

SB

56

<TARGET><BILL>SB 56</BILL><SUBJECT>SB
56</SUBJECT><COMM>HJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE



SENATOR FRED DYSON
SENATE DISTRICT F

SPONSOR STATEMENT FOR CSSB 56(JUD)

Alaska's prison population is currently growing at one of the fastest rates in the nation. Despite the \$250 million Goose Creek Correctional Center, the Department of Corrections estimates that all available prison beds will again be full in 2016. Simultaneously, per inmate incarceration costs have risen from \$110/day to \$147/day, now equaling more than \$50,000/inmate per year. Since 2005, the DOC's operating budget has spiked nearly 94%, from \$167M to over \$323M. Finally, and perhaps most troubling, Alaska's prison beds are increasingly filled with non-violent offenders.

With our prisons packed and the cost of incarceration skyrocketing, we must seek responsible ways to slow prison population growth while preserving public safety. According to DOC data, from 2002 to 2011, non-violent offenders have been the fastest growing segment in our prison population; drug and alcohol offenses account for a substantial portion of this growth. A recent study by an Alaskan researcher concluded that a significant driver of Alaska's prison population growth is the rise in admissions for non-violent, small-quantity drug offenders, particularly felony offenders convicted of non-distributive possession. Reforming our drug policy could reduce this driver of prison growth and save the state millions of dollars. This conclusion is supported by leading justice reform policy groups, recent DOC Dep. Commissioner Carmen Gutierrez, and Legislative Research Services who concur that the fiscal burden of our current drug laws is significant.

SB 56 creates an escalating punishment regime, similar to Alaska's approach to DUI's, reclassifying the initial possession of non-distributive (small quantity) amounts of Schedule IA (e.g. heroin, codeine, oxycodone) and IIA substances (e.g. methamphetamine, mushrooms, cocaine) from a Class C Felony to a Class A Misdemeanor. This reclassification preserves a serious criminal penalty for drug possession, but allows first time offenders to avoid the collateral consequences and longer prison sentences of a felony. It also protects law enforcement's ability to aggressively pursue distributors and repeat offenders.

Comparative analysis of states where small quantity possession is already a misdemeanor indicates that reclassification should have minimal impact on public safety. Misdemeanor states actually have slightly *lower* rates of violent crime, property crime and drug use. Finally, this reform will benefit offenders and their families by removing the stigma of a felony conviction, markedly improving employment prospects, professional licensing, and housing opportunities, all variables strongly correlated with decreased alcoholism, domestic violence and recidivism.

Staff contact: Chuck Kopp, (907)465-6580

ALASKA STATE LEGISLATURE



SENATOR FRED DYSON
SENATE DISTRICT F

SB 56 – SUMMARY OF CHANGES

SB 56 received a minor amendment in Senate Judiciary to correct a drafting error which had incorrectly identified the controlled substance 'DET', rather than the controlled substance 'LSD' as intended by the bill sponsor.

On p. 3, line 11 of version 28-LS0355\N - AS 11.71.150(b)(9) was amended to AS 11.71.150(b)(12).



SENATOR FRED DYSON

SECTION ANALYSIS – CSSB56(JUD)

Section 1

1. Amends the criminal statute AS 11.71.040 (Misconduct Involving Controlled Substance in the Fourth Degree), raising the quantity of Schedule IA or IIA controlled substance needed to be found in an offender's possession that would precipitate a felony charge from "any amount" to a quantity that implies distribution.
2. Establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 15 or more tablets, ampules, or syrettes when the Schedule IA or IIA is found in such a form.
3. Further establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 3 grams when the Schedule IA or IIA substance is in the form of a preparation, compound, or mixture.
4. Creates a carve out for the substances heroin and Lysergic acid diethylamide (LSD), each of which will be subject to a stricter felony quantity limit: 500 milligrams for heroin and 300 milligrams for LSD.
5. Provides for an "escalating punishment" system wherein a repeat offender found in possession of any amount of Schedule IA or IIA substance may still be prosecuted for Misconduct Involving a Controlled Substance in the Fourth Degree—a Class C Felony—if they have been previously convicted of any drug offense defined in AS 11.71.010 – 11.71.050 in the five years preceding the current offense.
6. Leaves unaffected any provisions of this statute or any other controlled substance statute that empowers law enforcement and prosecutors to charge and convict distributors of controlled substances.

Section 2

1. Provides that offenders found in possession of small quantities of Schedule IA and IIA substances may be prosecuted under AS 11.71.050 (Misconduct Involving a Controlled Substance in the Fifth Degree), a Class A Misdemeanor.
2. Establishes that an offender may be prosecuted of a Misconduct Involving a Controlled Substance in the Fifth Degree if they are found with any amount of a Schedule IA or IIA substance up to the felony limits, above which they are subject to felony convictions under AS.71.040.
3. Establishes the felony limit as 15 tablets, ampules, or syrettes if the substance is found in such a form, or 3 grams if found in a preparation, compound, or mixture.
4. Includes carve outs for heroin and LSD, for which the felony limits will be 500 and 300 milligrams, respectively.

