

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 22, 2005

8:44 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 85(JUD)

"An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school."

HEARD AND HELD

CS FOR HOUSE BILL NO. 88(RLS)

"An Act relating to certain weapons offenses involving minors; relating to the definition of 'recreation or youth center' for purposes of misconduct involving a controlled substance; to aggravating factors in sentencing for certain offenses committed on school grounds, on a school bus, at a school-sponsored event, or in administrative offices of a school district; to mitigating factors in sentencing for a defendant's assistance to authorities to detect, apprehend, or prosecute other persons who committed an offense; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 85

SHORT TITLE: PRESCRIBED MEDICATION FOR STUDENTS

SPONSOR(s): REPRESENTATIVE(s) MEYER

|          |     |                                 |
|----------|-----|---------------------------------|
| 01/19/05 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/19/05 | (H) | HES, JUD                        |

02/15/05 (H) HES AT 3:00 PM CAPITOL 106  
 02/15/05 (H) Moved CSHB 85(HES) Out of Committee  
 02/15/05 (H) MINUTE(HES)  
 02/18/05 (H) HES RPT CS(HES) 6DP  
 02/18/05 (H) DP: CISSNA, GARDNER, ANDERSON, MCGUIRE,  
 SEATON, WILSON  
 02/18/05 (H) FIN REFERRAL ADDED AFTER JUD  
 03/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
 03/07/05 (H) Moved CSHB 85(JUD) Out of Committee  
 03/07/05 (H) MINUTE(JUD)  
 03/09/05 (H) JUD RPT CS(JUD) 5DP  
 03/09/05 (H) DP: GRUENBERG, DAHLSTROM, COGHILL,  
 GARA, MCGUIRE  
 03/09/05 (H) FIN REFERRAL WAIVED  
 03/15/05 (H) TRANSMITTED TO (S)  
 03/15/05 (H) VERSION: CSHB 85(JUD)  
 03/16/05 (S) READ THE FIRST TIME - REFERRALS  
 03/16/05 (S) HES, JUD  
 04/04/05 (S) HES AT 1:30 PM BUTROVICH 205  
 04/04/05 (S) Moved CSHB 85(JUD) Out of Committee  
 04/04/05 (S) MINUTE(HES)  
 04/05/05 (S) HES RPT 4DP 1NR  
 04/05/05 (S) DP: DYSON, GREEN, WILKEN, OLSON  
 04/05/05 (S) NR: ELTON  
 04/22/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 88

SHORT TITLE: CRIM LAW:MINORS, SCHOOLS, DRUGS, SENTENCES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/05 (H) READ THE FIRST TIME - REFERRALS  
 01/19/05 (H) JUD, FIN  
 01/26/05 (H) JUD AT 1:00 PM CAPITOL 120  
 01/26/05 (H) -- Meeting Canceled --  
 02/02/05 (H) JUD AT 1:00 PM CAPITOL 120  
 02/02/05 (H) <Bill Hearing Postponed to Fri. 2/4/05>  
 02/04/05 (H) JUD AT 1:00 PM CAPITOL 120  
 02/04/05 (H) -- Rescheduled from Wed. 2/2/05 --  
 02/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
 02/07/05 (H) Heard & Held  
 02/07/05 (H) MINUTE(JUD)  
 02/16/05 (H) JUD AT 1:00 PM CAPITOL 120  
 02/16/05 (H) Moved CSHB 88(JUD) Out of Committee  
 02/16/05 (H) MINUTE(JUD)  
 02/18/05 (H) JUD RPT CS(JUD) NT 1DP 6NR  
 02/18/05 (H) DP: GRUENBERG;

02/18/05 (H) NR: ANDERSON, KOTT, COGHILL, DAHLSTROM,  
GARA, MCGUIRE

03/16/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519

03/16/05 (H) Bill Postponed To 3/17/05

03/17/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519

03/17/05 (H) Heard & Held

03/17/05 (H) MINUTE(FIN)

03/21/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519

03/21/05 (H) Moved CSHB 88(FIN) Out of Committee

03/21/05 (H) MINUTE(FIN)

