

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4609 HHS SB 32 (FILE 7) - SB 37

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LEGISLATIVE HIGHLIGHTS

sequent conviction committed for 18 months, a fine of not less than \$750 or imprisonment 180 days, or both such fine and S Veh & Tr Law § 1174(c), (d), as added.—5 CLS Adv Leg Serv ch

districts may purchase insurance policies incurred by an authorized school volunteer program, including those authorized participants on school buses, school sponsored and from school, or on school buses or any other school sponsored vehicle. CLS Gen Mun Law § 1604 subd 31-b, 1709 subd 4, 2503 subd 10-b, 2559 as amended.—6 CLS Adv Leg

1987, every passenger seat on a vehicle manufactured for use in New York State equipped with approved seat belts and seat back padding; furnishing school bus which is scheduled for use must be retrofitted with seat belts and additional padding; for limiting liability of boards of trustees, and school district when an injury relating to seat back padding occurs. CLS Veh & Tr Law § 383 as added.—7 CLS Adv Leg

school districts which are participating in the organization incentive building program may earn credit toward July 1, 1988. CLS Educ Law § 304.—7 CLS Adv Leg Serv ch

of education is authorized to conduct a demonstration program in health education in elementary schools. CLS Educ Law § 304-a, as added.—7 CLS Adv Leg Serv ch 730.

regarding purchases of produce by school districts has been amended to allow smaller farms to combine their efforts to allow them to take advantage of the volume requirement of the Gen Mun Law § 103 subd 9, as amended.—7 CLS Adv Leg Serv ch 741.

may enter into agreements for the purchase of instructional equipment, with the purchase price applied against the purchase price of the equipment. CLS Educ Law § 1725-a, as added.—7 CLS Adv Leg Serv ch 759.

is demanded of a claimant by a town, village, fire district or fire district commenced within 90 days of

service of the demand, the claimant may commence an action against the municipality or district unless the claimant has failed to appear or has requested an adjournment or postponement beyond the 90 day period; if the claimant has requested an adjournment, hearing of the examination will be rescheduled at the earliest available date. CLS Gen Mun Law § 50-h subd 5, as amended.—7 CLS Adv Leg Serv ch 761.

* A student who is not permitted by a school district to participate in an athletic program because of a physical impairment, based upon a medical examination conducted by the school physician, may commence a special proceeding in Supreme Court to enjoin the school district from prohibiting his participation, subject to certain limitations. CLS Educ Law § 2308-a, as added.—7 CLS Adv Leg Serv ch 763.

* Municipalities and school districts may issue sinking fund bonds for any object or purpose for which serial bonds may be issued. CLS Local Fin Law §§ 22.00, 22.10, 31.00, 90.10, as amended and added.—7 CLS Adv Leg Serv ch 866.

SCHOOL GROUNDS

Penalties are imposed for the sale of controlled substances on school grounds to a maximum prison sentence of no less than 6 years and no more than 25 years, and the minimum sentence must be set at 1/3 the maximum term imposed. CLS Penal Law §§ 70.00 subds 2, 3, 220.00 subd 14, 220.34, 220.44, as added and amended.—6 CLS Adv Leg Serv ch 280.

The Governor, in his memorandum concerning said chapter 280, appearing at 6 CLS Adv Leg Serv p Gm-189, states that the crack problem is one of the most important issues facing our nation today, and that the bill amends the Penal Law to increase the penalties for selling drugs to school children and defines school grounds to include the area within 1000 feet, equivalent of two city blocks, of the real property boundary line of the school.

SCHOOLS

* The hours for voting in school board elections and budget votes may now begin as early as 6 o'clock a.m. CLS Educ Law § 2013, as amended.—7 CLS Adv Leg Serv ch 589.

* In promulgating regulations governing the tuition liability of students attending private schools, the commissioner shall require that the tuition charge for programs approved for participation in student financial aid general awards programs shall be apportioned on the basis of terms or semesters or on the basis of portions of the calendar year if instruction is not offered by term or semester; in addition, the tuition refund policy for such programs which are offered on a flexible start basis shall provide for a full refund of tuition to any student who cancels his or her enrollment agreement prior to or during the first week of instruction. CLS Educ Law §§ 665 subds 1, 3,

665-a, 681-a, 5001 subd 1, 7902 subds 3-5, 5003, 5004, 5005, as added and amended.—7 CLS Adv Leg Serv chs 680, 681.

* An occupational therapist permittee is authorized to practice in an elementary or secondary school for the purpose of providing occupational therapy as a related service for a handicapped child. CLS Educ Law § 7905 subd 2, as amended.—7 CLS Adv Leg Serv ch 703.

* The office of mental health is responsible for tuition expenses for a child who is a resident of New York State receiving care in a residential treatment facility for children and youth, who was not placed in the facility by a school district, social services district, the division for youth or the Family Court. CLS Educ Law § 4004 subd 2, CLS Men Hyg Law § 3126 subd f, as amended and added.—7 CLS Adv Leg Serv ch 810.

SECRETARY OF STATE

The Secretary of State shall determine the type and amount of all fees to be collected by the Department of State for services rendered by the department pursuant to the provisions of the Uniform Commercial Code, and the Uniform Commercial Code services account is established in which shall be deposited all such fees. CLS Exec Law § 96-a; CLS Lien Law § 243; CLS State Fin Law § 97-y; CLS Uniform Commercial Code §§ 9-403—9-407, as added, amended and repealed.—6 CLS Adv Leg Serv ch 453.

SECURITY

A distributor of motor fuel, alcoholic beverages or cigarettes must file with the department of taxation and finance a bond issued by an approved surety company as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the tax commission; if it becomes necessary to sell the security in order to recover any taxes due, no sale shall be had until after the person has had an opportunity to litigate the validity of any tax, and upon such sale, any surplus above the sums due must be returned to the person. CLS Tax Law §§ 283 subd 3, 4, 5, 422, 423, 431 subd 3, 472 subd 1, 481 subd 3, 504 subd 4, 511 subd 4, 1137 subd (e)(2), 1317 subd (h), as amended.—6 CLS Adv Leg Serv ch 275.

* Any petroleum business selling, transferring, using or otherwise disposing of petroleum within the state of New York must register with the tax commission, unless the transaction is one as to which the United States Constitution or laws enacted thereunder preclude such a requirement; in addition, the tax commission may require the business to post a bond or other security to secure the payment of any sum due from the business to the commission. CLS Tax Law § 302, as added and amended.—7 CLS Adv Leg Serv chs 581, 582.

SECURITY EMPLOYEES

A survivor's benefit for a state employee in a

and such possession was established solely through application of statutory provision making presence of dangerous drug in automobile presumptive evidence of knowing possession thereof by each and every person in automobile at time such controlled substance was found, but marijuana and paraphernalia were discovered after defendant and his companions were removed from automobile, application of statutory presumption under such circumstances was highly questionable. *People v Bennett* (1975, 1st Dept) 47 AD2d 322, 366 NYS2d 639 (ovrld on other grounds *People v Simone* (1st Dept) 48 AD2d 497, 370 NYS2d 583, rev'd on other grounds 39 NY2d 818, 385 NYS2d 765, 351 NE2d 432).

Even though drug was in kitchen of apartment and defendants were found by police in other rooms, defendants were not outside ambit of statute to effect that presence of narcotic drug in open view in room, other than public place, under circumstances evincing intent to unlawfully prepare it for sale it is presumptive evidence of knowing possession by each and every person in close proximity to such drug when found. *People v Caban* (1977) 90 Misc 2d 43, 393 NYS2d 303.

Evidence was not sufficient to convict 16-year-old girl of criminal possession of more than one-eighth of ounce of heroin found in open view in kitchen of apartment in which defendant, who was not member of family which occupied apartment, had recently taken up residence. *People v Caban* (1977) 90 Misc 2d 43, 393 NYS2d 303.

There were insufficient circumstances to give rise to the presumption of possession contained in Penal Law § 220.25 by a defendant who was present in a room when two plastic bags containing cocaine were removed from a brown bag by a second individual, placed on a table near defendant and opened briefly for a third individual to sample since the drugs were neither mixed, packaged nor compounded, and merely displaying drugs, even when the purpose of such display is to sell the drugs, would not, in itself, constitute preparing them for sale as required by the statute. *People v Uribe* (1982) 113 Misc 2d 207, 448 NYS2d 987.

The presumption of knowing possession of a controlled substance and a firearm by all who occupy a vehicle at the time such contraband is found would not apply to a driver for hire whose license

had been temporarily suspended, since such driver can no more reasonably be said to be aware and culpably involved in the possession of such contraband in a vehicle not necessarily owned by him, not accessible exclusively to him, and used by passengers not ordinarily known to him, than his counterpart with a currently valid license, so that it was error for the district attorney to instruct the Grand Jury that it could apply those presumptions in indicting an unlicensed driver for hire for possession of an unlicensed firearm and a quantity of a controlled substance allegedly recovered by police from the rear of the vehicle he was operating. *People v Allison* (1983) 117 Misc 2d 461, 458 NYS2d 496.

The presumption contained in this section passes constitutional muster where habeas corpus petitioner, convicted of first and fourth degree criminal possession of dangerous drugs, was one of three persons arrested while in a car containing over one pound of cocaine. Under these facts a rational juror could have found, beyond a reasonable doubt, knowing possession of the drug by petitioner. *Leyva v Superintendent, Green Haven Correctional Facility* (1977, DC NY) 428 F Supp 1.

9.-15. [Reserved for future use. Please consult your supplement.]

16. Under former § 1751

Where defendants were accused of acting in concert, and defendant in rear seat threw heroin out of automobile, the 2 defendants in the front seat were chargeable with the presumption of a knowing possession and control of heroin. *People v Potter* (1956) 4 Misc 2d 796, 162 NYS2d 439.

If a peace officer has reasonable grounds to believe that there is in an automobile enough narcotics to base the presumption of subd 2 of the above statute, he has by virtue of the provisions of subd 4 thereof reasonable grounds to believe that each occupant of such automobile was in possession of such drugs and is thereby justified in arresting any or all of them under Criminal Code § 177. *People v Rodolitz* (1965) 47 Misc 2d 129, 261 NYS2d 959, adhered to 48 Misc 2d 546, 265 NYS2d 460.

Section 1751(4) of the Penal Law is constitutional. *People v Mitchell* (1965) 51 Misc 2d 82, 272 NYS2d 523.

§ 220.30. [Repealed]

HISTORY:

Add, L 1965, ch 1030. Substance derived from §§ 1747-b, 1747-c, 1751(1). Amd, L 1969, ch 787; repealed, L 1973, ch 276, § 13, eff Sept 1, 1973.

§ 220.31. Criminal sale of a controlled substance in the fifth degree

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

HISTORY:

Add, L 1973, ch 276, § 19, eff Sept 1, 1973; amd, L 1979, ch 410, § 16, eff Sept 1, 1979.

Section heading, amd, L 1979, ch 410, § 16, eff Sept 1, 1979.

NOTES:

See 1973 note under Art 22.

See 1979 note under § 220.34.

CROSS REFERENCES:

This section referred to in CLS CPL § 700.05.

FEDERAL ASPECTS:

Drug abuse offenses and penalties, 21 USCS §§ 841 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:**Law Reviews:**

Heroin deaths: homicidal responsibility of the seller in New York. 37 Albany L Rev 497.

CRIMINAL JURY INSTRUCTIONS, NEW YORK:

3 CJI (NY) PL 220.31 p 1732.

CASE NOTES

1. In general
2. Criminal sale in fifth degree compared
3. Indictment; grand jury proceedings
4. Burden of proof
5. Admissibility of evidence
6. Defenses

1. In general

Sentence of six months' imprisonment imposed upon defendant who was convicted, on plea of guilty, of attempted criminal possession of a controlled substance in the sixth degree would be reduced to probation for five years, the same sentence imposed upon codefendant who was convicted of attempted defacement of weapons and dangerous instruments and appliances. *People v Ascani* (1977, 2d Dept) 56 AD2d 891, 392 NYS2d 675.

Defendant, who was convicted of criminal sale of a controlled substance, sixth degree, and criminal possession of a controlled substance, seventh degree, was improperly sentenced to one year imprisonment on each count to run concurrently, where the absence of a prior criminal record and both the nature and the amount of the drugs involved suggested that such sentence was not appropriate. *People v Reilly* (1981, 4th Dept) 81 App Div 2d 739, 438 NYS2d 405.

Section of Penal Law proscribing sales of controlled substances places no culpability re-

ment in element of "unlawfully sells." *People v Vargas* (1976) 86 Misc 2d 1018, 384 NYS2d 643.

While the People must show specific intent that defendant charged with sale of controlled substance was aware of nature of substance sold they need not demonstrate whether or not defendant thought sale was authorized by law. *People v Vargas* (1976) 86 Misc 2d 1018, 384 NYS2d 643.

2. Criminal sale in fifth degree compared

As they relate to sale of marihuana, provisions of statute relating to criminal sale of controlled substances in the sixth degree, and those of statute relating to criminal sale of controlled substance in the fifth degree, are as baffling as they are identical, since no minimum weights are assigned for sale of marihuana in either statute, and where there is no other element recited that would distinguish sale of marihuana under one statute from sale of marihuana under the other. *People v Kinnicut* (1975) 83 Misc 2d 229, 371 NYS2d 984.

Because statutes relating to criminal sale of controlled substance in the sixth and fifth degree are identical, proof sufficient to return an indictment for a violation of one statute would be proof sufficient to return an indictment for violation of the other. *People v Kinnicut* (1975) 83 Misc 2d 229, 371 NYS2d 984.

Difference to a defendant between an indictment for sale of controlled substance in the sixth degree and an indictment charging a sale in the fifth

degree is material and such charges defendant only which permits imprisonment the latter charges him with permits imprisonment for nicut (1975) 83 Misc 2d 229.

3. Indictment; grand jury

Return by grand jury of controlled substance in charged sale of marihuana instructed grand jury on substance in the sixth required dismissal of the because the statutes were to permit indictment for would be proof sufficient violation of the other, six under the sixth-degree statute for up to seven years. A under fifth-degree statute up to 15 years. *People v Vargas* (1976) 86 Misc 2d 229, 371 NYS2d 984.

Instruction of prosecutor stated, inter alia, that a sale of controlled substance knowingly and unlawfully substance, and that marihuana substance, was proper where were stated correctly, and controlled substance as defined v Kinnicut (1975) 83 Misc 2d 229.

4. Burden of proof

Even though under sub Health Law burden of proof of prescription justifying stance would rest with defendant violation of Law, same burden respect to defendant charged with sale of controlled substance. *People v Vargas* (1976) 86 Misc 2d 1018, 384 NYS2d 643.

5. Admissibility of evidence

Where defendant's prior he was acting as an agent which tended to show that controlled substance was for People to introduce tape defendant to show the intent even though the tapes show crime which dealt with subsequent to dates of the indictments. *People v Flanagan* (1977) 56 AD2d 959, 367 NYS2d 444, 46 L Ed 2d 266, 96 S Ct 229.

Although unjustified, removing racial reference where proof that defendant selling a controlled substance.

Because statutes relating to criminal sale of controlled substance in the sixth and fifth degree are identical, proof sufficient to return an indictment for a violation of one statute would be proof sufficient to return an indictment for violation of the other. *People v Kinnicut* (1975) 83 Misc 2d 229, 371 NYS2d 984.

Difference to a defendant between an indictment for sale of controlled substance in the sixth degree and an indictment charging a sale in the fifth degree is material and substantial, since the former charges defendant only with a class D felony, which permits imprisonment for seven years, while the latter charges him with a class C felony, which permits imprisonment for 15 years. *People v Kinnicut* (1975) 83 Misc 2d 229, 371 NYS2d 984.