Section 3

1. Establishes that this Act applies to offenses committed on or after the effective date of the Act, except that references to previous convictions in the "escalating punishment" or "three strikes" provisions of Section 1 include convictions occurring before, on, or after the effective date.

Section 4

1. Removes conflicting language related to Bath Salts from the MICS-4 and MICS-5 statute. After the passage of this bill, Bath Salts will be treated as other Schedule IIA controlled substances, with the same felony limits as, for example, methamphetamine.

Section 5

1. Provides for an effective date.

AMENDMENT

#1
passed unanimously

OFFERED IN THE HOUSE
TO: CSSB 56(JUD)

- 1 Page 2, line 2:
- 2 Delete "**five**"
- 3 Insert "**seven**"

AMENDMENT

#2
passed unanimously

OFFERED IN THE HOUSE
TO: CSSB 56(JUD)

1 Page 5, following line 15:

2 Insert a new bill section to read:

3 **** Sec. 3.** AS 12.55.135 is amended by adding a new subsection to read:

4 (l) A defendant convicted of misconduct involving a controlled substance in
5 the fifth degree shall be ordered to satisfy the screening, evaluation, referral, and
6 program requirements of an alcohol safety action or drug abuse evaluation program, if
7 an alcohol safety action or drug abuse evaluation program is available in the
8 community where the person resides, or of a private or public treatment facility
9 approved by the Department of Health and Social Services under AS 47.37 to make
10 referrals for rehabilitative treatment or to provide rehabilitative treatment."
11

12 Renumber the following bill sections accordingly.

AMENDMENT #3
passed unanimously

OFFERED IN THE HOUSE

TO: CSSB 56(JUD)

1 Page 2, lines 1 - 9:

2 Delete all material and insert:

3 "(A) any amount of a
4 (i) schedule IA controlled substance listed in
5 AS 11.71.140(e); or
6 (ii) schedule IA or IIA controlled substance other than
7 [EXCEPT] a controlled substance listed in (i) of this subparagraph,
8 and, two or more times within the preceding five years, the person
9 was convicted under AS 11.71.010 - 11.71.050 or a law or ordinance
10 of this or another jurisdiction with elements similar to those of an
11 offense under AS 11.71.010 - 11.71.050 [AS 11.71.150(e)(11) -
12 (15)];"

13

14 Page 3, lines 1 - 7:

15 Delete all material and insert:

16 "(H) 15 or more tablets, ampules, or syrettes containing a
17 schedule IA or IIA controlled substance other than a controlled substance
18 listed in AS 11.71.140(e); or
19 (I) one or more preparations, compounds, mixtures, or
20 substances of an aggregate weight of
21 (i) three grams or more containing a schedule IA
22 controlled substance other than a controlled substance listed in
23 AS 11.71.140(d)(11) or 11.71.140(e) or a schedule IIA controlled

1 substance other than a controlled substance listed in
2 AS 11.71.150(b)(12):"

3

4 Page 5, lines 3 - 9:

5 Delete all material and insert:

6 "(F) less than 15 tablets, ampules, or svrettes containing a
7 schedule IA or IIA controlled substance other than a controlled substance
8 listed in AS 11.71.140(e); or

9 (G) one or more preparations, compounds, mixtures, or
10 substances of an aggregate weight of less than

11 (i) three grams containing a schedule IA controlled
12 substance other than a controlled substance listed in
13 AS 11.71.140(d)(11) or 11.71.140(e) or a schedule IIA controlled
14 substance other than a controlled substance listed in
15 AS 11.71.150(b)(12):"

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 1
(S) Publish Date: 3/11/13

Identifier: SB056-DOA-OPA-3-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Richard Allen, Director
Division: Office of Public Advocacy
Approved By: Curtis Thayer, Deputy Commissioner
Department of Administration

Phone: (907)269-3504
Date: 03/01/2013 08:00 PM
Date: 03/01/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

If enacted as filed, SB56 would likely result in drug offenders charged with simple possession facing misdemeanor rather than felony charges, depending on the offender's criminal history and the amounts involved. There would likely be a substantial reduction in the transactional, fiscal costs associated with charging, trying and incarcerating such offenders, because it is less expensive to bring a misdemeanor case than it is to bring a felony case. The Office of Public Advocacy (OPA) could therefore expect to see a reduction in the cost of providing constitutionally required defense services to such offenders and subsequently submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 2
(S) Publish Date: 3/11/13

Identifier: SB056-DOA-PDA-3-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By:	Quinlan Steiner	Phone:	(907)334-4414
Division	Public Defender Agency	Date:	03/01/2013 09:12 AM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	03/01/13
	Department of Administration		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

SB56 reduces to a misdemeanor certain first and second simple drug possession cases. Reducing the number of cases previously charged as a felony will reduce the cost of processing individual cases.

