

11831 SENATE JUDICIARY

SB

20

SENATE COMMITTEE REPORT

DATE RETURNED: 4/20/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 20

SB 20 OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____


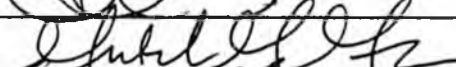
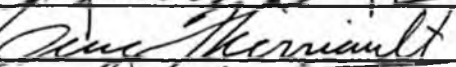
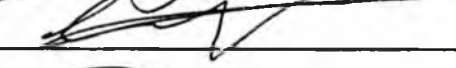
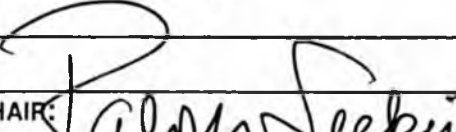
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
				X
				X
	X			
	X			
CHAIR: 	✓			

AMENDMENT #1

OFFERED IN THE SENATE
TO: CSSB 20(JUD)

BY SENATOR FRENCH

Failed

1 Page 1, following line 2:

2 Insert a bill section to read:

3 **** Section 1.** The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 LEGISLATIVE INTENT. Nothing in this Act is intended to grant personhood status
6 to an unborn child, as defined in sec. 6 of this Act, or to create any other legal basis for a
7 challenge to the U.S. Supreme Court's holding in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705,
8 35 L.Ed.2d 147 (1973)."

9

10 Page 1, line 3:

11 Delete "**Section 1**"

12 Insert "**Sec. 2**"

13

14 Renumber the following bill sections accordingly.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

AMENDMENT #1

OFFERED IN THE SENATE
TO: CSSB 20(JUD)

BY SENATOR FRENCH

Failed

1 Page 1, following line 2:

2 Insert a bill section to read:

3 **"* Section 1.** The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 **LEGISLATIVE INTENT.** Nothing in this Act is intended to grant personhood status
6 to an unborn child, as defined in sec. 6 of this Act, or to create any other legal basis for a
7 challenge to the U.S. Supreme Court's holding in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705,
8 35 L.Ed.2d 147 (1973)."

9

10 Page 1, line 3:

11 Delete **"Section 1"**

12 Insert **"Sec. 2"**

13

14 Renumber the following bill sections accordingly.

AMENDMENT #2

Adopted

OFFERED IN THE SENATE
TO: CSSB 20(JUD)

1 Page 2, line 7, following "life":

2 Insert "; for purposes of this paragraph, a pregnant woman's decision to remain in a
3 relationship in which domestic violence as defined in AS 18.66.990 has occurred does not, by
4 itself, constitute conduct manifesting an extreme indifference to the value of human life"

6 Page 3, line 13, following "life":

7 Insert "; for purposes of this paragraph, a pregnant woman's decision to remain in a
8 relationship in which domestic violence as defined in AS 18.66.990 has occurred does not, by
9 itself, constitute conduct manifesting extreme indifference to the value of human life"

SENATE COMMITTEE REPORT

DATE: 3/16/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 20

SB 20 OFFENSES AGAINST UNBORN CHILDREN

"An Act relating to offenses against unborn children."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	x			
<i>[Signature]</i>	x			
<i>[Signature]</i>			x	
CHAIR: <i>[Signature]</i>	✓			

24-LS0197P
Crawford
4/14/05

CS FOR SENATE BILL NO. 20(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

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

3 *** Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
5 crime of murder of an unborn child if the person

6 (1) with intent to cause the death of an unborn child or of another
7 person, causes the death of an unborn child;

8 (2) with intent to cause serious physical injury to an unborn child or to
9 another person or knowing that the conduct is substantially certain to cause death or
10 serious physical injury to an unborn child or to another person, causes the death of an
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled
2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn
6 child under circumstances manifesting an extreme indifference to the value of human
7 life.

8 (b) A person may not be convicted under (a)(3) of this section if the only
9 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
10 and the unborn child killed is the intended victim of the defendant. However, if the
11 defendant causes the death of another unborn child, the defendant may be convicted
12 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
13 conviction of murder in the first degree or murder in the second degree, murder of an
14 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

15 (c) Murder of an unborn child is an unclassified felony.

16 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
17 the crime of manslaughter of an unborn child if, under circumstances not amounting to
18 murder of an unborn child, the person

19 (1) intentionally or knowingly causes the death of an unborn child; or

20 (2) recklessly causes the death of an unborn child by means of a
21 dangerous instrument.

22 (b) Manslaughter of an unborn child is a class A felony.

23 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
24 person commits the crime of criminally negligent homicide of an unborn child if, with
25 criminal negligence, the person causes the death of an unborn child by means of a
26 dangerous instrument.

27 (b) Criminally negligent homicide of an unborn child is a class B felony.

28 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
29 11.41.170 do not apply to acts that

30 (1) cause the death of an unborn child if those acts were committed
31 during a legal abortion to which the pregnant woman consented or a person authorized

1 by law to act on her behalf consented, or for which such consent is implied by law; or

2 (2) are committed under usual and customary standards of medical
3 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

4 * Sec. 2. AS 11.41 is amended by adding new sections to article 2 to read:

5 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A
6 person commits the crime of assault of an unborn child in the first degree if

7 (1) that person recklessly causes serious physical injury to an unborn
8 child by means of a dangerous instrument;

9 (2) with intent to cause serious physical injury to an unborn child or to
10 another person, that person causes serious physical injury to an unborn child;

11 (3) that person knowingly engages in conduct that results in serious
12 physical injury to an unborn child under circumstances manifesting extreme
13 indifference to the value of human life; or

14 (4) that person recklessly causes serious physical injury to an unborn
15 child by repeated assaults using a dangerous instrument, even if each assault
16 individually does not cause serious physical injury.

17 (b) Assault of an unborn child in the first degree is a class A felony.

18 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A
19 person commits the crime of assault of an unborn child in the second degree if

20 (1) with intent to cause physical injury to an unborn child or to another
21 person, that person causes serious physical injury to an unborn child; or

22 (2) that person recklessly causes serious physical injury to an unborn
23 child by repeated assaults, even if each assault individually does not cause serious
24 physical injury.

25 (b) Assault of an unborn child in the second degree is a class B felony.

26 **Sec. 11.41.289. Applicability of and definitions for AS 11.41.280 and**
27 **11.41.282.** (a) AS 11.41.280 and 11.41.282 do not apply to acts that

28 (1) cause serious physical injury or physical injury to an unborn child
29 if those acts were committed during a legal abortion to which the pregnant woman
30 consented or a person authorized by law to act on her behalf consented, or for which
31 consent is implied by law; or

1 (2) are committed under usual and customary standards of medical
2 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

3 (b) In AS 11.41.280 and 11.41.282, "serious physical injury" has the meaning
4 given in AS 11.81.900 and includes physical injury that results in, except for a
5 multiple birth, the birth of a child before 37 weeks gestation if the child weighs 2,500
6 grams or less at the time of birth.

7 * Sec. 3. AS 11.81.250(a) is amended to read:

8 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
9 title, except murder in the first and second degree, attempted murder in the first
10 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
11 in the first degree, murder of an unborn child, sexual assault in the first degree,
12 sexual abuse of a minor in the first degree, misconduct involving a controlled
13 substance in the first degree, and kidnapping, are classified on the basis of their
14 seriousness, according to the type of injury characteristically caused or risked by
15 commission of the offense and the culpability of the offender. Except for murder in
16 the first and second degree, attempted murder in the first degree, solicitation to
17 commit murder in the first degree, conspiracy to commit murder in the first degree,
18 murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor
19 in the first degree, misconduct involving a controlled substance in the first degree, and
20 kidnapping, the offenses in this title are classified into the following categories:

21 (1) class A felonies, which characteristically involve conduct resulting
22 in serious physical injury or a substantial risk of serious physical injury to a person;

23 (2) class B felonies, which characteristically involve conduct resulting
24 in less severe violence against a person than class A felonies, aggravated offenses
25 against property interests, or aggravated offenses against public administration or
26 order;

27 (3) class C felonies, which characteristically involve conduct serious
28 enough to deserve felony classification but not serious enough to be classified as A or
29 B felonies;

30 (4) class A misdemeanors, which characteristically involve less severe
31 violence against a person, less serious offenses against property interests, less serious

1 offenses against public administration or order, or less serious offenses against public
2 health and decency than felonies;

3 (5) class B misdemeanors, which characteristically involve a minor
4 risk of physical injury to a person, minor offenses against property interests, minor
5 offenses against public administration or order, or minor offenses against public health
6 and decency;

7 (6) violations, which characteristically involve conduct inappropriate
8 to an orderly society but which do not denote criminality in their commission.

9 * Sec. 4. AS 11.81.250(b) is amended to read:

10 (b) The classification of each felony defined in this title, except murder in the
11 first and second degree, attempted murder in the first degree, solicitation to commit
12 murder in the first degree, conspiracy to commit murder in the first degree, murder of
13 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
14 degree, misconduct involving a controlled substance in the first degree, and
15 kidnapping, is designated in the section defining it. A felony under Alaska law
16 defined outside this title for which no penalty is specifically provided is a class C
17 felony.

18 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

19 (64) "unborn child" means a member of the species Homo sapiens, at
20 any stage of development, who is carried in the womb.

21 * Sec. 6. AS 12.55.035(b) is amended to read:

22 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a
23 defendant who is not an organization may be sentenced to pay, unless otherwise
24 specified in the provision of law defining the offense, a fine of no more than

25 (1) \$500,000 for murder in the first or second degree, attempted
26 murder in the first degree, murder of an unborn child, sexual assault in the first
27 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct
28 involving a controlled substance in the first degree;

29 (2) \$250,000 for a class A felony;

30 (3) \$100,000 for a class B felony;

31 (4) \$50,000 for a class C felony;

1 (5) \$10,000 for a class A misdemeanor;

2 (6) \$2,000 for a class B misdemeanor;

3 (7) \$500 for a violation.

4 * Sec. 7. AS 12.55.125(a) is amended to read:

5 (a) A defendant convicted of murder in the first degree or murder of an
6 unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of
7 imprisonment of at least 20 years but not more than 99 years. A defendant convicted
8 of murder in the first degree shall be sentenced to a mandatory term of imprisonment
9 of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee who
12 was engaged in the performance of official duties at the time of the murder;

13 (2) the defendant has been previously convicted of

14 (A) murder in the first degree under AS 11.41.100 or former
15 AS 11.15.010 or 11.15.020;

16 (B) murder in the second degree under AS 11.41.110 or former
17 AS 11.15.030; or

18 (C) homicide under the laws of another jurisdiction when the
19 offense of which the defendant was convicted contains elements similar to first
20 degree murder under AS 11.41.100 or second degree murder under
21 AS 11.41.110;

22 (3) the court finds by clear and convincing evidence that the defendant
23 subjected the murder victim to substantial physical torture; or

24 (4) the defendant is convicted of the murder of and personally caused
25 the death of a person, other than a participant, during a robbery.

26 * Sec. 8. AS 12.55.125(b) is amended to read:

27 (b) A defendant convicted of attempted murder in the first degree, solicitation
28 to commit murder in the first degree, conspiracy to commit murder in the first degree,
29 kidnapping, or misconduct involving a controlled substance in the first degree shall be
30 sentenced to a definite term of imprisonment of at least five years but not more than
31 99 years. A defendant convicted of murder in the second degree or murder of an

1 unborn child under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of
2 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
3 of murder in the second degree shall be sentenced to a definite term of imprisonment
4 of at least 20 years but not more than 99 years when the defendant is convicted of the
5 murder of a child under 16 years of age and the court finds by clear and convincing
6 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a
7 legal guardian, or a person occupying a position of authority in relation to the child; or
8 (2) caused the death of the child by committing a crime against a person under
9 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of
10 authority" have the meanings given in AS 11.41.470.

Sen Seelcius

(From Sen Green Staff)
(Kim is a prosecutor)

Premature birth weight

(1)

still have to show
reckless



+

(2)

dangerous instrument



low birth weight is
merely the symptom
you have to prove the
criminal causation

based on mental state (reckless)
and the weapon (dangerous instrument)

low birth weight
w/o (1) + (2) is not
a crime

AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 20(STA)

BY SENATOR FRENCH

1 Page 1, line 1:

2 Delete all material and insert:

3 "An Act enhancing penalties for crimes committed against pregnant women."
4

5 Page 1, line 3 through page 7, line 8:

6 Delete all material and insert:

7 **** Section 1.** AS 11 is amended by adding a new chapter to read:

8 **Chapter 32. Enhanced Penalties.**

9 **Sec. 11.32.100. Penalties for crimes committed against pregnant women.**

10 (a) Notwithstanding another provision of this title or AS 12, if a person commits a
11 crime defined in this title against a pregnant woman who the person knew or should
12 have known to be pregnant that results in a miscarriage or stillbirth, the crime shall be
13 punished in the following manner:

14 (1) a crime defined as murder in the first degree under AS 11.41.100
15 shall be punished by a sentence of 30 - 99 years;

16 (2) a crime defined as murder in the second degree under
17 AS 11.41.110 shall be punished by a sentence of 20 - 99 years;

18 (3) a crime defined in this title as a class A felony shall be punished as
19 an unclassified felony in the manner provided for unclassified felonies in
20 AS 12.55.125;

21 (4) a crime defined in this title as a class B felony shall be punished as
22 a class A felony in the manner provided for class A felonies in AS 12.55.125;

23 (5) a crime defined in this title as a class C felony shall be punished as

1 a class B felony in the manner provided for class B felonies in AS 12.55.125;

2 (6) a crime defined in this title as a class A misdemeanor shall be
3 punished as a class C felony in the manner provided for class C felonies in
4 AS 12.55.125;

5 (7) a crime defined in this title as a class B misdemeanor shall be
6 punished as a class A misdemeanor in the manner provided for class A misdemeanors
7 in AS 12.55.135.