03/22/05 (H) FIN RPT CS(FIN) NT 8NR

03/22/05 (H) NR: HAWKER, WEYHRAUCH, JOULE, MOSES,  
HOLM, KELLY, CROFT, STOLTZE

03/31/05 (H) RLS AT 9:00 AM FAHRENKAMP 203

03/31/05 (H) Moved CSHB 88(RLS) Out of Committee

03/31/05 (H) MINUTE(RLS)

04/01/05 (H) RLS RPT CS(RLS) NT 5DP 1NR

04/01/05 (H) DP: HARRIS, COGHILL, MCGUIRE, KOHRING,  
ROKEBERG;

04/01/05 (H) NR: BERKOWITZ

04/01/05 (H) RETURNED TO RLS COMMITTEE

04/08/05 (H) TRANSMITTED TO (S)

04/08/05 (H) VERSION: CSHB 88(RLS)

04/11/05 (S) READ THE FIRST TIME - REFERRALS

04/11/05 (S) JUD, FIN

04/22/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Representative Kevin Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 85

Mr. Mike Pawlowski  
Staff to Representative Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Commented on HB 85

Ms. Patricia Senner, RN  
Alaska Nurses Association  
2207 East Tudor Rd. Suite 34  
Anchorage, AK 99507  
**POSITION STATEMENT:** Testified in support of HB 85

Ms. Marge Larson

American Lung Association of Alaska

**POSITION STATEMENT:** Testified in support of HB 85

Ms. Stephanie Birch

Division of Public Health (DPH)

Department of Health & Social Services

PO Box 110601

Juneau, AK 99801-0601

**POSITION STATEMENT:** Testified in support of HB 85

Ms. Anne Carpeneti

Department of Law

PO Box 110300

Juneau, AK 99811-0300

**POSITION STATEMENT:** Commented on HB 88

Ms. Patty Ware, Director

Division of Juvenile Justice

Department of Health & Social Services

PO Box 110601

Juneau, AK 99801-0601

**POSITION STATEMENT:** Commented on HB 88

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:43:33 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

#### **HB 85-PRESCRIBED MEDICATION FOR STUDENTS**

CHAIR RALPH SEEKINS announced HB 85 to be up for consideration.

[8:43:33 AM](#)

REPRESENTATIVE KEVIN MEYER introduced HB 85, which proposes to allow children to carry their own inhalers (commonly known as Epipen®). Not having their medication readily available puts children at risk. Some children have died because their medication was in the school nurse's office. HB 85 would allow a parent or guardian to sign a release of liability provided the healthcare provider submit a written consent treatment plan and certify that the child is capable of using the medication. HB 85 would qualify Alaska for federal grants under the Asthmatic Schoolchildren's Treatment Act of 2004. Thirty-seven states have passed similar legislation. It protects the schools from liabilities and it would potentially reduce absences.

[8:46:17 AM](#)

SENATOR GRETCHEN GUESS asked Representative Meyer to explain why pharmacist is listed under the definition of healthcare provider.

REPRESENTATIVE MEYER explained the reason is pharmacists often train children to use their inhalers.

[8:49:03 AM](#)

MR. MIKE PAWLOWSKI, legislative aide, reiterated Representative Meyer's assertion that pharmacists are the ones who teach children how to use their medication. The Department of Public Health (DPH) supports adding pharmacists.

SENATOR GUESS asserted HB 85 allows pharmacists to write a treatment plan.

CHAIR SEEKINS said he would feel more comfortable if backup medicine was available in the school nurse's office.

REPRESENTATIVE MEYER advised under HB 85 children could still leave backup medication with the nurse.

[8:52:42 AM](#)

REPRESENTATIVE MEYER continued families couldn't always afford two inhalers so he would be hesitant to require a backup.

[8:54:38 AM](#)

Senator Gene Therriault joined the committee.

SENATOR CHARLIE HUGGINS expressed concern over children passing their inhalers around.

REPRESENTATIVE MEYER stated the school would not be liable.

SENATOR HUGGINS said he was worried about children causing the death of other children by sharing inhalers.

REPRESENTATIVE MEYER countered inhalers wouldn't kill a child although they might make someone hyperactive.

[8:56:21 AM](#)

SENATOR HUGGINS asked the definition of advanced nurse practitioner.

SENATOR HOLLIS FRENCH advised all nurse practitioners are advanced nurse practitioners.