This will reduce the overall growth rate of the Agency's budget. Due to increasing caseloads in the most complex case types, however, the anticipated cost savings is not expected to result in a reduction of the Agency's budget. The Agency, therefore, submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 3
(S) Publish Date: 3/11/13

Identifier: SB056-DPS-DET-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Lieutenant Rodney Dial
Division: Alaska State Troopers
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)254-1284
Date: 03/01/2013 03:45 PM
Date: 03/01/13

FISCAL NOTE ANALYSIS #3

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. CSSB 56(JUD)

Analysis

This bill would reclassify certain offenses related to possession of schedule IA and IIA controlled substances.

Passage of this bill would not change the investigative process regarding these offenses and will have no fiscal impact on the Division of Alaska State Troopers. Therefore, a zero fiscal note is being submitted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 4
(S) Publish Date: 3/11/13

Identifier: SB056-DPS-LAB-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Judiciary

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Laboratory Services
OMB Component Number: 527

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Orin Dym, Forensic Laboratory Manager	Phone:	(907)254-1284
Division	Office of the Commissioner	Date:	03/01/2013 03:45 PM
Approved By:	Joseph A. Masters, Commissioner	Date:	03/01/13
	Department of Public Safety		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

This bill would adjust the penalties related to certain offenses involving possession of schedule IA and IIA controlled substances.

The sections of the bill relating to possession of specific quantities of a controlled substance will affect the analysis practices within the Scientific Crime Detection Laboratory (SCDL). The minimum thresholds established by this bill will require testing of enough of the substance to meet the threshold.

For example, whereas the SCDL currently may need to positively identify only one tablet to determine whether it was a prohibited substance under the law, analysis of at least 15 tablets (if present) may now need to be analyzed to meet the threshold and burden of proof.

Though there will be some impact to the workload, it is expected that the SCDL can manage it within its current staffing. Therefore, a zero fiscal note is being submitted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 5
(S) Publish Date: 3/11/13

Identifier: SB56-DOC-OC-03-01-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This is the original version of the bill.

Prepared By: Kevin Worley, Director
Division: Department of Corrections - Administrative Services
Approved By: Leslie Houston, Deputy Commissioner
Department of Corrections

Phone: (907)465-4641
Date: 03/01/2013 08:00 PM
Date: 03/01/13

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

Passage of this legislation would reduce the offense level for possession of small amounts of certain controlled substances from a class C felony to a class A misdemeanor. At this time, data is not available for the Department to calculate the number of offenders who would be sentenced as misdemeanors under this legislation. The Department will continue to monitor the potential impacts of this legislation.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
 Fiscal Note Number: 6
 (S) Publish Date: 3/11/13

Identifier: SB056-LAW-CRIM-03-01-13
 Title: RECLASSIFYING CERTAIN DRUG OFFENSES
 Sponsor: DYSON
 Requester: (S) Judiciary

Department: Department of Law
 Appropriation: Criminal Division
 Allocation: Criminal Justice Litigation
 OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services	***	***	***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	***	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	03/01/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/01/13
	Department of Law		

FISCAL NOTE ANALYSIS #6

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

Under current law it is a class C felony to possess any amount of a Schedule IA controlled substance (for example opium or morphine) or a Schedule IIA controlled substance (for example cocaine or LSD). SB 56 would make possession of these controlled substances a class C felony (1) if the defendant, in the five years preceding the offense, had been convicted two or more times of misconduct involving a controlled substance in the first, second, third, fourth, or fifth degrees, or a law or ordinance in another jurisdiction with similar elements; (2) possesses 15 or more tablets, ampules, or syrettes containing a schedule IA or IIA controlled substance; or (3) or possesses three or more grams of a preparation containing a schedule IA or IIA controlled substance, unless it is heroin, in which case it would be a class C felony to possess 500 milligrams or more, or unless it is DET, in which case it would be a class C felony to possess 300 milligrams or more.

SB 56 would make possession of lesser amounts of substances described in (2) and (3) above, a class A misdemeanor under AS 11.71.150.

