previously thought.

Id. at 6.

50. Depression of Plasma Testosterone Levels After Chronic Intensive Marihuana Use, 290 N.Engl.J.Med. 872 (1974). *But cf.* Plasma Testosterone Levels Before, During and After Chronic Marihuana Smoking, 291 N.Engl.J. Med. 1051 (1974).

persons who could be pushed into psychosis by any number of drug or nondrug-related influences.

There is considerable debate as to the long-term effects of marijuana on mental functioning. Certain researchers cite evidence of an "amotivational syndrome" among long-term heavy cannabis users. However, the main examples of this effect are users in societies where large segments of the population exhibit such traits as social withdrawal and passivity even without drug use. The National Commission concludes that long-time heavy users do not deviate significantly from their social peers in terms of mental functioning, at least to any extent attributable to marijuana use.[51]

The experts generally agree that the early widely-held belief that marijuana use directly causes criminal behavior, and particularly violent, aggressive behavior, has no validity. On the contrary, the National Commission found indications that marijuana inhibits "the expression of aggressive impulses by pacifying the user, interfering with muscle coordination, reducing psychomotor activities and generally producing states of drowsiness, lethargy, timidity and passivity."[52] Moreover, the Commission and most other authorities agree that there is little validity to the theory that marijuana use leads to use of more potent and dangerous drugs. Although it has been stated that the more heavily a user smokes marijuana, the greater the probability that he has used or will use other drugs, "it has been suggested that such use is related to 'drug use proneness' and involvement in drug subcultures rather than to the characteristics of cannabis, *per se*."[53]

The most serious risk to the public health discerned by the National Commission is the possibility of an increase in the number of heavy users, who now constitute about 2% (500,000) of those who have used the drug. Within this group certain emotional changes have been observed among "predisposed individuals" as a result of prolonged heavy use. This group seems to carry the highest risk, particularly in view of the risk of retarding social adjustment among adolescents if heavy use should grow.

Most authorities have accepted the theory that marijuana users develop a "reverse tolerance", that is, that a moderate user needs less and less marijuana over time to achieve a high. Recent research indicates that this may be true only up to a point, and that beyond a certain intensity of use a true tolerance begins to develop.[54] If true, this may be relevant regarding only

51. Marihuana: A Signal of Misunderstanding, the First Report of the National Commission on Marihuana and Drug Abuse (March 1972), 63. *See also* Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education and Welfare (1974), which reads at 12:

> While chronic users in the United States have used for appreciably shorter periods of time than users overseas, studies of American chronic users are potentially of great importance in assessing possible implications of marihuana use for the American population. In one large scale study of undergraduate student use comparisons were made between nonusers (including those who had done a limited amount of experimentation), occasional users and chronic users (those who had used three or more times a week for three years or more or for two years if use was almost daily). No statistical differences in academic performance were found nor was there any evidence of reduced motivation. . . . Another study of moderately using medical students who has used regularly for three or more years and who were matched with nonusing medical students for intelligence, found no difference on an extensive battery of neuropsychological tests.

52. *Id.* at 70–71.

53. Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare (1974) at 6.

54. "While tolerance to the effects of marihuana has not been generally observed among American users, there is increasingly convincing evidence that tolerance (i. e., larger dosages required to produce the same effects found with lower dosages) does develop under conditions of heavy, regular use. Given

heavy use of concentrated forms of cannabis, since marijuana use is self-limiting due to the forms in which it is taken.

The National Commission rejected the notion that marijuana is physically addicting. It also rejected the notion that marijuana as used in the United States today presents a significant risk of causing psychological dependency in the user. Rather, the experimental or intermittent user develops little or no psychological dependence. Lengthy use on a regular basis does present a risk of such dependence and of subsequent heavier use, and strong psychological dependence is characteristic of heavy users in other countries. This pattern of use is rare in the United States today, however.

While there is no confirmed report of a human ever having died from an overdose of cannabis, the toxic levels of THC have been determined from tests on animals. The lethal dose for marijuana is approximately 40,000 times the dose needed to achieve intoxication. The equivalent ratio of intoxicating to lethal doses for alcohol is 4/10 and for barbiturates is 3/50.

The number of persons arrested for marijuana possession has climbed steeply in recent years. In 1973, over 400,000 marijuana arrests occurred, a 43% rise over the previous year. It should also be noted that 81% of persons arrested for marijuana-related crimes have never been convicted of any crime in the past, and 91% have never been convicted of a drug-related crime.[53]

The justifications offered by the State to uphold AS 17.12.010 are generally that marijuana is a psychoactive drug; that it is not a harmless substance; that heavy use has concomitant risk; that it is capable of precipitating a psychotic reaction in at least individuals who are predisposed towards such reaction; and that its use adversely affects the user's ability to operate an automobile. The State relies upon a number of medical researchers who have raised questions as to the substance's effect on the body's immune system, on chromosomal structure, and on the functioning of the brain. On the other hand, in almost every instance of reports of potential danger arising from marijuana use, reports can be found reaching contradictory results. It appears that there is no firm evidence that marijuana, as presently used in this country, is generally a danger to the user or to others. But neither is there conclusive evidence to the effect that it is harmless.[56] The one significant risk in use of marijuana which we do find established to a reasonable degree of certainty is the effect of marijuana intoxication on driving. We shall return to this aspect of the problem later in this opinion.

Possibly implicit in the State's catalogue of possible dangers of marijuana use is the assumption that the State has the authority to protect the individual from his own folly, that is, that the State can control activities which present no harm to anyone except those enjoying them. Although some courts have found the "public interest" to be broad enough to justify protecting the individual against himself,[57] most have found inherent limitations on the police power of the state. An apposite example is the litigation regarding the constitutionality of laws requiring motorcyclists to wear helmets. Most of the courts addressing the issue, including this one, have resolved it by finding a connection between

the relatively low doses and infrequent use typical of present patterns of use in the United States it is not surprising that tolerance has not usually been observed. . . . While the amounts involved were usually large and quite atypical of current use patterns, the probability of a withdrawal syndrome in at least some American heavy users must be considered." Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare (1974) at 10, 75–81.

55. Marihuana: A Signal of Misunderstanding, Appendix II, at 622.

56. Petitioner's witnesses, Doctors Fort and Ungerleider, both testified that marijuana was not harmless.

57. *E. g.*, Raines v. State, 225 So.2d 330 (Fla. 1969).

the helmet requirement and the safety of other motorists,[58] but a significant number of courts have explicitly rejected such restrictive measures as beyond the police power of the state because they do not benefit the public.[59] Typical of the logic of these latter cases is the dissent of Justice Abe in *State v. Lee*,[60] in which the Hawaii Supreme Court upheld a motorcycle helmet requirement despite finding no clear link between lack of the equipment by the motorcyclist and injury to others. The court reasoned that where a person's conduct is so reckless, and the resulting injury and death are so widespread as to be of concern to the public, then the conduct affects the public interest and is within the scope of the police power. Justice Abe dissented, citing a general right to be left alone or liberty to do as you please. There has to be a genuine harm to others, he wrote, to justify such controls; a state cannot simply decide what is in a person's best interest and compel it.[61]

[13, 14] We glean from these cases the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large[62] as it relates to matters of public health or safety, or to provide for the general welfare. We believe this tenet to be basic to a free society. The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. The right of the individual to do as he pleases is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others.[63]

[15, 16] Further, the authority of the state to control the activities of its citizens is not limited to activities which have a present and immediate impact on the public health or welfare. It is conceivable, for example, that a drug could so seriously develop in its user a withdrawal or amotivational syndrome, that widespread use of the drug could significantly debilitate the fabric of our society. Faced with a substantial possibility of such a result, the state could take measures to combat the possibility. The state is under no obligation to allow otherwise "private" activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare. But we do not find that such a situation exists today regarding marijuana. It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol, barbitu-

58. *E. g.*, Kingery v. Chappel, 504 P.2d 831 (Alaska 1972); People v. Bielmeyer, 54 Misc.2d 466, 282 N.Y.S.2d 797 (1967); State v. Mele, 103 N.J.Super. 353, 247 A.2d 176 (1968).