CHAIR SEEKINS agreed and stated licensed nurse would be included. The difference is a licensed nurse who is not a nurse practitioner would not be able to prescribe medications.

SENATOR FRENCH asked Mr. Pawlowski to explain Epipen®.

MR. PAWLOWSKI advised it is short for epinephrine injector, which is a self-administered injection.

SENATOR FRENCH asked whether the use of epinephrine inhalers among schoolchildren was common.

[8:58:47 AM](#)

CHAIR SEEKINS replied yes. He explained epinephrine is a form of adrenaline.

[8:59:36 AM](#)

SENATOR THERRIAULT asked the recourse if a child lets a friend take a dose of the medication.

MR. PAWLOWSKI replied discipline according to the school code would govern that situation.

[9:01:36 AM](#)

SENATOR THERRIAULT asked the recourse when children pass inhalers around to get each other high.

MR. PAWLOWSKI responded the debate occurred in the House and it was decided disciplinary action by the schools should be adequate.

CHAIR SEEKINS mentioned a person can buy some types of inhalers over the counter and there is no present issue of children buying inhalers. He asserted it is serious when someone has an asthma attack.

[9:03:35 AM](#)

CHAIR SEEKINS said his only concern was if a student were to forget to bring their medication. He prefers to have a backup in place. He read a statement from the Alaska Nurses Association that asked to require a student to have an extra inhaler stored in the school nurse's office.

MR. PAWLOWSKI commented that was included in Section 5. A healthcare provider could include that stipulation in the written treatment plan.

SENATOR FRENCH said it could be included in the list under "doses of medications needed."

[9:05:27 AM](#)

SENATOR GUESS advised it would be beneficial to keep the option so as not to mandate families to always have two inhalers. Some families may not be able to afford two inhalers.

[9:07:40 AM](#)

CHAIR SEEKINS said it is not his intent to put someone who can't afford the medication in risk of violating the law. However, a serious case of asthma needs to be considered.

[9:08:55 AM](#)

MS. PATRICIA SENNER, nurse practitioner, testified in support of HB 85. She maintained school nurses are having trouble with managing inhalers. Children often forget them or they run out of medication. She suggested to stipulate under Section 5 the healthcare provider state what back up is needed.

[9:10:29 AM](#)

MS. SENNER advised the committee albuterol inhalers run about twenty dollars while steroid inhalers run close to one hundred dollars. She expressed concern with children carrying Epipens®, however school nurses report they have not had trouble with abuse, although there are instances of sharing. The side effects of albuterol are minimal unless the person suffers from a heart condition. The Anchorage school districts do have Epipen® backups.

[9:12:08 AM](#)

MS. SENNER admitted the Alaska Nurses Association has a problem with the definition of healthcare provider. The problem with adding pharmacists is they do not have personal knowledge of the child. She suggested restricting the description of healthcare provider to those people who legally have the authority to diagnose and treat.

[9:13:54 AM](#)

MS. SENNER suggested leaving out licensed nurse and pharmacists.

SENATOR FRENCH asked whether all inhalers have the same active ingredient.

MS. SENNER replied the most common are rescue inhalers, which contain albuterol. There are a variety of others.

SENATOR FRENCH asked which kind would work in an emergency situation.

MS. SENNER stated albuterol.

SENATOR FRENCH asked the reason children bring inhalers to school.

MS. SENNER informed albuterol is often taken four times per day and most other inhalers are twice a day medications.

[9:15:59 AM](#)

SENATOR FRENCH asked what kind of emergency inhaler a school would select.

MS. SENNER affirmed it would be albuterol.

SENATOR FRENCH asked the danger from using someone else's inhaler.

MS. SENNER said the main thing would be a contagious disease through the transfer of germs.

SENATOR FRENCH asked whether any children have died because of asthma attacks.

MS. SENNER replied she is not aware of any.

[9:17:33 AM](#)

MS. STEPHANIE BIRCH, chief of the women and children's health section, Division of Public Health (DPH), offered support for HB 85 and also offered to answer questions.

MS. MARGE LARSEN, American Lung Association of Alaska testified in support. She reminded the committee not every school in Alaska has a school nurse. The intent of HB 85 is for school children have access to their medication. Most people who die from asthma are mild asthmatics who do not manage their asthma. Rescue medication is a necessary and critical part of asthma management.