Return by grand jury of indictment for sale of controlled substance in the fifth degree, which charged sale of marijuana, after prosecutor had instructed grand jury only as to sale of controlled substance in the sixth degree, was improper and required dismissal of the indictment, even where, because the statutes were identical, proof sufficient to permit indictment for violation of one statute would be proof sufficient to permit indictment for

violation of the other, since a defendant convicted under the sixth-degree statute could be imprisoned for up to seven years, while defendant convicted under fifth-degree statute may be imprisoned for up to 15 years. *People v Kinnicut* (1975) 83 Misc 2d 229, 371 NYS2d 984

4. Agency; defenses

Evidence in prosecution for criminal sale of controlled substance in fifth degree was sufficient to create jury question on defense of agency. *People v Belknap* (1977, 3d Dept) 57 AD2d 970, 394 NYS2d 94.

Jury in prosecution for criminal sale of controlled substance in fifth degree was properly instructed on burden of disproving defense of agency beyond reasonable doubt and as to relationship between agency and sale elements of crime. *People v Belknap* (1977, 3d Dept) 57 AD2d 970, 394 NYS2d 94.

One who is merely agent for buyer cannot commit the offense of selling narcotics. *People v Simone* (1977, 2d Dept) 59 AD2d 918, 399 NYS2d 154, later app (2d Dept) 78 AD2d 685, 432 NYS2d 248.

§ 220.35. [Repealed]

HISTORY:

Add. L 1965, ch 1030. Substance derived from § 1751(1). Amd. L 1969, ch 787; repealed, L 1973, ch 276, § 18, eff Sept 1, 1973.

§ 220.37. [Repealed]

HISTORY:

Add. L 1973, ch 276, § 19, eff Sept 1, 1973; amd. L 1978, ch 772; repealed, L 1979, ch 410, § 18, eff Sept 1, 1979.

§ 220.39. Criminal sale of a controlled substance in the third degree

A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. one gram or more of a stimulant; or
4. one milligram or more of lysergic acid diethylamide; or
5. twenty-five milligrams or more of a hallucinogen; or
6. one gram or more of a hallucinogenic substance; or
7. one or more preparations, compounds, mixtures or substances of an

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aggregate weight of one-eighth ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or

8. undiluted phencyclidine in an amount of one gram or more; or

9. a narcotic preparation to a person less than twenty-one years old.

Criminal sale of a controlled substance in the third degree is a class B felony.

HISTORY:

Add, L 1973, ch 276, § 19; amd, L 1973, ch 278, both eff Sept 1, 1973, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 2, add, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Former sub 2, add, L 1973, ch 278, eff Sept 1, 1973; renumbered sub 3, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Prior sub 2, repealed, L 1973, ch 278, eff Sept 1, 1973.

Sub 3, formerly sub 2, renumbered sub 3 and amd, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Former sub 3, add, L 1973, ch 278, eff Sept 1, 1973. Substance derived from former sub 2. Repealed, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Prior sub 3, repealed, L 1973, ch 278, eff Sept 1, 1973.

Sub 4, add, L 1973, ch 278, eff Sept 1, 1973; amd, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 5, formerly sub 6, renumbered sub 5 and amd, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Former sub 5, add, L 1973, ch 278, eff Sept 1, 1973. Substance derived from former sub 3. Repealed, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 6, formerly sub 8, renumbered sub 6 and amd, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Former sub 6, add, L 1973, ch 278, eff Sept 1, 1973; renumbered sub 5, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 7, formerly sub 10, renumbered sub 7 and amd, L 1973, ch 1051, § 14, eff Sept 1, 1973, L 1979, ch 410, § 19, eff Sept 1, 1979.

Former sub 7, add, L 1973, ch 278, eff Sept 1, 1973. Substance derived from former sub 3. Repealed, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 8, add, L 1979, ch 410, § 19, eff Sept 1, 1979.

Former sub 8, add, L 1973, ch 278, eff Sept 1, 1973; renumbered sub 6, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 9, add, L 1979, ch 410, § 19, eff Sept 1, 1979.

Former sub 9, add, L 1973, ch 278, eff Sept 1, 1973. Substance derived from former sub 3. Repealed, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 10, add, L 1973, ch 278, eff Sept 1, 1973; renumbered sub 7, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Sub 11, add, L 1973, ch 278, eff Sept 1, 1973; repealed, L 1973, ch 1051, § 14, eff Sept 1, 1973.

Closing par, amd, L 1979, ch 410, § 19, eff Sept 1, 1979.

NOTES:

See 1973 note under Art 220.

See 1979 note under § 220.34.

CROSS REFERENCES:

This section referred to in § 60.09; CLS CPL §§ 220.20, 700.05.

Eavesdropping warrants in prosecutions for criminally selling a dangerous drug in the third degree, CLS CPL §§ 700.05 et seq.

FEDERAL ASPECTS:

Drug abuse offenses and penalties, 21 USCS §§ 841 et seq.

The time between the indictment (July 8 and 16, 1969) and the indictment (Sept. 25, 1969) was not unreasonable and did not constitute a denial of due process in that the delay was purposeful, unjustifiable, and prejudiced his ability to prepare a defense. McKay v. State, Sup. Ct. Op. No. 729, File No. 1294, 489 P.2d 145 (1971).

A seven-month interval from the alleged drug sale until arrest was an unreasonable delay denying accused due process. McKay v. State, Sup. Ct. Op. No. 729, File No. 1294, 489 P.2d 145 (1971).

Dismissal of the criminal proceedings was constitutionally mandated where eight months had elapsed between the occurrence of the alleged sale and the filing of the indictment. Marks v. State, Sup. Ct. Op. No. 787, File No. 1414, 490 P.2d 66 (1972).

Classification of drug offenders under prior law. See Waters v. State, Sup. Ct. Op. No. 684, File No. 1276, 487 P.2d 169 (1971); Meyers v. State, Sup. Ct. Op. No. 720, File No. 1491, 488 P.2d 71 (1971).

Penalty provisions of former laws construed. See Wright v. State, Sup. Ct. Op. No. 843, File No. 1288, 501 P.2d 1360 (1972); Speas v. State, Sup. Ct. Op.

No. 889, File No. 1555, 511 P.2d 130 (1973); Call v. State, Sup. Ct. Op. No. 890, File No. 1544, 511 P.2d 105 (1973); Gonzales v. State, Sup. Ct. Op. No. 1010, File No. 2002, 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974); Darling v. State, Sup. Ct. Op. No. 1027, File No. 1907, 520 P.2d 793 (1974); White v. State, Sup. Ct. Op. No. 1055, File No. 1907, 523 P.2d 425 (1974); Salazar v. State, Sup. Ct. Op. No. 1404, File No. 2567, 562 P.2d 694 (1977); Hull v. State, Sup. Ct. Op. No. 1493, File No. 4201, 568 P.2d 1014 (1977), aff'd on other grounds, 560 P.2d 621 (1978); Johnson v. State, Sup. Ct. Op. No. 1596, File No. 3446, 577 P.2d 230 (1978); Davis v. State, Sup. Ct. Op. No. 1599, File No. 3510, 577 P.2d 690 (1978); Morgan v. State, Sup. Ct. Op. No. 1770, File No. 4350, 588 P.2d 277 (1978); Wharton v. State, Sup. Ct. Op. No. 1797, File No. 3380, 590 P.2d 427 (1979); Elliott v. State, Sup. Ct. Op. No. 1798, File No. 3379, 590 P.2d 881 (1979); Sangers v. State, Sup. Ct. Op. No. 1975, File No. 4190, 602 P.2d 1252 (1979); Mangoni v. State, Sup. Ct. Op. No. 2168, File No. 4678, 613 P.2d 272 (1980); Strachan v. State, Sup. Ct. Op. No. 2171, File No. 4901, 615 P.2d 611 (1980).

Unclassified Felony

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

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

(2) delivers any amount of a schedule IIA or IIIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) engages in a continuing criminal enterprise.

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

(1) the person commits a violation of this chapter which is punishable as a felony; and

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

(A) which the person undertakes in concert with at least five other persons organized, supervised, or otherwise managed by the person, and

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Sec. 11-71-030. Misconduct involving a controlled substance in the third degree. (a) Except as authorized in AS 17-30 or AS 17-35, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

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

(2) delivers any amount of a schedule IVA, VA or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) being 18 years of age or older, possesses any amount of a schedule IA or IIA 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

class B felony

(b) It is an affirmative defense to a prosecution under (a)(3) 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) Misconduct involving a controlled substance in the third degree is a class B felony. § 2 ch 45 SLA 1982.

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 17-10 and 17-12.

Defenses. — Where, on appeal from a conviction of selling cocaine, the defendants argue that this section under which they were charged, prohibits the sale only of natural or L-cocaine, derived from coca leaves, and where the state's chemist testified on cross-examination that his tests did not exclude the possibility that the substance sold by the defendant was D-cocaine, an artificial compound not produced from coca leaves, but where the chemist also testified that to the best of his knowledge D-cocaine had never been synthesized in any quantity, the supreme court, construing his testimony most favorably to the state, concluded that reasonable persons could find beyond a reasonable doubt that D-cocaine was not involved in the case and thus rejected the "D-cocaine" defense. *Leduff v. State*, Sup. Ct. Op. No. 2192 (File Nos. 4117, 4136), 618 P.2d 557 (1980).

Fact going to weight of evidence, not admissibility. — Where the informer who purchased bags of drugs from defendant testified and that he was to break to

the chain of custody of the bags, and where there was no evidence that the informer tampered with the bags, the fact that the informer was out of sight of the police for short periods of time before turning the bags over to the police went to the weight of the evidence, not its admissibility. *Robinson v. State*, Sup. Ct. Op. No. 1827 (File No. 3393), 593 P.2d 621 (1979).

Sentence for sale of cocaine. — See *Johnson v. State*, Sup. Ct. Op. No. 1706 (File No. 3146), 577 P.2d 230 (1978); *Ellott v. State*, Sup. Ct. Op. No. 1798 (File No. 3379), 590 P.2d 881 (1979); *Robinson v. State*, Sup. Ct. Op. No. 1827 (File No. 3393), 593 P.2d 621 (1979); *Mangold v. State*, Sup. Ct. Op. No. 2108 (File No. 4678), 614 P.2d 272 (1980); *Hawley v. State*, Sup. Ct. Op. No. 2137 (File No. 4200), 614 P.2d 1349 (1980); *Leduff v. State*, Sup. Ct. Op. No. 2192 (File Nos. 4117, 4136), 618 P.2d 557 (1980). See also *Strachan v. State*, Sup. Ct. Op. No. 2151 (File No. 4901), 615 P.2d 611 (1980); *Kelly v. State*, Sup. Ct. Op. No. 2208 (File Nos. 4097, 4529), 622 P.2d 432 (1981); *State v. Dana*, Ct. Op. App. No. 03 (File No. 4888), 623 P.2d 348 (1981).

Sentence for sale of amphetamines. See *State Sup Ct Op No 72-434*, 27 ALR 541 P 2d 541 (1976).

Sentence for possession of amphetamine tablets with intent to distribute or sell. See *Keller v. State, Sup Ct Op No 1221* (File No 2330), 543 P 2d 251 (1977).

Sentence for selling LSD. See *Goodrich v. State, Sup Ct Op No 1534*

Sentence for sale of acid, mesorolone and amphetamines. See *Meyers v. State, Sup Ct Op No 720*, 455 No 140, 485 P 2d 718 (1971).

Sentence for possession of hallucinogenic drug with intent to sell or distribute. See *Clark v. State, Sup Ct Op No 1530*, 455 No 141, 485 P 2d 719 (1971).

Sec. 11.71.010. Misconduct involving a controlled substance in the fourth degree. (a) Except as authorized in AS 17.30 or AS 17.35, 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 trade mark, trade name, or other identifying mark, imprint, or device of another or affixes any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance.

7. knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number 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.

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

11. It is an affirmative defense to a prosecution under any 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.

12. Nothing in a provision of this section precludes a prosecution or proceeding for, or any other prosecution of this section or any other section of this chapter or chapter AS 17.

13. Misconduct involving a controlled substance in the manner described in class C felony. (AS 17.31.3 1982)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 17.30 and 17.12.

Access to cocaine for personal use.

Right of privacy does not permit reasonable access to cocaine for personal and social use. *State v. Erickson*, Sup. Ct. Op. No. 1747, File No. 3250-574 P.2d 1978.

There is a sufficiently close and substantial relationship between the means chosen to regulate cocaine and the legislative purpose of preventing harm to health and welfare so as to justify the prohibition. *State v. Erickson*, Sup. Ct. Op. No. 1747, File No. 3250-574 P.2d 1978.

Possession of even a trace of a prohibited drug may be sufficient to sustain a conviction where other evidence supports the inference of knowledge. *Moreau v. State*, Sup. Ct. Op. No. 1770, File No. 2555-588 P.2d 277, 1978.

Age of purchaser. — Where police officers were charged with selling marijuana to a minor in violation of former AS 17.2, the purchaser's age had no bearing on the question of whether the defendants were guilty of a violation. The question of the age of the purchaser is relevant to the

punishment that could be imposed for that offense. *Morris v. State*, Sup. Ct. Op. No. 2176, File Nos. 4264, 4318-639 P.2d 13, 1981.

Knowing possession must be proved for conviction. — To sustain a conviction for possession of narcotics the prosecution must prove a knowing possession by the accused. *Davis v. State*, Sup. Ct. Op. No. 836, File No. 1532-501 P.2d 1026-1972.

Proving defendant's knowledge of substance's character. — Where the prohibited substance is itself mixed with an unknown or unknown substance, it is necessary that the state prove the defendant's knowledge of the nature and character of the substance. *Moreau v. State*, Sup. Ct. Op. No. 1770, File No. 2555-588 P.2d 277, 1978.

Knowledge can be shown by inferences. — A defendant's knowledge of the narcotic character of a substance can be shown by inferences that can be reasonably drawn from facts in evidence. *Moreau v. State*, Sup. Ct. Op. No. 1770, File No. 2555-588 P.2d 277, 1978.

Evidence of previous possession of contraband admissible. — In the prosecution of possessive offenses, where it is necessary to prove the defendant's knowl-

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

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

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

(3) opium poppy and poppy straw;

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

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

- (1) acetylmethadol;
- (2) allylprodine;
- (3) alphacetylmethadol;
- (4) alphameprodine;
- (5) alphamethadol;
- (6) alphaprodine;
- (7) anileridine;
- (8) benzethidine;
- (9) betacetylmethadol;
- (10) betameprodine.