59. *E. g.*, American Motorcycle Ass'n v. Davids, 11 Mich.App. 351, 158 N.W.2d 72 (1968); People v. Fries, 42 Ill.2d 446, 250 N.E.2d 149 (1969). *See* Everhardt v. New Orleans, 208 So.2d 423 (La.App.1968), *rev'd*, 217 So.2d 400 (1969); People v. Carmichael, 53 Misc.2d 584, 279 N.Y.S.2d 272 (1967), *rev'd*, 56 Misc.2d 388, 288 N.Y.S.2d 931 (1968).

60. 51 Haw. 516, 465 P.2d 573 (1970).

61. Similarly, in *State v. Kantner*, 53 Haw. 327, 493 P.2d 306 (1972), which involved the constitutionality of Hawaii's marijuana statute, Justice Abe noted his belief that the statute went beyond the police power of the state because of the lack of evidence that use of marijuana harms anyone other than the user. There is, he wrote, under the Hawaii Constitution a fundamental right of liberty to make a fool of oneself so long as one's act does not endanger others.

62. *Cf.* Liggett Co. v. Baldridge, 278 U.S. 105, 111–12, 49 S.Ct. 57, 59, 73 L.Ed. 204, 208 (1928):

> The police power may be exerted in the form of state legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare.

63. *See* Roe v. Wade, 410 U.S. 113, 154, 93 S.Ct. 705, 35 L.Ed.2d 147, 177 (1974); Gray v. State, 525 P.2d 524, 528 (Alaska 1974); Breese v. Smith, 501 P.2d 159, 170 (Alaska 1972).

rates and amphetamines. Moreover, the current patterns of use in the United States are not such as would warrant concern that in the future consumption patterns are likely to change.[64]

[17–19] Research is continuing extensively. Scientific doubts persist, however, and that fact has significance for our application of the law. It is a long-standing rule of law that statutes designed to protect the public health will receive a liberal construction.[65] We have seen repeated examples in recent years where scientific doubts as to the safety of various products, drugs, or environmental conditions have been held to justify controls. There is a presumption in favor of public health measures; when there is substantial doubt as to the safety of a given substance or situation for the public health, controls intended to obviate the danger will usually be upheld.

But one way in which use of marijuana most clearly does affect the general public is in regard to its effect on driving. All of which brings us to the opposite (from the home) end of the scale of the right to privacy in the context of ingestion or possession of marijuana, namely, when the individual is operating a motor vehicle. Recent research has produced increasing evidence of significant impairment of the driving ability of persons under the influence of cannabis.[66] Distortion of time perception, impairment of psychomotor function, and increased selectivity in attentiveness to surroundings apparently can combine to lower driver ability.[67] In this regard, Ravin points out that marijuana usually produces passivity and inactivity, in contrast to alcohol, which increases aggressiveness and is likely to result in overconfidence in one's driving ability. Although a person under the influence of marijuana may be less likely to attempt to drive than

64. We recognize that more potent forms of cannabis than marijuana are commonly used in other countries and are available on a limited scale here. However, studies of use patterns here do not indicate any great likelihood of a significant shift in use here to the more potent substances. If such a shift were to occur, then marijuana use could be characterized as a serious health problem.

65. 3 Sutherland Statutory Construction § 71.02 (4th ed. 1974) and the cases cited in note 42 *supra*.

66. *See* Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare 105 (1974). This report contains citations to the most recent studies.

67. Evidence that marijuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities, and to detract from performance on a divided attention task, all of which are presumably involved in driving. A recent Canadian study of driving ability while marijuana-intoxicated examined drivers' performance under both driving course and actual traffic conditions. A significant decline in performance as measured by several criteria was found in most drivers tested. Based on the accumulated evidence, it seems clear that driving while under the influence of marijuana is ill-advised. Marihuana and Health, Fourth Report to the U. S. Congress from the Secretary of Health, Education, and Welfare 10–11 (1974).

Petitioner's own experts do not disagree with the Secretary's conclusions. Dr. Grinspoon testified that ". . . it stands to reason that anybody who is intoxicated or has a psychoactive drug in him should not drive, because there is no question . . . his wherewithall is not with him, and I think that would be the case with marijuana." Dr. Finegluss stated that ". . . moderate or heavy use of marijuana can definitly interfere with some of the local skills that would be necessary for the operation of a motor vehicle, and therefore, in their recommendations did take note of driving while intoxicated as a potential danger to the public safety." Dr. Ungerleider testified that although the immediate effects of marijuana intoxication on the organs and bodily functions are transient and have little or no permanent effect, "there is a definite loss of some psychomotor control, temporary impairment of time space perception. . . ." Later in the course of his testimony, Dr. Ungerleider concluded that recent studies had proven that driving under the influence of marijuana presents a serious risk resulting from impaired driving ability.

a person under the influence of alcohol, there exists the potential for serious harm to the health and safety of the general public.[68]

[20–24] In view of the foregoing, we believe that at present, the need for control of drivers under the influence of marijuana and the existing doubts as to the safety of marijuana, demonstrate a sufficient justification for the prohibition found in AS 17.12.010 as an exercise of the state's police power for the public welfare. Given the evidence of the effect of marijuana on driving an individual's right to possess or ingest marijuana while driving would be subject to the prohibition provided for in AS 17.12.010. However, given the relative insigificance of marijuana consumption as a health problem in our society at present, we do not believe that the potential harm generated by drivers under the influence of marijuana, standing alone, creates a close and substantial relationship between the public welfare and control of ingestion of marijuana or possession of it in the home for personal use. Thus we conclude that no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes.[69] Further, neither the federal or Alaska constitution affords protection for the buying or selling of marijuana, nor absolute protection for its use or possession in public. Possession at home of amounts of marijuana indicative of intent to sell rather than possession for personal use is likewise unprotected.[70]

In view of our holding that possession of marijuana by adults at home for personal use is constitutionally protected, we wish to make clear that we do not mean to condone the use of marijuana. The experts who testified below, including petitioner's witnesses, were unanimously opposed to the use of any psychoactive drugs. We agree completely. It is the responsibility of every individual to consider carefully the ramifications for himself and for those around him of using such substances. With the freedom which our society offers to each of us to order our lives as we see fit goes the duty to live responsibly, for

68. Current Alaska law enacted since the trial of this case prohibits driving under the influence of an hallucinogenic drug. AS 28.-35.030. Alaska law also specifically prohibits operation of a boat while under the influence of marijuana. AS 05.25.060.

There does not now exist a means for detecting the presence of cannabis in the body which is available for practical use by law enforcement agencies. Such means are in use in laboratories, however, and research is progressing toward a device which could be used by police in the way that breathalyzer tests for alcohol are used now.

69. We do not intend to imply that the right of privacy in the home does not apply to children. *See* Breese v. Smith, 501 P.2d 159, 167 (Alaska 1972). We note that distinct government interests with reference to children may justify legislation that could not properly be applied to adults.

70. Statistics indicate that few arrests for simple possession occur in the home except when other crimes are simultaneously being investigated. The trend in general in law enforcement seems to be toward minimal effort against simple users of marijuana, and concentration of efforts against dealers and users of more dangerous substances. Moreover, statistics indicate that most arrests for possession of marijuana in Alaska result in dismissals before trial.

our own sakes and for society's. This result can best be achieved, we believe, without the use of psychoactive substances.

