

RECOMMENDATION TO THE ALASKA LEGISLATURE FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 1-2018, adopted January 12, 2018:

Create a Class A Felony for Misconduct Involving a Controlled Substance

The Alaska Criminal Justice Commission's Justice Reinvestment Report, submitted to the legislature in December 2015, included several recommendations relating to drug crimes. One recommendation was to differentiate the quantities involved in drug-related crimes; the purpose of this was to distinguish between "user-dealers," who deal drugs only in small quantities to support their addiction, and commercial dealers, who deal drugs in larger quantities to turn a profit.

The recommendations did not, however, distinguish between higher-volume or lower-volume commercial dealers. Under the Misconduct Involving a Controlled Substance (MICS) statutes, as amended by SB 91, the highest level of offense at which a commercial dealer could be charged is a Class B felony (MICS 2).¹ This offense applies to manufacturing, delivering, or possessing with intent to manufacture or deliver more than 1 gram of a Schedule IA substance (such as heroin) or more than 2.5 grams of a Schedule IIA or IIIA substance (such as methamphetamine or cocaine).

The Commission therefore recommends enacting a Class A felony offense for Misconduct Involving a Controlled Substance. The offense should criminalize the following conduct:

- Manufacturing or delivering 25 grams or more of a schedule IA substance, or possessing 25 grams or more of a schedule IA substance with intent to manufacture or deliver, or
- Manufacturing or delivering 50 grams or more of a schedule IIA or IIIA substance, or possessing 50 grams or more of a schedule IIA or IIIA substance with intent to manufacture or deliver.

The Commission approved this recommendation on a vote of five to two with three abstentions. Proponents of the recommendation believe that enacting a Class A offense will help prosecute higher-level drug trafficking cases that federal prosecutors can't or won't take; that a higher-level offense will provide a tool to encourage dealers to cooperate with law enforcement in identifying other dealers; and will express community condemnation of an activity which has caused a great deal of harm to Alaskans.

Those who did not agree with the recommendation cited concerns that creating a higher-level offense would warehouse dealers in prison at great cost, but would not serve a public safety purpose because any dealer who is convicted under this statute would be replaced by another dealer. They were reluctant to make a recommendation without evidence that it would help decrease the amount of drugs in Alaska's communities. They were also concerned that it would diminish focus on treatment for addicts.

¹ See AS 11.71.030. Drug dealing could be charged as an unclassified felony (MICS 1) if the drugs were sold to a person under age 19 or if the offense was part of a continuing criminal enterprise (See AS. 11.71.010).