8 (b) The penalties in (a) of this section do not apply to acts committed

9 (1) during a legal abortion to which the pregnant woman, or a person
10 authorized by law to act on the pregnant woman's behalf, consented;

11 (2) during any medical treatment of the pregnant woman or the fetus;
12 or

13 (3) by a pregnant woman against herself.

14 (c) In this section,

15 (1) "miscarriage" means the interruption of the normal development of
16 the fetus, other than by a live birth or by an induced abortion, resulting in the complete
17 expulsion or extraction of the fetus from a pregnant woman;

18 (2) "stillbirth" means the death of a fetus before the complete
19 expulsion or extraction from a woman, other than by an induced abortion, irrespective
20 of the duration of the pregnancy.

21 * Sec. 2. AS 12.55.125(a) is amended to read:

22 (a) A defendant convicted of murder in the first degree shall be sentenced to a
23 definite term of imprisonment of at least 20 years but not more than 99 years. A
24 defendant convicted of murder in the first degree enhanced under
25 AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at
26 least 30 years but not more than 99 years. A defendant convicted of murder in the
27 first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

28 (1) the defendant is convicted of the murder of a uniformed or
29 otherwise clearly identified peace officer, fire fighter, or correctional employee who
30 was engaged in the performance of official duties at the time of the murder;

31 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110;

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture; or

11 (4) the defendant is convicted of the murder of and personally caused
12 the death of a person, other than a participant, during a robbery.

13 * Sec. 3. AS 12.55.125(b) is amended to read:

14 (b) A defendant convicted of attempted murder in the first degree, solicitation
15 to commit murder in the first degree, conspiracy to commit murder in the first degree,
16 kidnapping, or misconduct involving a controlled substance in the first degree shall be
17 sentenced to a definite term of imprisonment of at least five years but not more than
18 99 years. A defendant convicted of murder in the second degree or a class A felony
19 enhanced under AS 11.32.100(a)(3) shall be sentenced to a definite term of
20 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
21 of murder in the second degree shall be sentenced to a definite term of imprisonment
22 of at least 20 years but not more than 99 years when the sentence is enhanced under
23 AS 11.32.100(a)(2) or when the defendant is convicted of the murder of a child under
24 16 years of age and the court finds by clear and convincing evidence that the
25 defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or
26 a person occupying a position of authority in relation to the child; or (2) caused the
27 death of the child by committing a crime against a person under AS 11.41.200 -
28 11.41.530. In this subsection, "legal guardian" and "position of authority" have the
29 meanings given in AS 11.41.470.

30 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a)
2 and (b), as amended by secs. 2 and 3 of this Act, apply to crimes committed on or after the
3 effective date of this Act."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3.01

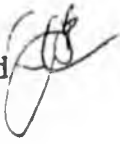
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 8, 2005

SUBJECT: CSSB 20(JUD) (Work Order No. 24-LS0197C)

TO: Senator Ralph Seekins
Attn: Brian Hove

FROM: James P. Crawford 
Assistant Revisor

Accompanying this memo is the requested committee substitute for SB 20.

Some definitional issues:

The definitions section for title 11, which is where these crimes are found, is AS 11.81.900.

In this version of the bill, the "recklessly" mental element of the manslaughter crime is being tied to use of a "dangerous instrument." The definition of "dangerous instrument" has not been augmented to include use of hands, feet, and other potentially dangerous parts of the body. Currently, 11.81.900(b)(15) defines "dangerous instrument" as "any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury." (Emphasis added). In light of this definition, separate reference to hands, feet or other bodily parts as they may be used to cause death is unnecessary.

I removed the reference to AS 11.71 from the term "controlled substance." AS 11.81.900(b)(8) states that "'controlled substance' has the meaning ascribed to it in AS 11.71.900(4)." Thus, the reference to AS 11.71 is unnecessary.¹

The material that was added to the definitions section for the assault crimes includes the terms "addicted," "clear indication," "fetal alcohol syndrome," and "health care professional." These terms are not defined in the bill or in AS 11.81.900. The Department of Law, through the district attorneys, will be the governmental entity responsible for prosecuting violations of these statutes. Because these terms originated with the Department itself, they are probably fine. Obviously, it is impractical to define each and every term in every statute, and all judges have legal dictionaries, cases,

¹ For its part, AS 11.71.900(4) provides that "'controlled substance' means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190."

Senator Ralph Seekins
April 8, 2005
Page 2

criminal treatises, and other reference works to assist in fleshing out the meaning of a statute.

However, if any of these terms are found to be ambiguous during a criminal proceeding, the general rule of construction relating to penal statutes is that the ambiguous term will be construed in favor of the defendant. Wurthmann v. State, 27 P.3d 762, 766 (Alaska App. 2001); 3 C. Sands, *Sutherland's Statutory Construction*, sec. 59.03 at 6-8 (4th ed. 1974). Of course, if that is consistent with your intent (or at least not inconsistent), there is no problem.

Miscellaneous Clean Up:

Both the murder and the assault section have applicability sections. In the assault applicability section, I took the liberty of changing the phrase "a pregnant woman" to "the pregnant woman" on page 3, line 31 so that it would mirror the phrase "the pregnant woman" in the murder applicability section on page 2, line 31.

JPC:med
05-241.med

Enclosure

24-LS0197C
Crawford
4/8/05

CS FOR SENATE BILL NO. 20(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

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

3 *** Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
5 crime of murder of an unborn child if the person

6 (1) with intent to cause the death of an unborn child or of another
7 person, causes the death of an unborn child;

8 (2) with intent to cause serious physical injury to an unborn child or to
9 another person or knowing that the conduct is substantially certain to cause death or
10 serious physical injury to an unborn child or to another person, causes the death of an
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled
2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn
6 child under circumstances manifesting an extreme indifference to the value of human
7 life.

8 (b) A person may not be convicted under (a)(3) of this section if the only
9 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
10 and the unborn child killed is the intended victim of the defendant. However, if the
11 defendant causes the death of another unborn child, the defendant may be convicted
12 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
13 conviction of murder in the first degree or murder in the second degree, murder of an
14 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

15 (c) Murder of an unborn child is an unclassified felony.

16 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
17 the crime of manslaughter of an unborn child if, under circumstances not amounting to
18 murder of an unborn child, the person

19 (1) intentionally or knowingly causes the death of an unborn child; or

20 (2) recklessly causes the death of an unborn child by means of a
21 dangerous instrument.

22 (b) Manslaughter of an unborn child is a class A felony.

23 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
24 person commits the crime of criminally negligent homicide of an unborn child if, with
25 criminal negligence, the person causes the death of an unborn child by means of a
26 dangerous instrument.

27 (b) Criminally negligent homicide of an unborn child is a class B felony.

28 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
29 11.41.170 do not apply to acts that

30 (1) cause the death of an unborn child if those acts were committed
31 during a legal abortion to which the pregnant woman consented or a person authorized

1 by law to act on her behalf consented, or for which such consent is implied by law; or

2 (2) are committed under usual and customary standards of medical
3 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

4 * Sec. 2. AS 11.41 is amended by adding new sections to article 2 to read:

5 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A
6 person commits the crime of assault of an unborn child in the first degree if

7 (1) that person recklessly causes serious physical injury to an unborn
8 child by means of a dangerous instrument;

9 (2) with intent to cause serious physical injury to an unborn child or to
10 another person, that person causes serious physical injury to an unborn child;

11 (3) that person knowingly engages in conduct that results in serious
12 physical injury to an unborn child under circumstances manifesting extreme
13 indifference to the value of human life; or

14 (4) that person recklessly causes serious physical injury to an unborn
15 child by repeated assaults using a dangerous instrument, even if each assault
16 individually does not cause serious physical injury.

17 (b) Assault of an unborn child in the first degree is a class A felony.

18 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A
19 person commits the crime of assault of an unborn child in the second degree if

20 (1) with intent to cause physical injury to an unborn child or to another
21 person, that person causes serious physical injury to an unborn child;

22 (2) that person recklessly causes serious physical injury to an unborn
23 child; or

24 (3) that person recklessly causes serious physical injury to an unborn
25 child by repeated assaults, even if each assault individually does not cause serious
26 physical injury.

27 (b) Assault of an unborn child in the second degree is a class B felony.

28 **Sec. 11.41.289. Applicability of and definitions for AS 11.41.280 and**
29 **11.41.282.** (a) AS 11.41.280 and 11.41.282 do not apply to acts that

30 (1) cause serious physical injury or physical injury to an unborn child
31 if those acts were committed during a legal abortion to which the pregnant woman

1 consented or a person authorized by law to act on her behalf consented, or for which
2 consent is implied by law; or

3 (2) are committed under usual and customary standards of medical
4 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

5 (b) In AS 11.41.280 and 11.41.282, "serious physical injury" has the meaning
6 given in AS 11.81.900 and includes *additionally*

7 (1) except for a multiple birth, the birth of an unborn child before 37
8 weeks gestation if the child weighs 2,500 grams or less at the time of birth;

9 (2) the birth of an unborn child with any amount of a controlled
10 substance in the child's blood, unless the substance was prescribed to the mother by a
11 health care professional;

12 (3) the birth of an unborn child if the child is born addicted to a
13 controlled substance; ~~and~~ *or*

14 (4) the birth of an unborn child with alcohol in the child's blood ~~or~~ *and*
15 with a clear indication of fetal alcohol syndrome.

16 * Sec. 3. AS 11.81.250(a) is amended to read:

17 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
18 title, except murder in the first and second degree, attempted murder in the first
19 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
20 in the first degree, murder of an unborn child, sexual assault in the first degree,
21 sexual abuse of a minor in the first degree, misconduct involving a controlled
22 substance in the first degree, and kidnapping, are classified on the basis of their
23 seriousness, according to the type of injury characteristically caused or risked by
24 commission of the offense and the culpability of the offender. Except for murder in
25 the first and second degree, attempted murder in the first degree, solicitation to
26 commit murder in the first degree, conspiracy to commit murder in the first degree,
27 murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor
28 in the first degree, misconduct involving a controlled substance in the first degree, and
29 kidnapping, the offenses in this title are classified into the following categories:

30 (1) class A felonies, which characteristically involve conduct resulting
31 in serious physical injury or a substantial risk of serious physical injury to a person;

1 (2) class B felonies, which characteristically involve conduct resulting
2 in less severe violence against a person than class A felonies, aggravated offenses
3 against property interests, or aggravated offenses against public administration or
4 order;

5 (3) class C felonies, which characteristically involve conduct serious
6 enough to deserve felony classification but not serious enough to be classified as A or
7 B felonies;

8 (4) class A misdemeanors, which characteristically involve less severe
9 violence against a person, less serious offenses against property interests, less serious
10 offenses against public administration or order, or less serious offenses against public
11 health and decency than felonies;

12 (5) class B misdemeanors, which characteristically involve a minor
13 risk of physical injury to a person, minor offenses against property interests, minor
14 offenses against public administration or order, or minor offenses against public health
15 and decency;

16 (6) violations, which characteristically involve conduct inappropriate
17 to an orderly society but which do not denote criminality in their commission.

18 * Sec. 4. AS 11.81.250(b) is amended to read:

19 (b) The classification of each felony defined in this title, except murder in the
20 first and second degree, attempted murder in the first degree, solicitation to commit
21 murder in the first degree, conspiracy to commit murder in the first degree, murder of
22 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
23 degree, misconduct involving a controlled substance in the first degree, and
24 kidnapping, is designated in the section defining it. A felony under Alaska law
25 defined outside this title for which no penalty is specifically provided is a class C
26 felony.

27 * Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

28 (64) "unborn child" means a member of the species Homo sapiens, at
29 any stage of development, who is carried in the womb.

30 * Sec. 6. AS 12.55.035(b) is amended to read:

31 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a

1 defendant who is not an organization may be sentenced to pay, unless otherwise
2 specified in the provision of law defining the offense, a fine of no more than

3 (1) \$500,000 for murder in the first or second degree, attempted
4 murder in the first degree, murder of an unborn child, sexual assault in the first
5 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct
6 involving a controlled substance in the first degree;

7 (2) \$250,000 for a class A felony;

8 (3) \$100,000 for a class B felony;

9 (4) \$50,000 for a class C felony;

10 (5) \$10,000 for a class A misdemeanor;

11 (6) \$2,000 for a class B misdemeanor;

12 (7) \$500 for a violation.

