

HB

180

HFIN

FILE

1-LS0188VK
Luckhaupt
2/3/00

*Amended pg 2, un.
Adopted*

CS FOR HOUSE BILL NO. 180()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES COWDERY, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the possession, manufacture, use, display, or delivery of
2 controlled substances while children are present."

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

4 * **Section 1.** AS 11.51.130(a) is amended to read:

5 (a) A person commits the crime of contributing to the delinquency of a minor
6 if, being 19 years of age or older or being under 19 years of age and having the
7 disabilities of minority removed for general purposes under AS 09.55.590, the person
8 aids, induces, causes, or encourages a child

9 (1) under 18 years of age to do any act prohibited by state law unless
10 the child's disabilities of minority have been removed for general purposes under
11 AS 09.55.590;

12 (2) under 18 years of age or allows a child under 18 years of age to
13 enter or remain in the immediate physical presence of [SAME ROOM IN A
14 BUILDING WHERE] the unlawful possession, manufacture, use, display, or

1 delivery [SALE] of a controlled substance knowing that the ~~unlawful~~ possession,
2 manufacture, use, display, or delivery is occurring, [DRUG OCCURS] unless; the
3 child's disabilities of minority have been removed for general purposes under
4 AS 09.55.590;

5 (3) under 16 years of age to be repeatedly absent from school, without
6 just cause; or

7 (4) under 18 years of age to be absent from the custody of a parent,
8 guardian, or custodian without the permission of the parent, guardian, or custodian or
9 without the knowledge of the parent, guardian, or custodian, unless the child's
10 disabilities of minority have been removed for general purposes under AS 09.55.590
11 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative
12 defense to a prosecution under this paragraph that, at the time of the alleged offense,
13 the defendant

14 (A) reasonably believed that the child was in danger of physical
15 injury or in need of temporary shelter; and

16 (B) within 12 hours after taking the actions comprising the
17 alleged offense, notified a peace officer, a law enforcement agency, or the
18 Department of Health and Social Services of the name of the child and the
19 child's location.

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 3, 1999

FURTHER REFERRALS:

Date of Committee Action: 02/04/00

The FINANCE Committee considered:

HB 180

HOUSE BILL NO. 180

DRUGS WHERE MINORS ARE PRESENT

"An Act relating to the possession, manufacture, use, display, or delivery of controlled substances while children are present."

recommends it be replaced with the following committee substitute CS HB 180 (Fin) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DDA, DOC, LAW fiscal note(s) _____

zero fiscal note(s) Court zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault	X			
<i>Edon Mulder</i>	Mulder	X			
<i>Leon Bunde</i>	Bunde			✓	
<i>Alan Guster</i>	Guster			✓	
<i>Col N. Davies</i>	DAVIES		X		
<i>Ben Grussendorf</i>	Grussendorf		X		
<i>Paul E. Moses</i>	Moses		✓		
<i>David Davis</i>	Davis		✓		
<i>Bill Phillips</i>	Phillips			✓	
<i>Bob Foster</i>	Foster	X			

CHAIR'S SIGNATURE

Gene Therriault *Edon Mulder*

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSHB 180(JUD)

Revision Date: January 31, 2000
 Title: "An Act relating to the possession, manufacture, use, or delivery of controlled substances while children are present"
 Sponsor: Representative Cowdery
 Requestor: (H) FIN

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	15.2	15.2	15.2	15.2	15.2	15.2
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.2	15.2	15.2	15.2	15.2	15.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15.2	15.2	15.2	15.2	15.2	15.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	15.2	15.2	15.2	15.2	15.2	15.2

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME	.25	.25	.25	.25	.25	.25
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: January 31, 2000

Approved by Commissioner: Bob Poe
 Agency: Department of Administration

Date: January 31, 2000

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 180(JUD)

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would make it a class A misdemeanor to allow a child to be in a dwelling or vehicle where any controlled substance is being used, manufactured, displayed, or delivered. If the controlled substance is used, manufactured, etc. in the immediate presence of the child, it is also a class A misdemeanor even if the use, etc. is not in a dwelling or vehicle.