The fiscal note is indeterminate. Generally, reducing an offense from a felony to a misdemeanor creates a savings in the criminal justice system. Felony trials generally take more of a prosecutor's time than do misdemeanor trials. However, sometimes there are unforeseen consequences. For example, with the increased complexity in the law, this bill will probably require more time in screening and evaluating cases. Further, it is likely that a case involving possession with intent to distribute a controlled substance, which would be charged as a class B felony, would go to trial on that charge rather than be resolved as a class A misdemeanor for simple possession. These are factors, along with others, that we cannot predict at this time.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version CSSB 56(JUD)
 Fiscal Note Number 7
 (S) Publish Date 3/11/13

Identifier (file name) SB056-ACS-TRC-2-26-13 Dept. Affected Alaska Court System
 Title Relating to Crimes Inv. Controlled Substances Appropriation Trial Courts
 Allocation _____
 Sponsor Senator Dyson
 Requester _____ OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Nancy Meade, General Counsel
 Division Alaska Court System
 Approved by Nancy Meade for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4736
 Date/Time 2/26/13 12:00 PM
 Date 2/26/2013

FISCAL NOTE ANALYSIS #7

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

Senate Bill B 56 would reclassify certain drug possession crimes. Currently, possession of *any* amount of a schedule IA controlled substance is Misconduct Involving a Controlled Substance in the Fourth Degree, a class C felony under AS 11.71.040(a). Section 1 of the bill would classify as a Class C felony (1) possession of any amount of schedule IA or IIA controlled substances a class C felony, only if the defendant has two or more prior convictions within the last five years, (2) possession of more than a specified amount of more pure forms of schedule 1A or IIA controlled substances, and (3) possession of a specified amount of preparations or mixtures of certain schedule IA and schedule IIA controlled substances.

Section 2 of the bill would classify the possession of the lesser amounts of schedule IA or IIA controlled substances (those that Section 1 would remove from AS 11.71.040(a)) as Misconduct Involving a Controlled Substance in the Fifth Degree, a Class A misdemeanor, under AS 11.71.050(a).

This change would have the effect of moving certain drug possession cases from felonies to misdemeanors; for the court system, that means handling those cases in the district court (with jurisdiction over misdemeanors) rather than superior court (with jurisdiction over felonies). Generally, misdemeanor criminal cases are less expensive for the court system to process than felonies: misdemeanor charges do not need to be considered by a grand jury, misdemeanors often settle earlier in the life of the case than felonies, and district court judges are paid less and have a higher caseload than superior court judges (because the cases are generally less complicated). Because of these general principles, the court system is likely to save some money and deal with these misdemeanor drug possession cases more efficiently under SB 56.

The court's statistics, however, are kept according to the statutory reference(s) on the charging documents filed by law enforcement. For different reasons, drug possession cases may be filed by the Department of Law as a violation of the general statute (AS 11.71.040), or by subsection (AS 11.71.040(a)), or by subparagraph (AS 11.71.040(a)(3)). The court enters the charge on the incoming charging document into the court's case management system, but we are not then able to accurately count the number of cases that involve a charge under AS 11.71.040(a)(3)(A). The court can say that 977 cases were filed with a MICS 4 charge in FY 12; the number was 878 in FY11 and 848 in FY12. But, these numbers include all cases with any charge under AS 11.71.040, which has numerous sections and subsections that concern a variety of criminal drug behaviors.

In addition, SB 56 would reclassify only a portion of the charges under that section as misdemeanors (depending on the amount of the controlled substance possessed and the defendant's prior convictions), and our statistics do not show which cases or the number of cases that would be in this category.

The court predicts increased efficiency from moving some cases from superior court to district court, but cannot predict the number of cases or actual fiscal impact. The court therefore submits a zero fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 56(JUD)
Fiscal Note Number: 8
(S) Publish Date: 3/27/13

Identifier: SB056CS(JUD)-LAW-CRIM-03-12-13
Title: RECLASSIFYING CERTAIN DRUG OFFENSES
Sponsor: DYSON
Requester: (S) FINANCE

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	***	***	***	***	***	***	***
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	***	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This fiscal note reflects the most recent committee substitute as amended.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	03/12/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/12/13
	Department of Law		

FISCAL NOTE ANALYSIS #8

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 56(JUD)

Analysis

Under current law it is a class C felony to possess any amount of a Schedule IA controlled substance (for example opium or morphine) or a Schedule IIA controlled substance (for example cocaine or LSD). CSSB 56 would make possession of these controlled substances a class C felony (1) if the defendant, in the five years preceding the offense, had been convicted two or more times of misconduct involving a controlled substance in the first, second, third, fourth, or fifth degrees, or a law or ordinance in another jurisdiction with similar elements; (2) possesses 15 or more tablets, ampules, or syrettes containing a schedule IA or IIA controlled substance; or (3) or possesses three or more grams of a preparation containing a schedule IA or IIA controlled substance, unless it is heroin, in which case it would be a class C felony to possess 500 milligrams or more, or unless it is LSD, in which case it would be a class C felony to possess 300 milligrams or more.

CSSB 56 would make possession of lesser amounts of substances described in (2) and (3) above, a class A misdemeanor under AS 11.71.150.