13 * Sec. 7. AS 12.55.125(a) is amended to read:

14 (a) A defendant convicted of murder in the first degree or murder of an
15 unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of
16 imprisonment of at least 20 years but not more than 99 years. A defendant convicted
17 of murder in the first degree shall be sentenced to a mandatory term of imprisonment
18 of 99 years when

19 (1) the defendant is convicted of the murder of a uniformed or
20 otherwise clearly identified peace officer, fire fighter, or correctional employee who
21 was engaged in the performance of official duties at the time of the murder;

22 (2) the defendant has been previously convicted of

23 (A) murder in the first degree under AS 11.41.100 or former
24 AS 11.15.010 or 11.15.020;

25 (B) murder in the second degree under AS 11.41.110 or former
26 AS 11.15.030; or

27 (C) homicide under the laws of another jurisdiction when the
28 offense of which the defendant was convicted contains elements similar to first
29 degree murder under AS 11.41.100 or second degree murder under
30 AS 11.41.110;

31 (3) the court finds by clear and convincing evidence that the defendant

1 subjected the murder victim to substantial physical torture; or

2 (4) the defendant is convicted of the murder of and personally caused
3 the death of a person, other than a participant, during a robbery.

4 * **Sec. 8.** AS 12.55.125(b) is amended to read:

5 (b) A defendant convicted of attempted murder in the first degree, solicitation
6 to commit murder in the first degree, conspiracy to commit murder in the first degree,
7 kidnapping, or misconduct involving a controlled substance in the first degree shall be
8 sentenced to a definite term of imprisonment of at least five years but not more than
9 99 years. A defendant convicted of murder in the second degree or murder of an
10 unborn child under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of
11 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
12 of murder in the second degree shall be sentenced to a definite term of imprisonment
13 of at least 20 years but not more than 99 years when the defendant is convicted of the
14 murder of a child under 16 years of age and the court finds by clear and convincing
15 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a
16 legal guardian, or a person occupying a position of authority in relation to the child; or
17 (2) caused the death of the child by committing a crime against a person under
18 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of
19 authority" have the meanings given in AS 11.41.470.



SENATOR FRED DYSON

SPONSOR STATEMENT

SB 20—*"An Act relating to offenses against unborn children."*

In recent years, several high-profile cases from across the nation have highlighted the need for laws protecting unborn victims of criminal violence. Perhaps, most notably, the tragic deaths of Laci and Conner Peterson have focused much-needed attention on this critically important issue. Currently, thirty states provide some degree of protection for unborn victims of violence. Many legal challenges have been brought against state unborn victims laws, based on Roe and other constitutional arguments, but state and federal courts have rejected all such challenges.

Recently, a publicized case in Michigan has the citizens of the state closely evaluating Michigan laws and the related ethical implications. A 16 year old, who was entitled to get a legal abortion, had her boyfriend beat her stomach with a miniature baseball bat over the course of three weeks until she miscarried the baby. A similar scenario is playing out in the State of Texas.

SB 20 amends the Alaska Criminal Code to afford protection to an unborn child at a level that is reasonably equivalent to protection afforded to live born persons in comparable circumstances. Nothing in this law shall apply to legal abortion or to usual and customary medical practice related to pregnancy. This bill also defines "unborn child" within the criminal statutes.

In 2004, the U.S. Congress passed the Unborn Victims of Violence Act, and President Bush subsequently signed the bill into law. This federal law recognizes that when a person attacks a pregnant woman, and injures or kills her unborn child, the attacker has harmed two victims. It is narrowly drafted in that it only applies when death or injury of an unborn child is the result of a federal crime. The federal act does not supersede state unborn victim laws, nor does it impose such a state law on a state, like Alaska, that has not yet acted.

Pregnant women who have been harmed by violence, and their families, know that there are two victims -- the mother and the unborn child -- and that both victims should be protected by law. Pregnant women are already protected by Alaska Criminal Code. SB 20 affords similar protection to unborn victims.

Updated 3/17/05

Section 1: A new section:

- 11.41.150 Defines Murder of an unborn child that contains the elements of criminal code applicable to First and Second Degree murder. Murder of an unborn child is established as an unclassified felony.
- 11.41.160 Defines Manslaughter of an unborn child and establishes it as a Class A felony.
- 11.41.170 Defines Criminally negligent homicide of an unborn child and establishes it as a Class B felony.
- 11.41.180 Exempts the applicability of this Section to any action taken against an unborn child that is otherwise legal.

Section 2: A new section:

- 11.41.280 Defines Assault of an unborn child in the first degree and establishes it as a Class A felony.
- 11.41.282 Defines Assault of an unborn child in the second degree and defines it as a Class B felony.
- 11.41.289 Exempts applicability of this Section to any action taken against an unborn child that is otherwise legal.

Section 3: Amends AS 11.81.250(a) to include "Murder of an unborn child" in the list of other serious crimes that are considered unclassified for purposes of sentencing.

Section 4: Amends AS 11.81.250(b) to include "Murder of an unborn child" in the list of other serious unclassified crimes that is exempted from being classified in the section that defines them.

Section 5: Defines "unborn child" to mean a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

Section 6: Amends 12.55.035(b) to include "Murder of an unborn child" in the list of other unclassified crimes for purposes of setting a guideline for fines.

Section 7: Amends 12.55.125(a) to include "Murder of an unborn child" as defined in AS 11.41.150(a)(1) with murder in the first degree for purposes of determining the imprisonment guideline for sentencing.

Section 8: Amends 12.55.125(b) to include "Murder of an unborn child" as defined in AS 11.41.150(a)(2)-(4) with murder in the second degree for purposes of determining the imprisonment guideline for sentencing.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to offenses against unborn children RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Senator Dyson
 Requester Senate State Affairs Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 ()						
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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-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Provisions of this bill create new sections in AS 11 for the murder of an unborn child, manslaughter of an unborn child, criminally negligent homicide of an unborn child, and assault of an unborn child in the first and second degree. It also creates a definition for "unborn child", and outlines penalties for convictions of these offenses.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532
 Division Alaska State Troopers Date/Time 2/28/05 11:26 AM
 Approved by: Commissioner William Tandeske Date 2/28/2005
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to offenses RDU Legal and Advocacy Services
against unborn children. Component Public Defender Agency
 Sponsor Sen. Dyson
 Requester Senate State Affairs Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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—Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill will have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Creating numerous felony offenses for death or harm done to an unborn child, mostly at the felony level, will increase the caseload and workload of the Agency. Making it a felony to knowingly cause serious physical injury to an unborn child that is subsequently born alive would certainly have a fiscal impact if it includes children born after inadequate prenatal care. It is impossible however to predict with any accuracy how many new cases this legislation would generate if enacted, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 3/1/05 7:56 AM
 Approved by: Mike Tibbles, Deputy Commissioner Date 3/1/2005
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 20(STA)
 (S) Publish Date: 3/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to offenses against unborn children" RDU Institutional Facilities
 Component Institution Director's Office
 Sponsor Senator Dyson
 Requester State Affairs, Judiciary Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type—Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 Due to the extremely small number of criminal cases that may be impacted by the proposed changes in the bill, passage of this legislation is not expected to have a significant fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641
 Division Administrative Services Date/Time 3/1/05 10:58 AM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/1/2005
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 74
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "Act making findings relating to marijuana use RDU Institutional Facilities
and possession; relating to marijuana and misconduct" Component Institution Director's Office
 Sponsor Rules Committee
 Requester Governor Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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--Do not abbreviate)	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)
 The legislation proposes new statutory language that delineates findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses, decreasing the amount of marijuana in possession that would constitute a violation, and increasing the penalties for possession, use and delivery of marijuana. Although most of the conduct prohibited in this bill already is a crime in Alaska, changes are proposed that will increase penalties for certain criminal activity. The legislation decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony under AS 11.71.040. The bill also creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. (continued)

Prepared by: Sharleen Griffin, Director Phone 465-4641
 Division Administrative Services Date/Time 4/21/05 4:12 PM
 Approved by: Portia Parker, Deputy Commissioner Date 4/21/2005
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 74

ANALYSIS CONTINUATION

The penalty is increased from a misdemeanor to a class B felony for certain delivery of marijuana offenses, including any amount delivered to a person under 21 years of age. These changes may increase the number of cases and the length of some sentences upon conviction, but accurate projections are extremely difficult to assess.

In 2003 and 2004, the Department of Corrections (DOC) incarcerated the following number of offenders charged with, and/or convicted of crimes similar to those being changed or expanded under the legislation.

AS 11.71.040, Misconduct involving a controlled substance in the fourth degree, a class C felony (MICS 4): DOC data shows that in 2003, DOC booked 1,817 individuals into its facilities who were charged with an offense under AS 11.71.040, and 646 of those individuals were later convicted of a crime under AS 11.71.040. In 2004, 1599 were booked, and 618 were convicted. Convicted offenders received an average composite sentence of 1.5 years and 2.07 years respectively. The "composite sentence" is the total sentence imposed for all crimes with which a defendant was convicted, and is not the best measure of the impact of sentencing for a specific crime. To measure sentences without unduly complicating the analysis, it is best to focus on cases in which the drug crime was the most serious charge of conviction, and that was done with data supplied by the Department of Law (DOL). AS 11.71.040 covers criminal activity involving a variety of controlled substances, including cocaine, heroine, methamphetamine and other illegal drugs, in addition to marijuana. DOL data shows that only 15% of the cases where the most serious charge of conviction under AS 11.71.040 involved marijuana (with the vast majority involving growing, selling or possessing with intent to sell one ounce or more, which is not changed by the legislation). An analysis of data that focused specifically on offenders convicted of possessing more than one pound of marijuana showed that most received a suspended imposition of sentence (SIS), with only a few serving minimal jail time, and probation ranging from two to three years. It seems reasonable to conclude that sentences will be similar, or lower for possession of only 4 to 16 ounces.

AS 11.71.050, Misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (MICS 5): In 2003, DOC booked 114 individuals, and 66 convictions. In 2004, 98 bookings and 186 convictions. Offenders received an average composite sentence of 1.0 years and 1.1 years respectively. Again, most cases involving marijuana were for growing, selling or possession with intent to sell. Only 10-12 cases (over the two year period) involved possession of ½ pound to one pound; offenders generally served no jail time, with some serving 10-30 days in jail, with periods of probation ranging from one to three years. Under the legislation, these dozen or so offenders may be prosecuted for MICS 4, and would probably receive sentences similar to those currently being sentenced under AS 11.71.040.

AS 11.71.060, Misconduct involving a controlled substance in the sixth degree, a class B misdemeanor (MICS 6): In 2003, DOC booked 652 individuals, and 186 convictions. In 2004, 593 bookings, and 99 convictions. Offenders received an average composite sentence of .79 years and .71 years respectively. According to DOL data, the vast majority of offenders are convicted as a result of public possession. By far the most common scenario, comprising upwards of 90% of the cases, is possession of marijuana in a motor vehicle, as a result of the driver being stopped for a traffic violation. Although the bill creates new misdemeanor penalties for having marijuana in cars, it remains to be seen if the new crimes will result in any increase in sentences in light of the fact that such conduct is already being charged under current law and very few cases result in jail time.

Cases involving in-home possession of four ounces to ½ pound of marijuana are quite rare, again because persons with that volume of marijuana are usually convicted of MICS 4 or 5 for growing, selling or possessing with intent to sell. MICS 6 cases involving in-home possession of fewer than four ounces of marijuana are rare and are generally dismissed. There is no indication that there will be a significant change in the way police agencies deal with in-home possession cases involving fewer than four ounces. Most cases will never come to the attention of prosecutors unless some other crime brings the police to the residence. In any event, cases of in-home possession of fewer than four ounces would become MICS 5 under the bill. Because MICS 5 cases involving possession of a ½ pound to one pound of marijuana ordinarily receive suspended sentences or very short periods of jail time, the department has no reason to expect any significant change in sentences for amounts involving fewer than four ounces.

Conclusion

It is unknown at this time what effect increasing the penalties for the use of marijuana may have in Alaska. According to the Department of Law, economic studies have shown that in other jurisdictions, increasing the penalties did have a deterrent effect due to the increased perception of the risk of using the drug. At this time, it cannot be predicted whether passage of this legislation will have the effect of reducing the usage of marijuana, and possibly reducing marijuana arrests and prosecutions, but it very well may. Therefore, it cannot be determined with any accuracy what the fiscal impact may be to the Department of Corrections. Although the changes proposed in the legislation likely will have some impact to the Division of Institutions, Department of Corrections, the extent of that impact is too speculative to support a defined fiscal note at this time, and therefore it is indeterminate. However, if the impact proves to be significant, the department will return to the legislature with a request for additional funding.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 74
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "Act making findings relating to marijuana use and possession; relating to marijuana ..." RDU: Probation and Parole
Probation and Parole Directors Ofc
 Sponsor: Rules Committee
 Requester: _____ Component No. 2684

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Specify Type--Do not abbreviate)	*	*	*	*	*	*
TOT. L	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

The legislation proposes new statutory language that delineates findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses, decreasing the amount of marijuana in possession that would constitute a violation, and increasing the penalties for possession, use and delivery of marijuana. Although most of the conduct prohibited in this bill already is a crime in Alaska, changes are proposed that will increase penalties for certain criminal activity. The legislation decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony under AS 11.71.040. The bill also creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. (continued)

Prepared by: Sharleen Griffin, Director Phone 465-4641
 Division: Administrative Services Date/Time 4/21/05 4:14 PM
 Approved by: Portia Parker, Deputy Commissioner Date 4/21/2005
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 74

ANALYSIS CONTINUATION

The penalty is increased from a misdemeanor to a class B felony for certain delivery of marijuana offenses, including any amount delivered to a person under 21 years of age. These changes may increase the number of cases and the length of some sentences upon conviction, but accurate projections are extremely difficult to assess.

In 2003 and 2004, the Department of Corrections (DOC) incarcerated the following number of offenders charged with, and/or convicted of crimes similar to those being changed or expanded under the legislation.

