

**CS FOR HOUSE BILL NO. 114(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 4/20/01**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES KAPSNER, Kookesh, Hayes, Kerttula, Guess, Stevens, Murkowski, Fate, Dyson, Cissna, Joule, Meyer, Coghill**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to abuse of inhalants; and relating to minors under the influence of**  
2 **alcohol, inhalants, or drugs."**

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

4 **\* Section 1.** AS 11.76 is amended by adding a new section to read:

5 **Sec. 11.76.200. Abuse of inhalants.** (a) Under circumstances not otherwise  
6 proscribed under AS 11.71, a person commits the offense of abuse of inhalants if the  
7 person smells or inhales any inhalant, other than an alcoholic beverage, with the intent  
8 of causing intoxication, inebriation, excitement, stupefaction, or dulling of the brain or  
9 nervous system.

10 (b) This section does not apply to the administration of a controlled substance,  
11 drug, or other substance by a practitioner or otherwise in a medical context. In this  
12 subsection, "administer," "drug," and "practitioner" have the meanings given in  
13 AS 11.71.900.

14 (c) In this section,

1 (1) "alcoholic beverage" has the meaning given in AS 04.21.080;

2 (2) "inhalant" has the meaning given in AS 47.37.270(10).

3 (d) Abuse of inhalants is a violation. A court may suspend the imposition of  
4 sentence, place the defendant on probation under AS 12.55.085, and require the  
5 defendant to successfully complete an inhalant abuse treatment program.

6 \* **Sec. 2.** AS 47.10.019 is amended to read:

7 **Sec. 47.10.019. Limitations on determinations.** Notwithstanding other  
8 provisions of this chapter, the court may not find a minor to be a child in need of aid  
9 under this chapter solely on the basis that the child's family is poor, lacks adequate  
10 housing, or exhibits a lifestyle that is different from the generally accepted lifestyle  
11 standard of the community where the family lives, **or that the child has been taken**  
12 **into protective custody and placed with a relative, another person willing to care**  
13 **for the minor, a shelter, a program, or a facility under AS 47.37.165.** However,  
14 this section may not be construed to prevent a court from finding that a child is in need  
15 of aid if the child has been subjected to conduct or conditions described in  
16 AS 47.10.011 - 47.10.015.

17 \* **Sec. 3.** AS 47.12.030(b) is amended to read:

18 (b) When a minor is accused of violating a statute specified in this subsection,  
19 other than a statute the violation of which is a felony, this chapter and the Alaska  
20 Delinquency Rules do not apply and the minor accused of the offense shall be  
21 charged, prosecuted, and sentenced in the district court in the same manner as an  
22 adult; if a minor is charged, prosecuted, and sentenced for an offense under this  
23 subsection, the minor's parent, guardian, or legal custodian shall be present at all  
24 proceedings; the provisions of this subsection apply when a minor is accused of  
25 violating

26 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
27 a municipality;

28 (2) AS 11.76.105, relating to the possession of tobacco by a person  
29 under 19 years of age;

30 (3) a fish and game statute or regulation under AS 16;

31 (4) a parks and recreational facilities statute or regulation under

1 AS 41.21;

2 (5) AS 04.16.050, relating to possession, control, or consumption of  
3 alcohol; [AND]

4 (6) a municipal curfew ordinance, whether adopted under  
5 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its  
6 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for  
7 the violation of a municipal curfew ordinance, the court shall allow a defendant the  
8 option of performing community work; the value of the community work, which may  
9 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);  
10 in this paragraph, "community work" includes the work described in AS 12.55.055(b)  
11 or work that, on the recommendation of the municipal or borough assembly, city  
12 council, or traditional village council of the defendant's place of residence, would  
13 benefit persons within the municipality or village who are elderly or disabled; **and**

14 **(7) AS 11.76.200, relating to abuse of inhalants.**

15 \* **Sec. 4.** AS 47.37 is amended by adding a new section to read:

16 **Sec. 47.37.165. Services for minors.** (a) Notwithstanding other provisions  
17 of this chapter, a peace officer may take into protective custody a minor who is not  
18 otherwise subject to arrest, detention, or protective custody if the peace officer has  
19 reasonable cause to believe the minor is

20 (1) under the influence of alcohol, inhalants, or drugs and subject to  
21 citation for a violation of AS 04.16.050 or AS 11.76.200; and

22 (2) unwilling or unable to exercise judgment necessary to protect the  
23 minor's health and safety as evidenced by the minor's conduct and circumstances.