[9:20:12 AM](#)

SENATOR GUESS asked the procedure when a school has no school nurse.

MS. LARSON advised the medications are locked up in the principal's office.

The LIO connection was lost and so Chair Seekins announced a brief recess at [9:22:08 AM](#).

Chair Seekins reconvened the meeting at [9:42:27 AM](#).

CHAIR SEEKINS proposed Amendment 1.

Page 2, line 19 after the word "permitted to" insert "personally" and following the word "nurse" insert "or other school official".

Hearing no objections the motion carried.

[9:44:15 AM](#)

CHAIR SEEKINS proposed Amendment 2.

Page 2, line 25 state "in this section, healthcare provider means a person with prescriptive authority in this state."

SENATOR GUESS objected for the purpose of discussion. She asked whether a village health aide would fall under that definition.

MS. BIRCH said a village health aide has delegated prescriptive authority. She suggested adding wording on line 26 to state "within their state regulations." This would allow for them to practice within their occupational licensing regulations.

CHAIR SEEKINS said a pharmacist might be the person best capable of showing the child how to use the inhaler device.

[9:49:48 AM](#)

MR. PAWLOWSKI suggested a pharmacist might attempt to do something outside their authority, such as write a prescription.

SENATOR GUESS expressed concern the definition of healthcare provider is being used as a catchall.

[9:51:36 AM](#)

CHAIR SEEKINS withdrew Amendment 2 and proposed Amendment 3, which defines healthcare provider. Hearing no objection, the motion carried.

[9:52:32 AM](#)

SENATOR HUGGINS moved Amendment 4, which inserts a permissive requirement that medication must be kept with a designated school official. Hearing no objections, the motion carried.

[9:54:41 AM](#)

SENATOR GUESS inferred the committee should clarify HB 85 in regards to public versus private school.

MR. PAWLOWSKI referred to a legal memo included in the packet dated April 6, 2005 from legislative legal. There is a concern that the word school is not specific enough. It is problematic for the state to require a private school to do anything. It is limited under AS 14.45.100. The sponsor suggested inserting the word "public" to clarify.

CHAIR SEEKINS moved Amendment 5, insert the word "public."

SENATOR THERRIAULT objected for the purpose of discussion.

[9:57:47 AM](#)

SENATOR GUESS noted the drafter might have had a reason not to specify public school.

MR. PAWLOWSKI admitted that was true. The drafter described it as not expressly necessary.

[10:02:30 AM](#)

SENATOR THERRIAULT suggested asking the drafters for a memo clarifying the intent that HB 85 addresses public schools and not private schools.

[10:05:11 AM](#)

CHAIR SEEKINS announced he wanted to be on record that it was not his intent to force private schools to adhere to HB 85.

[10:06:38 AM](#)

Amendment 5 was adopted.

CHAIR SEEKINS announced the committee would wait for a clean version of the amended bill before going further.

**HB 88-CRIM LAW: MINORS, SCHOOLS, DRUGS, SENTENCES**

[10:08:26 AM](#)

CHAIR SEEKINS announced HB 88 to be up for consideration.

MS. ANNE CARPENETI, Department of Law (DOL) introduced HB 88, which is designed to respond to the problems of violence in schools and also violence among juveniles relating to guns. Under HB 88 juveniles who are 16 or 17 years old who use guns in certain circumstances would be automatically waived to adult court. Those circumstances are; using a gun during a drug felony

crime and drive by shootings. The court may mitigate a sentence for a defendant who has cooperated with the authorities in the prosecution of the case.

The definition of recreation or youth center has been changed to add those run by private groups. HB 88 makes the aggravating factor apply to arson (AS 11.46.400) but the committee would have to amend it to include a building on school grounds if they want the arson aggravating factor to stay.

[10:12:51 AM](#)

MS. CARPENETI asserted arson against a school building should be considered.

[10:13:06 AM](#)

MS. PATTY WARE, director, division of juvenile justice, (DJJ) Department of Health and Social Services (DHSS) offered to answer questions. HB 88 adds offenses for juveniles who are age 16 and older in terms of them being processed and treated as an adult.