AS 11.71.040, Misconduct involving a controlled substance in the fourth degree, a class C felony (MICS 4): DOC data shows that in 2003, DOC booked 1,617 individuals into its facilities who were charged with an offense under AS 11.71.040, and 646 of those individuals were later convicted of a crime under AS 11.71.040. In 2004, 1599 were booked, and 618 were convicted. Convicted offenders received an average composite sentence of 1.5 years and 2.07 years respectively. The "composite sentence" is the total sentence imposed for all crimes with which a defendant was convicted, and is not the best measure of the impact of sentencing for a specific crime. To measure sentences without unduly complicating the analysis, it is best to focus on cases in which the drug crime was the most serious charge of conviction, and that was done with data supplied by the Department of Law (DOL). AS 11.71.040 covers criminal activity involving a variety of controlled substances, including cocaine, heroine, methamphetamine and other illegal drugs, in addition to marijuana. DOL data shows that only 15% of the cases where the most serious charge of conviction under AS 11.71.040 involved marijuana (with the vast majority involving growing, selling or possessing with intent to sell one ounce or more, which is not changed by the legislation). An analysis of data that focused specifically on offenders convicted of possessing more than one pound of marijuana showed that most received a suspended imposition of sentence (SIS), with only a few serving minimal jail time, and probation ranging from two to three years. It seems reasonable to conclude that sentences will be similar, or lower for possession of only 4 to 16 ounces.

AS 11.71.050, Misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (MICS 5): In 2003, DOC booked 114 individuals, and 66 convictions. In 2004, 98 bookings and 186 convictions. Offenders received an average composite sentence of 1.0 years and 1.1 years respectively. Again, most cases involving marijuana were for growing, selling or possession with intent to sell. Only 10-12 cases (over the two year period) involved possession of ½ pound to one pound; offenders generally served no jail time, with some serving 10-30 days in jail, with periods of probation ranging from one to three years. Under the legislation, these dozen or so offenders may be prosecuted for MICS 4, and would probably receive sentences similar to those currently being sentenced under AS 11.71.040.

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Cases involving in-home possession of four ounces to ½ pound of marijuana are quite rare, again because persons with that volume of marijuana are usually convicted of MICS 4 or 5 for growing, selling or possessing with intent to sell. MICS 6 cases involving in-home possession of fewer than four ounces of marijuana are rare and are generally dismissed. There is no indication that there will be a significant change in the way police agencies deal with in-home possession cases involving fewer than four ounces. Most cases will never come to the attention of prosecutors unless some other crime brings the police to the residence. In any event, cases of in-home possession of fewer than four ounces would become MICS 5 under the bill. Because MICS 5 cases involving possession of a ½ pound to one pound of marijuana ordinarily receive suspended sentences or very short periods of jail time, the department has no reason to expect any significant change in sentences for amounts involving fewer than four ounces.

Conclusion:

It is unknown at this time what effect increasing the penalties for the use of marijuana may have in Alaska. According to the Department of Law, economic studies have shown that in other jurisdictions, increasing the penalties did have a deterrent effect due to the increased perception of the risk of using the drug. At this time, it cannot be predicted whether passage of this legislation will have the effect of reducing the usage of marijuana, and possibly reducing marijuana arrests and prosecutions, but it very well may. Therefore, it cannot be determined with any accuracy what the fiscal impact may be to the Department of Corrections. Although the changes proposed in the legislation likely will have some impact to the Division of Probation and Parole, Department of Corrections due to a potential increase in the number of felons under probation and/or parole supervision, the extent of that impact is too speculative to support a defined fiscal note at this time, and therefore it is indeterminate. However, if the impact proves to be significant, the department will return to the legislature with a request for additional funding.

Pacific Solutions

Sherrie Markin Goll, Principal

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March 29, 2005

Senator Ralph Seekins
Chairman
Senate Judiciary Committee
Alaska State Senate

Dear Chairman Seekins and Members of the Senate Judiciary Committee,

Having spent most of my working life advocating for women's rights and safety I regret that I must oppose SB 20 as currently written.

Violence against women is abhorrent and is far too great a problem in our state. Women are more often victims of violence perpetrated by someone they know than they are by strangers and the physical assaults they suffer often escalate when the woman is pregnant.

The victim in every case of violence against a pregnant woman is the woman. If the assault harms her so seriously as to terminate her pregnancy the crime is more serious and the penalty should be greater but the victim is still the pregnant woman. She is the living person upon whom a crime has been perpetrated.

Our criminal laws include crimes against persons and crimes involving property. The legal definition of a "person" is and should remain a "homo sapiens who is born alive". An embryo or a fetus does not fit this definition. Until it is born alive it remains a part of a woman's body.

The term "unborn child" is neither a legal or medical term. Please do not cloud our statutes with politically charged language intended to make points with those on one side of the abortion debate. Please remove these references from the bill and put the focus of the legislation where it belongs on the safety of the pregnant woman rather than on the debate over when life begins.

I strongly urge the Judiciary Committee to replace the term "unborn child" with the correct terms "embryo", "fetus" and "viable fetus" and "miscarriage" and "stillborn" as appropriate throughout the legislation.

I very much support a sentencing aggravator for assaults on pregnant women, that allows the court to consider that a greater crime has been committed against the woman if the resulting harm includes the loss of her fetus.

The best way to protect fetuses is to protect the women who carry them within their bodies. Please put the focus of this legislation where it belongs – on the pregnant woman who is victim to a crime of violence.

Thank you very much for your consideration.

Sincerely,

Sherrie Goll

Sherrie Goll

SB

48

SENATE COMMITTEE REPORT

DATE: 4/13/06

No CS

FURTHER:

DATE TURNED IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 48

SB 48 PSYCH. EVALUATION/TREATMENT FOR STUDENTS

"An Act relating to recommending or refusing psychotropic drugs or certain types of evaluations or treatments for children."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	X			
	X			
	X			
	X			
CHAIR:	✓			

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
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Phone: (907) 269-0144
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State Capitol, Suite 7
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Senator_Bettye_Davis@legis.state.ak.us
<http://www.akdemocrats.org>

Senator Bettye Davis

Senate Bill SB 48

"An Act relating to recommending or refusing psychotropic drugs as a treatment for children and to the evaluation and treatment of children with behavioral or psychological problems."

Sponsor Statement

The use of psychiatric drugs in our nation's schools has more than doubled in the first half of the last decade and continues to escalate. There are documented incidences of highly negative consequences in which psychiatric prescription drugs have been utilized for what are essentially problems of discipline, which may be related to a variety of causation. There is also parental concern regarding the issue of diagnosis and medication and their impact on student achievement.

In it's simplest terms this bill basically states that a public school may not deny any student access to programs or services simply because the parent of the student has refused to place the student on psychotropic medications, get a psychiatric evaluation or seek psychiatric or psychological treatment for a child.

It also spells out what communications are allowed, who can do evaluations and the protections a parent or guardian has against being reported to OCS simply because they disagree with psychotropic medications.

Provisions to allow behavioral, psychological or psychiatric screening by those qualified to do so, with parental consent are preserved.

Communication between school employees on behavioral and learning issues concerning the child are preserved.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 48(HES)
 (S) Publish Date: 4/13/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title: *An Act relating to recommending or refusing RDU: Teaching & Learning Support
psychotropic drugs . . . Component: Student and School Achievement
 Sponsor: Davis
 Requester: HESS Component No. 2796

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 48 describes specific actions and communications in which school personnel may or may not engage related to psychiatric and behavioral evaluations and treatments. School personnel are prohibited from recommending or requiring that a child take or continue to take a psychotropic drug as a condition for attending school; conducting a psychiatric or behavioral evaluation of a child; recommending a specific physician, psychologist or other health specialist to a parent or guardian; recommending that the parent take a specific course of medical or psychiatric action; and reporting suspected child abuse or neglect based solely on whether a parent or guardian refuses to consent to a course of medical, psychiatric, psychological, or behavioral treatment or evaluation.

Costs for school districts to implement provisions of this bill are indeterminate.

Prepared by: Barbara Thompson, Director
 Division: Teaching & Learning Support
 Approved by: Karen Rehfeld, Deputy Commissioner
 Agency: Education & Early Development

Phone 465-8727
 Date/Time 3/31/06 12:30 p.m.
 Date 03/31/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2

Bill Version: CSSB 48(HES)

(S) Publish Date: 4/13/08

Revision Date/Time (Note if correction):

Dept. Affected: Health & Social Services

Title: REFUSING PSYCHOTROPIC DRUGS AND TREATMENTS FOR CHILDREN

RDU: Children's Services

Component: Front Line Social Workers

Sponsor: DAVIS

Requester: SENATE (HES)

Component No.: 2305

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 48 proposes to accomplish three major things: 1) prohibit public schools from recommending mental health services and/or psychotropic medication for students; 2) prohibit public schools from reporting suspected abuse or neglect if the only concern is that a parent or guardian refuses to consent to proper mental health treatment for a child; and, 3) prohibit the DHSS from taking custody based solely on a parent or guardian's refusal to consent to proper mental health treatment for a child. There would be no fiscal impact to the department.

Prepared by: Tammy Sandoval, Deputy Commissioner

Phone: 465-3191

Division: Office of Children's Services

Date/Time: 03/31/2006

Approved by: Karleen Jackson, Commissioner

Date: 03/31/2006

Agency: Department of Health and Social Services

SB 48

Similar Legislation

Available Bills

Category	Bill #	Summary	Status
Children	<u>AK SB 0048</u>	PSYCH. EVALUATION/TREATMENT FOR STUDENTS	introduced
Children	<u>FL HB 0209</u>	Contains the following provisions: 1) A recipient of state funds shall not require a student to be prescribed or administered any psychotropic medication as a condition of such student receiving educational or school-based services; 2) A psychotropic medication shall not be administered to a student on school premises except by a licensed health care professional and in compliance with HIPPA; and 3) A school or school district personnel shall not initiate, or make a referral for, diagnosis or treatment of a student for any disorder listed in the Diagnostic and Statistical Manual of Mental Disorders or in ICD-10.	passed house committee
Children	<u>FL SB 1090</u>	Minors/Psychotropic Medication	passed senate committee
Children	<u>FL SB 1766</u>	School Students/Psychotropic Med	introduced
Children	<u>GA SR 0128</u>	Mental Health Screening; urge GA Congressional Delegation to oppose	introduced
Children	<u>NH HB 0240</u>	relative to psychotropic drugs and child protection.	passed house committee
Children	<u>NM SJM 0052</u>	STUDY PRESCRIPTION DRUGS FOR CHILD BEHAVIOR	enacted
Children	<u>NY AB 1132</u>	Directs the commissioner of education to establish rules and regulations prohibiting school personnel from recommending psychotropic drugs for children.	introduced
Children	<u>NY AB 5043</u>	Restricts recommendations for psychotropic drugs.	introduced
Children	<u>NY SB 2900</u>	Directs the commissioner of education to establish rules and regulations prohibiting school personnel from recommending psychotropic drugs for children.	introduced
Children	<u>PA HB 0591</u>	An Act amending the act of March 10 1949 (P.L.30 No.14) known as the Public School Code of 1949 prohibiting school officials or employees from recommending that a child use psychotropic or sympathomimetic drugs.	introduced
Children	<u>TN HB 0580</u>	Students - Prohibits school personnel from recommending psychotropic drugs such as Ritalin to treat elementary and secondary school students for behavioral concerns. - Amends TCA Title 49 Chapter 6 Part 50.	hearing held
Children	<u>UT HB 0042</u>	Prohibits school personnel from making certain medical recommendations for a minor, including the use of psychotropic drugs; prohibits consideration of a petition for removal of a minor and removal of a minor from parental custody based on a parent's refusal to consent to the administration of psychotropic drugs.	passed house & senate
Children	<u>VT HB 0074</u>	PSYCHOTROPIC DRUGS AND SPECIAL NEEDS SERVICES FOR CHILDREN	introduced
Children, Medications Access, Mental Health	<u>NY AB 5885</u>	Authorizes and directs the department of health to conduct a study on drugs prescribed for school-age children with ADD.	introduced

7/10/03/11/15/16/17

1999-2003

Bills and Resolutions

U.S. BILLS & RESOLUTIONS INTRODUCED OR PASSED AGAINST COERCIVE PSYCHIATRIC LABELING & DRUGGING OF CHILDREN

In 1999, the Colorado State Board of Education passed a precedent-setting Resolution that asked school personnel to use academic rather than drug solutions to resolve problems with behavior, attention and learning. Since then, state legislatures, school boards and national organizations have responded to the need to protect children from arbitrary and forced psychiatric labeling and drugging, and to monitor the prescription rate of stimulants and other psychiatric drugs for children.

In 2001, two precedent-setting laws were passed in Connecticut and Minnesota that prevent school personnel from coercing or recommending that parents drug their children, especially as a requisite for remaining in class. Laws have also been necessary to protect parents against criminal charges being threatened or laid if they refuse to put their child on a mind-altering psychiatric drug.