24 (b) A peace officer taking into protective custody a minor under (a) of this  
25 section shall

26 (1) take the minor to the minor's parent or guardian or, if the minor's  
27 parent or guardian is unknown or unavailable, shall

28 (A) take the minor to a relative, or to a shelter, program, or  
29 facility suitable for the minor; or

30 (B) use the procedures provided in AS 47.37.170 for an  
31 intoxicated person if the minor appears to be intoxicated; and

1 (2) use the procedures provided in AS 47.37.170 for a person  
2 incapacitated by alcohol, inhalants, or drugs if the minor appears to be incapacitated.

3 (c) A peace officer, relative, other person, or a representative of a shelter,  
4 program, or facility shall notify the minor's parent or guardian as soon as possible  
5 when the minor is placed with a person or in a setting other than that directed by the  
6 parent or guardian of the minor.

7 (d) When a minor has been placed and is required to be released as provided  
8 under AS 47.37.170, the minor shall be returned to the minor's parent or guardian or,  
9 if the minor's parent or guardian is unknown or unavailable, to a relative or other  
10 person willing to care for the minor. If no suitable person or placement can be found  
11 for the minor being released, the person or program caring for the minor may notify  
12 the department.

13 \* **Sec. 5.** AS 47.37.170(b) is amended to read:

14 (b) A person who appears to be incapacitated by alcohol, inhalants, or drugs  
15 in a public place shall be taken into protective custody by a peace officer or a member  
16 of the emergency service patrol and immediately brought to an approved public  
17 treatment facility, an approved private treatment facility, or another appropriate health  
18 facility or service for emergency medical treatment. If a [NO] treatment facility or  
19 emergency medical service is not available, a person who appears to be incapacitated  
20 by alcohol, inhalants, or drugs in a public place shall be taken to a state or municipal  
21 detention facility in the area if that appears necessary for the protection of the person's  
22 health or safety.

23 \* **Sec. 6.** AS 47.37.170(d) is amended to read:

24 (d) A person who, after medical examination at an approved private treatment  
25 facility, or another appropriate health facility or service for emergency medical  
26 treatment, is found to be incapacitated by alcohol, inhalants, or drugs at the time of  
27 admission or to have become incapacitated by alcohol, inhalants, or drugs at any time  
28 after admission, may not be detained at a facility after the person is no longer  
29 incapacitated by alcohol, inhalants, or drugs. A person may not be detained at a  
30 facility if the person remains incapacitated by alcohol for more than 48 hours after  
31 admission as a patient. A person may consent to remain in the facility as long as the

1 physician in charge considers it appropriate.

2 \* **Sec. 7.** AS 47.37.170(f) is amended to read:

3 (f) If a patient is admitted to an approved public treatment facility, family or  
4 next of kin shall be promptly notified. If an adult patient who is not incapacitated by  
5 alcohol, inhalants, or drugs requests that there be no notification of next of kin, the  
6 request shall be granted.

7 \* **Sec. 8.** AS 47.37.170(g) is amended to read:

8 (g) A person may not bring an action for damages based on the decision under  
9 this section to take or not to take an intoxicated person or a person incapacitated by  
10 alcohol, inhalants, or drugs into protective custody, unless the action is for damages  
11 caused by gross negligence or intentional misconduct.

12 \* **Sec. 9.** AS 47.37.170(i) is amended to read:

13 (i) A person taken to a detention facility under (a) or (b) of this section may be  
14 detained only (1) until a treatment facility or emergency medical service is made  
15 available, (2) until the person is no longer intoxicated or incapacitated by alcohol,  
16 inhalants, or drugs, or (3) for a maximum period of 12 hours, whichever occurs first.  
17 A detaining officer or a detention facility official may release a person who is detained  
18 under (a) or (b) of this section at any time to the custody of a responsible adult. A  
19 peace officer or a member of the emergency service patrol, in detaining a person under  
20 (a) or (b) of this section and in taking the person to a treatment facility, an emergency  
21 medical service, or a detention facility, is taking the person into protective custody,  
22 and the officer or patrol member shall make reasonable efforts to provide for and  
23 protect the health and safety of the detainee. In taking a person into protective custody  
24 under (a) and (b) of this section, a detaining officer, a member of the emergency  
25 service patrol, or a detention facility official may take reasonable steps for self-  
26 protection, including a full protective search of the person of a detainee. Protective  
27 custody under (a) and (b) of this section does not constitute an arrest and an [NO]  
28 entry or other record may not be made to indicate that the person detained has been  
29 arrested or charged with a crime, except that a confidential record may be made that is  
30 necessary for the administrative purposes of the facility to which the person has been  
31 taken or that is necessary for statistical purposes where the person's name may not be

1 disclosed.