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- (11) buprenorphine;
- (12) bupropion;
- (13) bupropion hydrochloride;
- (14) clonidine;
- (15) dexromoramide;
- (16) diampromide;
- (17) diethylthiambutene;
- (18) difenoxin;
- (19) dihydrocodeine;
- (20) dimenoxadol;
- (21) enalapril;
- (22) dimethylthiambutene;
- (23) diisopropyl ether;
- (24) diphenoxylate;
- (25) dipipanone;
- (26) ethylmethylthiambutene;
- (27) etonitazene;
- (28) etoxyeridine;
- (29) fentanyl;
- (30) furethidine;
- (31) naltrexone;
- (32) isomethadone;
- (33) ketobemidone;
- (34) levomethorphan;
- (35) levomoramide;
- (36) levorphanol;
- (37) levophenacetylmorphan;
- (38) meperidine, also known as pethidine;
- (39) metazocine;
- (40) methadone;
- (41) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (42) moramide-intermediate, 2-methyl-3-morpholino-1, 1-dimethylpropane-carboxylic acid;
- (43) morphine;
- (44) noracymethadol;
- (45) norlevorphanol;
- (46) normethadone;
- (47) norpipanone;
- (48) pethidine, also known as meperidine;
- (49) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenyl piperidine;
- (50) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (51) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

- 52 phenadoxone;
- 53 phenampromide;
- 54 phenazocine;
- 55 phenomorphan;
- 56 phenoperidine;
- 57 piminodine;
- 58 piritramide;
- 59 propheptazine;
- 60 properidine;
- 61 propiram;
- 62 racemethorphan;
- 63 racemoramide;
- 64 racemorphan;
- 65 trimeperidine.

d. Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 1 acetorphine;
- 2 acetyldihydrocodeine;
- 3 benzylmorphine;
- 4 codeine methylbromide;
- 5 codeine-n-oxide;
- 6 cyprenorphine;
- 7 desomorphine;
- 8 dihydromorphine;
- 9 drote'anol;
- 10 etorphine, except hydrochloride salt;
- 11 heroin;
- 12 hydromorphanol;
- 13 methyl-desorphine;
- 14 methyl-dihydromorphine;
- 15 morphine methylbromide;
- 16 morphine methylsulfonate;
- 17 morphine-n-oxide;
- 18 nyrophine;
- 19 niocodine;
- 20 niomorphine;
- 21 normorphine;
- 22 pholcodine;
- 23 thebacon. (S. 2 ch 45 SLA 1982)

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

3. Schedule IIA includes, unless specifically excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, whether optical, position, or geometric, or salts of isomers whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation.

(1) 1-bromo-2,5-dimethoxy-amphetamine, also known as 1-bromo-2,5-dimethoxy-*o*-methylphenethylamine and 1-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-*o*-methylphenethylamine and 2,5-DMA.

(3) 4-methoxyamphetamine, also known as 4-methoxy-*o*-methylphenethylamine and paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-methyl-2,5-dimethoxy-*o*-methylphenethylamine.

(6) 3,4-methylenedioxy amphetamine.

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

(8) bufotenine, also known as 3-(*β*-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indole, *N,N*-dimethylserotonin, 5-hydroxy-*N,N*-dimethyltryptamine, and psipamine.

(9) diethyltryptamine, also known as *N,N*-diethyltryptamine and DET.

(10) dimethyltryptamine, also known as DMT.

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

(12) lysergic acid diethylamide, also known as LSD.

(13) mescaline;

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

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

(16) peyote;

(17) analogs of phencyclidine, PCP, including:

(A) ethylamine analog, also known by some trade or other names as follows: *N*-ethyl-1-phenylcyclohexylamine, 1-phenylcyclohexyl-ethylamine, *N*-(1-phenylcyclohexyl)-ethylamine, cyclohexamine, PCE.

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

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

(18) psilocybine;

(19) psilocyn.

(c) Schedule IIA includes cocaine or coca leaves, and any salt, compound, derivative, mixture, isomer, ester, ether, or preparation of cocaine or coca leaves produced directly, or indirectly by extraction from coca leaves, or independently by means of chemical synthesis, or by a

combination of extraction and chemical synthesis including the isomers, salts, and salts of isomers of cocaine and other derivatives of coca leaves whenever the existence of these esters, ethers, isomers or salts is possible, but does not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

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

- (1) amobarbital;
- (2) mandrax or mandrax;
- (3) mecloqualone;
- (4) methaqualone;
- (5) pentobarbital;
- (6) phenacyclidine, also known as PCP;
- (7) secobarbital.

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

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, its salts, isomers, and salts of its isomers;
- (3) methylphenidate;
- (4) phenmetrazine and its salts.

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

- (1) immediate precursor to amphetamine and methamphetamine phenylacetone, also known as phenyl-2-propanone, P2P, benzil methyl ketone, methyl benzyl ketone;
- (2) immediate precursors to phenacyclidine, also known as PCP:
 - (A) 1-phenylcyclohexylamine;
 - (B) 1-piperidinocyclohexanecarbonitrile, also known as PCC. (S. 2 ch 15 SLA 1982)

NOTES TO DECISIONS

Editor's notes. The cases cited in the notes below were decided under former AS 17.10.

Regulation of cocaine. Word "narcotic" in common usage includes cocaine although cocaine is not a narcotic.

pharmacologically. State v. Erickson, Sup. Ct. Op. No. 1547, 130 No. 8250, 574 P.2d 1, 1978.

The legislature specifically intended to regulate the use and possession of cocaine regardless of its particular pharmaco-

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legislated status under Erickson, Sup Ct Op No. 1547 (File No. 1250), 574 P.2d 1 (1978).

Constitutionality of classification of cocaine as narcotic. The classification of cocaine with narcotics under former AS 17.10 was not violative of equal protection or due process. State v. Erickson, Sup Ct Op No. 1547 (File No. 1250), 574 P.2d 1 (1978).

When viewed from the overall legisla-

tive purpose of identifying and classifying a drug harmful to the health and welfare of society, the classification of cocaine as a narcotic drug was not so arbitrary and capricious as to violate due process. State v. Erickson, Sup Ct Op No. 1547 (File No. 1250), 574 P.2d 1 (1978).

Cocaine was not unconstitutionally classified as a narcotic drug by AS 17.10. Johnson v. State, Sup Ct Op No. 1596 (File No. 1316), 577 P.2d 240 (1978).

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

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

- (1) benzphetamine;
- (2) chlorphentermine;
- (3) clortermine;
- (4) mazindol;
- (5) phendimetrazine;

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

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

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

(2) amobarbital, secobarbital, or pentobarbital or any salt of these substances, approved by the federal Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 24, 1988

MEMORANDUM

TO: Representative John Sund

ATTN: Shari Kochman

FROM: Karla Hart *KH*
Legislative Analyst

RE: City Ordinances and Federal Laws on Possession of Marijuana
Research Request 88.180

Attached are copies of the Ann Arbor, Michigan and Madison, Wisconsin city ordinances on the possession of marijuana and U.S. Code Title 23, Section 844, relating to penalties for possession of controlled substances (including marijuana).

If you require additional information, please call.

Attachments

Provided, That, nothing in this section shall limit the right of the grantee of any public utility franchise to mortgage its property or franchise, or shall restrict the rights of the purchaser, upon foreclosure sale, to operate the same, except that such mortgagee or purchaser shall be subject to the terms of the franchise and provisions of this chapter.

CHAPTER 16 CONTROLLED SUBSTANCES

Restrictions on Alcoholic Beverages

SECTION 16.1. The City Council, in addition to the powers and duties specially conferred upon them by this Charter and law, shall have power, within said city, to enact, make, continue, modify, establish, amend and repeal such ordinances, by-laws and regulations as they may deem desirable, within said city, for the following purposes:

To forbid and prevent the vending or other disposition of liquors and intoxicating drinks in violation of the laws of this State, and to forbid the selling or giving to be drunk any intoxicating or fermented liquors to any common drunkard, or to any child or young person. (Amended April 6, 1964; November 3, 1964; November 8, 1966; April 7, 1969)

Restrictions on Marijuana

SECTION 16.2. (a) No person shall possess, control, use, give away, or sell marijuana or cannabis, which is defined as all parts of the plant cannabis sativa L., whether growing or not; its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of the above, unless such possession, control, use, or sale is pursuant to a license or prescription as provided in Public Act 196 of 1971, as amended. This definition does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compounds, manufacture, sale, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

ANN ARBOR, MI

(b) Any violation of this section shall be subject to a sentence of up to \$5.00, including judgement fees and costs, and no probation or any other punitive or rehabilitative measure shall be imposed; provided, however, that this section shall not be construed to prohibit deferred sentencing. The District Court clerk shall accept any plea of guilty which is made in the same manner as pleas of guilty are accepted at the Parking Violations Bureau of the Fifteenth District Court, as of September 5, 1973. Persons pleading guilty of violations of this section shall be allowed to tender the sum of \$5.00 to the District Court clerk as a full and complete satisfaction and discharge of liability, and no appearance before a district judge or other judicial officer shall be required. In any prosecution for violation of this section the burden of establishing any license or prescription shall be upon the defendant but this does not shift the burden of proof for the violation.

(c) In all arrests and prosecutions for violations of this section, appearance tickets and the relevant procedures set forth in Public Act 147 of 1968, as amended, shall be used.

(d) No Ann Arbor police officer, or his or her agent, shall complain of the possession, control, use, giving away, or sale of marijuana or cannabis to any other authority except the Ann Arbor city attorney; and the city attorney shall not refer any said complaint to any other authority for prosecution.

(e) Should the State of Michigan enact lesser penalties than that set forth in subsection (b) above, or entirely repeal penalties for the possession, control, use, giving away, or sale of marijuana or cannabis, then this section, or the relevant portions thereof, shall be null and void.

(f) The people of the City of Ann Arbor specifically determine that the provisions herein contained concerning marijuana or cannabis are necessary to serve the local purposes of providing just and equitable legal treatment of the citizens of this community, and in particular of the youth of this community present as university students or otherwise; and to provide for the public peace and safety by preserving the respect of such citizens for the law and law enforcement agencies of the City. Such provisions are necessary within the City because of the widespread local use of marijuana or cannabis. (Added by election of April 2, 1974)

Sec. 23.16(2)

OFFENSES AGAINST PUBLIC POLICY

- (2) No person, firm, or corporation which routinely conducts its business within the City of Madison shall wear or cause its employees or agents to wear a uniform, insignia, badge, pants, shirt, jacket and any other combination of clothing articles and paraphernalia which by their color, style, design and other characteristics would lead a reasonably prudent person to conclude that such person so garbed is a commissioned City of Madison police officer. It is the intent of this proviso to prohibit garb and paraphernalia which in its totality would create the impression in a reasonably prudent person that the one so clothed is a commissioned City of Madison police officer.
 - (3) Exceptions. This ordinance is not applicable to any official governmental body or subdivision thereof or to such body's employees or agents so long as such employees or agents are so attired in the regular course of such employment. Further, this ordinance is not applicable to theatrical productions.
 - (4) Severability. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Common Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared invalid.
 - (5) Penalty. Any person, firm, or corporation which violates any provision of this ordinance shall be subject to a forfeiture of not less than twenty dollars (\$20) nor more than two hundred dollars (\$200) for each violation.
 - (6) Effective Date. This ordinance shall be in full force and effect six months after adoption and publication.
- (Sec. 23.16 Cr. by Ord. 7548, 10-29-81)

23.17 BILLIARD HALL CLOSING HOURS. All persons who run a billiard hall, whether licensed or not, shall close such places of business or use and keep them closed from 1:00 a.m. to 5:00 a.m. of each day.

23.18 CRUELTY TO DUMB ANIMALS. It shall be unlawful for any person to inhumanely, unnecessarily or cruelly beat, injure or otherwise abuse any dumb animal.

23.19 DESTRUCTION OF BIRDS PROHIBITED. No person shall injure or attempt to injure or destroy, within the limits of the City of Madison, any wild bird.

* 23.20 REGULATIONS CONCERNING MARIJUANA AND CANNABIS.

- (1) Purpose. The people of Madison specifically determine that the regulations herein contained concerning marijuana and cannabis are necessary to serve the ethical purpose of providing just and equitable legal treatment of the citizens of this community and to preserve the respect of such citizens for law, its process, and its administration.

- (7) Separability Clause. If any subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

(Section 23.20 Cr. by Ord. 5833, 4-18-77)

23.21 PRUNING OR REMOVING TREES IN PUBLIC HIGHWAYS OR PUBLIC PLACES.

- (1) No person, corporation, or association shall plant, cut, prune, or remove any living tree or shrub in a public highway in the City of Madison, or cut, disturb or interfere in any way with the roots of any tree, to the extent of causing serious injury to such tree, in such public highway, or spray any such trees or shrubs with any chemical or insecticides without written permit of the Board of Park Commissioners.
- (2) Nothing herein shall be construed as preventing the City Engineer or Superintendent of Streets, Sewers, and Sanitation (Superintendent of Sanitation) from trimming trees so as to prevent interference with street illumination, provided that before trimming the trees said City Engineer or Superintendent of Streets, Sewers, and Sanitation (Superintendent of Sanitation) shall obtain the suggestion of the City Forester, and if the trimming suggested by him shall be sufficient to accomplish the purpose the tree shall be trimmed accordingly.

23.22 PLANTING OF THESE TREES IN PUBLIC HIGHWAY. No shade or ornamental tree or shrub shall be planted in any of the public streets of the City of Madison until such tree and the place where it is to be planted shall first have been approved by the Board of Park Commissioners, and a permit granted by said Board therefor.

23.23 DEPOSITING MATERIALS NEAR TREES. No person shall place or maintain upon the ground, in a public highway of the City of Madison, stone, cement, lumber, or other substance or material which may impede the free passage of water and air to any tree or shrub in such highway without leaving an open space of ground outside the trunk of said tree or the base of said shrub, of an area not less than sixteen (16) square feet. Before depositing any material in any highway of the City of Madison near to trees therein, the person so depositing said materials shall place such guard around the trees as shall effectively prevent injury to them.

23.24 BREAKING OR INJURING TREES. No person shall break or injure any tree planted in any highway in the City of Madison, nor shall he pour salt water on any such public highway in such places as to injure any tree or shrub planted or growing therein.

23.25 ATTACHING ELECTRIC WIRES, ETC., TO TREES. No person, corporation, or association, shall attach any electric insulator, or any device for holding of electric wire, to any tree growing or planted upon any public highway of the City of Madison. Every person, corporation, or association having any wire or wires charged with electricity running

item after narcotics investigator advised of inadequacy of office records and nurse's central role in circulation of several hundred dispensing cards containing false statements. *U.S. v. Vamos*, A.2 (N.Y.) 1986, 797 F.2d 1146.

Defendant's proposed instruction referring to the use of a telephone to order cocaine for others did not refer to a lesser included offense of unlawful use of a telephone facility in connection with a cocaine conspiracy. *U.S. v. Brown*, C.A. Cal. 85, 761 F.2d 1272.

Intoxication instruction, which stated that being under influence of drug provides legal excuse for commission of crime only if effect of drug makes impossible for accused to have specific intent to commit charged crime, adequately explained proposition that proof of intoxication, in and of itself, does not excuse commission of a specific intent crime. *U.S. v. Echeverry*, C.A.9 (Wash.) 1985, 9 F.2d 1451.

Denial of defendant's request for instruction on issue of entrapment was not reversible error in drug conspiracy prosecution where defendant recruited cellmate and was abundantly predisposed to commit the crime and did not show any governmental inducement; his vague assertions that cellmate had induced him to cooperate did not suffice as cellmate did not assist the government until well after defendant solicited his assistance. *S. v. Leon*, C.A. Tex. 1982, 679 F.2d 534.

2. Verdict

Acquittal on charges of conspiracy to possess cocaine and possession of cocaine did not require that convictions of using telephone to facilitate those offenses be vacated on ground of inconsistency of verdicts. *U.S. v. Powell*, Cal. 1984, 105 Ct. 471, 469 U.S. 57, 83 L.Ed.2d 461.

Defendant could properly be convicted for using a communications facility to commit a felony where the offense charged to have been facilitated as a substantive crime and, in any event, defendant was not acquitted of the underlying crime. *S. v. Ramos*, C.A. Fla. 1982, 666 F.2d 469.

3. Judgment of acquittal

Verdicts of acquittal on a substantive RICO charge and of conviction on a substantive count identical to one of the predicate facts for the RICO charge are not inconsistent; acquittal of substantive RICO and RICO conspiracy charges and conviction of using a telephone to facilitate distribution of controlled substance were not inconsistent. *U.S. v. Russo*, C.A. 11 (Fla.) 1986, 96 F.2d 1443.

