

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 10, 2004
11:25 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Paul Seaton

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 269(CRA)

"An Act relating to access to library records, including access to the library records of a child by a parent or guardian."

- MOVED HCS CSSB 269(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 306(FIN) am

"An Act relating to the practice of naturopathic medicine; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 97(JUD) am(ct rule fld)(efd fld)

"An Act relating to public interest litigants and to attorney fees and costs and the posting of bonds or other security."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 269

SHORT TITLE: PARENT ACCESS TO CHILD'S LIBRARY RECORDS

SPONSOR(S): SENATOR(S) GREEN

01/16/04 (S) READ THE FIRST TIME - REFERRALS
01/16/04 (S) CRA, HES
02/11/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
02/11/04 (S) Heard & Held
02/11/04 (S) MINUTE(CRA)
02/18/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
02/18/04 (S) Moved CSSB 269(CRA) Out of Committee
02/18/04 (S) MINUTE(CRA)
02/19/04 (S) CRA RPT CS 2DP 1DNP 2AM NEW TITLE
02/19/04 (S) DP: STEDMAN, WAGONER; DNP: ELTON
02/19/04 (S) AMEND: LINCOLN, STEVENS G
02/20/04 (S) HES AT 1:30 PM BUTROVICH 205
02/20/04 (S) -- Meeting Canceled --
02/23/04 (S) HES AT 2:30 PM BUTROVICH 205
02/23/04 (S) Moved CSSB 269(CRA) Out of Committee
02/23/04 (S) MINUTE(HES)
02/25/04 (S) HES RPT CS(CRA) 2DP 1NR
02/25/04 (S) DP: GREEN, WILKEN; NR: GUESS
03/03/04 (S) TRANSMITTED TO (H)
03/03/04 (S) VERSION: CSSB 269(CRA)
03/04/04 (H) READ THE FIRST TIME - REFERRALS
03/04/04 (H) HES, JUD
03/30/04 (H) HES AT 3:00 PM CAPITOL 106
03/30/04 (H) Moved Out of Committee
03/30/04 (H) MINUTE(HES)
03/31/04 (H) HES RPT 4DP 1DNP 1NR
03/31/04 (H) DP: COGHILL, WOLF, GATTO, WILSON;
03/31/04 (H) DNP: CISSNA; NR: SEATON
04/16/04 (H) JUD AT 1:00 PM CAPITOL 120
04/16/04 (H) <Bill Hearing Postponed to 04/19/04>
04/19/04 (H) JUD AT 1:00 PM CAPITOL 120
04/19/04 (H) -- Meeting Canceled --
04/28/04 (H) JUD AT 1:00 PM CAPITOL 120
04/28/04 (H) -- Meeting Canceled --
05/05/04 (H) JUD AT 1:00 PM CAPITOL 120
05/05/04 (H) Scheduled But Not Heard
05/06/04 (H) JUD AT 3:00 PM CAPITOL 120
05/06/04 (H) Scheduled But Not Heard
05/07/04 (H) JUD AT 6:15 PM CAPITOL 120
05/07/04 (H) Scheduled But Not Heard
05/08/04 (H) JUD AT 11:00 AM CAPITOL 120
05/08/04 (H) Scheduled But Not Heard
05/09/04 (H) JUD AT 3:00 PM CAPITOL 120
05/09/04 (H) Scheduled But Not Heard
05/10/04 (H) JUD AT 11:00 AM CAPITOL 120

WITNESS REGISTER

SENATOR LYDA GREEN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 269.

ART WEEKS, Director
Anchorage Municipal Libraries
Municipality of Anchorage (MOA)
Anchorage, Alaska
POSITION STATEMENT: During discussion of SB 269, provided comments and responded to questions.

MARY RASMUSSEN, Member
Library Advisory Board
Anchorage Municipal Libraries
Municipality of Anchorage (MOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SB 269.

CHRISTINE O'CONNOR, Librarian
Dillingham Public Library
City of Dillingham
Dillingham, Alaska
POSITION STATEMENT: During discussion of SB 269, provided comments and responded to a question.

ANDREE McLEOD
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 269 and urged the committee to pass it.

BARBARA BERG, Director
Juneau Public Libraries
City and Borough of Juneau;
Member
Alaska Library Association (AkLA)
Juneau, Alaska
POSITION STATEMENT: During discussion of SB 269, provided comments, responded to questions, and made reference to a proposed change.

