

HB

180

From the office of . . . Representative John J. Cowdery

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MEMORANDUM

TO: Representative Pete Kott
FROM: Representative Cowdery
DATE: April 20, 1999
RE: Judiciary hearing for House Bill 180

Notes:

Please schedule House Bill 180 for a hearing in the House Judiciary Committee at your convenience.

Thank you.

Sponsor Statement for HB 180

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 "C" felony.

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).

Penalty provisions under 11.51.100 are "C" felonies unless a child is actually injured.

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.

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Luckhaupt
4/22/99

CS FOR HOUSE BILL NO. 180()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COWDERY

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 11.51.100(a) is amended to read:

5 (a) A person commits the crime of endangering the welfare of a child in the
6 first degree if, being a parent, guardian, or other person legally charged with the care
7 of a child under 16 years of age, the person

8 (1) intentionally deserts the child in a place under circumstances
9 creating a substantial risk of physical injury to the child;

10 (2) leaves the child with another person who is not a parent, guardian,
11 or lawful custodian of the child knowing that the person

12 (A) is registered or required to register as a sex offender under
13 AS 12.63 or a law or ordinance in another jurisdiction with similar
14 requirements;

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(B) has been charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; [OR]

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child; or

(4) allows the child to enter or remain in

(A) a dwelling or vehicle knowing that a controlled substance is being unlawfully used, manufactured, displayed, or delivered in the dwelling or vehicle;

(B) the immediate physical presence of the unlawful use, manufacture, display, or delivery of a controlled substance knowing that the unlawful use, manufacture, display, or delivery is occurring.

* Sec. 2. AS 11.51.100(c) is amended to read:

(d) Endangering the welfare of a child ^{in the first degree} ~~in the first degree~~ under (a) ⁽⁴⁾ ~~subsection~~
~~or~~ [OR (2)] of this section is a class ^{A misdemeanor.} ~~disorder~~.

* Sec. 3. AS 11.51.110(a) is amended to read:

(a) A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under 10 years of age,

[(1) CAUSES OR ALLOWS THE CHILD TO ENTER OR REMAIN IN A DWELLING OR VEHICLE IN WHICH A CONTROLLED SUBSTANCE IS STORED IN VIOLATION OF AS 11.71; OR

(2)] is impaired by an intoxicant, whether or not prescribed for the person under AS 17.30, and there is no third person who is at least 12 years of age and not impaired by an intoxicant present to care for the child.

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

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the

1 disabilities of minority removed for general purposes under AS 09.55.590, the person
2 aids, induces, causes, or encourages a child

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

6 (2) under 18 years of age to enter or remain in the immediate physical
7 presence of [SAME ROOM IN A BUILDING WHERE] the

8 (A) unlawful possession [SALE] of a controlled substance
9 knowing that the unlawful possession is occurring, [DRUG OCCURS] unless
10 the child's disabilities of minority have been removed for general purposes
11 under AS 09.55.590; or

12 (B) unlawful manufacture, use, display, or delivery of a
13 controlled substance with reckless disregard that the unlawful
14 manufacture, use, display, or delivery is occurring, unless the child's
15 disabilities of minority have been removed for general purposes under
16 AS 09.55.590;

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

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

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

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