4. Sentence and punishment

U.S. v. Fontanez, 628 F.2d 687 [main volume] certiorari denied 101 S.Ct. 1401, 450 U.S. 935, 67 L.Ed.2d 371.

5. Parole

In denying parole to defendant serving four-year term for illegally using communication facilities to facilitate unlawful cocaine transaction, United States Parole Commission remanded within its own guidelines in considering facts surrounding underlying smuggling charge which was dismissed in return for plea bargain. Page v. U.S. Parole Commission, C.A. Tex. 1981, 651 F.2d 883.

26. Venue

Overt act within Northern District of West Virginia was sufficient for venue thereof prosecution charging conspiracy to possess a narcotic with intent to distribute. *U.S. v. Goldman*, C.A. W. Va. 1984, 750 F.2d 1221.

District in which defendant's telephone call was received was district in which venue was proper for prosecution for use of "communication facility" in facilitating conspiracy to import cocaine and conspiracy to possess with intent to distribute cocaine, even though the telephone call was made from outside of the district. *U.S. v. Barnes*, C.A. Fla. 1982, 681 F.2d 717, rehearing denied 694 F.2d 233, certiorari denied 103 S.Ct. 1447, 460 U.S. 1046, 75 L.Ed.2d 802.

Fact that defendant was not physically present in the Western District of Wisconsin during any of telephone conversations and did not initiate telephone calls himself did not preclude him from being found to have used communication facilities

in Western District of Wisconsin and to have committed the offense there of using a communication facility for illegal drug transactions; thus, venue was proper in the Western District of Wisconsin. *U.S. v. Andrews*, D.C. Wis. 1984, 598 F.Supp. 296.

27. Privacy

Pharmaceutical industry, like the mining, firearms, and liquor industries, is a pervasively regulated industry and consequently pharmacists and distributors subject to provisions of this section have a reduced expectation of privacy in the records kept in compliance with this chapter. *U.S. v. Acklen*, C.A. Tenn. 1982, 690 F.2d 70.

28. Facilitate

To "facilitate" within meaning of statute [21 U.S.C.A. § 843(h)] governing unlawful use of communication facility is merely to make easier or less difficult. *U.S. v. Reese*, C.A. 9 (Cal.) 1985, 775 F.2d 1066.

§ 844. Penalties

(a) Simple possession

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 subchapter or subchapter II of this chapter. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$1,000 but not more than \$5,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$2,500 but not more than \$10,000, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$5,000 but not more than \$25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of Title 28, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of Title 18 that the defendant lacks the ability to pay.

(b) Probation; expungement of records relating to arrest, etc.

(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, 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 determining 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 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 discharge of such person and dismissal 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.

(c) Definition

As used in this section, the term "drug or narcotic offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

(As amended Pub.L. 99-570, Title I, § 1052, Oct. 27, 1986, 100 Stat. 3207-8.)

Amendment of Section

Pub.L. 98-473, Title II, §§ 219, 235, Oct. 12, 1984, 98 Stat. 2027, 2031, as amended by Pub.L. 99-217, § 4, Dec. 26, 1985, 99 Stat. 1728, provided that this section is amended, effective Nov. 1, 1987, by striking out subsec. (b) and by deleting the designation "(a)" in subsec. (a). See note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

Legislative History. For legislative history and purpose of Pub.L. 99-570, see 1986 U.S. Code Cong. and Adm. News, p. 5393.

Federal Jury Practice and Instructions

Removal of goods from custody of Customs Service, see § 16.07 Notes.

Notes of Decisions

Injunction 86

2. Constitutionality

Church declared that it considered peyote divine, an embodiment of the deity, and use of peyote a sacrament, and record did not show a compelling state interest in denying church members the right to use peyote in religious ceremonies or that the denial was narrowly drawn to attain the important governmental purpose; therefore, remand was appropriate for further proceedings to determine whether Vernon's Ann. Texas Civ.St. art. 4476-15, §§ 4.032, 4.041, and 4.042 making possession or distribution of peyote a criminal act

denied to members of the church the right freely to exercise their religion under U.S.C.A. Const. Amend. 1. *Peyote Way Church of God, Inc. v. Smith, C.A.Tex.1984, 742 F.2d 193.*

8. — Dominion and control

Conviction for possession of cocaine was supported by sufficient evidence, where defendant retained constructive possession over cocaine since he had ability to use it and remove it, and therefore to exercise dominion and control over the substance. *U.S. v. Schocket, C.A.Va.1985, 753 F.2d 336.*

Use of a portion of narcotics by a defendant is relevant to the extent of his control over the larger quantity. *U.S. v. White, C.A.III.1981, 660 F.2d 1178, on remand 541 F.Supp. 1114.*

9. — Knowledge or intent

Irrespective of what defendant's intentions were regarding ultimate disposition of heroin he claimed to have found while performing his duties as a janitor in prison, defendant's knowledge of illicit nature of substance and purposeful possession of substance was a violation of heroin posses-

sion statute. *U.S. v. Holloway, C.A.1 744 F.2d 527.*

Assistance which defendant subsequently gave to another in selling heroin which a third person had given to the other person in defendant's possession could be considered as evidence of defendant's knowledge that the substance given to the other person by the third person was heroin. *U.S. v. Wilson, C.A.Tex.1981, 657 F.2d 755, denied 102 S.Ct. 1456, 455 U.S. 951, 766 F.2d 667.*

10. — Actual or constructive

Person having an association with another who had physical custody of drug so as to be able to assure their production, without difficulty to a customer as a matter of course may be deemed to have constructive possession. *U.S. v. Wilson, C.A.III.1981, 660 F.2d 1178, on remand 541 F.2d 1114.*

Possession of a controlled substance which is to be distributed may be either actual or constructive; "constructive possession" may be established by a showing of ownership, dominion, or control over the contraband itself, or dominion or control over the premises or the vehicle in which the contraband was concealed; constructive possession may be exclusive or joint and may be established by either direct or circumstantial evidence. *U.S. v. Wilson, C.A.Tex.1981, 657 F.2d 755, denied 102 S.Ct. 1456, 455 U.S. 951, 766 F.2d 667.*

12. — Proximity to narcotic

Proximity, under certain circumstances, to constructive possession of cocaine. *U.S. v. James, C.A.D.C.1985, 764 F.2d 1114.*

16. Measurable or usable quantity

Evidence showed beyond doubt that defendant had agreed to possess more than simply a minimal amount of marijuana for personal consumption; rather, police arrested the three defendants near a truck filled with more than one pound of marijuana; therefore, evidence did not support an instruction on conspiracy simply to "measurable amount" with no intent to distribute. *U.S. v. Anello, C.A.1 (Me.) 1985, 753 F.2d 253.*

Quantity of marijuana is not a consideration in simple possession. *U.S. v. Wilson, C.A.4 (W.Va.) 1985, 757 F.2d 1439.*

19. Arrest

Probable cause to arrest defendant for possession of a controlled substance was established where anonymous tip regarding valium and two women was substantially corroborated by police officer's observation of women matching defendant's description apparently making purchases of narcotics to defendant, particularly in light of officer's knowledge of previous valium purchases in that area, which was within one block of a detoxification center. *U.S. v. Wilson, C.A.D.C.1985, 778 F.2d 885.*

20. Search and seizure

In drug prosecution, government did not bear its burden of proving that defendant's consent to search of his apartment in which drugs were found was voluntary, that consent was

the court shall discharge such person. Discharge and dismissal under this section of guilt, but a nonpublic record of Justice solely for the purpose of use in subsequent proceedings, such person or dismissal shall not be deemed a bar or disabilities imposed by law upon such person as prescribed under this part for second or subsequent offense. Discharge and dismissal under this part to any person.

Dismissal of the proceedings against such person, if he was not overruled on appeal, may apply to the court for an order other than the nonpublic records to which paragraph (1) all recordation relating to such person, finding of guilty, and dismissal and arrest determines, after hearing, that such person against him discharged and that he was not of the offense, it shall enter such order. Such person, in the contemplation of the arrest or indictment or information. No order shall be held thereafter under any order otherwise giving a false statement by such person to acknowledge such arrest, or indictment or inquiry made of him for any purpose.

"Narcotic offense" means any offense in the manufacture, cultivation, sale, transportation, distribution, manufacture, cultivate, sell or possess which is prohibited under this subchapter.

1986, 100 Stat. 3207-8.)

Section

Act. 12, 1984, 98 Stat. 2027, 2031, as amended, 1985, 99 Stat. 1728, provided that in 1987, by striking out subsec. (b) in subsec. (a). See note set out under Criminal Procedure.

granted to members of the church the right freely to exercise their religion under U.S.C.A. Const. Amend. 1. *Peyote Way Church of God, Inc. v. Smith*, C.A.Tex.1984, 742 F.2d 193.

— Dominion and control

Conviction for possession of cocaine was supported by sufficient evidence, where defendant retained constructive possession over cocaine since he had ability to use it and remove it, and therefore to exercise dominion and control over the substance. *U.S. v. Schocket*, C.A.Va.1985, 753 F.2d 336.

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Irrespective of what defendant's intentions were regarding ultimate disposition of heroin he claimed to have found while performing his duties as a janitor in prison, defendant's knowledge of illicit nature of substance and purposeful possession of substance was a violation of heroin possession statute. *U.S. v. Holloway*, C.A.Mich.1984, 744 F.2d 527.

Assistance which defendant subsequently gave to another in selling heroin which a third party had given to the other person in defendant's presence could be considered as evidence of defendant's knowledge that the substance given to the other person by the third person was heroin. *U.S. v. Wilson*, C.A.Tex.1981, 657 F.2d 755, certiorari denied 102 S.Ct. 1456, 455 U.S. 951, 71 L.Ed.2d 667.

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A person having an association with those having physical custody of drug so as to enable him to assure their production, without difficulty, to a customer as a matter of course may be held to have constructive possession. *U.S. v. White*, C.A.III.1981, 660 F.2d 1178, on remand 541 F.Supp. 1114.

Possession of a controlled substance with intent to distribute it may be either actual or constructive; "constructive possession" may be established by a showing of ownership, dominion, or control over the contraband itself, or dominion or control over the premises or the vehicle in which the contraband was concealed; constructive possession may be exclusive or joint and may be proved by either direct or circumstantial evidence. *U.S. v. Wilson*, C.A.Tex.1981, 657 F.2d 755, certiorari denied 102 S.Ct. 1456, 455 U.S. 951, 71 L.Ed.2d 667.

12. — Proximity to narcotic

Proximity, under certain circumstances, may amount to constructive possession of contraband. *U.S. v. James*, C.A.D.C.1985, 764 F.2d 885.

16. Measurable or usable quantity

Evidence showed beyond doubt that defendants agreed to possess more than simply a measurable amount of marijuana for personal consumption, rather, police arrested the three defendants in or near a truck filled with more than one ton of marijuana; therefore, evidence did not warrant instruction on conspiracy simply to possess a "measurable amount" with no intent to distribute as defined in Comprehensive Drug Abuse Prevention and Control Act of 1970, § 404, 21 U.S.C.A. § 844. *U.S. v. Anello*, C.A.I (Me.) 1987, 765 F.2d 253.

Quantity of marijuana is not a consideration in cases of simple possession. *U.S. v. Bernard*, C.A.4 (W.Va.) 1985, 757 F.2d 1439.

19. Arrest

Probable cause to arrest defendant for possession of a controlled substance was established where anonymous tip regarding valium sales by two women was substantially corroborated by police officer's observation of women matching informant's description apparently making sale of narcotics to defendant, particularly in light of officer's knowledge of previous valium sales in that area, which was within one block of methadone and detoxification center. *U.S. v. Lucas*, C.A.D.C.1985, 778 F.2d 885.

20. Search and seizure

In drug prosecution, government did not sustain its burden of proving that defendant's consent to search of his apartment in which drugs were found was voluntary, that consent was product of

defendant's submitting to what he reasonably believed was exercise of lawful authority, and that consent was not result of free and rational choice by defendant. *U.S. v. Restrepo-Cruz*, D.C.N.Y. 1982, 547 F.Supp. 1048.

43. Pleas—Generally

Fact that 18-year-old defendant's conditional plea to possession of marijuana could not operate as conviction did not negate factual circumstances surrounding underlying arrest for possession of marijuana and, therefore, statute preventing conditional plea from being a conviction did not preclude air force base commander from entering bar order. *Berry v. Bear*, C.A.4 (Md.) 1986, 796 F.2d 713.

Once the district court had accepted a bargained guilty plea agreement, thereby binding defendant and prosecution, it could not simply change its mind on basis of information in presentence report, at least where that information revealed less than fraud on the court; thus, since jeopardy attached, under facts of case, when defendant's guilty plea was accepted, information charging defendant with simple possession of cocaine, the misdemeanor to which defendant had pled guilty, had to be reinstated and case remanded for sentencing. *U.S. v. Cruz*, C.A.Puerto Rico 1983, 709 F.2d 111.

46. — Double jeopardy

Where oral decision granting defendants' motions for judgments of acquittal on count charging possession with intent to distribute heroin was followed promptly by modification providing for reduction of count to lesser included offense instead of elimination of count, and where reduced count could be and was submitted in normal course of trial to original jury, submission of reduced count did not violate double jeopardy. *U.S. v. LoRusso*, C.A.N.Y.1982, 695 F.2d 45, certiorari denied 103 S.Ct. 1525, 460 U.S. 1070, 75 L.Ed.2d 948.

60. — Particular cases sufficient

Evidence that 17 marijuana plants, ranging in height between five and six feet, were growing in field cleared out of forest on defendant's land and about 100 yards from farmhouse in which defendant lived with his family, and that there were 24 marijuana stumps in field and 24 marijuana plants similar to those found in field, hanging in plain view in defendant's barn only few yards away from his residence, was sufficient to sustain conviction for possession of marijuana. *U.S. v. Bernard*, C.A.4 (W.Va.) 1985, 757 F.2d 1439.

In prosecution for simple possession of heroin, evidence of heroin found in automobile of which defendant was both owner and driver, only shortly after defendant had left automobile, was sufficient to sustain conviction. *U.S. v. Maldonado*, C.A.Tex.1984, 735 F.2d 809.

Evidence in defendant's prosecution for possession of cocaine, including evidence that substance had appearance of illicit cocaine, that when sampled and tested by experienced user of cocaine, it had effect of cocaine, that price paid for substance was "high," that sale and delivery were conducted furtively and with deviousness, and that all persons dealing with substance treated and dealt with it as cocaine, was sufficient to support defendant's conviction, even though substance delivered to

defendant had not been seized and government was unable to chemically analyze substance and thereby establish its illicit character. *U.S. v. Scott*, C.A.W.Va.1984, 725 F.2d 43.

61. — Particular cases insufficient

Evidence that defendant accompanied another person when that other person gave a third person 25 capsules of heroin for further distribution and that defendant then assisted the third party in selling the 25 capsules to others was insufficient to sustain defendant's conviction for distribution of heroin to the third person. *U.S. v. Wilson*, C.A. Tex.1981, 657 F.2d 755, certiorari denied 102 S.Ct. 1456, 455 U.S. 951, 71 L.Ed.2d 667.

65. Instructions—Generally

In prosecution which resulted in conviction of defendant on single misdemeanor count of possessing $\frac{1}{16}$ of an ounce of cocaine, trial court erred in instructing jury that D-cocaine was the chemical equivalent of L-cocaine, the only one of the eight cocaine isomers covered under this section, in that jury could reasonably have determined that substance was either L-cocaine or D-cocaine. *U.S. v. Ross*, C.A.N.Y.1983, 719 F.2d 615.