The fiscal note is indeterminate. Generally, reducing an offense from a felony to a misdemeanor creates a savings in the criminal justice system. Felony trials generally take more of a prosecutor's time than do misdemeanor trials. However, sometimes there are unforeseen consequences. For example, with the increased complexity in the law, this bill will probably require more time in screening and evaluating cases. Further, it is likely that a case involving possession with intent to distribute a controlled substance, which would be charged as a class B felony, would go to trial on that charge rather than be resolved as a class A misdemeanor for simple possession. These are factors, along with others, that we cannot predict at this time.

Chuck Kopp

From: Amory Lelake
Sent: Friday, April 05, 2013 8:22 AM
To: Chuck Kopp
Subject: Amanda Coyne on SB 56

War on war on drugs finds unlikely ally in Sen. Fred Dyson

Amanda Coyne,
AmandaCoyne.com
Posted on [April 4, 2013](#)

As anti-oil tax protesters protested outside of the Capitol building in Juneau; as they waved enlarged \$5 billion checks from the state to ConocoPhillips, BP, and Exxon; as the chants "it's our oil," were chanted. As Democratic politicians took to the microphone proclaiming that they were here for the people, for the least of us, another bill, SB 56, was being debated in the Capitol building.

It's a bill that takes a stab at undoing what many consider the egregious harm caused by the war on drugs. This is Democrat country. But it wasn't sponsored by the politicians who were chanting outside the Capitol building. It was sponsored by Republican Sen. Fred Dyson, a staunch, dyed-in-the-wool Republican if there ever was one.

It passed the Senate 17 to 2. Two of those most vocal Dems in Alaska, two who were shouting the loudest about taking care of the people, Sens. Bill Wielechowski and Hollis French, voted against it after French offered two failing amendments that would weaken the bill.

Here's what the bill does: As of now, if you're in possession of small quantities schedule I and II substances, like heroin, cocaine, and oxycodone, you can be slapped with a felony. There doesn't need to be proof that you've ingested the drug. The drug might not even be yours. You still could be faced with a felony for your first offense. It'll be on your record forever. You'll not be able to join the military or vote. You won't be able to carry a gun. You won't be able to get a federal student loan. You won't even be able to be a janitor in a public school.

If enacted, this bill would join 14 other states to make such simple possession a Class A misdemeanor, which still can carry with it up to a year in prison and a \$10,000 fine. It's supported by the ACLU, the Department of Corrections and a bevy of defense lawyers who have long been bemoaning the havoc our drug laws has wrought.

It's also a bill that will save the state millions. The exact amount is unclear, but a preliminary fiscal note puts the savings at as much as \$14 million a year.

Each prisoner costs the state \$50,000 a year, and most of them are in for nonviolent offenses.

The budget for the Alaska Department of Corrections is over \$323 million a year, up from \$167 million a year in 2005.

Incarceration for both misdemeanor and felony drug offenses has increased by 63 percent since 2002. For felony drug offenses alone there's been an 81 percent increase.

Dyson is trying to save the state money, but he's also trying to undo some of the real damage done to people by those on his side of the aisle since 1982, when Alaska's current drug laws were enacted.

"I suspect it was those on my end of the political spectrum who wanted to posture and beat our chests and say we're going to be tough on crime at a time when lots of these drugs were getting a lot of publicity," Dyson said on the Senate floor.

"We shouldn't put you in jail as a felon if you're doing something unwise," Dyson said. "Almost all of you at some time in your life have made some mistakes," he said.

The bill now goes to the House.



April 5, 2013

The Honorable Wes Keller, Chair
The Honorable Bob Lynn, Vice-Chair
House Judiciary Committee
Alaska State House of Representatives
Juneau, AK 99801

via email: Rep.Wes.Keller@akleg.gov
Rep.Bob.Lynn@akleg.gov

AMERICAN CIVIL
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EMMA HILL, Anchorage
STUDENT ADVISOR

**Re: CS Senate Bill 56 – Adjusting the Grading
of Minor Drug Offenses
ACLU Letter of Support**

Dear Chair Keller and Vice-Chair Lynn:

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we appreciate the opportunity to provide the Committee with our review of the committee substitute of Senate Bill 56.

We would be happy to work with the Committee to answer any questions you may have.

Overview of CSSB 56 and the Drug Laws

The committee substitute for Senate Bill 56 would alter how drug offenses are categorized and punished. SB 56's most substantial effect would be to change the laws on drug possession so that most drug offense possessions would be misdemeanors, provided that the offender did not have a substantial history of drug possession offenses and did not possess more than a small amount of drugs.