JACQUELINE TUPOU, Staff
to Senator Lyda Green

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of a proposed change encompassed in the House committee substitute (HCS) for SB 269, Version S.

CLARK GRUENING, Lobbyist
for the Alaska Library Association (AkLA)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions regarding SB 269 and the proposed House committee substitute (HCS), Version S.

ACTION NARRATIVE

TAPE 04-84, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting, which had been recessed on 5/9/04, back to order at 11:25 a.m. Representatives McGuire, Holm, Samuels, Gara, and Gruenberg were present at the call back to order. Representatives Anderson and Ogg arrived as the meeting was in progress.

SB 269 - PARENT ACCESS TO CHILD'S LIBRARY RECORDS

Number 0112

CHAIR MCGUIRE announced that the committee would consider CS FOR SENATE BILL NO. 269(CRA), "An Act relating to access to library records, including access to the library records of a child by a parent or guardian." [In members' packets was a proposed House committee substitute (HCS) for SB 269, Version 23-LS1457\S, Mischel, 5/10/04; before the committee was CSSB 269(CRA).]

Number 0163

SENATOR LYDA GREEN, Alaska State Legislature, sponsor, relayed that over the interim last year, she'd [been approached by] some parents in her district who'd been contacted by the library regarding some books that their children had requested or checked out. One mother, upon calling the library back, was informed by the library that it would not release the names of the books in question to her, the parent, because library records are confidential. In the other case, the library left a message that some books were overdue, and when the mother

contacted the library to find out which books were overdue, she was told that that information was confidential and could not be released to her. Senator Green remarked that one child was 7 years old and the other was 8 years old.

SENATOR GREEN remarked that even though parents are responsible for all aspects of their children's lives, current law provides that library records are confidential. She noted, however, that current law also provides that all school-related records of children, including library records, be disclosed to parents, and offered her belief that the same standard should apply to public libraries. She opined that parents do have the right to get the information in their children's library records, whether school library records or public library records, and that libraries should not be allowed to withhold that information from parents.

SENATOR GREEN said that SB 269 will change current law such that all library records of children could be released to parents. She noted that under the bill, the library records of an emancipated minor would not be released - since an emancipated minor would be treated as an adult - nor would university library records of children enrolled in a university be released. She indicated that federal law - the Family Educational Rights Privacy Act ("FERPA") - says all school records should be accessible to parents, and reiterated her belief that parents should have access to their children's library records, even if they are not school library records, since parents are ultimately responsible for any action their children take while in the library or for any damage their children do to library materials.

Number 0587

SENATOR GREEN noted that some libraries have a form to that effect which parents must fill out before their children are issued a library card. She offered her belief that notwithstanding the fact that parents are ultimately responsible for their children's actions, [some] libraries prohibit parents from picking up a library book on behalf of their children. She relayed that some have suggested that children should give their parents [written] permission to pick up their library books; however, children just aren't inclined to give parents that kind of permission, she opined. With regard to the argument [that SB 269] will violate children's right to privacy, she offered her belief that those rights don't extend to children.

SENATOR GREEN posited that passage of SB 269 will not increase librarians' workload, and relayed that one state librarian offered testimony in a prior committee that he had released information regarding when a child's library book was due or regarding how much money was owed. This illustrates that the current law is not being applied evenly across the state, she suggested; however, regardless of any inconsistency in how state law is applied, the issue is really one of whether, by law, parents have the right to the information contained in their children's library records.

SENATOR GREEN, in response to a comment, offered her understanding that Section 1 of the bill addresses what information in a person's library record must be kept confidential, and provides an exemption for the records of children under 18 years of age.

CHAIR MCGUIRE asked why proposed subsection (a) deletes the words, "This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska."

SENATOR GREEN, in response, indicated that proposed subsection (b) would delete the words, "public elementary or secondary schools" as they pertain to libraries, and that proposed subsection (c) would insert the words, "This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska, and by a public library nonprofit corporation".

Number 0799

CHAIR MCGUIRE surmised that this change adds an element of segregation to what types of libraries the restriction and exemption apply to.