CHAIR SEEKINS said HB 88 sounds strangely familiar.

SENATOR THERRIAULT advised it was similar to SB 65. He moved to Amendment 1.

Strike Section 1.

Hearing no objections, Amendment 1 carried.

Chair Seekins announced a brief recess at [10:15:37 AM](#).

Chair Seekins reconvened the meeting at [10:19:59 AM](#).

CHAIR SEEKINS and the committee reviewed CSSB 65(JUD).

SENATOR FRENCH commented HB 88 focuses on juveniles who perform adult-type crimes.

[10:24:01 AM](#)

SENATOR FRENCH said HB 88 is the more likely vehicle to pass legislation this term. He suggested replacing Section 3 of HB 88 with Section 1 of CSSB 65(JUD).

SENATOR THERRIAULT commented the only difference is the issue of arson. HB 88 Section 3 added AS 11.46.400, which is problematic.

MS. CARPENETI stated the problem would be fixed by an amendment.

SENATOR THERRIAULT asked whether the committee wants to delete arson or confine it to arson against school buildings.

SENATOR FRENCH asserted arson against school property was a problem in his community.

[10:25:08 AM](#)

MS. CARPENETI said in order to leave arson in HB 88 the committee would have to limit it to school buildings on school grounds or school busses.

SENATOR FRENCH moved Amendment 2.

Strike HB 88 Section 3 and insert CSSB 65(JUD) Section 1. Hearing no objections, Amendment 2 was adopted.

[10:26:42 AM](#)

SENATOR FRENCH proposed Amendment 3, which adds arson. Hearing no objections, Amendment 3 was adopted.

[10:29:07 AM](#)

SENATOR FRENCH asked Ms. Carpeneti whether the DOL supports the mitigater.

MS. CARPENETI replied yes.

SENATOR THERRIAULT asked Ms. Carpeneti to comment on the difference in HB 88 and CSSB 65(JUD) in regards to first and second-degree weapon use.

[10:31:43 AM](#)

MS. CARPENETI said CSSB 65(JUD) included both first and second-degree misconduct involving weapons. HB 88 would not waive for certain behavior, such as possessing a concealed weapon on school grounds and behavior with discharging of a firearm at or in the direction of a building with reckless disregard for physical injury to a person or a dwelling.

SENATOR THERRIAULT asked whether the DOL agreed to the narrowing of the statute.

MS. CARPENETI advised they spoke against it.

SENATOR THERRIAULT asked the reasoning.

MS. WARE interjected to explain the thinking had to do with what Senator French mentioned earlier - the decision to waive juveniles into adult court. The discussion centered on the

seriousness of second degree versus first degree and possession versus actually using a gun during a crime. In terms of the numbers, in a two-year period the DJJ reported 16 juveniles were charged with misconduct involving weapons in the first degree and the second degree. Under the narrower version, the DJJ would have waived five of these juveniles into the adult system. Under the broader definition, all 16 juveniles would have been waived into adult court.

[10:34:18 AM](#)

SENATOR GUESS asked Ms. Ware whether the DJJ has the discretion to waive cases into the adult system.

MS. WARE replied they do under the existing statutes any offense that is deemed serious enough they connect with the district attorney's office and petition the court for a waiver of the individual into the adult court system.

SENATOR FRENCH clarified HB 88 allowed for an automatic waiver.

MS. CARPENETI interjected the argument on the other side is that an automatic waiver is a serious step, so they decided it best to best to start with the first degree offense and later look into second degree.

SENATOR THERRIAULT agreed with the narrower scope.

SENATOR THERRIAULT asked for clarification on Section 1, subparagraph (B). He wondered whether an after school swim club at a local gym would be included.

MS. WARE explained the key word in Section 1, subparagraph (B) is "licensed". The DHSS licenses an array of facilities for shelter services for children. The example given would not be covered.

SENATOR THERRIAULT asked about a boys and girls club.

MS. WARE responded they were not licensed.

[10:38:53 AM](#)

CHAIR SEEKINS announced the committee would wait for a clean version of the amended bill before going further. CHAIR SEEKINS recessed the Senate Standing Judiciary Committee until 4 pm April 23, 2005 at [10:41:51 AM](#).