[25, 26] We briefly address Ravin's second assertion of error, namely that AS 17.12.010 denies him due process and equal protection of the law. The argument is two-fold. First, Ravin asserts, the proscription denies equal protection because the other commonly used "recreational" drugs, alcohol and tobacco, are not proscribed, though they inflict far more damage on the user than does marijuana. We reject, however, the assumption that the legislature must apply equal controls to equal threats to the public health. Assuming some degree of control of marijuana use is permissible, it does not follow that the political obstacles to placing controls on alcohol and tobacco should render the legislature unable to regulate other substances equally or less harmful.[71] It is not irrational for the legislature to regulate those public health areas where it can do so, when there exists other areas where controls are less feasible.

[27] Ravin also attacks as irrational the classification of marijuana with the other drugs covered by AS 17.12.150(3) ("depressant, stimulant, or hallucinogenic"). He may be correct that marijuana is the least harmful of the drugs covered by AS 17.12.150(3), but that alone is not sufficient to make the classification irrational. In a number of cases the classification of marijuana either as or with narcotic drugs has been struck down as irrational in view of the relative harmlessness of marijuana.[72] In other cases, courts have deferred to the legislative finding of facts implicit in the classification.[73] However, in every case in which statutes have been struck down, the statutory scheme classified marijuana with, or subject to equal sanctions with, the most dangerous proscribed drugs. In Alaska, however, "hard" drugs are in a completely different category[74] from marijuana, with substantially greater penalties for misuse. The drugs with which marijuana is grouped in AS 17.12.150(3) are not so different from marijuana that yet another classification must be set up for marijuana alone. We find no merit to Ravin's contention on this point.

[28] One other facet of this petition remains for discussion. Ravin urges us to recognize that whatever harm results from marijuana use is far outweighed by the negative aspects of enforcement. Over 400,000 persons were arrested for marijuana-related crimes in 1973; 81% of them had no previous criminal records. Using these statistics, and asserting that marijuana use does not pose a substantial public health threat, Ravin questions the wisdom of AS 17.12.010. We note that the Alaska Bar Association, American Bar Association, National Conference of Commissioners on Uniform State Laws, National Advisory Commission on Criminal Justice Standards and Goals and the Governing Board of the American Medical Association have recommended decriminalization of possession of marijuana. The National Commission on Marihuana and Drug

71. *See* U. S. v. Maiden, 355 F.Supp. 743 (D. Conn.1973); U. S. v. Kiffer, 477 F.2d 349 (2d Cir. 1973). In attacking a complex problem, the state need not choose between attacking every aspect of that problem or not attacking that problem at all. Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970); McDonald v. Board of Election Commissioners, 394 U.S. 802, 89 S. Ct. 1404, 22 L.Ed.2d 739 (1969).

72. *E. g.*, People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971); Attwood v. State, 509 S.W.2d 342 (Tex.Crim.App.1974); *see* People v. Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972); *cf.* State v. Zornes, 475 P.2d 109 (Wash.1970).

73. *E. g.*, Bettis v. United States, 408 F.2d 563 (9th Cir. 1969); Commonwealth v. Leis, 243 N.E.2d 898 (Mass.1969); Miller v. Texas, 458 S.W.2d 680 (Tex.Crim.App.1970); Raines v. State, 225 So.2d 330 (Fla.1969); People v. McKenzie, 169 Colo. 521, 458 P.2d 232 (1969); People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965). *See* State v. Kantner, 53 Haw. 327, 493 P.2d 306 (1972).

74. See AS 17.10.010 et seq. (The Uniform Narcotic Drug Act).

Abuse has recommended that private possession for personal use no longer be an offense. A Canadian study has arrived at similar results. And at least one state, Oregon, has already decriminalized possession of small amounts of marijuana.[75]

In opposition, the State argues that under Alaska's constitutional system of separate but equal branches of government the issue is a "political controversy over the State's fundamental policy toward the drug marijuana". Thus, the "issue should be properly determined by the people's elected representatives". We agree that determination of the wisdom of a particular legislative enactment is more properly the subject of investigation and resolution by the legislature rather than the judiciary.

The record does not disclose any facts as to the situs of Ravin's arrest and his alleged possession of marijuana. In view of these circumstances, we hold that the matter must be remanded to the district court for the purpose of developing the facts concerning Ravin's arrest and circumstances of his possession of marijuana. Once this is accomplished, the district court is to consider Ravin's motion to dismiss in conformity with this opinion.

Remanded for further proceedings consistent with this opinion.

BOOCHEVER, Justice (concurring, with whom CONNOR, Justice, joins).

Because of the importance of the issues discussed in this case and the possibility that portions of the opinion may be construed as substantially circumscribing the Alaska Constitutional right to privacy, I find it necessary to file this concurrence. By its reliance on certain United States Supreme Court cases[1] and the manner in which some of the conclusions are set forth, the opinion may be read as limiting the right of privacy principally to protection of activities engaged in within the confines of the home.[2] The opinion relies chiefly on United States Supreme Court precedent, although there is no Federal Constitutional provision corresponding to art. I, § 22 of the Alaska Constitution which specifies that "the right of the people to privacy is recognized and shall not be infringed". While Federal cases defining the right of privacy derived from other provisions of the United States Constitution are of assistance in determining the perimeters of our constitutional right to privacy, we are certainly not bound by those cases in construing the separate Alaska provision. Even when Alaska Constitutional provisions are closely akin to those of the Federal Constitution, we have stated:

> While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court's interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead, we should be moving concurrently to develop and expound the principles embedded in our constitutional law.[3]

Although the majority opinion emphasizes the right of privacy in the home, it rec-

75. O.R.S. 167.207. The Alaska legislature have also recently passed a bill which would decriminalize possession of marijuana in certain contexts.

1. Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

2. The court writes that art. I, § 22 of the Alaska Constitution ". . . was intended to give recognition and protection to the home".

3. Baker v. City of Fairbanks, 471 P.2d 386, 401-02 (Alaska 1970) (footnotes omitted).

ognizes that analysis of the Federal decisions does not indicate that the right of privacy is relegated to the home. It is true that *Griswold v. Connecticut*[4] invalidated a Connecticut statute prohibiting the distribution of contraceptives and the dissemination of birth control information to married adults by finding a right of privacy, emanating from other constitutional provisions, within which the marital relationship, arguably home related, was protected. But the later case of *Eisenstadt v. Baird*[5] held that a statute prohibiting the distribution of contraceptives to unmarried persons but allowing such distribution to married persons violated the equal protection clause of the fourteenth amendment. In so holding, the Court referred to *Griswold* and explained what the case stood for.

> If under Griswold the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.[6]

The Court held that the right of privacy involved being free to decide for oneself whether to bear or beget a child, a right relating to the autonomy of the individual, not to a place.

Similarly, *Roe v. Wade*,[7] in upholding the right of a woman to decide whether she should terminate her pregnancy, stated:

> This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.[8]

Again, the right of privacy pertained to the freedom of the individual to decide as to her course of action and was unrelated to any situs.

On the other hand, there are the *Stanley—Paris Adult Theatre I* group of cases[9] holding that the "broad power to regulate obscenity does not extend to mere possession by the individual in the privacy of his own home" although obscenity is not otherwise constitutionally immune from state regulation.

Thus it appears that the United States Supreme Court has found a right of privacy to exist as to activities within the home or with reference to values associated with the home, and, additionally, as a right of personal autonomy, to make decisions that shape an individual's personal life.[10]

Since the citizens of Alaska, with their strong emphasis on individual liberty, enacted an amendment to the Alaska Constitution expressly providing for a right to

4. 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

5. 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972).

6. *Id.* 405 U.S. at 453, 92 S.Ct. at 1038, 31 L.Ed.2d at 362.

7. 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

8. *Id.* 410 U.S. at 153, 93 S.Ct. at 727, 35 L.Ed.2d at 177.

9. Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973); United States v. Orito, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513 (1973); United States v. 12 200-Ft. Reels, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

10. On Privacy: Constitutional Protection for Personal Liberty, 48 N.Y.U.L.Rev. 670, 703 (1973).

privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution. As such, it includes not only activities within the home and values associated with the home, but also the right to be left alone and to do as one pleases as long as the activity does not infringe on the rights of others. Thus, the decision whether to ingest food, beverages or other substances comes within the purview of that right to privacy.[11]

The right to privacy, however, is not monolithic. For example, the right to decide whether to eat strawberry ice cream cannot be placed on the same level as that of deciding whether to bear a child. Moreover, the importance of the right may properly be related to the place where it is exercised, for example, at the home or in the market place. Other considerations would be the nature of relationships involved (marital, doctor-patient, attorney-client, etc.), the particular activity in question and the individual's interest in it.

Having discussed generally the contours of what I perceive to be the right to privacy under the Alaska Constitution, I shall turn briefly to the test utilized by the court in determining infringements of that right. Particularly in equal protection cases, but also as to cases alleging infringement of other constitutional rights, the United States Supreme Court,[12] and this court[13] in the past, have followed a two-tiered test. If the right involved was deemed to be "fundamental", a statute infringing upon it was required to be "necessary" to further a "compelling state interest". Whereas if the right infringed upon was classified as non-fundamental, any rational basis that might be conceived to justify the legislation was held to be sufficient.[14] As a practical matter, the test was result oriented, since once a right was declared to be fundamental, the challenged regulation or legislative act would be stricken,[15] whereas otherwise some reason could usually be found to sustain it.

I agree with the majority's departure from that test in areas where we have discretion to depart from standards established by the United States Supreme Court. With reference to laws challenged as invading the Alaskan right of privacy,[16] I would apply a single flexible test dependent first upon the importance of the right involved. Based on the nature of that right, a greater or lesser burden would be placed on the state to show the relationship of the intrusion to a legitimate governmental interest. I agree with the majority opinion that interference with rights of privacy within one's home requires a very high level of justification. Similar considerations would apply to certain relationships, without reference to situs, i. e. attorney-client, doctor-patient, priest-parishioner, marital relationship, parent-child. In all cases involving a right of privacy, I believe that the relationship of the intrusion to a legitimate governmental interest must be carefully examined. The court should not abandon protection of the right of an individual to decide how to conduct his life because a rational basis may be "con-

11. Gray v. State, 525 P.2d 524 (Alaska 1974).

12. *See* Bates v. Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973).

13. Lynden Transport, Inc. v. State, 532 P. 2d 700 (Alaska 1975); Breese v. Smith, 501 P.2d 159 (Alaska 1972).

14. Lynden Transport, Inc. v. State, 532 P.2d 700, 706 (Alaska 1975).

15. Where a fundamental right has required use of the compelling state interest test, only one law has been found valid by the Supreme Court, Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944), but no state law has passed muster. Dunn v. Blumstein, 405 U.S. 330, 363-64, 92 S.Ct. 995, 31 L.Ed.2d 274, 296-97 (1972) (Burger, C. J., dissenting). *See* 48 N.Y.U.L.Rev. 670 at 702. *See also* Gilbert v. State, 526 P.2d 1131 (Alaska 1974).

16. Of course, in any event where Federal Constitutional rights are involved, we must at least apply the minimum standards prescribed by the United States Supreme Court. Baker v. City of Fairbanks, 471 P.2d 386, 401-02 (Alaska 1970).

ceived" for the legislation in question. The importance of the governmental interest and the means utilized to accomplish this goal must be balanced against the nature of the particular right of privacy.[17]

Applying this test to the facts in this case, assuming that the defendant was found in possession of marijuana in an automobile, I agree with the majority that a valid reason existed for the prohibition due to the proven effect of marijuana on driving, and the unavailability of practical tests for ascertaining whether one is under the influence of an hallucinogenic when balanced against the rather minor status of the right involved, to possess marijuana in public. Accordingly, I would affirm the order denying the motion to dismiss.

CONNOR, Justice (concurring).

I concur in the majority opinion and the separate concurring opinion of Justice BOOCHEVER, but wish to add some observations.

The decision today properly leaves unanswered the question of how far the right to privacy, in connection with the possession of marijuana, extends outside the home. Such a determination can be made only when we are presented with specific facts against which the individual's claim of privacy can be measured, as opposed to the state's assertion of power to control the possession of marijuana. Under the test we have employed in determining the scope of the right to privacy, it is necessary to balance these conflicting claims and determine whether the state's prohibition bears a direct and substantial relationship to effectuating a legitimate state interest.

The record in the case before us does not contain facts about the particular circumstances in which appellant possessed marijuana. Accordingly, we must remand the case for further elucidation of the facts.

It is certain that the right to privacy does not vanish when one leaves the home.[1] There are certain aspects of personal autonomy which one carries with him even when he ventures out of the home, though the claim to privacy diminishes in proportion to the extent that one's person and one's activities impinge upon other persons. But, in order to trace the contours of the right to privacy, it will be necessary to engage in a critical analysis of the facts of each case which presents itself for decision. Only in this fashion can the right to privacy, outside the home, be determined on a reasoned, coherent basis so as to furnish the courts and the public with reliable rules of action. Much definitional work, therefore, remains to be done in the cases yet to be determined.

17. 48 N.Y.U.L.Rev. 670 at 705.

1. The right to privacy which received protection in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), has nothing to do with the locus of the home and, for the most part, is concerned with matters occurring outside the home.

In the Matter of the ALASKA BAR ASSOCIATION, Petitioner,

v.

Robert F. MARTIN, Respondent.

No. 2495.

Supreme Court of Alaska.

July 14, 1975.

The Bar Association brought disciplinary proceeding and recommended a suspension. The Supreme Court held that the respondent's misconduct warrants suspension from practice for a period of 60 months.

Suspension ordered.

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
CREEKSIDE
EAST ANCHORAGE

HOME
3960 REKA DRIVE-B6
ANCHORAGE, AK 99508
PHONE 333-6990

DURING SESSION
POUCH V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3783

Alaska House of Representatives

January 28, 1987

Rep. Niilo Koponen, Co-Chair
House Committee on Health
and Social Services
Capitol, Room 104
Juneau, AK 99811

Dear Rep. Koponen:

At its first reading on January 19, HB 55 was referred to your committee on health and social services. I would very much appreciate it if you would hold a hearing on this bill as soon as you possibly can.

HB 55 would recriminalize the possession and use of marijuana. This bill is identical to last year's HB 264, which was scheduled for hearing twice in HESS, but for unknown reasons was not heard either time.

Inasmuch as public concern about the use of marijuana has grown considerably over the past few years, and scientific studies have validated the public's concern, I hope you can agree that HB 55 should be heard by the Legislature. In the attached packet of background information you will find resolutions from a wide range of organizations, including the leaders of Alaska's students themselves. They agree that if we are to make any real progress in our efforts to combat the debilitating presence of illegal drugs in our schools and in society, we must recognize our marijuana law for the symbol of permissiveness that it is. Under current law (AS 11.71.990(4) and AS 11.71.140-190) marijuana is classified as a controlled substance, and has been so held by the courts (See State v. Resek, 706 P.2d 706).

I hope that I can count on you to schedule HB 55 for a hearing as soon as you can. If you need any further information on the bill, please contact me or my staff.

Best regards,

Terry

Rep. Terry Martin

TM/jwm
enclosures
second original to Rep. Ellis

Chris,
file

KETCHIKAN LODGE No. 1429

BENEVOLENT AND PROTECTIVE ORDER OF ELKS

APR 17 1987

BOX 5177
KETCHIKAN, ALASKA

April 16, 1987

Alaska Elks Lodges:

The enclosed resolution was read, and adopted on our lodge floor April 8, 1987.