70. Sentence and punishment—Generally

Defendant's testimony before district court established that he distributed marijuana for remuneration, thereby supporting sentence, on defendant's guilty plea to distribution of marijuana, to five-year prison term, rather than maximum two-year term under statute, 21 U.S.C.A. § 844(a), which provides for lesser punishments for possession or delivery of small amounts of marijuana without remuneration. *U.S. v. Harvey*, C.A.8 (Ark.) 1986, 784 F.2d 330.

Imposition of sentence of six months for possession of controlled substance was not excessive. *Orosco v. U.S.*, D.C.Okla.1981, 526 F.Supp. 756.

§ 845. Distribution to persons under age twenty-one

(a) Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b) of this section) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title, and (2) at least twice any special parole term authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year.

(b) Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title, and (2) at least three times any special parole term authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(As amended Pub.L. 98-473, Title II, § 503(b)(3), Oct. 12, 1984, 98 Stat. 2070; Pub.L. 99-570, Title I, § 1105(a), (b), Oct. 27, 1986, 100 Stat. 3207-11.)

71. — Disbarment or suspension

Federal convictions on three counts of stealing property from an agency of the United States government, and two counts of possession of narcotic drug controlled substances, which crimes, if committed within New York, would be felonies, warrant automatic disbarment. *Matter ... Perlmutter*, N.Y.A.D. 1 Dept.1986, 500 N.Y.S.2d 700.

75. — Admissibility of evidence

District court, in imposing maximum sentence of one year imprisonment and \$5,000 fine for possession of marihuana, committed no error in considering government agent's testimony, which jury rejected in reaching its verdict, that defendant intended to distribute the marihuana he possessed, since defense counsel cross-examined such agent, and defendant had opportunity to introduce his own expert testimony at trial and opportunity to address district court with regard to the issue at the sentencing hearing. *U.S. v. Bernard*, C.A.4 (W.Va.) 1985, 757 F.2d 1439.

86. Injunction

Teenager who was barred from residing with her stepfather and brothers on air force base by order of the base commander because she had been cited for possession/use of a controlled/dangerous substance was entitled to preliminary injunction to permit her to return and live with the other members of her family; her alternative was to live on her own in metropolitan Washington, D.C. area, any dilution of the base commander's authority if she were allowed to return would be minimal, the base commander's action appeared to be arbitrary and beyond statutory limits, and it would be in public interest to keep the family together. *Berry v. Bean*, D.C.Md.1985, 623 F.Supp. 977.

1984 Amendment. Subsec (a) Pub L. 99-570, § 503(b)(3), added exception for section 845a of this title.

Amended

Pub.L. 99-570, Title I, § 1105(a), (b), that, effective on the date of enactment of this title, "special parole term" and "special release" wherever applicable.

Repeals. Pub.L. 98-473, Title II, §§ 235, Oct. 12, 1984, 98 Stat. 2030, 2031 provided that, effective Nov. 1, 1986, this title is amended in subsection (a), by deleting the second place it appears, and by deleting "at least twice any special parole term authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule"; and in subsection (b), by deleting the second place it appears, and by deleting "(2) at least three times any special parole term authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule". This title was amended by Pub.L. 99-570, Title I, § 1005(b)(1), Oct. 27, 1986, 100 Stat. 3207-6.

Legislative History. For legislative history and purpose of Pub.L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See also: Pub.L. 99-570, 1986 U.S. Code Cong. and Adm. News, p. 5393.

Federal Practice and Procedure

Special parole terms given to certain categories of offenders, see Wright: Criminal 2d § 53c.

§ 845a. Distribution or manufacture

(a) Penalty

Any person who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age who real property comprising a public school or a public or private college or university, is punishable (1) by the greater of (A) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title, and (2) at least twice any special parole term authorized by section 841(b) of this title, for a first offense. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(b) Second offenders

Any person who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age who real property comprising a public school or a public or private college or university, after a prior conviction or convictions under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) have become final, is punishable (1) by the greater of (A) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title, and (2) at least three times any special parole term authorized by section 841(b) of this title for a first offense.



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

December 3, 1986

MEMORANDUM

TO: Representative Alyce Hanley

ATTN: Cassie Russell

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Recriminalization of Marijuana
Research Request 87.047

You requested a discussion of federal and State law criminalizing marijuana, and were interested in which states had amended their constitutions to conform with federal drug law. You also asked for information on recriminalizing marijuana in Alaska by constitutional amendment and/or legislation.

Federal Law

The Comprehensive Drug Abuse Prevention and Treatment (CDAPT) Act of 1970 (also known as the Controlled Substances Act) criminalizes the possession and distribution of marijuana. Under the act, possession of any amount of marijuana is a criminal offense. Both a fine and incarceration can be imposed on a person possessing marijuana, subject to a court's discretion. Any offense other than simple possession (first offense) is a felony. Attachment A contains a copy of applicable sections of the CDAPT Act.

The Anti Drug Abuse Act of 1986 set mandatory sentences for simple possession of marijuana and for possession with intent to distribute. Penalties are specified in Table 1. The act also specified penalties for distributing drugs to juveniles and pregnant women, distributing drugs near schools and appropriated funds for states to improve narcotics control.

Federal drug laws may be enforced in any state by federal agents. State law enforcement officers may also enforce federal drug laws. According to Gretchen Derr, Special Assistant to the Alaska Commissioner of Public Safety, Alaska State Police usually will not pursue a federal offense until the U.S. Attorney's office authorizes such action.

TABLE 1
FEDERAL PENALTIES FOR THE POSSESSION OF MARIJUANA

	First Offense		Second Offense	
	Fine (000)	Incarceration (Years)	Fine (000)	Incarceration (Years)
<u>Simple Possession</u>	\$5	1 or probation	\$1 to \$5*	1*
<u>Possession with Intent to Distribute</u>				
Quantity (kilograms):				
0 to 50				
individual	250	5	500	10
corporation	1,000		2,000	
50 to 99				
individual	1,000	20	2,000	30
corporation	5,000		10,000	
100 to 999				
individual	2,000	5 to 40*	4,000	10 to life*
corporation	5,000		10,000	
1000 and up				
individual	5,000	10 to life*	8,000	20 to life*
corporation	10,000		20,000	
<u>Cultivation:</u>				
< 100 plants & 0-50 kg	250	5	500	10
> 100 plants & 0-99 kilograms	1,000	20	2,000	30

NOTES:

*--Mandatory Sentencing.

Simple possession by quantity is not defined in federal law. A first offender of simple possession will often be put on probation, with the record expunged after the completion of probation. If the offense is repeated, courts then apply either the first or second offense penalties.

Possession with intent to distribute can be inferred by the quantity of marijuana in possession, even if a sale has not occurred. Distribution of a small amount of marijuana for no remuneration is often treated as simple possession.

Cultivation of more than 100 plants with a weight greater than 99 kilograms, carries the same penalties, according to the quantity, as possession with intent to distribute.

"Corporation" includes any organization, association, or group of drug traffickers.

Prepared by the House Research Agency, December 1986.

Representative Hanley
December 3, 1986
Page 3

According to Jim Walsh, Assistant Attorney with the U.S. Department of Justice Controlled Substance Unit, the federal government has no interest in prosecuting for possession of small amounts of marijuana. Federal enforcement agencies are interested in the smuggling and trafficking of large amounts and rarely pursue or prosecute small-scale possessors.

State Law

Although most states have traditionally followed the federal lead regarding drug legislation, a state is not in violation of federal law because its prohibitions on the possession and distribution of marijuana differ from federal law. Adoption of federal provisions in this area is not mandatory, and states may develop their own policies regarding marijuana within their state boundaries. No state has amended its constitution in order to conform with federal drug legislation. The Uniform Controlled Substance Act of 1970--model legislation drafted by the National Conference of Commissioners on Uniform State laws--was designed to make state laws more compatible with federal law. Between 35 and 40 states have adopted the Uniform Act.

State marijuana laws are listed on Table 2. As shown on this table, eleven states--Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, and Oregon--have decriminalized marijuana. Decriminalization means that the possession of marijuana is considered a civil offense or a criminal infraction and is not punishable by incarceration. In states which have decriminalized marijuana, a citation and a small fine are the usual penalties for violations. None of the states that have decriminalized marijuana have recriminalized it.

Twenty-eight states allow for a conditional discharge for first-time, simple possession violators; defendants are released, generally without an adjudication of guilt, on condition that they satisfy certain requirements, such as participation in a drug education program. In Massachusetts, a first offense possessor of any amount of marijuana is subject only to probation.

State laws relating to subsequent violation of simple possession provisions and for cultivation and selling marijuana vary greatly. In a majority of states, cultivation is punished as heavily as the sale of marijuana.

TABLE 2
STATE MARIJUANA LAWS

PREPARED BY THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML)
SPRING 1985

State	Amount ¹	Possession	Cultivation	Sale	State	Amount ¹	Possession	Cultivation	Sale
Federal Law	any amount	0-1 yr. & \$5,000*	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	Missouri	up to 35 gms.	0-1 yr. & \$1,000	0-3 yrs. & \$1,000	3 yrs. life
Alabama†	up to 2.2 lbs. for personal use	0-1 yr. & \$1,000	2-15 yrs. & \$25,000	2-15 yrs. & \$25,000	over 35 gms.	0-5 yrs. & \$1,000	0-5 yrs. & \$1,000	3 yrs. life	
	up to 2.2 lbs. not for personal use	2-15 yrs. & \$25,000	2-15 yrs. & \$25,000	2-15 yrs. & \$25,000	Montana†	up to 60 gms.	0-6 mos. & \$500	1 yr. life & \$50,000	1 yr. life & \$50,000
	2.2-2,000 lbs.	3-15 yrs. & \$25,000	3-15 yrs. & \$25,000	3-15 yrs. & \$25,000	over 60 gms.	0-5 yrs. & \$50,000	1 yr. life & \$50,000	1 yr. life & \$50,000	
	2,000-10,000 lbs.	5-15 yrs. & \$50,000	5-15 yrs. & \$50,000	5-15 yrs. & \$50,000	Nebraska	up to 1 oz.	\$100 & drug ed.†	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000
	over 10,000 lbs.	15 yrs. & \$200,000	15 yrs. & \$200,000	15 yrs. & \$200,000	1 oz. 1 lb.	0-7 days & \$300	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000	
Alaska	any amount for personal home use	Legal†	Legal	N.A.	over 1 lb.	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000	
	any amount "not in a public place" for personal use	\$0-\$100	\$0-\$100	N.A.	Nevada†	up to 1 oz. by person under 21	0-6 yrs.* & \$2,000	1-15 yrs. & \$5,000	1-15 yrs. & \$5,000
	up to 2.2 lbs.	\$0-\$100	\$0-\$100	0-1 yr. & \$1,000	up to 100 lbs. (any age)	prohibition 6 yrs. & \$5,000	1-15 yrs. & \$5,000	1-15 yrs. & \$5,000	
	public use or display over 1 oz. or poss. over 4 oz.	0-90 days & \$1,000	N.A.	0-5 yrs. & \$10,000	100-2,000 lbs.	3-20 yrs. & \$25,000	3-20 yrs. & \$25,000	3-20 yrs. & \$25,000	
Arizona†	any amount not for sale	1-5 yrs. & \$0-\$150,000	1-5 yrs. & \$0-\$150,000	N.A.	2,000-10,000 lbs.	3-20 yrs. & \$50,000	3-20 yrs. & \$50,000	3-20 yrs. & \$50,000	
	any amount for sale	4 yrs. & \$0-\$150,000	4 yrs. & \$0-\$150,000	7 yrs. & \$0-\$150,000	over 10,000 lbs.	15 yrs. life & \$200,000	15 yrs. life & \$200,000	15 yrs. life & \$200,000	
Arkansas†	up to 1 oz. for personal use	0-1 yr.* & \$1,000	3-10 yrs. & \$10,000	2-10 yrs. & \$10,000	New Hampshire†	up to 1 lb.	0-1 yr. & \$1,000	0-15 yrs. & \$2,000	0-15 yrs. & \$2,000
	1 oz.-10 lbs.	4-10 yrs. & \$25,000	4-10 yrs. & \$25,000	4-10 yrs. & \$25,000	over 1 lb.	0-7 yrs. & \$2,000	0-15 yrs. & \$2,000	0-15 yrs. & \$2,000	
	10 lbs.-100 lbs.	5-20 yrs. & \$50,000	5-20 yrs. & \$50,000	5-20 yrs. & \$50,000	New Jersey†	up to 25 gms.	0-6 mos.* & \$500	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000
	over 100 lbs.	6-30 yrs. & \$100,000	6-30 yrs. & \$100,000	6-30 yrs. & \$100,000	over 25 gms.	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	
California†	up to 1 oz.	\$0-\$100	16 mo., 2 or 3 yrs.	2,3, or 4 yrs.	New Mexico†	up to 1 oz.	0-15 days & \$100	9 yrs. & \$10,000	12 mos. & \$5,000
	over 1 oz.	0-6 mos. \$500	16 mo., 2 or 3 yrs.	2,3, or 4 yrs.	1 oz. & 2 oz.	0-1 yr. & \$1,000	9 yrs. & \$10,000	18 mos. & \$5,000	
Colorado*	0-1 oz. not in public	\$0-\$100	2-4 yrs.	2-4 yrs.	8 oz.-100 lbs.	0-18 mos. & \$5,000	4 yrs. & \$10,000	18 mos. & \$5,000	
	0-1 oz. in public	0-15 days \$0-\$100	2-4 yrs.	2-4 yrs.	over 100 lbs.	3 yrs. & \$5,000	9 yrs. & \$10,000	3 yrs. & \$5,000	
	1 oz.-8 oz.	0-2 yrs. \$0-\$500	2-4 yrs.	2-4 yrs.	New York†	up to 25 gms. in private	\$0-\$100	0-1 yr. & \$1,000	0-1 yr. & \$1,000
Connecticut†	up to 1 oz.	0-1 yr. & \$1,000	0-7 yrs. & \$1,000	0-7 yrs. & \$1,000	25 gms.-2 oz.	0-3 mos. & \$500	0-1 yr. & \$1,000	0-4 yrs.	
	4 oz.-2.2 lbs.	0-5 yrs. & \$2,000	0-7 yrs. & \$1,000	0-7 yrs. & \$1,000	2-4 oz.	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-1 yrs.	
	over 2.2 lbs.	0-5 yrs. & \$2,000	5-20 yrs.	5-20 yrs.	4-8 oz.	0-1 yr. & \$1,000	0-1 yr. & \$10,000	0-7 yrs.	
Delaware	up to 50 lbs.	0-2 yrs.* & \$500	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	8 oz.-1 lb.	0-4 yrs.	0-4 yrs.	0-7 yrs.	
	50-100 lbs.	3 yrs. & \$50,000	3-10 yrs. & \$50,000	3-10 yrs. & \$50,000	1-10 lbs.	0-7 yrs.	0-7 yrs.	0-15 yrs.	
	1,000-5,000 lbs.	5 yrs. & \$100,000	5 yrs. & \$100,000	5 yrs. & \$100,000	over 10 lbs.	0-15 yrs.	0-15 yrs.	0-15 yrs.	
Florida†	up to 20 gms	0-1 yr.* & \$1,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	North Carolina†	up to 1 oz.	\$0-\$100	0-2 yrs. & \$2,000	0-2 yrs. & \$2,000
	20 gms.-100 lbs.	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	over 1 oz.	0-2 yrs. & \$2,000	0-2 yrs. & \$2,000	0-2 yrs. & \$2,000	
	100-2,000 lbs.	3-30 yrs. & \$25,000	3-30 yrs. & \$25,000	3-30 yrs. & \$25,000	North Dakota	up to 5 oz. not in vehicle	0-10 days* & \$500	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000
	2,000-10,000 lbs.	5-30 yrs. & \$50,000	5-30 yrs. & \$50,000	5-30 yrs. & \$50,000	5-1 oz. or up to 5 oz. in vehicle	0-1 yr. & \$1,000	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	
	over 10,000 lbs.	15-30 yrs. & \$200,000	15-30 yrs. & \$200,000	15-30 yrs. & \$200,000	over 1 oz.	0-5 yrs. & \$5,000	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	
Georgia†	up to 1 oz.	0-1 yr.* & \$1,000	1-10 yrs.	1-10 yrs.	Ohio†	up to 100 gms.	\$0-\$100*	6 mos.-5 yrs. & \$2,500	6 mos.-5 yrs. & \$2,500
	1 oz.-100 lbs.	1-10 yrs.	1-10 yrs.	1-10 yrs.	100-200 gms.	0-30 days & \$250	6 mos.-5 yrs. & \$2,500	6 mos.-5 yrs. & \$2,500	
	100-2,000 lbs.	5-10 yrs. & \$25,000	5-10 yrs. & \$25,000	5-10 yrs. & \$25,000	200-600 gms.	6 mos.-5 yrs. & \$2,500	1-10 yrs. & \$5,000	1-10 yrs. & \$5,000	
	2,000-10,000 lbs.	7-10 yrs. & \$50,000	7-10 yrs. & \$50,000	7-10 yrs. & \$50,000	over 600 gms.	1-10 yrs. & \$5,000	2-15 yrs. & \$7,500	2-15 yrs. & \$7,500	
	over 10,000 lbs.	15 yrs. & \$200,000	15 yrs. & \$200,000	15 yrs. & \$200,000	Oklahoma†	any amount	0-1 yr.*	2-10 yrs. & \$5,000	2-10 yrs. & \$5,000
Hawaii	up to 1 oz.	0-30 days* & \$500	0-30 days & \$500	0-1 yr. & \$1,000	Oregon†	up to 1 oz.	\$0-\$100	0-10 yrs. & \$2,500	0-10 yrs. & \$2,500
	1-2 oz.	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-1 yr. & \$1,000	over 1 oz.	prohibition-10 yrs. & \$2,500	0-10 yrs. & \$2,500	0-10 yrs. & \$2,500	
	2 oz.-2.2 lbs.	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-5 yrs. & \$5,000	Pennsylvania	up to 30 gms.	0-30 days* & \$500	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000
	over 2.2 lbs.	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	over 30 gms.	0-1 yr. & \$5,000	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	
Idaho	up to 4 oz.	0-1 yr.* & \$1,000	0-5 yrs. & \$1,000	0-5 yrs. & \$1,000	Rhode Island†	any amount	0-1 yr. & \$500	0-30 yrs. & \$50,000	0-30 yrs. & \$50,000
	over 4 oz.	0-5 yrs. & \$10,000	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	South Carolina†	up to 1 oz.	0-30 days* & \$200	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000
Illinois†	under 2.5 gms	0-90 days* & \$500	0-6 mos. & \$500	0-6 mos. & \$500	over 1 oz.	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	
	2.5-10 gms	0-10 mos. & \$500	0-1 yr. & \$1,000	0-1 yr. & \$1,000	South Dakota	up to 1 oz.	0-30 days & \$100	0-30 days & \$100	0-1 yr. & \$1,000
	10-30 gms	0-1 yr. & \$1,000	1-3 yrs. & \$10,000	1-3 yrs. & \$10,000	1 oz.-1 lb.	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-2 yrs. & \$2,000	
	30-500 gms	1-3 yrs. & \$10,000	2-5 yrs. & \$50,000	2-5 yrs. & \$50,000	1-10 lbs.	0-2 yrs. & \$2,000	0-2 yrs. & \$2,000	0-10 yrs. & \$10,000	
	over 500 gms.	2-5 yrs. & \$10,000	5-7 yrs. & \$100,000	5-7 yrs. & \$100,000	over 10 lbs.	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	
					Tennessee†	up to 5 oz.	0-1 yr. & \$1,000	1-5 yrs. & \$1,000	0-1 yr. & \$1,000
					5 oz.-10 lbs.	0-1 yr. & \$1,000	1-5 yrs. & \$1,000	1-5 yrs. & \$1,000	
					over 10 lbs.	3-10 yrs. & \$10,000	4-10 yrs. & \$10,000	4-10 yrs. & \$10,000	

