

MEMORANDUM

State of Alaska

Department of Law

TO: Alaska Criminal Justice Commission DATE: December 5, 2017

FROM: Jahna Lindemuth
Attorney General

SUBJECT: MICS2 Proposal

The current structure of Alaska's drug laws fails to provide an adequate deterrent and punishment for those importing large quantities of drugs into the State. To eliminate this gap, the Department of Law is proposing, for potential introduction by the Governor next session, an additional tier of drug offenses to specifically target the high level, large scale drug traffickers. The purpose of this memorandum is to inform the Alaska Criminal Justice Commission of the proposal and hear directly from the members of the Commission at the December 7, 2017 meeting any thoughts or concerns they may have before this legislation is introduced.

Currently, a person distributing illegal drugs (felony-level Misconduct Involving Controlled Substances) is charged based on the quantity of the drug with either a Class C felony or a Class B felony. There is no Class A felony. The Department of Law proposes adding a Class A felony level based on the distribution of large amounts of drugs that would only be found in a drug trafficking situation (e.g., 25 grams or more of a Schedule IA substance such as heroin or 50 grams or more of a Schedule IIA or IIIA substance such as methamphetamine). A person convicted of a Class A felony offense faces a presumptive range of three to six years for a first felony conviction, with a maximum of 20 years. This would fit within the current statutory scheme by continuing to focus on the quantities of drugs distributed and adding an additional tier.

Given the current drug epidemic facing Alaskans, such a statute is necessary. Heroin and methamphetamine are the most heavily imported controlled substances in Alaska. National surveys have shown that methamphetamine contributes to violent crime and heroin is a contributor of property crime. DPS 2016 Annual Drug Report, p. 18, <http://www.dps.state.ak.us/AST/ABI/docs/SDEUreports/2016%20Annual%20Drug%20Report%206.28.17final.pdf>. Further, according to Alaska's Department of Health and Social Services, between 2009 and 2015 Alaska's heroin deaths more than quadrupled. <http://dhss.alaska.gov/dph/Director/Pages/heroin-opioids/data.aspx>.

Alaska's geographical make up and over taxed law enforcement resources have made Alaska a profitable location for drug traffickers. For example, in 2016, **252.9 pounds of heroin** and **92.5 pounds of methamphetamine** were seized by all of the law enforcement agencies in the state. User amounts for heroin are generally around 1/10 of a gram, and user amounts for methamphetamine typically range between 1/4 to 1/2 of a gram depending on the tolerance of the user. We need to work on cutting off the supply of drugs in order to stem the tide.

Those trafficking large amounts of drugs are not low level, "middle man" users distributing to support their habit. These individuals are typically connected to traffickers from outside the state and contribute to Alaska's drug epidemic in a significant way.

Federal drug laws also organize its sentencing structure between high-level and mid-level distribution. For example, under federal law, a person who distributes less than 100 grams of heroin faces a mandatory minimum five year prison term, with a maximum of 40 years. Distribution of more than a kilogram of heroin has a mandatory minimum of 10 years with a maximum sentence of life in prison. While these penalties may appear severe and adequate to address Alaska's drug epidemic, federal drug enforcement is the prerogative of the current federal administration. As federal administrations change, so does the federal priority (or lack thereof) of federal drug enforcement in Alaska. Alaska's ability to focus on—and eliminate—high level drug traffickers should remain constant, regardless of federal priorities. By amending Alaska's statutes to target the drug traffickers importing these dangerous substances, we can better control the cases that are pursued and prosecuted, while also adding a necessary deterrent.