Present during our meeting was our State President, George Robinson. We sincerely hope that your lodge will also endorse it. Under separate copy please forward it to your state representative, and Senator. There is a bill currently pending to criminalize the possession of marijuana, and hopefully this will have some impact.

Fraternally,

John J. Conley,
Exalted Ruler, Lodge #1429

KETCHIKAN LODGE No. 1429
BENEVOLENT AND PROTECTIVE ORDER OF ELKS

BOX 5177
KETCHIKAN, ALASKA

Marijuana Resolution

WHEREAS, Elks members, citizens of the State Alaska, are concerned about the prevalent use and abuse of the drug marijuana; and,

WHEREAS, adults may now possess 4 ounces of marijuana for their own personal use in their home, even though children may reside in these homes; and,

WHEREAS, research has demonstrated that marijuana usage is occurring more frequently in earlier age groups; and,

WHEREAS, marijuana has been found to be harmful, both mentally and physically, to be addictive, to build tolerance and may be ten times more potent than ten years ago, significantly increasing health risks; and,

WHEREAS, marijuana has been found to impair motor skills, making it dangerous to operate any mechanical equipment; and,

WHEREAS, marijuana is considered a "gateway drug", the use of it introduces the "high" experience and may lead to users seeking stronger drugs; and,

WHEREAS, the State of Alaska statutes pertaining to marijuana are not in conformity with National and International laws; and,

WHEREAS, the Supreme Court of Alaska has stated that "no one has the right to do things in their own home which will affect others adversely"; and,*

WHEREAS, the Supreme Court of Alaska further stated, "when there is a substantial doubt as to the safety of a substance or situation of Public Health, controls to obviate the danger will usually be upheld";*

THEREFORE, BE IT RESOLVED that Elks members, citizens of Alaska, respectfully urge our public officials in the State government, including the Legislature, to make the possession of any amount of marijuana illegal, by all appropriate and lawful means.

*Reference - Raven case, 1975.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

KETCHIKAN LODGE No. 1429
BENEVOLENT AND PROTECTIVE ORDER OF ELKS

BOX 5177
KETCHIKAN, ALASKA

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WHEREAS, the State of Alaska statutes pertaining to marijuana are not in conformity with National and International laws; and,

WHEREAS, the Supreme Court of Alaska has stated that "no one has the right to do things in their own home which will affect others adversely"; and,*

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THEREFORE, BE IT RESOLVED that Elks members, citizens of Alaska, respectfully urge our public officials in the State government, including the Legislature, to make the possession of any amount of marijuana illegal, by all appropriate and lawful means.

*Reference - Raven case, 1975.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB55
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to marijuana."

Agency Affected : Department of Law
BRU : Prosecution

Sponsor : Repr. Martin
Requestor : Repr. Martin

Components : Third Judicial District, Fourth Judicial District, Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		160.9	165.7	170.7	175.8	181.1
TRAVEL		5.4	5.6	5.8	6.0	6.2
CONTRACTUAL		53.7	36.5	11.9	12.3	12.7
SUPPLIES		12.6	9.3	9.6	9.9	10.2
EQUIPMENT		4.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		237.1	217.1	198.0	204.0	210.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		237.1	217.1	198.0	204.0	210.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : 1/27/87

Approved by Commissioner : Ronald W. Lorensen, Acting Attorney General
Date : 1/27/87
Agency : Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

HB55 is a blanket provision which would make possession or use of less than one-half pound of marijuana by anyone a class B misdemeanor. Some of the conduct which this bill would cover (such as use or display of any amount in a public place, possession of any amount while operating a motor vehicle, or possession of more than four ounces of marijuana anywhere) is a class B misdemeanor under existing law. See AS 11.71.060. Some of the conduct which this bill would make a crime (such as delivery of less than one-half ounce or possession of less than one ounce in public) is classified under current law as a "violation", punishable by a fine. See AS 11.71.070. The penalties under current law for other conduct such as delivery of one-half ounce or more, delivery to a minor, or possession of any amount on school grounds would not be altered. Penalties under existing law for these offenses range from A misdemeanor to B felony level. See AS 11.71.030, .040, and .050.

The passage of HB55 would have fiscal impact on the Department of Law in three general areas: (1) the cost of defending the new law against constitutional challenge; (2) the cost of processing the resulting additional criminal cases; and (3) the cost of educating the public about the new law. These three areas are discussed separately below.

1. Defending the New Law

In 1975 the Alaska Supreme Court in the case of Ravin v. State, 537 P.2d 497 (Alaska 1975), ruled that under Art. I, Sec. 22 of the Alaska Constitution the state could not prohibit possession of marijuana by adults in their own homes for personal use. The court held that the state had not demonstrated the existence of a legitimate state interest which was strong enough to justify the regulation of this conduct.

Since passage of HB55 would make it a crime for an adult to possess any amount of marijuana anywhere, including in his or her own home, the constitutionality of the new law is certain to be challenged. An appellate court will have to decide whether the state has proved that there is a "compelling state interest" in the prohibition of the use of marijuana which is sufficient to outweigh an individual's right to privacy under the state constitution. It is extremely important, therefore, that the legislature's consideration of this bill include extensive public hearings, debate on the social policy merits of the proposal, and the collection of the results of the most recent scientific, medical, and pharmacological studies regarding the physical, emotional, and social effects of marijuana usage.

In addition to the necessary legislative hearings, evidentiary hearings at the trial court level can be expected when a challenge to the new law is filed. Challenges to the new law will most likely arise in the context of a defendant's pretrial motion to dismiss a criminal prosecution. When responding to such a defense motion, the prosecutor

would, in essence, have to convince a court to reverse the ruling in the Ravin case. In order to demonstrate that the result in Ravin is no longer correct, the prosecutor would have to present convincing, scientifically accurate, evidence that the effects of marijuana usage are so injurious to a person's mental and physical health as to justify the legislative decision to totally prohibit use of marijuana by anyone at any time (as opposed to use by minors or use by a person who is operating a motor vehicle--both of which are already prohibited under current law).

The presentation of this convincing evidence will require the prosecution to present expert testimony from authorities who have conducted recent research in this area. Out-of-state witnesses in medical and scientific fields charge a fee for their services. These fees will vary from individual to individual, but are expected to average at least $100 per hour. This would include services for consultation, witness preparation and actual testimony. Costs will be incurred for expert witness transportation, food and lodging, and other incidental expenses. Additionally, there will be some costs for preparation of exhibits and written reports. To the extent possible, the Department of Law would attempt to present written testimony in situations where it is not feasible to fly a person to Alaska to testify in person. We estimate that a minimum of six expert witnesses will be required to attempt to successfully defend the new law at the trial court level.

Hearings at the trial court level can reasonably be expected to take several days. A substantial commitment of attorney time will be required for scientific and legal research in preparation for the hearings, actual court time, legal briefing, and the preparation of proposed findings of fact. Since prosecutions under the new law will occur statewide, defense challenges may be raised at the same time in different parts of the state. The extensive hearings described above may have to be held in more than one judicial district in the state.

Regardless of which side prevails at the trial court level, the lower court ruling would almost certainly be followed by an appeal. At a minimum, such an appeal (or appeals) would required additional legal research, a thorough review of the record, the drafting of briefs, and oral argument before the appellate court.

2. New Criminal Cases

Although some of the conduct included within the scope of HB55 is already against the law, much behavior which is now classified as a "violation" or which is not now an offense of any sort will become a misdemeanor crime. It is difficult to accurately predict in advance the impact which the passage of HB55 will have on the criminal justice system.

Some law enforcement officers who work primarily in the drug enforcement area believe that the new law could potentially result in "thousands" of new misdemeanor cases a year. They believe that the bill would cause an increased enforcement effort both in the areas not now covered by existing law and against persons who commit minor offenses which are already against the law. A great number of the new cases would arise from situations where law enforcement officers now commonly discover small amounts of marijuana (as when an officer responds to a domestic disturbance call and sees some marijuana plants in a person's home, or when a person is arrested for a minor offense and a routine search for weapons reveals some marijuana cigarettes in the person's pocket, for example). Incidents of this sort occur frequently now, but do not generally result in any criminal prosecution for the marijuana possession. Many of these cases are likely to be referred for criminal prosecution if HB55 becomes law.