TABLE 2
STATE MARIJUANA LAWS

State	Amount	Possession	Cultivation	Sale
Indiana	up to 30 gms	0-1 yr. & \$5,000	0-1 yr. & \$5,000	0-1 yr. & \$5,000
	over 30 gms	0-2 yrs. & \$10,000	0-2 yrs. & \$10,000	0-2 yrs. & \$10,000
Iowa ¹	any amount	0-6 mos. & \$2,500	0-5 yrs. & \$2,500	0-5 yrs. & \$10,000
Kansas	any amount	0-1 yr. & \$2,500	0-1 yr. & \$2,500	1-10 yrs. & \$10,000
Kentucky	up to 8 oz.	0-90 days* & \$250	0-90 days & \$250 ¹	0-1 yr. & \$500
	8 oz. - 5 lbs.	0-1 yr. & \$500	see footnote 1 below	1-5 yrs. & \$5,000
	over 5 lbs.	0-1 yr. & \$500	1-5 yrs. & \$5,000 ¹	5-10 yrs. & \$10,000
Louisiana ²	up to 100 lbs.	0-6 mos. & \$500	0-10 yrs. & \$15,000	0-10 yrs. & \$15,000
	100-2,000 lbs.	5-15 yrs. & \$50,000	5-15 yrs. & \$50,000	5-15 yrs. & \$50,000
	2,000-10,000 lbs.	15-25 yrs. & \$200,000	15-25 yrs. & \$200,000	15-25 yrs. & \$200,000
	over 10,000 lbs.	25-35 yrs. & \$500,000	25-35 yrs. & \$500,000	25-35 yrs. & \$500,000
Alaska ³	any amount for personal use	0-2 yrs. & \$2,000	0-5 yrs. & \$2,000	0-5 yrs. & \$2,000
	up to 1.5 oz.	\$0-\$200	\$0-\$200	0-1 yr. & \$1,000
	1.5 oz. - 2 lbs.	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-1 yr. & \$1,000
	2-1,000 lbs.	0-5 yrs. & \$2,500	0-5 yrs. & \$2,500	0-5 yrs. & \$2,500
	over 1,000 lbs.	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000	0-10 yrs. & \$10,000
Maryland	any amount for personal use	0-1 yr. & \$1,000	0-1 yr. & \$1,000	0-5 yrs. & \$15,000
	any other amount	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000
	import over 100 lbs. into state	0-25 yrs. & \$50,000	0-25 yrs. & \$50,000	0-25 yrs. & \$50,000
Massachusetts	any amount	probation*	0-2 yrs. & \$5,000	0-2 yrs. & \$5,000
Michigan ⁴	any amount use	0-1 yr. & \$1,000	0-4 yrs. & \$5,000	0-1 yr. & \$5,000
		0-90 days & \$100		
Minnesota ⁵	up to 1.5 oz.	\$0-\$100	0-5 yrs. & \$30,000	0-5 yrs. & \$30,000
	over 1.5 oz.	0-3 yrs. & \$3,000	0-5 yrs. & \$30,000	0-5 yrs. & \$30,000
Mississippi	up to 1 oz. not in vehicle	\$100-\$250	0-1 yr. & \$1,000	0-1 yr. & \$1,000
	1 gm. - 1 oz. in vehicle	0-90 days & \$1,000	0-1 yr. & \$1,000	0-1 yr. & \$1,000
	1 oz. - 2.2 lbs.	0-2 yrs. & \$3,000	0-20 yrs. & \$30,000	0-20 yrs. & \$30,000
	over 2.2 lbs.	0-20 yrs. & \$1 million	0-30 yrs. & \$1 million	0-30 yrs. & \$1 million
Texas ⁶	up to 2 oz.	0-6 mos. & \$1,000	0-6 mos. & \$1,000	2-10 yrs. & \$5,000
	2-1 oz.	0-1 yr. & \$2,000	0-1 yr. & \$2,000	2-10 yrs. & \$5,000
	over 1 oz.	2-10 yrs. & \$5,000	2-10 yrs. & \$5,000	2-20 yrs. & \$10,000
Utah	any amount	0-6 mos. & \$200	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000
Vermont ⁷	up to 1 oz.	0-6 mos. & \$500	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000
	1-2 oz.	0-3 yrs. & \$1,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000
	over 2 oz.	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000	0-5 yrs. & \$5,000
Virginia ⁸	up to 5 oz.	0-30 days & \$500	0-30 days & \$500	0-1 yr. & \$1,000
	5 oz. - 5 lbs.	0-30 days & \$500	0-30 days & \$500	0-10 yrs. & \$1,000
	over 5 lbs.	0-30 days & \$500	5-30 yrs.	5-30 yrs.
Washington ⁹	up to 10 gms	0-90 days & \$250	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000
	over 10 gms.	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000	0-5 yrs. & \$10,000
West Virginia ¹⁰	up to 15 gms	discharge*	1-5 yrs. & \$15,000	1-5 yrs. & \$15,000
	over 15 gms	90 days - 6 mos. & \$1,000	1-5 yrs. & \$15,000	1-5 yrs. & \$15,000
Wisconsin ¹¹	any amount	0-30 days* & \$500	0-5 yrs. & \$15,000	0-5 yrs. & \$15,000
Wyoming	any amount	0-6 mos. & \$1,000	0-6 mos. & \$1,000	0-10 yrs. & \$5,000

Note: This chart contains the penalties for first offense possession, sale, and cultivation of marijuana. The 11 states which have decriminalized possession are shaded and indicated as follows: Alaska.

Many states have increased penalties for subsequent offenses. A number of states also have separate penalties for offenses not included in this summary chart, including possession with intent to distribute.

The penalties set out above are the maximum authorized by law. When the penalty is a prison term and a fine, both can be imposed unless the chart specifically indicates otherwise. For example, the penalty for possession in Alabama can be up to 1 year in prison and/or a fine of up to \$1,000.

* Conditional discharge is authorized for first offense possession. This permits judges to release defendants, generally without an adjudication of guilt, on condition that they satisfy certain requirements, such as participation in a drug education program. If the conditions of the program are satisfied, the criminal case will then be dismissed.

¹ These states have enacted laws allowing for the medical use of marijuana, generally for patients being treated for glaucoma and cancer. Marijuana helps counteract the nausea associated with chemotherapy treatment.

² Many state laws have different penalties for possession or sale of different amounts of marijuana. Some of these statutes distinguish by ounce (oz.) weights, and others by gram (gm.) weights. For comparative purposes:

1 oz. = 28.35 gms.

1 lb. = 453.59 gms.

2.2 lbs. = 1 kilogram

³ In 1975, the Supreme Court of Alaska held that the constitutional Right of Privacy protects the possession of marijuana for personal use in the home of adults.

⁴ Cultivation of under 25 plants is punishable as possession; cultivation of 25 or more plants is punishable by 1-5 yrs. and a \$5,000 fine.

⁵ There is a rebuttable presumption that possession of more than 1.5 ozs. is with intent to distribute, which has the same penalty as sale.

Alaska Law

In Ravin v. State, the Supreme Court of Alaska held that the possession of marijuana for personal use in the home by adults is protected by the right to privacy clause in the Alaska Constitution.¹ Decriminalization of marijuana, however, applies only to the possession of marijuana in the home, as the Ravin case states. Possession outside the home in any amount is a criminal violation.

Under Alaska law, penalties for the possession of marijuana increase as the quantity involved increases. It is a criminal violation to possess up to one ounce of marijuana in a public area (AS 11.71.070). It is a class B misdemeanor to possess one ounce or more in a public area or to possess more than four ounces of marijuana anywhere (AS 11.71.060). According to Gayle Horetski, Assistant Attorney General with the Criminal Division of the Alaska Attorney General's office, AS 11.71.060 could apply to the possession of more than four ounces in a private home. Alaska statutes prohibiting the possession and distribution of marijuana are Attachment B of this memorandum.

Recriminalizing Marijuana

Recriminalization of marijuana in Alaska could occur by amending the Alaska Constitution (or) by repealing existing legislation and enacting new legislation. If the Alaska Constitution were amended to exempt the possession of marijuana from the right to privacy clause, State statutes would still have to be amended in order to criminalize possession of small amounts of marijuana. If State statutes were amended to criminalize marijuana and the constitution were not amended, the amended statutes would probably be challenged under the Ravin decision.

Amending the Alaska Constitution requires a two-thirds vote of the legislature and a majority vote by the people [Article 13, Section 1 of the constitution (Attachment C)]. Ms. Horetski suggests that language to exempt the possession of marijuana from the constitutional right to privacy might be: "Rights embodied in this section do not extend to the possession of controlled substances (or marijuana)." In 1985, a Senate resolution was proposed to exempt the possession of controlled substances from the constitutional right to privacy (Attachment D).

¹The Ravin decision is unique among states. Of the (nine) states which have right to privacy clauses in their constitutions, California and Hawaii have also addressed the clause in regard to possession of marijuana. In both states, the courts found the claim to be untenable.

Representative Hanley
December 3, 1986
Page 7

Amending State statutes would involve redesigning the structure of the current drug statutes. This would include the repeal of AS 11.71.070, amending statutes which specify penalties for possession of marijuana, and cross referencing statutes to amend all statutes that relate to marijuana. According to Ms. Horetski, if the constitution were not amended to exclude marijuana from the right to privacy clause, statutes criminalizing marijuana could be struck down at the trial court level and the case would probably be appealed to the Supreme Court. According to a fiscal note prepared by the Attorney General's office, convincing the trial court to reverse the Ravin ruling would require that the prosecutor present scientific evidence that the effects of marijuana use are so injurious to a person's mental and physical health as to justify the legislative decision to prohibit the use of marijuana by anyone at any time.

On appeal, the Supreme Court would decide whether the State has proved that there is a "compelling State interest" in prohibiting the use of marijuana which outweighs an individual's right to privacy under the State Constitution. The fiscal note also stated that to prove a compelling State interest, the State must show that the legislature's consideration of the recriminalization of marijuana included extensive public hearings, debate on the merits of recriminalization and discussions of the most recent studies regarding the physical, emotional, and social effects of marijuana usage.

* * * *

I hope this information is helpful to you. Please contact us if you have any questions or if we can be of further assistance.

PW

Attachments

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

SB

32

file 8

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

MARIJUANA
MEDICAL PAPERS



EDITED BY

TOD H. MIKURUYA, M.D.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Dr. Carlton Turner
US Senate Hearings - Jan. 1980
MARIJUANA AND HEALTH



maxell. UR 90

POSITION-IEC TYPE I-NORMAL

DELIVER TO: TITUS

ORIGINAL

SENT: 04/13/88 TIME: 20:23

FROM: LUCAS

SUBJECT: PL 43, 4-13; HESS; SB-32

PRINT DATE: 04/13/88 TIME: 20:23

APRIL 13 1988

INDEX

SB-32

COLODINA

AT YRDN

PARTICIPANT LIST

TO TESTIFY

NAME/REPRESENTING	ADDRESS	PHONE #
1. DAVID BURTON	BOX 489 STERLING	262-5222
2. JIM BERTSON	BOX 2524 KENNY 99611	263-5153
3. RICK ZIMM	BOX 304 STERLING	262-4607
4. BRN. TOM PATMOR ✓	PO. BOX 124 CLAM GULCH	

TO INTERVIEW

NAME/REPRESENTING	ADDRESS	PHONE #
1. TOM WARRON	BOX 424 CLAM GULCH	

2.
3.
4.
5.