The drug offense laws are written in a very elaborate way, which can be hard for a layperson to understand. While as lawmakers you are probably familiar with the structure of the statutes, a brief guide may help other readers. Most drugs are divided into a "schedule" of classifications: most opiate drugs, like heroin or oxycontin, are in Schedule IA; cocaine, most hallucinogens, and

PCP are in Schedule IIA; hashish is in Schedule IIIA; most steroids are in Schedule VA; and marijuana is in Schedule VIA. *See* AS 11.71.140–190.

The enforcement statutes, AS 11.71.010–060, define six categories of drug offenses. Each offense is called “misconduct involving a controlled substance,” (abbreviated “MICS” and pronounced like “mix”) and then labeled as in the first through sixth degrees. Those offenses range in seriousness, with MICS in the first degree being the most serious (selling heroin or cocaine to a child), and MICS in the sixth degree being the least serious (possession of a small amount of marijuana). Those offenses are further abbreviated with the number of their grading; “misconduct involving a controlled substance in the fourth degree” is thus a “MICS 4” (pronounced “mix-four”).

Currently, *any* possession of *any* amount of a Schedule IA drug or most Schedule IIA drugs are felony offenses, misconduct involving controlled substances in the fourth degree. AS 11.71.040(a)(3). Under SB 56, the basic offense of possessing a Schedule IA or Schedule IIA substance would become a misdemeanor. However, SB 56 would make *repeated* drug possession offenses a felony (where the individual has at least two prior drug convictions in the last five years). SB 56 would also allow felony charges when the individual carries more than 15 vials or tablets of a Schedule IA or IIA drug, more than 3 grams of a Schedule IA or IIA drug, or more than 300 milligrams of heroin or LSD.

Under SB 56, the remaining drug possession offenses involving Schedule IA and IIA drugs would become a misdemeanor – misconduct involving a controlled substance in the fifth degree.

Prosecuting Drug Possession as a Felony Is Expensive and Bad Public Policy

What’s the difference between a felony and a misdemeanor? About four years. Someone convicted of MICS in the fourth degree, a C felony, can be sent to prison for up to five years. AS 12.55.125(e). Someone convicted of MICS in the fifth degree, an A misdemeanor, can be sent to prison for one year. AS 12.55.135(a). Since the cost of imprisonment is running almost \$50,000 per year in Alaska, the Committee will probably be hard-pressed to think of a case, not otherwise covered by SB 56, where the State should spend a quarter-million dollars to incarcerate someone for mere possession of a small amount of drugs.

Nationwide, 18% of all felony convictions – almost one in five – in state courts in 2004 were for drug possession (not trafficking or sale).¹ In 64% of those drug possession cases, the person convicted was sentenced to a term of incarceration.² Of those convicted of a drug possession felony and sentenced to incarceration, the average sentence was 23 months.³ As a nation, we are

¹ Bureau of Justice Statistics, U.S. Dep’t of Justice, *State Court Sentencing of Convicted Felons 2005*, Table 1.1 available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04101tab.cfm>.

² *Id.*, Table 1.2, available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04102tab.cfm>.

³ *Id.*, Table 1.3, available at <http://bjs.gov/content/pub/html/scscf04/tables/scs04103tab.cfm>.

investing enormous resources and wasting the lives of many citizens trying to fight the substance abuse problem with prison time.

According to the Alaska Department of Corrections' last census, the largest number of prisoners serving time on drug offenses are those serving time on MICS 4 sentences.⁴ 168 of the 401 prisoners in custody at the time of the last prison census were serving time either on MICS 4 or attempted MICS 4 offenses.⁵ More prisoners were serving time on MICS 4 sentences than for sexual abuse of a minor in the first degree.⁶ Is that how we want to prioritize scarce and expensive criminal justice resources?

Substance abuse is a serious problem in Alaska; no one can deny that. However, the question before the committee is how we *address* the substance abuse problem, not whether it is serious or not. To date, after 40-plus years of the War on Drugs, no state has successfully incarcerated its way out of the substance abuse problem. We do not anticipate that trend changing soon.

Experts in substance abuse treatment and, increasingly, the general public see long-term incarceration of those merely possessing drugs as wasteful, ineffective public policy. Increased resources for substance abuse treatment programs, treatment courts, and public education are important, useful alternatives to trying to solve the drug problem through the prison system.

The core of our criminal justice system has long been to punish acts directly harming other people: murder, assault, rape, robbery, and kidnapping. We punish those acts most severely because they both result in serious harm to others and because they are done out of malice towards others. Those two core concepts, a bad act and a bad mindset, are the elements of a crime. We differentiate between cold-blooded murder and a death in a car accident because we think that only crimes committed with that bad mindset, that malice towards someone else, merit the most serious punishment.

Drug use certainly imposes costs on society, on others, and on families. However, that harm is *indirect*, in its secondary effects on others. *Indirect* harms are only rarely punished by the criminal justice system and rarely punished seriously. More importantly, a drug user does not take drugs specifically intending to hurt his family or disappoint his co-workers or drive up health insurance costs; while he may be aware of these effects generally and be indifferent to them, most people would agree the typical drug user does not use drugs *maliciously*.