Prosecutors generally predict a lesser number of new potential criminal cases under HB55 than do police. Once the public becomes aware of the new law, people are likely to be more careful about not allowing marijuana or smoking paraphernalia to be exposed in plain view in their homes, for example. Judging from the number of minor marijuana offenses prosecuted prior to the Ravin decision in 1975, prosecutors expect a "few hundred" new criminal cases a year.

Cases which are accepted for prosecution will require attorney time both at trial and in preparation for trial (i.e., preparation of search warrants, response to defense motions, evaluation of results of laboratory analysis, pretrial witness preparation, etc.). To handle screening of the expected case referrals, and to prosecute the additional cases, the criminal division will require the addition of at least two Attorney III positions in Anchorage. It is anticipated that a half-time attorney will also be needed in the Fairbanks District Attorney's office.

This fiscal note reflects the fact that the pretrial diversion program will be entirely eliminated in FY 88. Anticipating that more than fifty per cent of defendants would qualify for diversion, we must prepare for a gross increase in the number of cases that will go to trial.

3. Public Education

In order to inform the public of the changes in the law, the Department of Law will develop and disseminate public notices explaining the new law. These notices will include newspaper ads and brochures, and will be modeled upon the public education notices which were distributed statewide in connection with the new drug law in 1982 and the new DWI and drinking age laws in 1983. Based upon experience with these earlier notices, approximately $19,000 will be needed to cover the costs of writing, layout, typesetting, publication, and distribution.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

In addition to the costs explained above, it is anticipated that the passage of this bill will result in increased costs to other components of the criminal justice system, including law enforcement, the courts, the public defender agency, and corrections.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 55

Fiscal Analysis

1. Defending the New Law

Admin. & Support Component/Prosc. - BRU

Object	Total
Contractual Services -	
Professional fees scientific experts	
120 hrs. X $100 = $12,000	$12,000
Experts' staff support, preparation of exhibits, written testimony	
50 hrs. X $40 = $2,000	2,000
Experts' travel to attend hearings and offer testimony	
6 trips X 4 days X $80 = $1,920 subsistence	1,920
6 trips X $1,500 = $9,000 travel	9,000
	$24,920

This amount will be required for both FY 88 and FY 89, to cover both trials and appeals.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

Fiscal Analysis - (cont'd)

2. New Criminal Cases

Third Judicial District - Anchorage

	Atty III (PFT)	Atty III (PFT)	Total
Personal Services	62.6	62.6	125.2
Travel - Witness travel subsistence, atty. travel	1.8	1.8	3.6
Contractual Services			
office commo. equip. repairs	2.4	2.4	4.8
copy - postage	1.2	1.2	2.4
			7.2
Commodities - Ongoing			
office consumables	1.8	1.8	3.6
Law library	1.2	1.2	2.4
Commodities - one time			
New position materials	1.2	1.2	2.4
			8.4
Equipment - one time			
New position equipment	1.5	1.5	3.0
	73.7	73.7	147.4

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

Fiscal Analysis - (cont'd)

Fourth Judicial District - Fairbanks

	Atty. III (PPT)	Total
Personal Services	35.7	35.7
Travel - Witness travel subsistence, Atty. travel	1.8	1.8
Contractual Services		
office commo., equip. repair	2.4	2.4
copy - postage	1.2	1.2
		3.6
Commodities - Ongoing		
office consumables	1.8	1.8
Law library	1.2	1.2
Commodities - one time		
New position materials	1.2	1.2
		4.2
Equipment - one time		
New position equipment	1.5	1.5
		46.8

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB55

Fiscal Analysis - (cont'd)

3. Public Education

Admin. & Support Component/Prosc. BRU

Object	Total
Contractual Services - one time writing, layout, typesetting, publication and distribution of public notices and information brochures describing the changes in the law.	18.0 18.0
	18.0

Summary of Expenses

	Defending the new law	New Criminal Cases	Public Education	Total
Personal Services		160.9		160.9
Travel		5.4		5.4
Contractual	24.9	10.8	18.0	53.7
Commodities		12.6		12.6
Equipment		4.5		4.5
	24.9	194.2	18.0	237.1

Costs beyond FY 88 include a 3 per cent inflation factor, less one-time items. The costs for defending the new law will occur in both FY 88 and FY 89 and they will be eliminated thereafter.

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	1	22A	PX

Time Status	Staff Months	Location	Election District
PPT	12	JBA - Fairbanks	16

Type of Expenditure		Amount
1	2	3
Salary	28,128	
Benefits	7,576	
Premium Pay		
Other		
Total Personal Services		35,704
Travel		1,800
Contractual		3,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		46,804

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	46,804
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This permanent part-time position at Fairbanks is required to handle the influx of new cases that will result when marijuana violations, or any use of marijuana, which is not now a violation, become misdemeanor offenses. Prosecutors expect that at least a few hundred offenses will occur each year as a result of the enactment of this bill. This position will be responsible for prosecuting those new cases that are brought in the Fourth Judicial District. Because these new cases will be classed as misdemeanor offenses, allocation of the position to the Attorney III level is appropriate.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Fourth Judicial District

Revised Date

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	2	22A	PX

Time Status	Staff Months	Location	Election District
PFT	24	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	98,380	
Benefits	26,834	
Premium Pay		
Other		
Total Personal Services		125,214
Travel		3,600
Contractual		7,200
Commodities		8,400
Equipment		3,000
Other		
Total Cost		147,414

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	147,414
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

These two full-time attorney positions are required at Anchorage to handle the influx of new cases that will result when marijuana violations, or any use of marijuana, which is not now a violation, become misdemeanor offenses. Prosecutors expect that at least a few hundred such offenses will occur each year as a result of the enactment of this bill. These positions will be responsible for prosecuting these new cases that are brought in the Third Judicial District and handling appellate briefs and appeals hearings. Because these new cases will be classed as misdemeanor offenses, allocation of the positions to the Attorney III level is appropriate.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date

FY 88

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 55
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date:
Title: "An Act relating to marijuana; providing for an effective date."
Sponsor: Rep. Martin
Requestor: House HESS

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Criminal Investigation Bureau

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No additional enforcement activities are anticipated and thus no fiscal impact is anticipated.

JMC 2/9/88 KGS

Prepared by: Francis C. Allan G.C.A.
Division: Alaska State Troopers
Phone: 269-5691
Date: 1/29/88

Approved by Commissioner: Arthur English D.A.H.
Agency: Public Safety
Date: 1/29/88

Distribution: (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 55
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 1/21/88
Title: "An Act relating to marijuana;..."
Sponsor: Martin, Hanley, et al.
Requestor: Judiciary, Finance

Agency Affected: Administration
BRU: Office of Public Advocacy

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	-0-	98.4	102.3	106.4	110.7	115.1
TRAVEL		0	0	0	0	0
CONTRACTUAL		60.0	62.4	64.9	67.5	70.2
SUPPLIES		2.0	2.8	2.9	3.0	3.1
EQUIPMENT		9.3	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	169.7	167.5	174.2	181.2	188.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	169.7	167.5	174.2	181.2	188.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	169.7	167.5	174.2	181.2	188.4

POSITIONS:

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee
Phone: 27?-1684
Division: Office of Public Advocacy
Date: 1/20/88

Approved by Commissioner: John Andrews
Date: 2/1/88
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 55

This bill will recriminalize the use or possession of marijuana at any location and would result in a significant increase in the number of prosecutions for such offenses.