TESTIFIED
OVARIE
DEFERRED
TOTAL

START/END TIME

* DELIVER TO: LOCKLE *
 * ORIGINAL *
 * TIME: 04/13/88 TIME: 19:07 *
 * FROM: LOCKLE *
 * SUBJECT: H. HESS; PL#1-SB 32; 4-13-88 *
 * PRINT DATE: 04/13/88 TIME: 19:07 *

DATE: APRIL 13, 1988
 REPORTED: HOMER H. E. S. S.
 SUBJECT: MARIJUANA
 CITY: KODIAK, MI
 MODERATOR: TINA HUTTENBACH

PARTICIPANT LIST #1

TO TESTIFY
 NAME/REPRESENTING ADDRESS PHONE #
 1. HIB, CORLE ✓ S.R. 9320, KODIAK 99615 487-2672

TO OBSERVE
 NAME/REPRESENTING ADDRESS PHONE #

TESTIFIED
 UNABLE
 OBSERVED
 TOTAL

START/END TIME

 * DELIVER TO: FTODGLE *
 * * * * *
 * ORIGINAL *
 * SENT: 04/13/88 TIME: 19:30 *
 * FROM: LTCCXOL *
 * SUBJECT: PL#2, 4-13, HHESS, SB-32 *
 * PRINT DATE: 04/13/88 TIME: 19:30 *
 * * * * *

APR 11 1988
 H HESS
 SB-32
 FBI WITNA
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PARTICIPANT LIST

 TO TESTIFY

NAME REPRESENTING	ADDRESS	PHONE #
1. DAVID LIRCH	BOX 489 STERLING	262-5222
2. ITH HARRISON	BOX 2524 BENAI 99611	283-5183
3. RICK TUBER	BOX 304 STERLING	262-4607
4.		
5.		

 TO OBSERVE

NAME REPRESENTING	ADDRESS	PHONE #
1.		
2.		
3.		
4.		
5.		

FT. TOTTEN
 WITNESSES
 11-1-88

SUBJECT: HHESS, SB32, 4-13-88

SENT 04/14/88 09:07

FROM: LIOCMAT

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3

.....2.....3.....4.....5.....6.....7.....8... 001/01
 DATE: 4-13-88 001/02
 SITE: MATSU 001/03
 SPONSOR: HOUSE HESS 001/04
 SUBJECT: SB 32 - RECRIMINALIZATION OF MARIJUANA 001/05
 MODERATOR: CHARLOTTE 001/06
 001/07
 001/08
 001/09
 001/10
 001/11
 001/12

FINAL STATS

TESTIFIED

NAME/REPRESENTING	ADDRESS	PHONE #	BILL #
1. RONI KELLY, P O BOX 341, SUTTON AK 99674,		745-2382	001/13
2. GARY PEARSON, P O BOX 3055, PALMER 99645,		745-5963	001/14
3. DANA OLSON, HC30 BOX 5438, WASILLA 99687,		373-4612	001/15
4. PHIL PRAGAM, SRA BOX 6719, PALMER 99645,		745-0784	001/16

MORE...
DELIM ;
INBOX

SUBJECT: HHESS, SB32, 4-13-88

SENT 04/14/88 09:07

FROM: LIOCMAT

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3

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UNABLE TO TESTIFY

NAME/REPRESENTING	ADDRESS	PHONE#	BILL#
1. DUANE A CONGDON, POUCH 5020, PALMER 99645,		745-7733	001/18

OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE #	BILL #
1. MICHAEL KELLY, P O BOX 341, SUTTON 99674,		745-2382	001/19
2. BRIAN O'DONOGHUE, FRONTIERSMAN, P O BOX 876983, WASILLA 99687,		373-3267	001/20
3. JOAN PRAGMAN, SRA BOX 6719, PALMER 99645,		745-0784	001/21
4. CLYDE BEUTLER, 600 SEWARD MERIDIAN, WASILLA 99687,		376-7746	001/22
5. MICHAEL PHILLIPS, P O BOX 520587, BIG LAKE 99652,		892-6914	001/23
6.			001/24

MORE...

DELIM ;
INBOX

SUBJECT: MHES;FS;SB32-MARJ;4-13-88
FROM: LIQCDJT

SENT 04/14/88 13:09

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: PERM

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8.....
DATE: APRIL 13, 1988 001/01
SITE: EAGLE VOLUNTEER SITE 001/02
SPONSOR: HOUSE HESS 001/03
SUBJECT: SB 32 - PENALTY FOR POSSESSION OF MARIJUANA 001/04
MODERATOR: ROGER 001/05

FINAL STATS

TESTIFIED

NAME/REPRESENTING

1. ROGER DUNBAR

2. GREG BIRCHARD

ADDRESS

P.O. BOX 143, EAGLE

P.O. BOX 14, EAGLE

PHONE #

547-2269

OBSERVED

001/06
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MORE...

DELIM ;

INBOX

SUBJECT: H HESS TELE ON MARIJUANA

SENT 04/14/88 15:23

FROM: LIOCANC

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: PERM

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*** FINAL TELECONFERENCE STATISTICS *** 001/02

001/03

001/04

001/05

DATE: APRIL 13, 1988.....

SITE: ANCHORAGE, AK.....

001/06

SPONSOR: HOUSE HESS.....

001/07

SUBJECT: LEG PUBLIC HEARING SB 32 - PENALTY FOR POSSESSION OF

001/08

MARIJUANA 001/09

LOCAL MODERATOR: CEC.....

001/10

001/11

001/12

001/13

TESTIFIED:

NAME\REPRESENTING ADDRESS PHONE # 001/14

1. RICHARD L. BURTON 7810 MAE RENE CIR,ANC 243-2019 001/15

2. RONALD L. BROWN 333 N FLOWER ST, ANC 274-1452 001/16

3. MAREY BUTLER 1640 DIMOND DR,ANC 563-3337 001/18

MORE...

DELIM ;

SUBJECT: H HESS TELE ON MARIJUANA
FROM: LIOCANC
FOLDER:

SENT 04/14/88 15:23

SECURITY LEVEL: 2 RETENTION PERIOD: PERM

	2	3	4	5	6	7	8	*****
3. MAREY BUTLER			1640	DIMOND DR,ANC	563-3337			001/12
4. DOUG ELLIOTT			400	E 24TH,#26,ANC	277-9296			001/19
5. WILLIAM GALLAMGER			3501	E 42ND,#121,ANC	562-6053			001/20
6. A. L. COZZETTI			P.O.BOX	90792,ANC509	562-6053			001/21

OBSERVED:

NAME\REPRESENTING	ADDRESS	PHONE #	
1. JOHN W FERRO	9230 CAMPBELL TER,ANC	248-2186	001/25
2. GEORGE TAFT	3221 E 43RD,ANC	562-5684	001/26
3. JAMIE BOLLENBAUI	P.O.BOX 201844,ANC520	276-2258	001/27
4. JANET MASON	6911 ROYAL CT,ANC	248-2217	001/28
5. DAN GORIN	6911 ROYAL CT,ANC	248-2217	001/29
6. TIFFANHY COZZETTI	P.O.BOX 90792,ANC 509	272-7207	001/30
7. RUDY HARDY	2700 BONIFACE ANCH		001/31

DELIM ;
INBOX

SENT 04/13/88 10:09

SUBJECT: HHES;SB32;FS;4-13

FROM: LIOCADM

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: 3

.....2.....3.....4.....5.....6.....7.....8..	001/01
4-13-88	001/02
HHES	001/03
SB32-PENALTY FOR POSSESSION OF MARIJUANA	001/04
SOLDOTNA	001/05
ARLENE	001/06

FINAL STATS

*****\	001/07
TO TESTIFY	001/08
NAME/REPRESENTING	001/09
ADDRESS	001/10
PHONE #	001/11
1.D. MILLER	001/12
389 DIANE LN,SOL	001/13
262-5183	001/14
SB32 AGAINST	001/15

*****	001/16
TO OBSERVE	001/17
NAME/REPRESENTING	001/18
ADDRESS	
PHONE #	

MORE...
DEF TM

INBOX

SUBJECT: HHESS;SB32;FS;4-13PM

SENT 04/14/88 08:20

FROM: LTCCSOL

PREPARED BY: LIDCADM

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: 3

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 APRIL 13, 1988 001/02
 H HESS 001/03
 SB-32 001/04
 SOLDOTNA 001/05
 ALYSON 001/06

FINAL STATS

*****\

TO TESTIFY

NAME/REPRESENTING

ADDRESS

PHONE #

- | | | | |
|-------------------|------------------------|----------|--------|
| 1.DAVID JURCO | BOX 489 STERLING | 262-5222 | 001/12 |
| 2.JIM MORRISON | BOX 2524 KENAI 9.611 | 283-5183 | 001/13 |
| 3.RICK ZUBER | BOX 304 STERLING | 262-4607 | 001/14 |
| 4.BRO. TOM PATMOR | PO. BOX 124 CLAM GULCH | | 001/15 |

*****\

001/17
MORE...

DELIM ;

SENT 04/13/88 11:15

SUBJECT: HHESS, SD32, MARIJUANA; FS-4-13

FROM: LIOCROB

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: PERM

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8..

DATE: APRIL 13, 1988

SPONSOR: HOUSE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMITTEE

SUBJECT: SB 32, PENALTY FOR POSSESSION OF MARIJUANA

SITE: KETCHIKAN

MODERATOR: JUNE ROBBINS

FINAL STATS

NAME/REPRESENTING

ADDRESS

PHONE NO

TO TESTIFY:

1. DON GONSER, GATEWAY CENTER FOR HUMAN SERVICES
KETCHIKAN, AK 99901

225-4154

2. CHIP AMES, 3360 FAIRVIEW, KETCHIKAN, AK 99901

225-1818

3. RON COMPTON, P.O. BOX 3067, KETCHIKAN, AK 99901

225-1573

TO OBSERVE:

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MORE...
DELIM :

SUBJECT: HHESS, SB32, FS, 4-13PM

SENT 04/14/88 08:20

FROM: LTCCSOL

PREPARED BY: LIOCADM

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: 3

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*****\ 001/17

TO OBSERVE 001/18

NAME/REPRESENTING ADDRESS PHONE # 001/19

1. TOM WARREN BOX 424 CLAM GULCH 001/20

***** 001/21

***** 001/22

***** 001/23

5 TESTIFIED 001/24

0 UNABLE 001/25

1 OBSERVED 001/26

5 TOTAL 001/27

***** 001/28

7:06PM/10:02PM START/END TIME 001/29

***** 001/30

***** 001/31

SUBJECT: HHESS, SB32, MARIJUANA, FS; 4-13
FROM: LIOCR0B
FOLDER:
SECURITY LEVEL: 2
RETENTION PERIOD: PERM
.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8...
DATE: APRIL 13, 1988 SPONSOR: HOUSE HEALTH, EDUCATION, AND
SOCIAL SERVICES COMMITTEE
SUBJECT: SB 32, PENALTY FOR POSSESSION OF MARIJUANA
SITE: KETCHIKAN
MODERATOR: JUNE ROBBINS

SENT 04/14/88 09:41

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001/18

FINAL STATS

NAME/REPRESENTING ADDRESS PHONE NO

TO TESTIFY:

- 1. MARTY JACKSON, BOX 692, WARD COVE, AK 99928 225-9726
- 2. CLYDE JOHNSON, 2051 SEA LEVEL DRIVE, #203, KETCHIKAN 225-3250
- 3. JANE CHURCH, 2512 3RD AVE., KETCHIKAN, AK 99901 225-4633
- 4. FRAN YOUNG, 537 TOWER RD, KETCHIKAN, AK 99901 225-3528

TO OBSERVE:

MORE...

SUBJECT: HHES;FS;SB32;4-13

SENT 04/14/88 09:53

FROM: LIOCSIT

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8... 001/01

APRIL 13, 1988 - 7-9 PM 001/02

HOUSE HESS 001/03

MARIJUANA 001/04

HAINES 001/05

MODERATOR: ALETA ADKINE 001/06

FINAL STATE

***** 001/07

TESTIFIED 001/08

NAME/REPRESENTING ADDRESS PHONE # BILL # 001/09

1. LINDA GIESE, CITY COUNCEL, BOX 1049, HAINES SB 32 001/10

2. BILL STACY, MENTAL HEALTH PROGRAM, BOX 436, HAINES SB 32 001/11

3. BILL HENDERSON, PRESIDENT SCHOOL BOARD, HAINES SB 32 001/12

001/13

001/14

001/15

MORE...

DELIM ;

SUBJECT: HHESS;FS;SB32;4-13-88

FROM: LTCCFBX

SENT 04/14/88 09:54

INBOX

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: PERM

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MORE...

*****FINAL STATE*****

DATE: _____APRIL 13, 1988_____

SITE: _____FAIRBANKS_____

SPONSOR: _____HOUSE HESS_____

SUBJECT: _____SB32: MARIJUANA_____

MODERATOR: _____BARB_____

TESTIFY:

NAME\REPRESENTING
1.) GLENN HACKNEY

ADDRESS
1136 SUNSET DR., FBKS, 99709

PHONE: #
474-0610

2.) VIVA BECKER

4137 ROSEBUD LN., FBKS, 99709

479-6968

DELIM ;
INBOX

SUBJECT: HHESS;FS;SB32;4-13-88

SENT 04/14/88 09:54

FROM: LTCCFBX

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: PERM

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8..... *****

3.) ROSS ADKINS 1598 WOLVERINE, FBKS, 99709 479-6849 001/18

4.) BLAKE MORGAN 948 E. CHENA HILLS, FBKS, 99707 474-8141 001/19

5.) JAMES C. HAYES 313 DROZ DR., FBKS, 99701 456-7698 001/20

6.) JOHN LYLE P.O. BOX 85715, FBKS, 99708 479-6284 001/21

7.) AL ROOT P.O. BOX 83638, FBKS, 99708 474-8343 001/22

UNABLE TO TESTIFY:

1.) EVERETT HARRISON P.O. BOX 73125, FBKS, 99707 479-1111 001/23

2.) ALAN ARMBRUSLER P.O. BOX 58509, FBKS, 99711 001/24

MORE...

DELIM ;
INBOX

SUBJECT: HHES;FS;SB32;4-13

SENT 04/14/88 10:02

FROM: LIOSIT

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 3

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8..	001/01
APRIL 13, 1988 - 7-9 PM	001/02
HOUSE HESS	001/03
MARIJUANA	001/04
MOSQUITO LAKE	001/05
MODERATOR: BILL KURZ	001/06

FINAL STATS

*****	001/07
*****	001/08
*****	001/09
*****	001/10
TO TESTIFY	001/11
NAME/REPRESENTING	001/12
ADDRESS	001/13
PHONE #	001/14
BILL #	001/15
1. JAN KURZ, BOX 778, HAINES 99827	TESTIFIED ON SB 32
2. BILL KURZ, BOX 778, HAINES	UNABLE TO TESTIFY ON SB 32
*****	001/16
*****	001/17
*****	001/18

MORE...
DELIM ;

SUBJECT: FINAL STATS
FROM: LTCCHOM

SENT 04/14/88 10:50

FOLDER: SECURITY LEVEL: 2 RETENTION PERIOD: 60

.....2.....+.....3.....+.....4.....+.....5.....+.....6.....+.....7.....+.....8..	001/01
4-13-88	001/02
HOMER	001/03
HOUSE MESS	001/04
SB-32, MARIJUANA	001/05
JEAN AND CHARLENE	001/06

TESTIFIED:

1. JOHN JONES, BOX 253, ANCHOR POINT, AK 99556 235-5366	001/07
	001/08
	001/09
	001/10
	001/11

WANTING TO TESTIFY:

1. RICK ISON, BOX 2649, HOMER, AK 99603 NO PHONE	001/12
2. JULIE CESARINI, BOX 812, HOMER, AK 99603 NO PHONE	001/13
3. CHARLES DAVIS, BOX 906, HOMER, AK 99603 235-6908	001/14
	001/15
	001/16
	001/17

OBSERVED.