SENATOR GREEN noted that proposed subsection (b) would change current law such that it would say, "Records of a library identifying a child under 18 years of age shall be made available on request to a parent or guardian of that child". In response to comments, she offered her belief that continuing federal education funding is dependant on the words, "child under 18 years of age" being part of statute.

CHAIR MCGUIRE asked whether other states have changed their statutory language to say, "child under 18 years of age" in order to comply with FERPA.

SENATOR GREEN said she did not know. She mentioned that included in members' packets is a handout detailing what other states are doing with regard to the privacy of children's library records: 13 states allow parental access to their children's library records - 5 states specifically say "school" library, 8 states specifically say "public" library; 14 states specifically provide for students' library records to be private; and 23 states have no laws specifically addressing children, but provide for public library records to be confidential. She also offered her understanding that in four of the latter type of states, there have been lawsuits wherein the courts have found for the parents regarding their right to their children's library records.

CHAIR MCGUIRE asked Senator Green whether she has given consideration to how the bill will interact with Alaska's specific constitutional right to privacy.

SENATOR GREEN reiterated her belief that that constitutional right to privacy does not extend to minors, and relayed that there was discussion of this issue in the House Health, Education and Social Services Standing Committee. She said that she is annoyed that a parent is currently unable to find out when a child's library book is due and is unable to pick up the child's library books. She relayed that she has been told that if she brings in her grandchildren's library cards, for example, that she can access the information; she indicated that this is an unacceptable solution.

REPRESENTATIVE GRUENBERG mentioned that according to a legal opinion he'd received from Legislative Legal and Research Services, the proposed law has a reasonable chance of being upheld, but if the reference to the age of the child were lowered, it would have a better chance.

Number 1267

ART WEEKS, Director, Anchorage Municipal Libraries, Municipality of Anchorage (MOA), surmised that Senator Green is attempting to address the issue of the parent's financial responsibility regarding overdue or damaged library materials. He pointed out, however, that at Anchorage Municipal Libraries, that information is disclosed to parents, though not information regarding the child's reading record. He also pointed out that the bill wouldn't address the situation she used as an example, that of being a grandparent and wanting to find out information about

her grandchildren's library records, because the bill only applies to parents and guardians, not grandparents. He offered the belief that the proposed legislation will compromise the safety of children. He elaborated:

At the very young age, toddler through elementary [school] years, we feel the parent should be at the library with the child anyway for reasons of safety as well as guiding their reading interests. We're very disturbed about the idea that adolescents would have their reader records disclosed to parents, especially for adolescents that may be in unsafe situations - [such as living with] abusive parents or caretakers, [or being exposed to] alcoholism - maybe they're looking into a future vocation that's meeting parental disapproval, or even [have] questions about their own sexuality. We are very concerned about the safety of teens, and we feel that this might be something that would compromise that, especially in a state where teen suicide is so great. ...

The other point I wanted to make was that unlike schools, we do not keep ... records of who custodial parents are, so we wouldn't know who we were divulging information to. ... We don't know whether the parent is custodial [or] has a restraining order, the variation in last names would be confusing, and [we] ... just don't want to be able to disclose a reader record that not only lists books that are being read but [also contains the] address of the child. So for that reason we feel that the privacy of children should be maintained as stated in the [Alaska State] Constitution, that there's not really a compelling reason to abridge that guarantee that is given in the Alaska [State] Constitution.

MR. WEEKS, in conclusion, suggested that the bill be amended to just address that particular situation where financial responsibility kicks in.

Number 1428

REPRESENTATIVE GARA asked for a sense of how many minors use the Anchorage Municipal Libraries without their parents [in attendance].

MR. WEEKS remarked that that would be difficult to determine. He added:

There's a certain age where you start navigating the world on your own; ... certainly in the teen years, starting around 12-13, you start to ... see children at the library without being attended by an adult. Under that age, [there are] very few. At the Anchorage Municipal Libraries, we certainly discourage unattended children. You do have some drop-offs after school, which is something we try to discourage; libraries are not necessarily a safe place because we are an institution that allows anybody through the door and our ability to supervise everybody in the library is not that good. So we do encourage parents with younger children to accompany them to the library. ...

REPRESENTATIVE GRUENBERG, on the issue of the bill's constitutionality, asked whether the courts would use a balancing test or a "strict scrutiny" analysis.