⁴ Of course, not *all* MICS 4 offenses involve the simple possession of a Schedule IA or IIA substance, thus the numbers are probably somewhat overinclusive. On the other hand, these numbers are also underinclusive, as the statistics also do not address the large number of prisoners in custody for violating the terms of the probation or parole, who may well contain large numbers of prisoners originally arrested for minor drug offenses.

⁵ Department of Corrections, State of Alaska, 2012 Offender Profile, at 14, *available at* http://www.correct.state.ak.us/admin/docs/2012Profile07_FINAL.pdf.

⁶ *Id.* at 14, 17.

Instead, drug possession laws were enacted with harsh penalties because many people believed that harsh penalties would deter people from using drugs. Forty years later, history has answered that question with a resounding “no.” Harsh drug possession penalties have not been effective in keeping people from using drugs, and virtually no expert in the field of substance abuse would claim that harsh criminal penalties for drug possession has been effective.

In Alaska, we have a terrible substance abuse problem, despite the fact that we’ve been treating simple drug possession as a felony since the 1980’s. If we keep doing exactly what we’ve been doing, we should probably expect the same results to continue. Bills like SB 56 that cut correctional costs and make room for better and more effective treatment of substance abuse problems are part of the way to change things for the better.

Building more jails isn’t going to make anybody sober.

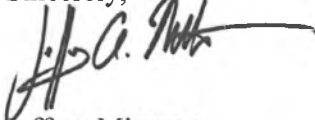
Conclusion

We hope that the House Judiciary Committee will note our support for SB 56.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions that Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Neal Foster, Rep.Neal.Foster@akleg.gov
Representative Gabrielle LeDoux, Rep.Gabrielle.LeDoux@akleg.gov
Representative Charisse Millett, Rep.Charisse.Millett@akleg.gov
Representative Lance Pruitt, Rep.Lance.Pruitt@akleg.gov
Representative Max Gruenberg, Rep.Max.Gruenberg@akleg.gov
Sponsor, Fred Dyson, Senator.Fred.Dyson@akleg.gov

April 03, 2013
Sen. Fred Dyson
SB 56

Senator Dyson,

I applaud someone taking the initiative to address a DOC that is bursting at the seams due to incarceration of non-violent criminals. The re-classification of certain crimes will enhance Corrections ability to focus on those individuals truly in need of incarceration and lesson the burden to the taxpayer. An additional step now utilized by most states is an expunction statute which allows felons that have not committed physical violent crimes to have their records expunged.

In doing so, there is a dramatic reduction in recidivism by these felons who are now enabled to secure work and not hindered by their non-violent felony record. The selection of those who would be applicable to expunction of course would be for non-physical violent first time felons that have successfully completed probation and have no re-occurring criminal issues. This often targets individuals that have no history of criminal activity and had a one-time error in judgment that will most likely never be repeated.

If interested, you might look at the State of Oregon's expunction statute given; it is within the same Supreme Court judicial district. I wish you luck in your endeavor.

Sincerely,

Mike Moore
Retired Law Enforcement & Corrections Officer

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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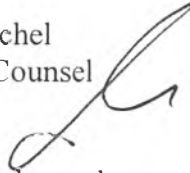
MEMORANDUM

April 9, 2013

SUBJECT: Meaning of the term "verify" -- CSHB 54(HSS)
(Work Order No. 28-LS0202\I)

TO: Representative Les Gara

FROM: Jean M. Mischel
Legislative Counsel



You have asked for an opinion about the meaning of the term "verify" as used in section 1 of the above-referenced bill. That section requires a supervisor to verify, in writing, that due diligence was conducted as described in the bill to locate specified family members of a foster child.

The term is undefined in the bill so if a court is asked to determine its meaning for any reason, a court would look to the context and common usage of the word.¹ In context, to "verify" appears to be an unambiguous reference to some form of confirmation by a supervisor of the actions taken to meet the statutory mandate of due diligence.

Black's Law Dictionary, eighth edition, defines "verify" as follows:

1. To prove to be true; to confirm or establish the truth or truthfulness of; to authenticate. 2. To confirm or substantiate by oath or affidavit; to swear to the truth of.

In the context of the bill, a supervisor would add to the written record involving the child that the supervisor has confirmed in some way the caseworker efforts, by, for example, reviewing the case notes, contacting a family member, or witnessing an interaction. It's possible that a court may, however, interpret the verification required under HB 54 to require a signature under oath but the bill does not expressly require that.

If I may be of further assistance, please advise.

JMM:lnd
13-234.lnd

¹ AS 09.63.040 describes verification for purposes of document production, which does not directly apply to HB 54.