The Department of Law has requested 2.5 attorney in Anchorage and Fairbanks in order to enforce this statute. The constitutionality of the statute, which appears to directly conflict with the Supreme Court's 1975 holding in Raven v. State, will undoubtedly be tested in extensive trial and appellate court proceedings.

The Office of Public Advocacy requests one new Attorney III position for Anchorage -- where the greatest number of prosecutions is likely to arise -- and $60,000 in contractual funds to pay for representation in other areas and for expert witness fees necessary for trial proceedings.

Personal Services	
Anchorage	
Attorney III Salary & Benefits = 65,977	$ 66.0
Legal Secretary I Salary & Benefits = 32,363	32.4
Subtotal Personal Services	98.4
Contractual	
Contract attorneys in rural areas and expert witnesses.	60.0
Supplies	
Stationary and library supplies for two new positions.	2.0
Equipment	
Office furniture and equipment for one professional position at $2,429 and one secretary position at $6,838 = $9,267	9.3
TOTAL	$169.7

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	1	22/A	X

Time Status	Staff Months	Location	Election District
PFT	12	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	49,140	
Benefits	16,837	
Premium Pay		
Other		
Total Personal Services		65,977
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		65,977

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	65,977
GF Program Receipts	1005	
Other		

Justification

The Anchorage OPA office presently has 3 attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Legal Secretary I	1	10/A	G

Time Status	Staff Months	Location	Election District
PFT	12	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	22,020	
Benefits	10,343	
Premium Pay		
Other		
Total Personal Services		32,363
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		32,363

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	32,363
GF Program Receipts	1005	
Other		

Justification

The Anchorage OPA office presently has 3 legal secretary positions providing clerical support to 12 professional positions, 2 vista volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of a legal secretary. The present ratio of 4 professionals to each secretary is the maximum that each secretary can handle. The additional workload created by an additional attorney carrying a full caseload cannot be absorbed by the present secretarial staff.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 55
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to marijuana"

Agency Affected: Dept. of Administration
BRU: Public Defender Agency

Sponsor: Rep. Martin
Requestor: Judiciary

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		140.4	146.0	151.8	157.9	164.2
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		27.5	10.4	10.8	11.2	11.6
SUPPLIES		2.0	2.1	2.2	2.3	2.4
EQUIPMENT		3.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		172.9	158.5	164.8	171.4	178.2

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		172.9	158.5	164.8	171.4	178.2
FEDERAL FUNDS						
OTHER						
TOTAL		172.9	158.5	164.8	171.4	178.2

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See attached analysis)

Prepared by: Dana Fabe, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 1/25/88

Approved by Commissioner: John Andrews
Date: 2/1/88
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 55

This bill would reinstitute the prosecution of offenses relating to the possession of marijuana in any amount or location and would result in a significant number of new cases for the Department of Law, the Public Defender Agency and the Office of Public Advocacy. The Department of Law is requesting 2.5 new attorney positions while the Public Defender Agency is requesting an Attorney III in Anchorage and an Attorney III in Fairbanks for a total of 172.9.

BUDGET ANALYSIS

100	Attorney III - Anchorage	66.0	
	Attorney III - Fairbanks	74.4	
			140.4
200	Travel		-0-
300	Contractual - Space, phone, etc.	10.0	
	Litigation, one time	17.5	27.5
400	Supplies - Law Library, office, etc.		2.0
500	Equipment - One time		3.0
		TOTAL	172.9

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	1	22/A	PX

Time Status	Staff Months	Location	Election District
PFT	12.0	Anchorage	92

Type of Expenditure		Amount
1	2	3
Salary	49.140	
Benefits	16.834	
Premium Pay		
Other		
Total Personal Services		65.974
Travel		-0-
Contractual		22.500
Commodities		1.000
Equipment		1.500
Other		
Total Cost		90,974

Funding Source for Total Cost	
Federal Receipts 1002	
G. F. Match 1003	
General Fund 1004	90,974
GF Program Receipts 1005	
Other	

Justification

This bill would result in a significant increase in criminal prosecutions as it would apply to any amount of marijuana in any location. The Public Defender Agency is requesting an Attorney III for Anchorage plus an additional 17.5 (one time) in contractual to litigate the constitutionality of this bill.

Request For New Position

Agency: Department of Administration
BRU: Public Defender Agency
Component: Third Judicial District

FY 89

Position Title	Attorney III	No. of Positions	1	Range/Step	22/A	Barg. Unit	PX
Time Status	PFT	Staff Months	12.0	Location	Fairbanks	Election District	94

Type of Expenditure		Amount
1	2	3
Salary	56.244	
Benefits	18.129	
Premium Pay		
Other		
Total Personal Services		74,373
Travel		-0-
Contractual		5,000
Commodities		1,000
Equipment		1,500
Other		
Total Cost		81,373

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	81,373
GF Program Receipts	1005	
Other		

Justification

This bill would result in a significant increase in criminal prosecutions as it would apply to any amount of marijuana in any location. The Public Defender Agency is requesting an Attorney III for Fairbanks to respond to the anticipated increased caseload.

Request For New Position

Agency: Department of Administration
BRU: Public Defender Agency
Component: Fourth Judicial District

Revised Date 1/25/88

FY 89

Bethel Mar 30,1987

Senator Jan Faiks
Alaska State Senate
Hess Commitee
Box V Juneau,AK 99811

Dear Senator,

Your district has one of the highest violent crime rates in Alaska and the City of Anchorage has 21 unfilled police officer positions . The records show that when marijuana was prohibited, law enforcement spent about 20 percent of their duty hours in investigation,arrests and court appearances involving simple possession. It would appear that the officers preferred that non-violent pursuit as opposed to dealing with rapists and other crimes of violence.

The health hazards that you cited,from use of marijuana, can also be cited for use of tobacco and alcohol. The problem is not one of use but,rather,abuse. Please consider educational programs to deter abuse. Criminal sanctions merely enhance the problem.

Vernon W. Keezer

Thank you for your consideration,

Vernon Keezer

cc to: Hess Commitee,House of Representatives

The Honorable Frank H. Murkowski
United States Senate
720 Hart Bldg.
Washington,D.C. 20510

The effects of a new prohibition of the use and posession of Marijuana would be socially and financially disasterous to the State of Alaska.

Hundreds of newly created "criminals" would be dumped into a court system that is already overloaded and would severely impair the ability of the courts to speedily and efficiently handle trials involving serious major crimes against the people of Alaska. Civil Rights litigation caused by overzealous search, seizure and investigative tactics on the part of law enforcement agencys, would further overload the system.

The increased cost in dollars to operate the courts and the costs of law enforcement man hours spent in investigation, arrests and court appearances cannot be acceptable in the light of our declining economy.

The social impact on Alaskans would be even more disasterous and have longer lasting negative effects than the financial impact. The first to suffer will be the children whom some prohibitionists claim they seek to protect. To jail a teenager is perhaps one of the easiest ways to corrupt and ruin his or her life. Surely we have not so soon forgotten the Ohio State R.O.T.C. and honor student who was incarcerated in a federal penitentiary in 1964 for the posession of one marijuana cigarette?

Under present laws ,minors are fobidden the use or posession of marijuana and alcohol and tobacco, however,the common law of the land has left the responsibility to-limit or deny the use of these legal drugs to the parents and guardians. By makeing any of these legal drugs illegal we travel back in time to the "roaring twenties" of alcohol prohibition and to 1937 when marijuana was made illegal for the first time ever to give law enforcement leverage against the the blacks and hispanics who were the major if not only, users. The results of these prohibitions were the violation of the civil rights of hundreds of thousands and corruption of the judicial and law enforcement systems .

Please adress your efforts, on our behalf, to the problems of abuse of legal drugs rather than thrusting us back into the Dark Ages of Prohibition.