MR. WEEKS said he didn't know.

REPRESENTATIVE GRUENBERG characterized his query as a core question.

Number 1563

MARY RASMUSSEN, Member, Library Advisory Board, Anchorage Municipal Libraries, Municipality of Anchorage (MOA), relayed that the Library Advisory Board recommended the following to the Anchorage Assembly:

By unanimous vote, the Library Advisory Board recommended that the assembly oppose Senate Bill 269. As the bill is written, it is both harmful to children and is vague and overly broad in scope. The Library Advisory Board cites the following reasons for its conclusions.

One, it will be unduly burdensome on libraries to determine who is a parent who might have a right of access to a child's records. Librarians, unlike educators, have no established relationships with parents, and therefore have no records to know the custodianship. Library borrowing by minor children in

Anchorage is offered by both Anchorage Municipal Libraries and the (indisc.) University of Alaska. Unlike public schools, neither institution (indisc.) information as to the custodial arrangement for minor children or records of parents.

Two, the amendment potentially compromises the safety of children by requiring disclosure of personal information on a library record. The disclosure of the library record, including home address, may be at variance with current state law on violence. The disclosure could also be in contravention of court restraining orders for noncustodial parents. There is furthermore a potential for a disclosure to strangers posing as parents. That's exposing children to predators.

Three, children, especially in the years of adolescence, should be able to investigate sensitive information in a safe and secure environment that maximizes the use of accurate and scholarly data and information. Librarians - like other professionals such as counselors, psychiatrists, police - respect a child's right to privacy and do not release certain information to parents under similar confidentiality laws.

Four, the university library staff, which do not have access to records on student family or age status, may be held liable if library records were illegally disclosed. Five, the legislation places an undue financial burden on many of Alaska's libraries; disclosure of reading material for some libraries would require either significant staff time for a hand audit of circulation records, or require procurement of a costly automated system - a burdensome expense especially for smaller libraries in Bush communities. Six, the Library Advisory Board therefore regards the legislation as an unfunded mandate and financially (indisc.) the libraries of Alaska.

Number 1694

MS. RASMUSSEN said that on a personal level, she'd like to make two points:

One is that I think our state has a wonderful privacy clause in its constitution, and I really would hate to see the legislature taking away privacy rights of citizens - including children. And the second point is that I am a parent and I think parental rights are really important, but I see this as [a] chance where parents can talk to their children, and I don't think the library and the librarians should be put ... in the middle.

And that's why I think it's really important, that this is an issue of: if your child is so young that they can't handle a library card, then maybe they should be doing it on their parent's card; but as they get older, this is a perfect chance, as a parent, to let them develop responsibility on their own and to teach them these things - so I think it's a real positive situation for them; and then, as an adolescent, I reiterate what Mr. Weeks said, that I think having access to accurate information is really important.

And if a parent can't talk to their child about this, then going in behind their back and getting their library record, I think, is a real disservice to that individual. Thank you for letting me testify.

Number 1748

CHRISTINE O'CONNOR, Librarian, Dillingham Public Library, City of Dillingham, noted that she is the mother of an 11-year-old son and a 13-year-old daughter. She said she doesn't have any problem with providing the parents of small children with their children's library records, but does have a couple of concerns with doing the same for adolescent children. She elaborated:

A lot of the teens that I see here do not come from caring homes; their parents are indifferent or even harmful to these young adults that use my library, and these are teens I'm worried will be harmed by the bill [as it's] currently written. Teens that lose the privacy of their library use will [also be] losing the security of knowing they can come to the library for safe access to information. And this is information that can be life changing for them.

There are two topics that especially concern me when we talk about taking privacy away from teens. The first is health. On several occasions teenage girls have brought me stacks of books on pregnancy, [and] I check them out. Most of the time I know the teen and I also know the parents, and each time this has happened ... I realized that this young girl doesn't have help from her parents to deal with a pregnancy, but at least she's looking for information, and I want that to be available to her. There are other sources of health information for teens here in Dillingham, but we're very small; a teen needing health information has to be willing to be exposed publicly. [In] visiting the hospital or the public health center, those records are private, but Dillingham is too small to allow a visit to be unnoticed. The library is the only place to get private information like that.