This bill has a broad reach. The child need not be aware of the use of the controlled substance in the dwelling. For example, even if a parent waited until the child is asleep in a separate room and used marijuana, the parent could still be subject to prosecution under this law.

The fiscal impact of this bill could be very significant. However, it is difficult to say how many criminal prosecutions there will be under this bill. We do have rough estimates from our experience in Child in Need of Aid (CINA) cases of parents using controlled substances in the home when children are present. Our CINA attorneys believe that there is some documentation of drug use in the home or in the presence of children in about a quarter of our CINA cases. The Public Defender Agency was appointed to 996 new CINA cases in FY99. Using a conservative estimate of 10% rather than 25% of these cases being strong enough for criminal prosecution, that would mean 100 addition misdemeanors to which the Public Defender Agency could be appointed.

According to national standards, public defender misdemeanor lawyers are supposed to handle no more than 400 new cases per year. Therefore, we are requesting funding for ¼ of a misdemeanor lawyer's salary. We are not making requests for equipment, supplies, contractual services, or travel. We believe most of these cases would arise in Anchorage.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CS HB180 (H FIN)

Revision Date/Time (Note if correction) _____	Dept. Affected	Department of Corrections
Title <u>An act relating to possession of controlled substances in the presence of children</u>	BRU	<u>Administration and Operations</u>
Sponsor <u>Representative Cowdery</u>	Component	<u>All</u>
Requester <u>House Finance Committee</u>	Component No.	<u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	***	***	***	***	***	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The Department of Law reports approximately 500 cases of Misconduct Involving a Controlled Substance in a year. Attempts have been made to determine how many of those cases may involve children in some way, but there is no data available. Additionally, although someone may be charged with Endangering the Welfare of a Child under this bill, that in no way ensures that the charge would not be concurrent, or used as a bargaining tool, in sentencing. In all likelihood, there would be instances when it would result in additional time (up to one year for a Class A Misdemeanor). It is the Department of Corrections' belief that there could be significant costs attached to this, but we have no way of quantifying it at this time. Therefore, the Department of Corrections is submitting an indeterminate fiscal note.

Prepared by: <u>Candace Brower</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date/Time <u>2/2/00 4:27 PM</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>Feb 2, 2000</u>
Agency <u>Dept. of Corrections</u>	

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 180(JUD)

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Possession of Drugs While Children are Present</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Rep. Cowdry</u>	Component	<u>Trial Courts</u>
Requester	<u>House Finance</u>	Component Serial No.	<u>769</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact anticipated.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>463-4750</u>
Agency:	<u>Alaska Court System</u>	Date/Time:	<u>2/1/00 9:58 AM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date:	<u>2/1/00</u>
Agency:	<u>Alaska Court System</u>		

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. CSHB 180 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>"An Act relating to the possession, manufacture, use,...of controlled substances while children are present."</u>	BRU <u>Criminal Division</u>
Sponsor <u>Representative Cowdery</u>	Component <u>1st-4th Judicial Districts; Criminal Appeals/Special Litigation</u>
Requester <u>House Finance Committee</u>	Component No. <u>2198-99;2201;03;61;79</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 180 (JUD) raises storing drugs in a vehicle or dwelling where children are allowed to enter or remain from a violation to a class A misdemeanor, and expands the prohibition to allowing children in the presence of other unlawful conduct in relation to drugs. A class A misdemeanor provides a maximum one year incarceration, and a \$5,000 fine, compared to a violation which is a maximum \$300 fine and no period of incarceration. The more serious consequences of the offense would make it more expensive to prosecute. The bill also expands Contributing to the Delinquency of a Minor by broadening the prohibition of allowing a child to be in the presence of illegal drug activity.

The Department of Law cannot estimate at this time how many cases this offense might generate. Until some more experience is gained, the department cannot project the fiscal impact of this bill.

Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>1/31/00 10:32 AM</u>
Approved by <u>Commissioner</u> <i>Ked for</i> <u>Bruce M. Botelho, Attorney General</u>	Date <u>1/31/00</u>
Agency <u>Department of Law</u>	

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Sponsor Statement for HB 180 (JUD)

Existing statutes acknowledge that children should not be allowed to enter or remain where drugs are stored (11.51.110) or sold (11.51.130). However, current law does not prohibit the manufacture or use of drugs in the presence of children. Children learn by example. I believe the destructive behavior modeled by drug use in the presence of a child is as damaging as that of being in the same room, dwelling or vehicle in which drugs are stored or sold. HB 180 corrects this situation.

New language in House Bill 180 expands the sphere of space in which the co-presence of children and drugs is forbidden. By using the phrase, "in the immediate physical presence of" children are protected in outdoor situations like a yard, campsite or park bench. Stiffer penalty provisions send the clear message that children and drugs don't mix.

To promote uniformity of application the new provision employs "use, manufacture, delivery and display", terms used in existing controlled substance statutes.

- Sectional Review -

House Bill 180 adds new language to 11.51.100. Section 100 is amended to recognize the damaging effects to children of being exposed to the drug culture. The new section 100 makes it a criminal act to allow a child under the age of 16 to enter or remain in a dwelling or vehicle where drugs are used, made or displayed. Additionally, Section 100 prohibits allowing a child to enter or remain in the immediate physical presence of the use, manufacture or display of drugs. In order to be prosecuted under these new provisions it must be shown that the adult legally charged with the care of the child knew that the use, sale, manufacture or display of illegal drugs was occurring. Upon the proof of knowing conduct, a person found in violation of Section 100 would be guilty of a class "A" misdemeanor.

House Bill 180 further adds new language to 11.51.300. Section 300 is amended to acknowledge the damaging example set by adults who use, manufacture or deliver controlled substances. The new language sanctions an adult who aids, induces, causes or encourages a child under the age of 18 to enter or remain in the immediate physical presence of the use, manufacture or delivery of a controlled. In order to be prosecuted under this subsection, it must be shown that the accused acted with "reckless disregard" for whether or not the drug related activity was occurring. Additionally, the new language makes it unlawful for a person to aid, induce, cause or encourage someone under 18 years old to be in the immediate physical presence of the possession of a controlled substance, knowing that the possession was occurring. A person convicted under this section would be guilty of a class "A" misdemeanor.

House Bill 180 removes redundant language from the existing statutes under 11.51.130.

AS 11.51.100 – Endangering the welfare of a child in the first degree

Currently does not recognize any drug related endangerment. Section applies to children under age 16.

New provisions provide penalty for allowing a child to enter or remain where drugs are used manufactured or displayed (direct actions). Violation is a class "A" misdemeanor

AS 11.51.110 – Endangering the welfare of a child in the second degree

Currently, for children under 10 years of age, it recognizes that children should not be allowed to enter or remain in a dwelling or vehicle where drugs are **stored**.

New provision deletes this section's reference to controlled substances

Penalty provision under 11.51.110 is a violation (Max \$300)

AS 11.51.130 – Contributing to the delinquency of a minor

Currently provides penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the same room in a building where the sale of a controlled substance occurs.

New provisions provide penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the immediate physical presence of the unlawful possession (situation) of a controlled substance, knowing that the possession is occurring.

New provisions provide penalty for an adult who aides, induces, causes or encourages a minor to enter or remain in the immediate physical presence of the unlawful manufacture, use, delivery or sale (direct actions) of a controlled substance, with reckless disregard that the unlawful conduct was occurring.

Violation is a class "A" misdemeanor.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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January 27, 2000

Representative Gene Therriault
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

Dear Representative Therriault:

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 180.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Sincerely,

John Charbonneau
State President

cc: Representatives Cowdery and Dyson