2 \* **Sec. 10.** AS 47.37.180(a) is amended to read:

3 (a) An intoxicated person who (1) has threatened, attempted to inflict, or  
 4 inflicted physical harm on another or is likely to inflict physical harm on another  
 5 unless committed, or (2) is incapacitated by alcohol, inhalants, or drugs, may be  
 6 committed to an approved public treatment facility for emergency treatment. A  
 7 refusal to undergo treatment does not constitute evidence of lack of judgment as to the  
 8 need for treatment.

9 \* **Sec. 11.** AS 47.37.190(a) is amended to read:

10 (a) A spouse or guardian, a relative, the certifying physician, or the  
 11 administrator in charge of an approved public treatment facility may petition the court  
 12 for a 30-day involuntary commitment order. The petition must allege that the person  
 13 is an alcoholic or inhalant or drug abuser who (1) has threatened, attempted to inflict,  
 14 or inflicted physical harm on another and that, unless committed, is likely to inflict  
 15 physical harm on another; or (2) is incapacitated by alcohol, inhalants, or drugs. A  
 16 refusal to undergo treatment does not constitute evidence of lack of judgment as to the  
 17 need for treatment. The petition must be accompanied by a certificate of a licensed  
 18 physician who has examined the person within two days before submission of the  
 19 petition, unless the person whose commitment is sought has refused to submit to a  
 20 medical examination, in which case the fact of refusal must be alleged in the petition.  
 21 The certificate must set out the physician's findings in support of the allegations of the  
 22 petition.

23 \* **Sec. 12.** AS 47.37.205(a) is amended to read:

24 (a) At any time during a person's 30-day commitment, the director of an  
 25 approved public facility or approved private facility may file with the court a petition  
 26 for a 180-day commitment of that person. The petition must include all material  
 27 required under AS 47.37.190(a) except that references to "30 days" shall be read as  
 28 "180 days" and must allege that the person continues to be an alcoholic or inhalant or  
 29 drug abuser who is incapacitated by alcohol, inhalants, or drugs, or who continues to  
 30 be at risk of serious physical harm or illness.

31 \* **Sec. 13.** AS 47.37.235(c) is amended to read:

1 (c) A person who knowingly initiates an involuntary commitment petition  
 2 under AS 47.37.180 - 47.37.205 without having good cause to believe that the other  
 3 person is an alcoholic **or inhalant** or drug abuser and is incapacitated or at risk of  
 4 serious physical harm or illness if not treated is guilty of a class C felony.

5 \* **Sec. 14.** AS 47.37.270(1) is amended to read:

6 (1) "alcoholic **or inhalant** or drug abuser" means a person who

7 **(A)** demonstrates increased tolerance to alcohol, **inhalants,** or  
 8 drugs, who suffers from withdrawal when alcohol, **inhalants,** or drugs are not  
 9 available, whose habitual lack of self-control concerning the use of alcohol,  
 10 **inhalants,** or drugs causes significant hazard to the person's health, and who  
 11 continues to use alcohol, **inhalants,** or drugs despite the adverse consequences;  
 12 **or**

13 **(B) uses inhalants on a more than occasional basis, whose**  
 14 **use of inhalants has caused significant adverse consequences to the**  
 15 **person's health or whose use of inhalants is likely to cause a significant**  
 16 **hazard to the person's life or health, and whose use of inhalants impairs**  
 17 **the person's judgment to such a degree that the person continues to use**  
 18 **inhalants despite the adverse consequences or hazards;**

19 \* **Sec. 15.** AS 47.37.270(10) is amended to read:

20 (10) "hazardous volatile material or substance" **or "inhalant"**

21 (A) means a material or substance that is readily vaporizable at  
 22 room temperature and whose vapors or gases, when inhaled,

23 (i) pose an immediate threat to the life or health of the  
 24 person; or

25 (ii) are likely to have adverse delayed effects on the  
 26 health of the person;

27 (B) includes, but is not limited to,

28 (i) gasoline;

29 (ii) materials and substances containing petroleum  
 30 distillates; and

31 (iii) common household materials and substances

1                    whose containers bear a notice warning that inhalation of vapors or  
2                    gases may cause physical harm;

3                    \* **Sec. 16.** AS 47.37.270(11) is amended to read:

4                    (11) "incapacitated by alcohol, inhalants, or drugs" means a person  
5                    who, as a result of alcohol, inhalants, or drugs, is unconscious or whose judgment is  
6                    otherwise so impaired that the person (A) is incapable of realizing and making rational  
7                    decisions with respect to the need for treatment, and (B) is unable to take care of the  
8                    person's basic safety or personal needs, including food, clothing, shelter, or medical  
9                    care;

10                    \* **Sec. 17.** AS 47.37.270(14) is amended to read:

11                    (14) "intoxicated person" means a person whose mental or physical  
12                    functioning is substantially impaired as a result of the use of alcohol, inhalants, or  
13                    drugs;