



# State Child Endangerment<sup>1</sup> Bill Status Update

**January 2007**

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<sup>1</sup> This update does not contain legislation addressing the child endangerment issue as it pertains to: (a) pregnant and addicted mothers/prenatal exposure to alcohol and/or controlled substances, (b) manufacturing controlled substances in or near “drug-free zones” such as places of worship, playgrounds, schools, day care facilities, etc., (c) driving under the influence of alcohol or controlled substances with a child present in a vehicle, (d) failing to place a child in a child safety seat/failing to employ the use of a seat belt or (e) providing alcohol or tobacco products to minors. Although the National Alliance for Model State Drug Laws (NAMSDL) recognizes that such acts endanger children, we consider the aforementioned offenses as separate research issues outside of the customary purview of child endangerment laws enacted to address the urgency fueled by the existence of clandestine laboratories, especially those used to create methamphetamine.

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## ARKANSAS

### **H.B. 1004**

**Status:** Read First Time, Rules Suspended, Read Second Time, Referred to Senate Committee on Judiciary. (1/16/07)

**H.B. 1004** seeks to enhance penalties for the manufacture of methamphetamine in the presence of certain persons. Current law provides penalty enhancements if methamphetamine is manufactured or drug paraphernalia is possessed with the intent to manufacture methamphetamine in the presence of minors only. This bill would increase the penalties for the aforementioned crimes if they were committed not only in the presence of a minor but also an elderly or incompetent person. **H.B. 1004** defines the term “elderly person” to mean, “any person seventy (70) years of age or older” and the term “incompetent person” to mean, “any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.”

## CALIFORNIA

### **A.B. 116**

**Status:** From Printer: May Be Heard in Committee on February 9, 2007. (1/10/07)

**A.B. 116** would amend the Section 273a of the Penal Code to provide that any parent, guardian, or caregiver of a minor child who knowingly and unlawfully consumes, smokes, inhales, ingests, or otherwise uses cocaine, cocaine base, phencyclidine or its analogs, lysergic acid diethylamide (also known as LSD), heroin, methamphetamine, or 3, 4-Methylenedioxymethamphetamine (also known as MDMA, XTC, or Ecstasy) if the act occurs in the presence of, or is witnessed by, a minor child under his or her care, is punishable by imprisonment in the state prison for sixteen (16) months, or two (2) or three (3) years.

## INDIANA

### **H.B. 1084**

**Status:** Authored by Representative. (1/08/07)

**H.B. 1084** is a bill to make technical corrections to various sections of the Indiana Code. Included among the sections to be amended is IC 5-2-15-4. Current law under this Section provides that, “a law enforcement agency that discovers a child less than fourteen (14) years of age at a methamphetamine laboratory site used for the illegal manufacture of a controlled

## INDIANA (continued)

Substance (as defined in IC 35-48-1-9) shall notify the Department of Child Services.” The proposed amendment would have the Section read, “a law enforcement agency that discovers a child less than eighteen (18) years of age at a site used for the illegal manufacture of a controlled substance shall notify the Department of Child Services.”

## MICHIGAN

### **H.B. 4420**

**Status:** Assigned PA 630’06 with Immediate Effect 2006 Addenda. (1/03/07)

**H.B. 4420** is an act concerning the reporting and investigation requirements of abused and neglected children, especially those who are suspected of having had exposure to or contact with methamphetamine production.

### **S.B. 1410**

**Status:** Assigned PA 0583’06 with Immediate Effect. (1/03/07)

See summary of H.B. 4420.

## MONTANA

### **S.B. 85**

**Status:** Scheduled for Second Reading (S). (1/17/07)

Under **S.B. 85** the crime of endangering the welfare of children per Section 45-5-622 of the Montana Code Annotated would be revised to include methamphetamine-related child endangerment. The legislation provides that a person, whether or not the person is supervising the welfare of a child less than eighteen (18) years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly: (a) produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine; (b) possesses any material, compound, mixture, or preparation that contains any combination of the items listed in Section 45-9-107 with intent to manufacture methamphetamine; or (c) causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia.