42 U.S.C. 671(a)(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that--

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) [42 USCS § 673(d)] to receive the payments;

Lila Hobbs

From: Lawton, Christy (HSS) <christy.lawton@alaska.gov>
Sent: Tuesday, April 09, 2013 9:51 AM
To: Rep. Les Gara
Cc: Harris, Naomi E (HSS); Laughlin, Wilda J (HSS); Toby Smith
Subject: FW: Partial answer to question from last night for today's 1 pm hearing
Attachments: 42 U.S.C.671(a)(29).pdf

Importance: High

Representative Gara- per your request to gain clarity about the OCS policy and practice around non-custodial parents, here is a summary.

In Alaska, all parents who have not had their parental rights terminated whose child is the subject to the *Child in Need of Aid* (CINA) proceedings must be notified regardless of their presumed fitness or presence of domestic violence (DV). That notification however, does not include a physical address of the child or that of the other parent. It does include information about their rights under the law, upcoming court dates, and what to expect in working with OCS moving forward.

The Department does however in cases of domestic violence strive to take into consideration the dynamics that may be at play and may at times, with or without the presence of a TRO, conduct meetings or hearings in a way that does not have the alleged perpetrator and victim in the same room at the same time. Additional efforts to safeguard information about the child's location and the mother's as well when DV or other factors are present when it may compromise their safety are also taken on a case by case basis. The petition that is filed for custody most often simply indicate the child's location as "licensed foster care" in lieu of stating the actual address.

Although, we are required to notify the non-custodial parents of the assumption of custody, we aren't required to place or provide visitation if our assessment indicates this would be contrary to the child's safety or well-being. In extreme cases of DV or abuse, the law provides OCS the ability to expedite proceedings to terminate parental rights and seek court orders to end the requirement of OCS to provide reasonable efforts to said parent.

I hope this provides the clarity needed. Give me a call if you further information is needed as I am in the office all week.

Christy
451-2096

From: Rep. Les Gara
Sent: Tuesday, April 09, 2013 8:17 AM
To: Harris, Naomi E (HSS) (naomi.harris@alaska.gov); FFCA Facing Foster Care in Alaska (facing_fostercare@yahoo.com); toby.smith@legis.state.ak.us; Rep. Max Gruenberg; Miles Brookes
Subject: Partial answer to question from last night for today's 1 pm hearing
Importance: High

Miles Brookes

From: Toby Smith
Sent: Tuesday, April 09, 2013 12:21 PM
To: Rep. Max Gruenberg; Miles Brookes
Subject: FW: Partial answer to question from last night for today's 1 pm hearing
Attachments: 42 U.S.C.671(a)(29).pdf

Importance: High

I believe the email below addresses Rep. Gruenberg's question that he raised yesterday in Judiciary about HB54. Please let me know if there are additional concerns.

Toby Smith
Legislative Aide for Representative Les Gara
(907) 465-2647

From: Lawton, Christy (HSS) [<mailto:christy.lawton@alaska.gov>]
Sent: Tuesday, April 09, 2013 9:51 AM
To: Rep. Les Gara
Cc: Harris, Naomi E (HSS); Laughlin, Wilda J (HSS); Toby Smith
Subject: FW: Partial answer to question from last night for today's 1 pm hearing
Importance: High

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Christy
451-2096

From: Rep. Les Gara
Sent: Tuesday, April 09, 2013 8:17 AM
To: Harris, Naomi E (HSS) (naomi.harris@alaska.gov); FFCA Facing Foster Care in Alaska (facing_fostercare@yahoo.com); toby.smith@legis.state.ak.us; Rep. Max Gruenberg; Miles Brookes
Subject: Partial answer to question from last night for today's 1 pm hearing
Importance: High

Hi Naomi. Yesterday's question, which came out of left field and that we e-mailed you about – is partially answered by the attached memo from Legislative legal. The question, which has nothing to do with our bill is this – if you have a parent whose rights have not been terminated, but who isn't a custodial parent and is dangerous, do they have to get notification when a child is put up for foster care (because we have to notify family members and friends of family in seeking possible forster parents).

Federal law says you don't have to notify a family member if there is family or domestic violence.

Is that the same rule used by OCS? Does OCS have a different fule? The federal statute is attached.

Thanks! We really need a written answer ASAP before our 1 pm hearing. Les

From: LAA Legal
Sent: Tuesday, April 09, 2013 8:07 AM
To: Rep. Les Gara
Subject:
Importance: High

Representative Gara,
Jean Mischel asked that I e-mail you the attached.
MaryEllen

MaryEllen Duffy
Special Assistant
LAA Legal Services
907-465-6651 direct
907-465-2029 fax
MaryEllen.Duffy@akleg.gov

Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.

42 U.S.C. 671(a)(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that--

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) [42 USCS § 673(d)] to receive the payments;