1999: The Colorado State Board of Education resolution stated, "*There are documented incidents of highly negative consequences in which psychiatric prescription drugs have been utilized for what are essentially problems of discipline which may be related to lack of academic success; and be it resolved that the State Board of Education encourage school personnel to use proven academic and/or classroom management solutions to resolve behavior, attention, and learning difficulties....*"

2000: The Texas State Board of Education Resolution recommended, "*that programs such as tutoring, vision testing, phonics, nutritional guidance, medical examinations, allergy testing, standard disciplinary procedures, and other remedies known to be effective and harmless, be recommended to parents as their options....*"

2001: Four laws were passed in the states of Connecticut, Minnesota, North Carolina and Utah, and the Hawaii legislature passed a Resolution. The Connecticut law prohibited school personnel from recommending the use of psychotropic drugs for any child.

2002: Illinois and Virginia passed laws with similar protections provided in Connecticut's law. Illinois' law required school boards to adopt and implement policy prohibiting disciplinary action being taken against parents or guardians for refusing to administer, or consenting to administer, a psychotropic or stimulant drug. The law in Virginia directed the Board of Education to develop and implement policies prohibiting school personnel from recommending the use of psychotropic drugs for any student. The National Foundation of Women Legislators (NFWL) passed a resolution calling on the federal government to pass regulations or laws in relation to schools receiving federal funds that protect children from being wrongly diagnosed and stigmatized as mentally disordered and forced onto psychotropic drugs as a requirement of their education. The American Legislative Exchange Council (ALEC) also proposed two pieces of model legislation, one against schools coercing parents to drug their children (or recommending drugs) and the other against invasive psychological testing and questionnaires.

2003: A federal bill was introduced—HR 1170—which states that as a condition of receiving federal funds under any program or activity administered by the U.S. Secretary of Education, each state shall develop and implement policies and procedures prohibiting school personnel from requiring a child to obtain a prescription for substances covered by

section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school or receiving services. [Covers those psychotropic drugs which are generally subject to special provisions because of their potential for abuse and dependence. They are grouped into five "Schedules" based on their abuse potential. Schedule I means those drugs that have a high abuse potential and no accepted medical use in the United States such as heroin, LSD, and mescaline; Schedule II means those drugs with a medical use that have the highest potential for abuse or drug dependence such as Ritalin, Concerta (methylphenidate), Dexedrine, morphine and cocaine; Schedules III-V includes those drugs that have an accepted medical use and lower degrees of potential for abuse and dependence such as vicodin, valium and over-the-counter cough medicines with codeine.] HR 1170 was passed by the House, by an overwhelming margin of 425 votes to one, on May 21, 2003. It is now with the Senate Committee on Health, Education, Labor and Pensions.

An amendment was also added to House of Representatives Bill 1350, the "Improving Education Results for Children with Disabilities Act of 2003," that amends and reauthorizes the Individuals with Disabilities in Education Act. The amendment reads, "PROHIBITION ON PSYCHOTROPIC MEDICATION," and essentially uses similar wording to that in HR 1170, but covering special education. HR 1350 passed the House on April 30 and was received in the Senate and referred to the Committee on Health, Education, Labor, and Pensions May 1, 2003.

On a state level, fifteen states introduced 24 bills and/or resolutions in 2003. These were Alaska, California, Colorado, Hawaii, Indiana, Kentucky, Massachusetts, Michigan, New Hampshire, New York, North Carolina, Oregon, Texas, Vermont and West Virginia. Colorado enacted a law on June 5, 2003, requiring school boards to adopt a policy prohibiting school personnel from recommending or requiring the use of a psychotropic drug for any student.

1999:

State	Description	Introduced	Active	Passed
Colorado State Board of Education Resolution	Resolution promoting the use of academic solutions to resolve problems with behavior, attention and learning in the classroom.	10/99	PASSED	11/11/99
National Black Caucus Of State Legislators	Resolution strongly urges a national examination of the use of psychotropic drugs and their effects on children.	12/01/99	PASSED	12/03/99

2000:

State	Description	Introduced	Active	Passed
Georgia R 1079	The General Assembly of Georgia creates the Commission on Psychiatric Medication of School-Age Children, to investigate the usage and effects of psychiatric drugs on children and to provide recommendations for improved monitoring of	02/16/00	PASSED	05/01/00

	the prescription rate of these drugs.			
<u>Texas</u> State Board of Education Resolution	Resolution urging local school personnel to use proven academic and/or management solutions to resolve behavior, attention and learning difficulties such as exams, tutoring, phonics, vision testing, etc., known to be effective and harmless.	11/01/00	PASSED	11/03/00
<u>Washington</u> HB 2912	An act relating to the use of psychiatric "medication" by children in state custody, and tracking the number of children being diagnosed and placed on psychiatric "medications."	01/21/00	PASSED	03/24/00

2001:

<u>State</u>	<u>Description</u>	<u>Introduced</u>	<u>Active</u>	<u>Passed</u>
<u>Connecticut</u> AB 5701	Prohibits school personnel from recommending the use of psychotropic drugs for any child. A parent or guardian refusing to administer, or consenting to administer, a psychotropic or stimulant cannot be grounds for a child to be taken into the custody of the Dept. of Child and Family Services.	01/12/01	PASSED	06/28/01
<u>Hawaii</u> SC Resolution 92	Requests the Department of Health and Department of Education jointly to research and examine non-"medication" alternatives for dealing with children who have learning and behavioral difficulties.	03/14/01	PASSED	04/12/01
<u>Minnesota</u> HB 478	Parents' refusal to give stimulant drugs to a child does not constitute educational neglect. States that a child does not have to take such drugs as a condition for re-admission to school after having been suspended. Also establishes a study and report system on the number of children in the	02/01/01	PASSED	05/01/01

	state labeled with ADD/ADHD and taking such drugs, as well recording what pressures families have experienced when placing their child on these drugs.			
North Carolina SB 542	Calls for the establishment of a statewide database on the administration of psychotropic drugs to children who receive state services.	03/19/01	PASSED	05/25/01
Utah HB 170	Amends the definition of "substantiated child abuse" to exclude failure to administer psychiatric drugs or course of treatment if the parent has not been told of the opportunity to obtain a physical exam; authorizes Division of Child and Family Services to report an individual who is <u>not</u> a licensed health care provider to the appropriate licensing authority for making medical recommendations regarding administration of psychiatric drugs to children.	01/26/01	PASSED	03/15/01

2002:

State	Description	Introduced	Active	Passed
Illinois SB 1718	Requires school board to adopt and implement policy prohibiting disciplinary action that is based totally or in part on the refusal of a student's parent or guardian to administer or consent to administer a psychotropic or stimulant drug.	01/10/02	PASSED	07/16/02
Virginia HB 90	Board of Education to develop and implement policies prohibiting school personnel from recommending the use of psychotropic drugs for any student. Student cannot be evaluated by a medical practitioner	01/31/02	PASSED	04/01/02

	unless with the written consent of the student's parents.			
<u>National</u> National Foundation of Women Legislators (NFWL) Resolution	National Foundation of Women Legislators (NFWL) urges federal government to pass regulations or laws in relation to schools receiving federal funds that protect children from being wrongly diagnosed and stigmatized as mentally disordered, and forced onto psychotropic drugs as a requisite for their education.	11/23/02	PASSED	11/23/02
<u>Texas</u> HB 320	Refusal to administer or consent to administration of psychotropic drugs or any other psychiatric or psychological treatment to a child does not by itself constitute neglect.	12/20/02	INTRODUCED 12/20/02	

2003:

<u>State</u>	<u>Description</u>	<u>Introduced</u>	<u>Active</u>	<u>Passed</u>
<u>Federal</u> HR 1170	As a condition of receiving funds under any program or activity administered by the Secretary of Education, each State shall develop and implement policies and procedures prohibiting school personnel from requiring a child to obtain a prescription for substances covered by section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school or receiving services.	3/11/03	Passed the House 5/21/03. Received in the Senate and referred to Committee on Health, Education, Labor and Pensions 5/22/03	
<u>Federal</u> Amendment to HR 1350	Amendment added to federal bill H.R. 1350 reauthorization of the Individuals with Disabilities Education Act: "State educational agency develops and implements policies and procedures prohibiting school personnel from requiring a child to	4/10/03	Passed the House 4/30/03. Received in the Senate and referred to Committee on Health,	

	obtain a prescription for substances covered by section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school or receiving services."		Education, Labor and Pensions 5/01/03	
<u>Alaska</u> SB 5	Prohibits school personnel from recommending or requiring a child take a psychotropic drug as a requisite for attending public school. Also prohibits filing a report to authorities of suspected child abuse or neglect based solely on the parent's/guardian's refusal to consent to the administration of a psychotropic drug or psychiatric, psychological, or behavioral treatment of child. And prohibits a court from making ruling of neglect or abuse against parent solely based on the same allegation.	01/10/03	Referred to Health Education and Social Services Committee and Finance Committee 1/21/03	
<u>California</u> AB 1424	Refusal of a parent or guardian to administer, or consent to administration of any medication or medical treatment for child does not constitute, in and of itself, a basis for child being removed from physical custody of parent or guardian.	2/21/03	Referred to Health committee 4/07/03	
<u>Colorado</u> HB 1172	Requires each school board to adopt a policy prohibiting school personnel from recommending or requiring the use of a psychotropic drug by any student.	1/15/03	PASSED	06/05/03
<u>Hawaii</u> HB 272	Prohibits the Department of Health personnel from requiring, suggesting, or implying that a student take psychiatric drugs as a requisite to attending school.	1/17/03	Passed First Reading 1/21/03	
	Replicates House Bill 274 for the Senate, requiring the Dept. of			

<p><u>Hawaii</u> SB 981</p>	<p>Health, assisted by the Dept. of Ed., to report annually for 5 years on number of children in schools diagnosed with ADD or ADHD; number of those children who receive special education; how many of those are prescribed and using psychiatric drugs.</p>	<p>1/21/03</p>	<p>Passed First Reading 1/21/03</p>	
<p><u>Hawaii</u> HB 275</p>	<p>Requires the Dept. of Health and the Dept. of Education to re-examine the legitimacy of the diagnoses of ADHD and ADD in their assessment of children under the category of attention problems and hyperactivity.</p>	<p>1/17/03</p>	<p>Passed First Reading 1/21/03</p>	
<p><u>Hawaii</u> SB 982</p>	<p>Replicates House Bill 275 for the Senate: Requires the Dept. of Health and the Dept. of Education to re-examine the legitimacy of diagnoses of ADHD and ADD in their assessment of children under the category of attention problems and hyperactivity.</p>	<p>1/21/03</p>	<p>Passed First Reading 1/21/03</p>	
<p><u>Indiana</u> HB 1974</p>	<p>Prohibits teachers from attempting to influence a parent or guardian to obtain psychotropic drugs for students, and forbids a student from being forced to take a psychotropic drug as a requisite for readmission after suspension for behavioral problems.</p>	<p>1/23/03</p>	<p>To House Committee on Education 1/23/03. Still in House Committee on Education. Rep. Reske added as coauthor 2/18/03</p>	
<p><u>Kentucky</u> HJR 67</p>	<p>House Joint Resolution that says, because of the concern about psychotropic drug effects and the increase of prescriptions for such drugs to children, the Kentucky Department of Education is requested to provide education and training to school personnel regarding the use of psychotropic drugs; it urges the Cabinet for Families and Children to adopt policy to ensure that a parent's refusal to place a child</p>	<p>1/10/03</p>	<p>Posted in Health & Welfare Committee 2/18/03</p>	

	on psychotropic drugs shall not in and of itself constitute grounds for abuse or neglect.			
Massachusetts SB 674	Prior to practitioners prescribing psychotropic drugs to a minor, they must have the parent or guardian read, or be told verbally if incapable of understanding written information, full information on the psychotropic drug(s) being prescribed from the <i>Physician's Desk Reference Family Guide to Prescription Drugs</i> and obtain written attestation that the information, including drug side effects, is understood. Written attest to be kept on file as part of child's record.	1/01/2003	To Committee on Health Care 1/01/03	
Massachusetts SB 811	A parent's or legal guardian's refusal to medicate their child with psychotropic drug(s) or refusing to have him/her receive mental health counseling shall not be considered neglect.	1/01/03	To Joint Committee on Human Services and Elderly Affairs and filed as Senate Docket 703 1/01/03	
Massachusetts SB 2227	Power of the school committee (the governing board of a town's public school system to carry out the educational policies of the state), any teacher, counselor or other agent of school committee shall not include the right to require a student be placed on a psychotropic drug to attend or remain in school, or the right to recommend or suggest the use of a psychotropic drug for any child.	1/01/03	To Committee on Education, Arts and Humanities 1/01/03	
Michigan HB 4024	Creates a psychotropic drug use advisory council to investigate, compile a report, and recommend policies pertaining to psychotropic drug use among children.	1/28/03	To Committee on Family and Children Services 1/28/03	
	Prohibits teachers from making a psychological		Passed through	