Vernon W. Keezer

Sincerely, Vernon Keezer/
Fellow Alaskan.

cc to: Senators Jan Faiks and Paul Fisher,Senate Hess Commitee
Hess Commitee,House of Representives

BILL NO: HB 55 DATE: 1/21/87

TITLE: "An Act relating to marijuana; and providing for an effective date.

CONTACT: Maj. Walter J. Gilmour
Acting Director

The Division of Alaska State Troopers is neutral on this legislation.

Many individuals and groups in Alaska feel that the use of marijuana is harmful to public health and welfare. The purpose of this legislation is to recriminalize the possession of any amount of marijuana.

Presently the state law allows up to four ounces of marijuana for personal use. This is in direct conflict with the existing Federal law. This in effect encourages the violation of Federal law.

The existing conflict of Federal and State law is confusing in the mind of the public. The public expects consistency rather than diversity in the law. Such diversity tends to breed disrespect for the law in general, especially upon the impressionable minds of our youth.

Alaska's lenient attitude toward marijuana in effect creates a legal market for a substance that is illegally grown in other states.

Alaska's legalization of small amounts of marijuana directly contravenes the terms of the Single Narcotics Convention, the international treaty which outlaws marijuana and other controlled substances. The United States is one of numerous countries which are signators to the convention.

Recriminalizing marijuana would not, as some fear, result in wholesale arrest of individuals possessing small amounts of marijuana. The present drug enforcement philosophy of source interdiction recognizes the far greater cost-effectiveness of striking against high-level distributors, and sadly, there is no lack of high-level drug dealers in Alaska to occupy the enforcement efforts of narcotics officers.

William R. Nix
Acting Commissioner

DEPARTMENT OF PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 55
Publish Date:

REQUEST
Revision Date:
Title: "An Act relating to marijuana; and providing for an effective date."
Sponsor: Rep. Martin
Requestor: H HESS/FN

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & C.I.B. Narcotics

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No additional enforcement activities are anticipated and thus no fiscal impact is anticipated.

INR 1/23/87

Prepared by: Francis C. Allan G.C.A.
Phone: 269-5691
Division: Alaska State Troopers
Date: 1/21/87

Approved by Commissioner:
Date: 1/23/87
Agency: Public Safety

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

HB

57

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H HESS 3-6-87 8:30a.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/2/87 FURTHER REFERRALS: Finance

DATE: ____________

The Health, Education and Social Services Committee has considered CS SSHB 57 (S.A)

"An Act establishing the Alaska children's trust fund to provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect; and providing for an effective date."

RECOMMENDS:

[ ] replace with ____________ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ____________ Committee

ADOPTS: [ ] ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[X] same as previous fiscal note published 2-25-87

[ ] same as previous zero fiscal note published ________

SIGNING DO PASS:

Rolf E. Bell [signature]

Niilo Koponen [signature]

[signature]

[signature]

Max F. Gruenberg [signature]

Dave Donley [signature]

Alyce Hanley [signature]

SIGNING OTHER RECOMMENDATIONS:

Niilo E. Koponen [signature]

Co Chairman's signature

BILL NO: CSSSHB 57 (SA) DATE: March 5, 1987

TITLE: An Act establishing the Alaska children's trust fund to provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect; and providing for an effective date

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence and Sexual Assault

DEPARTMENT OF PUBLIC SAFETY

CSSSHB 57(SA) establishes a children's trust fund which will provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect. Prevention programs are crucial in protecting children and are often the first to receive budget cuts. This fund will not make up for the reductions presently projected for these programs but will provide a small but stable source of income that is greatly needed. Many states have established similar funds which guarantee that at least some prevention of child abuse and neglect programs will be funded even in times of economic hardship. Utilizing the staff of an existing agency will provide a cost-effective way to review, award and monitor these grants.

The Council has some concerns about the legislation including whether it will be feasible for Council staff who are employees of the Department of Public Safety to work for a board in the Department of Revenue. Also, although the board is not solely comprised of Council members, the majority of the members are on the Council on Domestic Violence and Sexual Assault and there might be concerns from potential applicants that the different missions of the board and Council might create conflict. The Council would, of course, work hard to dispel any conflict.

This legislation addresses an important need in Alaska; therefore, the Council on Domestic Violence and Sexual Assault supports CSSSHB 57(SA).

William R. Nix
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CSSSHB 57 (SA)
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to the Alaska children's trust fund to provide etc.
Sponsor : Goll, Brown, etc.
Requestor : Health, Education, Social Services (House)

Agency Affected : Public Safety
BRU : Council on Domestic Violence and Sexual Assault
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

CSSSHB 57 (SA) does not allow for funding board operations and staff costs. While the income of the fund is small and there are few grants to be awarded, it will be possible to absorb this responsibility with existing Council staff. However, there will be costs associated with board meetings that need to be accounted for.

JNE 3/5/87

Prepared by : Barbara Miklos, Executive Director — Phone : 465-4356
Division : Council on Domestic Violence & Sexual Assault — Date : 3/5/87

Approved by Commissioner : — Date : 3/5/87
Agency : Department of Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CSSSHB 57 (SA)
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to the Alaska children's trust fund to provide etc.
Sponsor : Goll, Brown, etc.
Requestor : Health, Education, Social Services (House)

Agency Affected : Public Safety
BRU : Council on Domestic Violence and Sexual Assault
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

CSSSHB 57 (SA) does not allow for funding board operations and staff costs. While the income of the fund is small and there are few grants to be awarded, it will be possible to absorb this responsibility with existing Council staff. However, there will be costs associated with board meetings that need to be accounted for.

JNL 3/5/87

Prepared by : Barbara Miklos, Executive Director BM Phone : 465-4356
Division : Council on Domestic Violence & Sexual Assault Date : 3/5/87

Approved by Commissioner : [signature] Date : 3/5/87
Agency : Department of Public Safety

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

BILL NO: CSSSHB 57 (SA) DATE: March 5, 1987

TITLE: An Act establishing the Alaska children's trust fund to provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect; and providing for an effective date

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence and Sexual Assault

DEPARTMENT OF PUBLIC SAFETY

CSSSHB 57(SA) establishes a children's trust fund which will provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect. Prevention programs are crucial in protecting children and are often the first to receive budget cuts. This fund will not make up for the reductions presently projected for these programs but will provide a small but stable source of income that is greatly needed. Many states have established similar funds which guarantee that at least some prevention of child abuse and neglect programs will be funded even in times of economic hardship. Utilizing the staff of an existing agency will provide a cost-effective way to review, award and monitor these grants.

The Council has some concerns about the legislation including whether it will be feasible for Council staff who are employees of the Department of Public Safety to work for a board in the Department of Revenue. Also, although the board is not solely comprised of Council members, the majority of the members are on the Council on Domestic Violence and Sexual Assault and there might be concerns from potential applicants that the different missions of the board and Council might create conflict. The Council would, of course, work hard to dispel any conflict.

This legislation addresses an important need in Alaska; therefore, the Council on Domestic Violence and Sexual Assault supports CSSSHB 57(SA).

William R. Nix
Acting Commissioner

(7)

HOUSE COMMITTEE REPORT

Date referred: 2/18/87

FURTHER REFERRALS: HESS
Finance

DATE: 2-27-87

The State Affairs Committee has considered SSHB 57

"An Act establishing the Alaska children's trust fund to provide a continuing source of revenue for grants to community-based programs for the prevention of child abuse and neglect; and providing for an effective date."

RECOMMENDS:

[X] replace with CS HB 57(SA) [X] the same title
[ ] a new title

[ ] attached amendment(s)

[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

1 [X] fiscal impact
3 [X] zero fiscal note
1 [X] zero with analysis

[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Tom Hufman
Cliff Davidson
Dave Donley
Fran Ulmer

SIGNING OTHER RECOMMENDATIONS:

Terry Martin - need a realistic fiscal note;

Fran Ulmer
Chairman's Signature