## MONTANA (continued)

A person convicted of the aforementioned is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed five (5) years and may be fined an amount not to exceed ten thousand dollars (\$10,000.00), or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed twenty-five thousand dollars (\$25,000.00) or be imprisoned for a term not to exceed ten (10) years, or both. Prosecution or conviction does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

## NEVADA

### **S.B. 6**

**Status:** From Printer. (12/13/06)

Presently, Nevada law prohibits one from intentionally allowing a child to be present in any conveyance or upon any premises where a controlled substance is being unlawfully used, sold or manufactured. However, marijuana is specifically excluded from the scope of this prohibition. **S.B. 6** seeks to amend existing law to include marijuana within the scope of the prohibition against unlawfully selling or manufacturing controlled substances in the presence of a child, but would not amend existing law to include marijuana within the scope of the prohibition against unlawfully using marijuana in the presence of a child.

## SOUTH CAROLINA

### **H.B. 3047**

**Status:** House Referred to Committee on Judiciary HJ-33. (1/09/07)

**H.B. 3047** endeavors to amend Section 44-53-375 of the Code of Laws of South Carolina, 1976, relating to the possession, distribution, manufacture, and trafficking of methamphetamine or cocaine base, so as to provide that a person may be charged with manslaughter if the distribution or trafficking in the drug causes the death of the user and to provide for an increase in the sentence if a person under the age of eighteen (18) is endangered or a law enforcement officer is injured by one of the hazards related to the manufacture of the drug.

## SOUTH CAROLINA (continued)

### **H.B. 3069**

**Status:** (H) Member(s) Request Name Added as Sponsor: Cotty. (1/11/07)

**H.B. 3069** is a bill to amend Section 20-7-490 of the Code of Laws of South Carolina, 1976, concerning the definition of terms in the Children's Code, including the definition of "child abuse and neglect," so as to provided that child abuse and neglect includes knowingly exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including during the manufacture of methamphetamine. The legislation also seeks to amend Section 20-7-763 regarding the requirement that the Department of Social Services must make reasonable efforts to preserve or unify the family and exceptions to this requirement, so as to provide as an exception that the parent has knowingly exposed a child to chemicals that have the capacity to interfere with normal physiological functions, including during the manufacture of methamphetamine. Lastly, **H.B. 3069** would amend Section 20-7-1572 to provide that the family court may order the termination of parental rights upon a finding that termination is in the best interest of the child and among other things, the parent of the child knowingly exposed any child in the home to chemicals that have the capacity to interfere with normal physiological functions including, but not limited to, chemicals used or generated during the manufacture of methamphetamine.

## TEXAS

### **S.B. 130**

**Status:** Filed and Received by the Secretary of State. (11/30/06)

**S.B. 130** is an act relating to conduct that constitutes the offense of endangering a child. As introduced, the bill would amend Section 22.041(c-1) of the Penal Code to provide that it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person, in the presence of the child: (1) manufactured the controlled substance methamphetamine; or (2) injected, ingested, inhaled, or otherwise introduced into the human body a controlled substance listed in Schedule I, as established by the Commissioner of Public Health under Chapter 481, Health and Safety Code.

### **S.B. 183**

**Status:** Filed and Received by the Secretary of State. (1/10/07)

Under **S.B. 183**, Section 481.1122 would be added to Subchapter D, Chapter 481 of the Health and Safety Code to read that if it is shown at the punishment phase of a trial for the manufacture of a controlled substance listed in Penalty Group 1 that when the offense was committed a child younger than eighteen (18) years of age was present on the premises where the offense was

## TEXAS (continued)

committed: (1) the punishments specified by Sections 481.112(b) and (c) are increased by one degree; (2) the minimum term of imprisonment specified by Section 481.112(e) is increased to fifteen (15) years and the maximum fine specified by that Section is increased to one hundred fifty thousand dollars (\$150,000.00); and (3) the minimum term of imprisonment specified by Section 481.112(f) is increased to twenty (20) years and the maximum fine specified by that Section is increased to three hundred thousand dollars (\$300,000.00).

## UTAH

### H.B. 231

**Status:** (H) To Standing Committee. (1/16/07)

Among other things, **H.B. 231** modifies the Utah Controlled Substances Act regarding violations of controlled substance laws in the presence of children. To that end, the bill amends the current crime of committing drug offenses in the “immediate presence” of persons younger than eighteen (18) by removing the word “immediate.”

## WYOMING

### H.B. 187

**Status:** Introduced and Referred to H01. (1/16/07)

**H.B. 187** would amend Section 6-4-405(b) of the Wyoming Statutes to provide that no person having the care or custody of a child shall knowingly and willfully permit the child to remain in a room, dwelling or vehicle where that person knows that methamphetamine is currently possessed, stored or being ingested. The term “child” would be defined to mean, “any person who has not yet reached the eighteenth anniversary of his birth.”