<p><u>Michigan</u> HB 4025</p>	<p>or medical diagnosis of a behavioral condition or disorder in a child or recommending a child having to take a prescribed psychotropic drug.</p>	<p>1/28/03</p>	<p>the House 5/08/03 and referred to Senate Committee on Education 5/13/03</p>	
<p><u>New Hampshire</u> HB 551</p>	<p>Refusal of a parent or other guardian to administer or consent to the administration of any psychotropic drug to a child shall not, in and of itself, constitute grounds to take the child into custody, or for the court to order that such child be taken into custody.</p>	<p>1/09/03</p>	<p>To Children and Family Law Committee 1/09/03</p>	
<p><u>New York</u> AB 2955</p>	<p>Enacts a "parent and pupil rights act" whereby all instructional material used in connection with any "psychiatric or psychological research or experimentation program or project," in elementary or secondary school, shall be available for inspection by parents or guardians; also prohibits such programs or projects having the purpose of revealing political affiliations, religious beliefs and practices, sex behavior and attitudes, and other listed privileged information.</p>	<p>2/03/03</p>	<p>Referred to Education Committee 2/3/03</p>	
<p><u>New York</u> AB 3563</p>	<p>Act amends education law to prohibit all school personnel and school districts from suggesting or recommending use of psychotropic drugs for any child. Any personnel or school district found guilty of the above "may be charged with the crime of professional misconduct...which relates to the practice of medicine without a license." Refusal of a parent or guardian to administer or agree to the administration of a psychotropic drug to a child shall not, in and of itself, constitute grounds for an investigation or</p>	<p>2/06/03</p>	<p>To Education Committee 2/06/03</p>	

	removal of the child by Child Protective Services.			
North Carolina HB 943	Prohibits school personnel from recommending or requiring use of psychotropic drugs or central nervous system stimulants for any child. Each local board of education shall adopt and implement rules and policies on these issues.	4/08/03	Through the House 4/30/03. Referred to Senate Committee on Health and Human Resources 5/01/03	
Oregon SB 456	A kindergarten through grade 12 public school administrator, teacher, counselor or nurse may not recommend student seek a prescription for a medication that is prescribed with the intent of affecting or altering the thought processes, mood or behavior of the student.	2/17/03	Passed through Senate to House 5/23/03	
Texas HB 1070	Parent's refusal to provide written consent for an employee of a school district to conduct a psychological exam, test, treatment or to permit a school employee to administer a psychotropic drug does not constitute neglect or abuse of a child. Any employee of a school district who uses or threatens to use a parent's refusal as the basis for making a report concerning abuse or neglect may be subject to a Class A misdemeanor charge and a parent may bring a civil court action against the school employee.	2/24/03	To Public Education Committee 2/24/03	
Texas HB 1406	School district employee may not recommend student use a psychotropic drug or have a psychiatric evaluation, or use refusal by a parent to consent to administration of a psychotropic drug or psychiatric evaluation for a student as grounds	2/27/03	Through both the House and Senate and sent to the Governor 6/03/03	

	for prohibiting the child from attending class or a school-related activity.			
Vermont SB 30	No school shall require a child to take psychiatric drugs as a requisite for attending school; parent or guardian may agree or disagree to allow the child to take psychiatric drugs; prohibits the unlawful possession of methylphenidate (Ritalin), with up to one year in prison or fines of up to \$2,000.	1/23/03	To Senate Committee on Education 1/24/03	
West Virginia SB 122	Requires public schools to comply with provisions of federal law governing release and elicitation of certain information concerning students and their families in connection with mental or health care services. No student may be required to submit to counseling, psychiatric or psychological treatment and experimental procedures, including surveys or tests, without the parents' informed consent. Parents have the right to exclude child from such tests/surveys based on religious, cultural, moral or political beliefs or affiliations.	1/10/03	To Senate Committee on Education 1/10/03	
West Virginia HB 2111	Prohibits teachers and other school personnel from recommending that a pupil is in need of psychiatric treatment or evaluation or psychotropic, mood altering or other mind-altering drugs.	1/10/03	To House Committee on Education 1/10/03	
Arizona HB 2024	A child whose parent, guardian or custodian refuses to put the child on a psychiatric medication or questions the use of a psychiatric medication shall not be considered to be an abused, neglected or dependent child for that reason alone.		PASSED	12/18/03

2004:

State	Description	Introduced	Active	Passed
United States H.R. 1350	Prohibits State and local educational personnel from requiring a child to obtain a prescription for substances covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation under IDEA, or receiving services.	20/3/03	PASSED	19/11/04
New Hampshire HB 551	A committee to study the prescription and use of psychotropic drugs in childcare centers, preschools, and public schools. Unless otherwise ordered by the court, the refusal of a parent or other person having control of a child to administer or consent to the administration of any psychotropic drug to such child shall not, in and of itself, constitute grounds for a child to be taken into custody.	7/01/04	PASSED	15/06/04
United States H.R. 1350	Prohibits State and local educational personnel from requiring a child to obtain a prescription for substances covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation under IDEA, or receiving services.	20/3/03	PASSED	19/11/04

2005:

State	Description	Introduced	Active	Passed
Florida SB 1090	Creates safeguards for parents in Florida from being coerced to put their children on dangerous psychotropic drugs or from being psychologically evaluated.	March, 2005	PASSED	May 27, 2005
Minnesota SF 2277	Provides that a parent's refusal to consent to the administration of a psychotropic drug or a psychiatric examination of a student shall not be used as grounds, by itself, for prohibiting the child from attending class or participating in a school-related activity. Further, the school district must not recommend that a student use a psychotropic drug.	28/04/05	PASSED	5/5/05

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SB 48

Background
Information



Methylphenidate: Pros and Cons

What is methylphenidate?

Methylphenidate, usually known by the trade names Ritalin, Concerta, Metadate and others is one medicine used to treat the symptoms of Attention Deficit Hyperactivity Disorder (ADHD). Some children with ADHD do well using behavior training methods, and may not need a medicine. For other children, this medicine can improve attention, focus, goal-directed behavior, and organizational skills. As with any medicine, there are pros and cons to its use.

How does it work?

Methylphenidate is a stimulant medicine. Since children with ADHD are already over-stimulated, it is hard to understand how a stimulant drug will help to calm them down. Researchers think that the area of the brain that controls when to pay attention to certain activities and when to ignore other ones is immature and works poorly in people with ADHD. The medicine stimulates those areas of the brain so that the child can better pay attention and focus on his activities.

What are the pros?

The medicine works quickly so you'll know if it will help or not. The dosage may have to be adjusted by your health care provider. It is fairly inexpensive and has been used for many years. If your child is having problems with attention, focus, and being overactive in school, stimulant medicine may provide some relief.

Benefits of this medicine often include:

- less trouble finishing classwork and homework
- less fidgeting or squirming
- better control of emotions
- less impatience and impulsiveness
- better relationship with family and friends
- increased self-esteem.

What are the cons?

Many parents do not like the idea of medicating their child for any length of time. As with any medicine, it can have side effects. Some children will have few or no side effects. Other children may have to stop using it because of the side effects.

Some common side effects include:

- decrease in appetite
- headaches

- difficulty falling asleep
- irritability
- stomachaches.

Some children may become more active in the evening after the medicine has worn off. This can be an ordeal for families who are tired and stressed out at the end of the day. Some children will have problems sleeping.

Rarely, this medicine causes high blood pressure, weight loss, growth delays, or aggressive behavior. One to two percent of children on this medicine have facial twitches called tics. If your child already had tics, the medicine may make them worse. The tics get better if the medicine is stopped. A few children don't like the way the medicine makes them feel. Most, however, like being better able to concentrate on schoolwork and control their activity level.

About 25% of children with ADHD do not respond to methylphenidate, although some of these children will benefit from other ADHD medicines.

Should my child take methylphenidate?

There are several treatment approaches for ADHD other than medicine, such as:

- changes to the child's education program
- cognitive-behavioral therapy
- parent education
- social skills training.

Discuss the decision to medicate your child with your child's health care providers, school counselors, and teachers. Decide with your doctor if your child's symptoms are causing enough problems that a trial of this medicine is needed.

The medicine is not a cure. There is no cure for ADHD, though medicine can help manage some of the symptoms. If you decide to try medicine, plan a 1 to 4 week trial period. Your child is usually given a small dose at first, so it may be necessary to increase the dose. Be sure to have several people that interact with your child complete rating scales that relate to ADHD behavior after your child has been on the medication for a few weeks. Even if you do decide to try medicine, be sure to get an educational evaluation and use behavioral training methods to help your child as well.

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Vernon Coleman

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Ritalin: Child Abuse On Prescription?

Family doctors are these days frequently under pressure (usually from teachers and social workers who know nothing about drug therapy and probably understand nothing about the way the international drug industry operates) to prescribe the drug called Ritalin for children who are accused of behaving badly behaved, reported as not doing well at school and 'diagnosed' as suffering from something called Attention Deficit Hyperactivity Disorder (known as ADHD).

For several decades now Ritalin, and other amphetamine type drugs, have been prescribed for children diagnosed as suffering from various types of brain dysfunction and hyperactivity. (Other psychostimulants which have, at one time or another, been regarded as competitors to Ritalin have included Dexedrine).

In my view the first problem is that Attention Deficit Hyperactivity Disorder (and other variations on the hyperactivity theme) is a rather vague diagnosis which is often leapt upon by teachers, social workers and parents to excuse and explain any unacceptable or uncontrollable behaviour.

Parents of children whose behaviour is in any way regarded as different or unusual are often encouraged to believe that their child is suffering from a disease for two simple reasons. First, it is more socially acceptable to give a child a pseudoscientific label than to have to admit that he or she may simply be badly behaved.

Second, when a child has been given a label it is possible to offer a treatment. Commonly it will be one, such as a drug, which offers someone a profit.

ADHD, which is also known as Attention Deficit Disorder (or ADD), hyperkinetic child syndrome, minimal brain damage, minimal brain dysfunction in children, minimal cerebral dysfunction and psycho-organic syndrome in children, is a remarkably non specific disorder. The symptoms which characterise the disorder may include: a chronic history of a short attention span, distractibility, emotional lability, impulsivity, moderate to severe hyperactivity, minor neurological signs and abnormal EEG. Learning may or may not be impaired.

Read that rather nonsensical list of symptoms carefully and you'll find that just about any child alive could probably be described as suffering from ADHD.

What child isn't impulsive occasionally? What child doesn't cry and laugh (that's what emotional lability means)? What child cannot be distracted?

One big worry I have is that Ritalin could be recommended for any child who seemed bored and

restless or who exhibited unusual signs of intelligence or skill. Read the biographies of geniuses and you may wonder what we are doing to our current generation of most talented individuals.

'Is Ritalin a drug in search of a disease?' wrote one author, and it isn't difficult to see why.

First Used In The 1960s

Ritalin has been recommended as a treatment for functional behaviour problems since the 1960s. When CIBA first suggested this in 1961 they were turned down by the FDA but in 1963 approval was given for this use of the drug.

By 1966 the 'experts' had come up with a definition of the sort of child for whom Ritalin could useful be prescribed. Children suffering from Minimal Brain Dysfunction (MBD), the first syndrome for which Ritalin was recommended, were defined as 'children of near average, average or above average general intelligence with certain learning or behavioural disabilities ranging from mild to severe, which are associated with deviations of function of the central nervous system. These deviations may manifest themselves by various combinations of impairment in perception, conceptualization, language, memory and control of attention, impulse or motor function'.

Other symptoms which children might exhibit and which could be ascribed to MBD included: being sweet and even tempered, being cooperative and friendly, being gullible and easily led, being a light sleeper, being a heavy sleeper and so on and on.

Given that sort of list to work with it is difficult to think of a child who wouldn't benefit from Ritalin - though the official estimate seemed to be that only around 1 in 20 children were real MBD sufferers.

A Convenient Diagnosis

The bottom line is that it has become easy for social workers and teachers to define any children who misbehaves or doesn't learn 'properly' as suffering from MBD or ADHD. Its a convenient diagnosis which excuses parents, teachers and social workers from responsibility or any sense of guilt. How can the parents or the teacher be accused of failing when the child is ill?

The head of the task force which identified and labelled MBD allegedly subsequently joined the company making Ritalin and produced their handbook for doctors on the condition. Commercially Ritalin and MBD became a huge success. By 1975 around a million children in the U.S. were diagnosed as suffering from MBD. Half of these were being given drugs and half of those on drugs were on Ritalin.

For the sake of completeness I should point out that Ritalin has not always been used exclusively in the treatment of badly behaved children.

When Dr Andrew Malleon wrote his book 'Need Your Doctor Be So Useless' in 1973 he reported that the CIBA Pharmaceutical Company had suggested 'to doctors the use of their habit forming drug Ritalin for 'environmental depression' caused by 'NOISE: a new social problem'.

Does Ritalin Work?

The next question which has to be asked is: 'Does Ritalin work?'

Well, I'm afraid that I can't answer that question. And I honestly don't think anyone else can either.

Novartis, the drug company which is now responsible for Ritalin in the UK, admits that 'data on...efficacy of long term use of Ritalin are not complete'.

With one in twenty children said to be suffering from MBD (or ADHD or ADD or whatever else anyone wants to call it), with Ritalin having been on the market and used for this condition for over three decades, and with some experts saying that a million children a year are given Ritalin in the U.S. alone you might find this a trifle disappointing.

Just how long does it take to find out whether or not a drug works? Am I being horribly cynical in suggesting that it might be against the drug company's interests to find out whether or not Ritalin really works? After all, if long term studies found that Ritalin didn't work a very profitable drug would, presumably, lose some of its appeal.

Some research has been done. One five year study of hyperactive children who were given Ritalin at Montreal Children's Hospital found that the children did not differ in the long term from hyperactive children who were not given the drug. At least one investigator has reported that drugs like Ritalin may produce a deterioration in learning new skills at school and parents have reported that the symptoms of MBD have miraculously disappeared during school holidays.

The picture is confused by the fact that there may be a short term improvement in behaviour among children given Ritalin. But is this a real improvement? Or is the child simply drugged? Amphetamine type drugs reduce the variety of behaviour exhibited by children. A child taking Ritalin might have more focused behaviour. But although that might mean less disruption in the classroom does it really help the child? And should we give a child a powerful and potentially hazardous drug because they it keeps him quiet?