	001/18
	MORE...

S B

33

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

House Hess:

March 18, 1987

March 19, 1987

March 20, 1987

April 2, 1987

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

March 16, 1987

To: Representative Niilo Koponen, Co-Chair
Representative Johnny Ellis, Co-Chair
House Health Education & Social Services Committee

From: Senator Paul Fischer *PS*

Subject: SB 33; VIOLATIONS OF TRUANCY LAWS

SB 33 would rewrite the provision of current law that releases liability for truancy at the end of the school year. Currently, enforcement of this law is usually delayed until then and the case is automatically dropped.

The purpose of our truancy law is to insure that children under the age of 16 are getting an education. This is not the case as the law is currently written.

Last session, a similar bill (SB 226) passed the Senate and almost made it through the House. The opinions and lessons of that bill's history are incorporated in SB 33.

Your favorable consideration is appreciated.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: Senate Bill No. 33
Publish Date: _____

Revision Date: _____
Title: "An act relating to the violation
of compulsory education laws"
Sponsor: Senator Paul Fischer
Requestor: Senator Paul Fischer

Agency Affected: Department of Corrections
BRU: _____
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	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Susie Riley, Budget Analyst Phone: 465-3376
Division: Administrative Services Date: 01/26/87

Approved by Commissioner: William W. Ladwig Date: 01/26/87
Agency: Department of Corrections

Distribution (by preparer):

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



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street

Soldotna, AK 99666

Phone 907/262-5846

December 4, 1986

cc: Paul Fischer

Senator Paul Fischer
P.O. Box 784
Soldotna, Alaska 99669

INDIVIDUAL LETTERS WERE SENT TO
ALL MEMBERS OF THE STATE SENATE.

RE: AS 14.30.020-030

Dear Senator Fischer:

Kenai Peninsula Borough Schools maintain a firm, fair and compassionate disciplinary system for dealing with the problems students and their parents bring to us. It enjoys the support of parent advisory groups and local police departments. It works because we keep the student's behavior the focus of attention and recognize that students often learn more from their mistakes than anything else.

One problem with a few students each year is based not in student behavior but with their parents. Chronic truancy has increased in the past several years and we developed procedures to advise both student and parent about the student's regular attendance in school. We just can't teach them much when students are not in school.

Each year a few students and their parents do not respond to admonishments to come to school on a regular basis. In that event, I send a series of written announcements and, if there is no improvement, ask the school board for permission to refer the parent to the district attorney's office. Under procedures worked out with that office, every effort is made to inform the parents of their legal responsibility for the student without going to court.

Our difficulty is with the wording of the AC 14.30.020 which includes the following statement.

"In any event, at the expiration of the school year, the person shall be released and discharged from all penalties provided by this section."

This statement forces us to bring truancy cases to the district attorney prior to December 15 each year or forget about them. Attorney's can (and have) delayed these cases beyond "the expiration of the school year", rendering them moot. The District Attorney's Office is unwilling to waste their time on cases they have no chance of winning. And the school district is forced to begin again next school year as if the truancy had never occurred.

CORRESPONDENCE

13

Our recommendation is to delete the sentence above from the current statute. No other change is necessary and the revised statute would permit schools to deal with truancy without clogging up the court system. This recommendation was presented in the last legislative session and almost made it into law. I request your support when it comes before you in committee or on the floor this year.

Please contact me if you have any questions.

Cordially,

Dr. Dennis Daggett
Associate Superintendent
Instructional Services

cc: Executive Secretary, Alaska ASA

encl

DD/set

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT
OFFICE OF THE DISTRICT ATTORNEY

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- 1031 WEST 4th AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
PHONE: (907) 277-8622
- P.O. BOX 3070
DILLINGHAM, ALASKA 99576
PHONE: (907) 842-2482
- 145 MAIN STREET LOOP, ROOM 201
KENAI, ALASKA 99611
PHONE: (907) 283-3131
- 326 CENTER AVE, SUITE 205
KODIAK, ALASKA 99615
PHONE: (907) 486-5744
- 809 S. CHUGACH ST.
PALMER, ALASKA 99645
PHONE: (907) 745-5027
- P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE: (907) 835-2462

February 8, 1985

Dr. Dennis Daggett
Associate Superintendent
Instructional Services
Box 1200
Soldotna, Alaska 99669

Re: Tony Hansen
Johnny Colwell



Dear Dr. Daggett,

On May 24, 1984, we received your letter regarding the above students and a complaint alleging failure to educate a child was filed June 26, 1984. Because of difficulty in serving a summons, Mrs. Hanson was not arraigned until November 28, 1984. Her trial was set for February 11, 1985.

The public defender has indicated they would seek to have the case dismissed because of the wording of the statute which seems to relieve the parent of responsibility at the end of each school year. I have dismissed the case because I do not believe we could convince the court of any other interpretation of that statute.

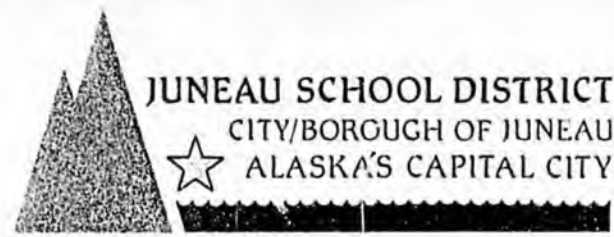
Hopefully, we can begin these cases earlier in the school year so that we could get to trial (or whatever disposition is appropriate) before the statute creates a problem. Perhaps the statute should be changed.

If you have any questions, please call.

Very truly yours,

Shannon D. Turner
Assistant District Attorney

SDT:11



10014 Crazy Horse Dr., Juneau, AK 99801 • (907) 586-2303

January 19, 1987

Representative Bill Hudson
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Representative Hudson:

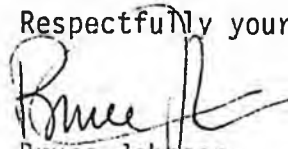
Thank you for the opportunity to comment on proposed SB33, relating to the Violation of Compulsory Education Laws.

The deletion of the language in AS 14.30.020 as follows: [In any event, at the expiration of the school year, the person shall be released and discharged from all penalties provided by this section] is appropriate in my opinion. The City and Borough of Juneau School District has found that most student attendance related difficulties do not come about suddenly, but rather develop from a general habit of not attending school on a regular basis beginning during the elementary school years. School attendance habits do not start or end with the school year calendar. Therefore, as Superintendent of the Juneau Schools, I would support the revision.

The issue of whether a high school or middle school student should be "charged" related to non-attendance rather than just charging the parents has also been discussed by our Board of Education. On many occasions, parents have informed the school that they no longer effectively control their child and to fine or imprison the parent will in no way improve school attendance of their youngster. Your thoughts on this issue would be welcomed.

Best wishes for a productive 15th Legislative Session.

Respectfully yours,



Bruce Johnson
Superintendent

cc: Board of Education
Senator Duncan
Representative Ulmer

BJ/sj

Original sponsor: Fischer

IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 33 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the violation of compulsory education laws."

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

* Section 1. AS 14.30.010(a) is amended to read:

(a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section [INSURE THAT THE CHILD IS NOT ABSENT FROM ATTENDANCE].

* Sec. 2. AS 14.30.020 is repealed and reenacted to read:

Sec. 14.30.020. VIOLATIONS. A person who knowingly fails to comply with AS 14.30.010 is guilty of a violation. Each five days of unlawful absence under AS 14.30.010 is a separate violation.

* Sec. 3. AS 14.30.050 is repealed.

CSSB 33

An Act relating to violation of compulsory
education laws.

File Contents

- 1) Copy of CSSB 33
- 2) Committee Substitute for CSSB 33 (HESS)
- 3) Memo by Senator Paul Fischer dated 3/16/87
w/attachments
- 4) Zero Fiscal Note 2/27/87
- ~~5) Copy of Senate HESS minutes of 2/27/87~~
- 6) Bill History
- 7) Letter from Bruce Johnson, Superintendent to Bill
Hudson dated 1/19/87
- 8) House HESS minutes, 3/18/87
- 9) House HESS minutes, 3/19/87
- 10) House HESS minutes, 3/20/87
- 11) House HESS minutes, 4/2/87

SB

37

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

House Files:

April 21, 1988

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

April 14, 1988

The Honorable Nilo E. Koponen, Co-chairman
Health, Education and Social Services Committee
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Sir:

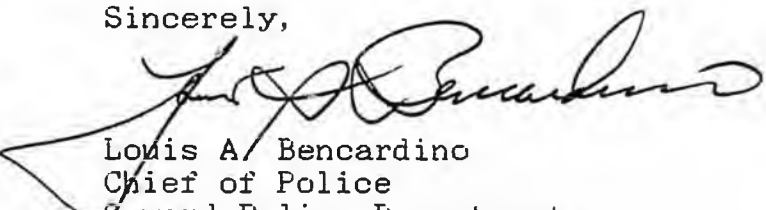
I would like to express my opinion on Senate Bill No. 37, regarding the fingerprinting of minors.

Because of the increase over past years of crimes committed by minor persons, it is necessary to change our attitudes toward our younger people. It is a hard choice, but one that must be made to protect the public. This bill would not change anything that is currently happening to the young person who has merely had a brush with law enforcement.

However, a young person who has committed a serious crime would be checked for other serious crimes, and his card would then be destroyed. If he had committed other crimes that latent fingerprints had been found, he could be identified. This would protect the public, and allow us to insert the minor into the justice system, thereby protecting the public and the minor. This is a tool that law enforcement needs desperately.

I urge that you direct your attention to this bill and assist in seeing that it is enacted.

Sincerely,



Louis A. Bencardino
Chief of Police
Seward Police Department

LAB/dra

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/29/88

FURTHER REFERRALS:

Judiciary
Finance

DATE: 4-27-88

The Health, Education and Social Services Committee has considered CSSB 37(R1s)

"An Act relating to fingerprinting of minors."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- 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 same as previous fiscal note published _____
- zero fiscal note
- zero with analysis same as previous zero fiscal note published 5/4/87/5/4/87

SIGNING DO PASS:

Deuce Henley
REC. E. C. [unclear]

SIGNING OTHER RECOMMENDATIONS:

Mike Koronas (no rec.)
Mike [unclear] (no rec.)
John Ellis (no rec.)
Bill [unclear] (no rec.)

John Ellis
 Chairman's signature
Mike Koronas

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99689
(907) 262-9420 W
262-9269 H



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

State Senate

*Jim -
file*

MEMORANDUM

FEB 11 1988

TO: Representatives Niilo Koponen and
✓ Johnny Ellis, Co-Chairmen
House Health, Education and Social
Services Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 37
(fingerprinting of minors)

DATE: February 10, 1988

I would appreciate your scheduling the above referenced bill before the House Health, Education and Social Services Committee at your earliest possible convenience.

This legislation prohibits fingerprinting a minor in the custody of health & social services or a law enforcement agency without a court order upon good cause shown. Good cause exists if the minor is in custody for a serious offense against persons or property, or if identification is necessary for the safety of the minor or of other persons. Reference to Alaska Rules of Children's Procedure 24 was deleted in the version that passed the Senate since the Alaska Supreme Court, during the interim, modified Procedure 24 and deleted reference to fingerprinting of minors. Additionally, the Senate deleted language that required fingerprints of a minor to be purged from the Alaska automated fingerprint identification system. This suggested deletion was a position taken by the Alaska Chiefs of Police Association, the Alaska Peace Officers Association and the FBI National Academy Associates. I have attached a copy of their position statement for your files.

Committee Substitute for Senate Bill 37 (Rules) passed the Senate on January 27, by a vote of 15 Yeas - 1 Nay.

PAF/sgn

Attachment

— Position Statement —

**ALASKA CHIEFS OF POLICE ASSOCIATION
ALASKA PEACE OFFICERS ASSOCIATION
FBI NATIONAL ACADEMY ASSOCIATES**



Concerning Legislative Proposals

before the

Fifteenth Alaska Legislature

January 1988

SB 37 (Fisher) relating to fingerprinting of minors

We support the fingerprinting and photographing of minors who have been arrested, for several reasons. Fingerprints of a minor found at the scene of a crime cannot be identified by the state's computer because minors cannot now be fingerprinted without a court order. Thus their fingerprints are not in the computer, even if they have been previously arrested. Since more than half of those persons arrested for certain crimes are minors, investigating officers have less than a 50 percent chance of identifying the fingerprints left at scenes of certain crimes. In effect, this means that minors breaking the law will not be arrested on the basis of fingerprint identification until they become adults, and then only after at least one previous arrest.

SE 37 permits the fingerprinting of minors 14 years of age or older who have been: (1) arrested for an offense that would be a felony if committed by an adult, or (2) minors institutionalized after adjudication for delinquency. Such fingerprints may be checked through the automated fingerprint identification system once, and then be destroyed. Fingerprints of minors 16 or 17 years of age may be entered into the automated system, but must be destroyed when the minor becomes 18 years old.

We are sensitive to the fact that some minors in trouble with the law may be successfully rehabilitated, but it is equally true that some minors commit extremely serious crimes, such as homicide. Being able to match fingerprints of a minor from a crime scene to fingerprints from a previous arrest would be a major step toward identification of the guilty and the better protection of the public. In addition, ~~minors on the street occasionally become homicide~~ victims themselves. If the minor had been previously fingerprinted, the body could positively identified. Absent other information, such positive identification is sometimes not possible now.

For these reasons we suggest amending SB-37 to permit the fingerprinting of all minors charged with committing a crime, and minors institutionalized following adjudication for delinquency, and permitting the fingerprints to remain in the automated system.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act relating to
fingerprinting of minors;..."
Sponsor: Fischer
Requestor: Senat Judiciary

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	0	0	0	0	0
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	0	0	0	0	0	0
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)

Prepared by: Brant McGee, Public Advocate *BM* Phone: 274-1684
Division: Office of Public Advocacy Date: 1/31/88

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

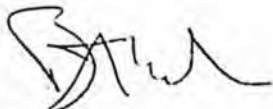
Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

POSITION PAPER
SB 37

This bill would allow the fingerprinting of minors aged 14 and older without a court order. The procedure is allowed only where the minor has been arrested for a felony or upon institutionalization after adjudication for delinquency.

New fingerprint technology currently available in Alaska allows a computerized review of thousands of fingerprints for comparison to crime scene latents. This technology could greatly enhance the efficiency of law enforcement authorities in identifying perpetrators, particularly for property crimes where no witnesses are available. The majority of burglaries are committed by juveniles and thus the fingerprinting of such persons could allow authorities to efficiently apprehend suspects and resolve a greater number of cases.

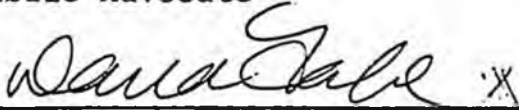
The Office of Public Advocacy and Alaska Public Defender Agency support this legislation because it will enhance the ability of law enforcement agencies to arrest perpetrators and provide the criminal justice system with strong, and often conclusive, evidence in the adjudication process.



Brant McGee
Public Advocate

11/21/88

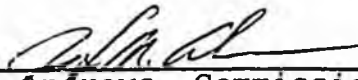
Date



Dana Fabe
Public Defender

1/21/88

Date



John Andrews, Commissioner
Department of Administration

2/2/88

Date