There is evidence suggesting that children who are genuinely hyperactive may have been poisoned by food additives or by lead breathed in from air polluted by petrol fumes. If this is so then is giving another potentially toxic drug really the answer to this problem?

Potentially Toxic

The next problem is that I believe that Ritalin can reasonably be described as potentially toxic. Ritalin has been described as 'very safe' but for the record here is a list of some of the possible side effects which may be associated with Ritalin: nervousness, insomnia, decreased appetite, headache, drowsiness, dizziness, dyskinesia, blurring of vision, convulsions, muscle cramps, tics, Tourette's syndrome, toxic psychosis (some with visual and tactile hallucinations), transient depressed mood, abdominal pain, nausea, vomiting, dry mouth, tachycardia, palpitations, arrhythmias, changes in blood pressure and heart rate, angina pectoris, rash, pruritus, urticaria, fever, arthralgia, alopecia, thrombocytopenia purpura, exfoliative dermatitis, erythema multiforme, leucopenia, anaemia and minor retardation of growth during prolonged therapy in children.

Doctors who prescribe Ritalin, and who have the time and the inclination to read the warnings issued with the drug, will discover that Ritalin should not be given to patients suffering from marked anxiety, agitation or tension since it may aggravate these symptoms.

Ritalin is contraindicated in patients with tics, tics in siblings or a family history or diagnosis of Tourette's syndrome. It is also contraindicated in patients with severe angina pectoris, cardiac arrhythmias, glaucoma, thyrotoxicosis, or known sensitivity to methylphenidate and it should be used cautiously in patients with hypertension (blood pressure should be monitored at appropriate intervals).

Ritalin should not be used in children under six years of age, should not be used as treatment for severe depression of either exogenous or endogenous origin and may exacerbate symptoms of behavioural disturbance and thought disorder if given to psychotic children.

The company selling it claims that although available clinical evidence indicates that treatment with Ritalin during childhood does not increase the likelihood of addiction chronic abuse of Ritalin can lead to marked tolerance and psychic dependence with varying degrees of abnormal behaviour.

Ritalin, it is warned, should be employed with caution in emotionally unstable patients, such as those with a history of drug dependence or alcoholism, because such patients may increase the dosage on their own initiative.

Ritalin should also be used with caution in patients with epilepsy since there may be an increase in seizure frequency.

And height and weight should be carefully monitored in children as prolonged therapy may result in growth retardation. (A child might lose several inches in possible height - though if treatment is stopped there is a generally a growth spurt). It is perhaps worth mentioning here my view that if a drug is powerful enough to retard growth it does not seem entirely unreasonable to suspect that the chances are high that it may be having other powerful effects upon and within the body.

Doctors are also warned that careful supervision is required during drug withdrawal, since depression as well as renewed overactivity can be unmasked. Long term follow up may be needed for some patients.

There have also been reports that children have committed suicide after drug withdrawal. And one study has shown that children who are treated with stimulants alone had higher arrest records and were more likely to be institutionalised.

Long term use of Ritalin has been said to cause irritability and hyperactivity (these are, you may remember, the problems for which the drug is often prescribed). In a study published in *Psychiatric Research* and entitled *Cortical Atrophy in Young Adults With A History of Hyperactivity* brain atrophy was reported in more than half of 24 adults treated with psychostimulants (though I don't think anyone can say for sure whether or not the psychostimulants caused the brain atrophy the possible link should make prescribers, teachers and parents who are fans of Ritalin stop and think for a moment).

In Johannesburg a study of 14 children is said to have produced a response in only 2 children. One child showed some deterioration and another showed marked deterioration.

The final insult is, surely, the fact that the company selling Ritalin tells doctors that 'Data on safety and efficacy of long term use of Ritalin are not complete.' For this reason they recommend that patients requiring long term therapy should be monitored carefully with periodic complete and differential blood counts, and platelet counts.

I regard this as an insult because Ritalin is not a new drug.

I have not, at the time of writing this, been able to find out exactly when it was first introduced but I have been able to trace it back to 1961.

Now, maybe I'm being rather demanding but it does seem to me that when a drug has been on the market for well over a quarter of a century it isn't entirely unreasonable for the drug company involved to have completed studying the data on whether or not it works and is safe.

Cancer In Mice

When early safety tests were done on mice researchers found that the drug caused an increased in hepatocellular adenomas and, in male mice only, an increase in hepatoblastomas (described as 'a relatively rare rodent malignant tumour type').

'The significance of these results to humans is unknown' say Novartis, the company selling Ritalin.

Here, once again, is yet more proof of the total worthlessness of animal experiments and the ruthless and cynical attitude shown by drug companies and those government departments which allegedly exist to protect the public from unsafe drugs.

I have frequently argued that when drug companies perform pre clinical tests on animals they do so knowing that if the tests show that a drug doesn't cause any problems when given to animals they can use the results to help convince the authorities that the drug is safe.

On the other hand when a drug does cause a problem when given to animals the results can be ignored on the grounds that 'the significance of these results to humans is unknown'.

The question here is a very simple one: if the experiments on mice which showed that Ritalin causes cancer were of value why is the drug still available on prescription for children? And if the experiments can safely be ignored (on the grounds that animals are so different to human beings that the results are irrelevant) why the hell were the tests done in the first place?

Ignorance And Misplaced Trust

My own feeling is that the people who told you that Ritalin is 'very safe' are either unable to read or too lazy to do any research into the safety of a product which they are recommending with such enthusiasm.

Years of experience mean that I am not in the slightest bit surprised to find such crass stupidity exhibited by social workers. I am, however, more surprised to find school teachers showing such a potent mixture of ignorance and misplaced trust. Some observers claim that Ritalin can be considered for a children when tests and clinical examinations have shown the existence of a clear neurological disorder - with abnormal brain wave patterns.

Psychiatrist, psychologist, health visitor, teachers, GP and parents should, it is said, all be considered before considering treatment.

Even the company selling Ritalin says that 'Ritalin treatment is not indicated in all children with this syndrome and the decision to use the drug must be based on the physician's evaluation of the child's history and the duration and severity of symptoms'.

However, despite this, when a team of researchers from the United Nations International Narcotics Control Board examined the records of nearly 400 paediatricians who had prescribed Ritalin they found that half the children who had been diagnosed as suffering from MBD (or ADD or whatever) had not been given psychological or educational testing before being given the drug. The United Nations concluded that frustrated parents, teachers and doctors were too quick to stick a label of ADD onto children with behavioural problems (or, to be more accurate, to children whose behaviour was annoying the parents, teachers and doctors).

Less Than Enthusiastic

I am less than enthusiastic about this drug. In my view, the world would be a healthier place if all supplies of this wretched drug were wrapped in concrete and buried in the rubble of the headquarters of the company making the damned stuff.

You might have guessed by now that I wouldn't prescribe Ritalin for anyone - for anything.

But other doctors clearly don't agree with me. Some observers have described Ritalin as a drug

that can unlock a child's potential. And although estimates about the number of children taking Ritalin vary in the U.S. alone it has been claimed that up to 12 % of all American boys aged between 6 and 14 are being prescribed Ritalin to treat various behavioural disorders. In 1990 the world wide production of the drug was less than three tonnes. By 1994 production of the drug had virtually trebled. It is now not unknown for schools to arrange for children to be treated with Ritalin without obtaining parental permission.

It is worth remembering that although doctors, parents and teachers have for over thirty years now been enthusiastically recommending the use of Ritalin (and similar drugs) in the treatment of MBD there are still a number of unanswered questions.

We still do not know whether the drug works and nor do we know whether it causes any permanent long term damage. We do not know whether the listed potential side effects do more damage than any possible good the drug might do. And, perhaps most astonishing of all, despite the fact that millions of children have been diagnosed as suffering from ADHD, ADD or MBD, and treated with powerful drugs, we do not even know whether any of these conditions - or hyperactivity - really exist.

Back in 1970 the Committee on Government Operations of the U.S. House of Representatives studied the use of behaviour modification drugs on children. At that time around 200,000 to 300,000 children a year in the U.S. were being given these drugs and the point was then made that hyperactivity is considered a disease because it makes it difficult for schools to be run 'like maximum security prisons, for the comfort and the convenience of the teachers and administrators who work in them...'

Since then the only thing that has changed is that the popularity of Ritalin has continued to rise and rise and rise inexorably.

Prescribing Ritalin is, in my view, authorised child abuse on a massive, global scale. But it is clear that the prescribing of powerful mind altering drugs for small children is big business.

In the US the use of antidepressants and stimulants among toddlers aged between two and four tripled between 1991 and 1995. The period between birth and four years of age is a time of great change in the human body. Most importantly it is a time when the brain is maturing. Heaven knows what effect these drugs have on those tiny developing brains.

Ritalin is now widely prescribed for toddlers. So are many other antidepressants, stimulants and other powerful drugs. Remember: typical symptoms of this alleged disease include 'restlessness' and 'inattentiveness'.

I am delighted that my protests and complaints about these absurd and obscene prescribing habits have drawn a number of vicious complaints from doctors.

In my view every doctor who prescribes such drugs for children with alleged ADHD should be defrocked, given a good thrashing with genetically engineered stinging nettles and forced to emigrate to the USA.

SB 48

Articles

Fairbanks Daily News-Miner

FYI
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Councilman backs bill affecting psychotropic drugs in schools

By CHRIS ESHLEMAN

Staff Writer

Monday, April 10, 2006 - A Fairbanks City Council member is asking the council to support a bill in Juneau that seeks to bar employees in public schools in Alaska from recommending the use of psychotropic drugs by students.

While he thinks it is rare that schools would require children to take drugs like Ritalin or Adderall as a prerequisite of attending, Councilman Lloyd Hilling said he is concerned that school employees in Alaska can recommend parents put their children on the drugs without enough understanding of the possible and proven side effects psychotropics can have.

"Let's let scientific research prove these psychotropic drugs," Hilling said. "Meanwhile, let's not be pushing them."

Hilling has put forward a resolution to the council that, if approved, would support a bill introduced last year in the Alaska Legislature. The bill, sponsored by state Sen. Bettye Davis, D-Anchorage, would, in part, prohibit school employees from recommending that a child take a psychotropic drug as a condition for attending a public school.

The bill has not moved from the Senate since it was introduced over a year ago, but a Senate committee plans to hold a public hearing on it Wednesday.

In a sponsor statement on her bill, Davis said it is important that only physicians suggest the use of psychiatric medication. Davis said the use of the drugs in schools has increased rapidly in recent years, and points to parents' concern regarding the issue of diagnosis.

"There are documented incidences of highly negative consequences in which psychiatric prescription drugs have been utilized for what are essentially problems of discipline," Davis' statement reads.

Hilling said the roles of schools in the prescription of psychiatric drugs has been a concern of his for years. A teacher at the University of Alaska Fairbanks and former teacher's aide, Hilling said he supports Davis' bill in part because it would help require parents around the state to go to doctors for advice without being biased through conversations with school employees.

Chris Eshleman can be reached at 459-7582 or ceshleman@newsminer.com.

March 23, 2006

Panel Advises Disclosure of Drugs' Psychotic Effects

By GARDINER HARRIS

GAITHERSBURG, Md., March 22 — Stimulants like Ritalin lead a small number of children to suffer hallucinations that usually feature insects, snakes or worms, according to federal drug officials, and a panel of experts said on Wednesday that physicians and parents needed to be warned of the risk.

The panel members said they hoped the warning would prevent physicians from prescribing a second drug to treat the hallucinations caused by the stimulants, which one expert estimated affect 2 to 5 of every 100 children taking them. Instead, they said, the right thing to do in such cases was to stop prescribing the stimulants.

On Feb. 9, a different advisory committee voted 8 to 7 to recommend that the Food and Drug Administration place its most serious warning label, a so-called black box, on the labels of stimulants to warn that they could have dangerous effects on the heart, particularly in adults. That recommendation grew out of reports that 25 people, mostly children, had died suddenly while taking the drugs.

Ritalin was first approved in the 1950's, stimulants to treat attention deficit disorder and hyperactivity have become among the most widely prescribed medicines in the world. In the United States alone, about 2.5 million children and 1.5 million adults take them; as many as 10 percent of boys ages 10 to 12 do

In addition to Ritalin, two other stimulants, Adderall and Concerta, are popular.

The drugs have been studied in hundreds of trials over five decades and have proven to be extremely effective. But they have always been controversial, with some experts saying they are overprescribed. It is a measure of the difficulty of uncovering the physiological effects of medicines that experts are only now grappling with some of the drugs' serious, though rare, physical and mental effects.

Dr. Thomas B. Newman, an epidemiologist at the University of California, San Francisco, who is a member of the pediatric advisory committee, estimated that out of 100 patients treated for a year with stimulants, 2 to 5 will suffer serious psychotic episodes like hallucinations.

"It's a small number, but it's real," said Dr. Robert M. Nelson, an intensive-care physician at Children's Hospital of Philadelphia and chairman of the committee.

Dr. Kate Gelperin, an F.D.A. drug-safety specialist, told the committee that the agency had discovered a surprising number of cases in which young children given stimulants suffered hallucinations. Most said that they saw or felt insects, snakes or worms, Dr. Gelperin said.

Gelperin described the case of a 12-year-old girl who said that insects were crawling under her skin. Another child was found by his parents crawling on the ground and complaining that he was surrounded by cockroaches. In both cases, the hallucinations disappeared after drug therapy was stopped. The boy's doctor persuaded his parents to give stimulants again, and his hallucinations reappeared.

F.D.A. officials made clear to the advisory panel that they considered the reports of hallucinations a problem that deserved a label warning.

"We were struck by the hallucinations," said Dr. Rosemary Johann-Liang, deputy director of the division of drug-risk evaluation at the F.D.A. "We felt it was a drug effect."

The agency does not have to follow the conclusions of its advisory panels, but it usually does. Dr. Robert Temple, director of the Office of Medical Policy at the agency, said after the meeting that the agency would "turn quite quickly to implementing the recommendations we've gotten."

Dr. Temple added, "The area of uncertainty is what to do about the black-box warning on cardiovascular risks in adults."

After the advisory committee meeting in February, agency officials said they had no intention in the near future of placing such warnings on stimulant labels about their potential heart risks.

Wednesday's panel, made up mostly of experts in pediatric medicine and psychiatry, discussed only the potential risks of the drugs among children, while February's group focused mostly on the risks to adults. The pediatric panel agreed with the earlier group that children who have heart problems should probably not be given stimulants. But most children who die suddenly from heart ailments never knew they were at risk, and most children put on stimulant therapy are not given thorough heart evaluations.

"You can't screen 2.5 million children" with intensive heart evaluation tests, Dr. Nelson said.

Sun-Sentinel.com

http://www.sun-sentinel.com/news/nationworld/ats-ap_health12mar16.1.3869296.story?ctrack=1&cset=true

More Kids Are Getting Anti-Psychotic Drugs

By LINDSEY TANNER
AP Medical Writer

March 16, 2006, 8:07 PM EST

CHICAGO -- Soaring numbers of American children are being prescribed anti-psychotic drugs -- in many cases, for attention deficit disorder or other behavioral problems for which these medications have not been proven to work, a study found.

The annual number of children prescribed anti-psychotic drugs jumped fivefold between 1995 and 2002, to an estimated 2.5 million, the study said. That is an increase from 8.6 out of every 1,000 children in the mid-1990s to nearly 40 out of 1,000.

But more than half of the prescriptions were for attention deficit and other non-psychotic conditions, the researchers said.

The findings are worrisome "because it looks like these medications are being used for large numbers of children in a setting where we don't know if they work," said lead author Dr. William Cooper, a pediatrician at Vanderbilt Children's Hospital.

The increasing use of anti-psychotics since the mid-1990s corresponds with the introduction of costly and heavily marketed medications such as Zyprexa and Risperdal. The packaging information for both says their safety and effectiveness in children have not been established.

Anti-psychotics are intended for use against schizophrenia and other psychotic illnesses.

However, attention deficit disorder is sometimes accompanied by temper outbursts and other disruptive behavior. As a result, some doctors prescribe anti-psychotics to these children to calm them down -- a strategy some doctors and parents say works.

The drugs, which typically cost several dollars per pill, are considered safer than older anti-psychotics -- at least in adults -- but they still can have serious side effects, including weight gain, elevated cholesterol and diabetes.

Anecdotal evidence suggests similar side effects occur in children, but large-scale studies of youngsters are needed, Cooper said.

The researchers analyzed data on youngsters age 13 on average who were involved in annual national health surveys. The surveys involved prescriptions given during 119,752 doctor visits. The researchers used that data to come up with national estimates.

Cooper said some of the increases might reflect repeat prescriptions given to the same child, but he said that is unlikely and noted that his findings echo results from smaller studies.

The study appears in the March-April edition of the journal *Ambulatory Pediatrics*.

Heavy marketing by drug companies probably contributed to the increase in the use of anti-psychotic drugs among children, said Dr. Daniel Safer, a psychiatrist affiliated with Johns Hopkins University, who called the potential side effects a concern.

Safer said a few of his child patients with behavior problems are on the drugs after they were prescribed by other doctors. Safer said he has let these children continue on the drugs, but at low doses, and he also does periodic tests for high cholesterol or warning signs of diabetes.

Dr. David Fassler, a University of Vermont psychiatry professor, said more research is needed before anti-psychotics should be considered standard treatment for attention deficit disorders in children.

"Given the frequency with which these medications are being used, there's no question that we need additional studies on both safety and efficacy in pediatric populations," Fassler said.

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Uncle Sam wants you – well, not everyone in prime recruiting age group

By Pauline Jelinak
ASSOCIATED PRESS

9:33 a.m. March 12, 2006

WASHINGTON – Uncle Sam wants YOU, that famous Army recruiting poster says. But does he really?

Not if you're a Ritalin-taking, overweight, Generation Y couch potato – or some combination of the above.

As for that fashionable “body art” that the military still calls a tattoo, having one is grounds for rejection, too.

With U.S. casualties rising in wars overseas and more opportunities in the civilian work force from an improved U.S. economy, many young people are shunning a career in the armed forces. But recruiting is still a two-way street – and the military, too, doesn't want most people in this prime recruiting age group of 17 to 24.

Some 32 million Americans now in this group, the Army deems the vast majority too obese, too uneducated, too flawed some way, according to its estimates for the current budget year.

“As you look at overall population and you start factoring out people, many are not eligible in the first place to apply,” said Doug Smith, spokesman for the Army Recruiting Command.

Some experts are skeptical.

Previous Defense Department studies have found that 75 percent of young people are ineligible for military service, noted Charles Moskos of Northwestern University. While the professor emeritus who specializes in military sociology says it is “a baloney number,” he acknowledges he has no figures to counter it.

“Recruiters are looking for reasons other than themselves,” said David R. Segal, director of the Center for Research on Military Organization at the University of Maryland. “So they blame the pool.”

The military's figures are estimates, based partly on census numbers. They are part of an elaborate analysis the military does as it struggles each year to compete with colleges and companies for the nation's best and brightest, plan for future needs and maintain diversity.

The Census Bureau estimates that the overall pool of people who would be in the military's prime target age has shrunk as American society ages. There were 1 million fewer 18- to 24-year olds in 2004 than in 2000, the agency says.

The pool shrinks to 13.6 million when only high school graduates and those who score in the upper half on a military service aptitude test are considered. The 30 percent who are high school dropouts are not the top choice of today's professional, all-volunteer and increasingly high-tech military force.

Other factors include:

- the rising rate of obesity; some 30 percent of U.S. adults are now considered obese.
- a decline in physical fitness; one-third of teenagers are now believed to be incapable of passing a treadmill test.

~~near-epidemic rise in the use of Ritalin and other stimulants to treat attention deficit hyperactivity disorder. Potential recruits are ineligible for military service if they have taken such a drug in the previous year.~~

~~Doctors prescribe these drugs to about 2 million children and 1 million adults a month, according to a federal survey. Many more are believed to be using such stimulants recreationally and to stay awake longer to boost academic and physical performance.~~

Other potential recruits are rejected because they have criminal histories and too many dependents. Subtract 4.4 million from the pool for these people and for the overweight.

Others can be rejected for medical problems, from blindness to asthma. The Army estimate has subtracted 2.6 million for this group.

That leaves 4.3 million fully qualified potential recruits and an estimated 2.3 million more who might qualify if given waivers on some of their problems.

The bottom line: a total 6.6 million potential recruits from all men and women in the 32 million-person age group.

In the budget year that ended last September, 15 percent of recruits required a waiver in order to be accepted for active duty services – or about 11,000 people of some 73,000 recruited.

Most waivers were for medical problems. Some were for misdemeanors such as public drunkenness, resisting arrest or misdemeanor assault – prompting criticism that the Army is lowering its standards.

This year the Army is trying to recruit 80,000 people; all the services are recruiting about 180,000.

And about the tattoos: They are not supposed to be on your neck, refer to gang membership, be offensive, or in any way conflict with military standards on integrity, respect and team work. The military is increasingly giving waivers for some types of tattoos, officials said.

■ On the Net:

Defense Department career and aptitude exploration site: www.asvabprogram.com

Find this article at:

<http://www.signonsandiego.com/news/military/20060312-0932-unclesamwantsyou.html>

Check the box to include the list of links referenced in the article.

SB 48

Resolution

Introduced by: Council Member Hilling
Date: April 10, 2006

RESOLUTION NO. 4208

A RESOLUTION IN SUPPORT OF SENATE BILL 48, WHICH WOULD PROHIBIT SCHOOL PERSONNEL FROM RECOMMENDING OR REQUIRING PRECRIPTIONS OF PSYCHOTROPIC DRUGS FOR SCHOOL CHILDREN

WHEREAS, the family of psychotropic drugs, such as the Amphetamine-type Ritalin and Adderall, are often prescribed for school age children in Alaska; and

WHEREAS, school personnel often require or recommend to parents that these drugs be prescribed to ameliorate their children's behavior; and

WHEREAS, such drugs pose significant risk for a multitude of proven negative side effects, including negative transformations of personality and even death; and

WHEREAS, Alaska Senate Bill No. 48, "An Act relating to recommending or refusing psychotropic drugs or certain types of evaluations or treatments for children," is currently being debated in the Alaska State Legislature; and

WHEREAS, the SB 48 would amend the Alaska Statutes by adding 14.30.171, which reads in part "school personnel may not recommend..." [or require that a parent or guardian obtain a prescription for] "...a child to take or continue to take a psychotropic drug..." (a full copy of the Bill is attached);

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fairbanks supports adoption of SB 48 and encourages the public to review the Bill and provide input to the legislature.

Passed and Approved this 10th day of April, 2006.

STEVE M. THOMPSON, MAYOR

APPROVED AS TO FORM

ATTEST:

Carol L. Colp CMC, City Clerk

Herbert P. Kuss, City Attorney

Testimony on Alaska Senate Bill 48 before the Senate Judiciary Committee

April 22, 2006

Presented by Richard Warner, President, Seattle Chapter, Citizens Commission on Human Rights, Seattle, Washington, 1-877-448-8517.

I. Background

Legislation similar to SB 48 has been passed by a number of states, including Connecticut, Minnesota, Illinois, Virginia, Colorado, Arizona, New Hampshire, and Florida.

Such legislation is meant to address the problem of the intrusion of psychiatry into the lives of families by means of the powers granted to schools and state agencies.

There is no question that children face enormous difficulties growing up in today's society and there are dozens of root causes that we can point to which influence their development and behavior. They include such things as unwanted births, divorce, broken homes, hours spent in front of television sets, constant exposure from a very young age to sexual images, poor nutrition, poor overall health, poverty, drug abuse, exposure to environmental toxins, and a lack of adult guidance in their lives. You can probably add you own factors to this list.

The psychiatrist, however, walks in and says, "You know what the problem is. You've got a defective child - kid's got a bad brain."

The problem, of course, is that 1) the psychiatric diagnostic system has no science behind it and is often ridiculed by psychiatrists and psychologists themselves; and 2) there's no credible evidence there is anything wrong with the brains of children who get psychiatrically labeled. They don't even have a way to measure the brain chemistry of living person.

So you get millions of kids being put on psychiatric drugs with no medical or scientific justification for it. And the numbers increase dramatically every year.

And what do these drugs do? The FDA has recently issued an unprecedented series of warnings about psychiatric drugs. The FDA has found that antidepressants can at least double the risk of a child becoming suicidal and that ADHD drugs like Ritalin can increase the risk of cardiovascular problems and cause psychiatric events such as suicidal ideation, hallucinations, aggression, and violent, psychotic behavior. And that just touches the surface of what we are discovering about these drugs.

To make matters worse, they are very ineffective.

For example, in April 18, 2004 the *Washington Post* reported,

Of 15 trials conducted among depressed children, 10 failed to show antidepressants were better than dummy pills. Two were inconclusive, and three showed positive results. The negative results have

mostly been withheld from public scrutiny by the pharmaceutical companies that paid for the trials, which say that the data are proprietary.

The Post also reported that an FDA internal analysis of two of the three studies that showed positive results found, "The evidence for efficacy based on the pre-specified endpoint is not convincing."

A more complete examination of these issues can be found in the testimony we presented to the Health, Education and Social Services Committee.

SB 48

The previous version of this bill recognized the obvious. That given the lack of a medical basis for labeling children as having brain diseases or chemical imbalances, and given the enormous risks of the drugs and their complete lack of effectiveness, no one, particularly the state, has any business forcing or coercing parents to psychiatrically evaluate or drug their children.

The previous version of this bill essentially stopped school personnel and the courts from going after parents who don't want their kids psychiatrically tested and drugged.

The current version has introduced a loophole that seriously weakens the bill. It allows school personnel and the courts to go after parents who do not consent to the drugging of their child by accusing them of "mental injury" or "neglect." Mental injury is defined in statute to be

an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function;

Neglect is defined as,

the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child,

And who is going to be deciding if there is mental injury or neglect? The people who think kids have bad brains - the very people from whom we are trying, by means of this legislation, to protect parents.

This legislation is a step in the right direction but it has been seriously weakened. The previous version was much better. The text on page 2, lines 28 and 29, insure that neglect and abuse will be reported. If there is concern that children might not get necessary medical treatment, we would then offer the following additional amendments (see attachment #1):

Page 2, lines 4 and 5: strike from "except" through "47.17.290,"

Page 4, after line 8, "public funds," reintroduce the language of the original bill, beginning on line 9 and ending on line 27

Page 4, line 28 on, in bold.