Number 1867

The second topic I have concerns about is religion. About two years ago, a teenage girl asked me to interlibrary loan her some books about a certain religion; she specifically asked me not to tell anyone because she said she was in trouble for reading about this topic. I was able to assure her that her library records were private and I would not tell anyone. I'm confident that if I'd told her that her parents have a right to see her borrowing record, she would not have ... borrowed these books. And I think that would just be a shame; I would hate to tell a teen in that position that, "Oh, if your parents ask, I have to say." And this girl was probably 16 at the time.

I'm hoping that this bill can be amended to protect teens. I ask that you please remember these young adults that need information they can't get at home, and that you'll just maintain the sanctuary that public libraries are providing for these kids. ... Thank you ... for allowing me to testify.

MS. O'CONNOR, in response to a question regarding the girls seeking information about pregnancy, said that some of the books checked out were Dr. Sears's The Baby Book, What to Expect When You're Expecting - essentially prenatal-care books. She said she tries to respect the girls' privacy as much as possible and

doesn't treat them any differently than if they were checking out a paperback.

Number 1977

ANDREE McLEOD said she is a parent of a 21-year old, and as far as she is concerned, he still doesn't have a right to privacy. She said she is in total favor of SB 269 and hopes it becomes law. She thanked the sponsor for taking the time to address this issue, which she characterized as acrimonious public policy that is adversarial to parents and guardians of children under the age of 18. She relayed that she is appalled at the situations that engendered the bill, and asked: "What kind of system do we have where public employees of public libraries, paid for with public funds, would be permitted to withhold information from parents about their minor children? Why are parents not given information that is rightfully theirs about their children? She suggested that this is evidence that a much deeper problem exists wherein librarians are allowed to do as they will without censure.

MS. McLEOD remarked that the Legislature is constantly passing bills making parents more responsible for their children's behaviors; public policy providing incentives for better parenting is becoming more exact and more detailed. In turn, parents have moral obligations to raise their children well. Alongside those obligations are parental rights, including, she opined, having any and all information pertaining to their children in order to mitigate their children's behavior should it be less than good. She contended that a child's public library record is just such information, even if it does show that a child is checking out books regarding pregnancy.

MS. McLEOD expressed doubt about the veracity of the examples given by those opposed to the bill, and questioned how often such situations really occur. Parents are legally and completely responsible for their children until they reach the age of 18. At the very least, parents do not need publicly funded librarians encroaching on their inherent and absolute parental rights. She asked that [SB 269] be passed from committee, offering her belief that it will protect parental rights, which take in a set of obligations, responsibilities, and liabilities. When librarians violate those rights by not releasing children's public library records to parents, they should be reproached and held accountable for dangerously shattering the increasingly fragile trust between families and publicly funded employees and institutions, she concluded.

Number 2082

BARBARA BERG, Director, Juneau Public Libraries, City and Borough of Juneau; Member, Alaska Library Association (AkLA), relayed that she would be speaking as a member of the AkLA, as a concerned professional, and as the mother of two grown sons. She said:

I would echo what both Art Weeks and Christine O'Connor have said about this bill. It takes a certain amount of courage for a young teen to approach a librarian on any controversial topic even if it doesn't have personal implications for them. Part of what we are in the business of doing is encouraging a spirit of free inquiry in support of [a] democratic society, in the public library.

So often we lose touch with teens; we do a real good job with young kids and we do a good job with adult readers, but we lose touch with teens in their teen years. And a child might be asking for information that's controversial but ... doesn't necessarily have personal implications. Say they were researching AIDS [acquired immunodeficiency syndrome] or something, but if they thought that having the books out would imply scrutiny by their parents that they were doing something wrong, they might not take that step and approach that inquiry. ...

I want to talk about some of the procedural ways that we deal with this at the Juneau Public [Libraries]. We don't release the registration information or what a person has checked out without the consent of that individual. The consent can be given if the child writes a note that says ... the parent "may pick up these books for me," or if the parent comes in and knows what those titles are, ... [or] are in possession of the child's library card - [then] they can pick that material up. Many parents choose to retain their children's library cards, and thereby they have control and they know what their children's library record is at anytime; that's perfectly acceptable to us. ...

MS. BERG continued:

And we have always considered that when the materials go overdue, or are lost, that the parent then has the right to know that information. For one thing, a notice has gone home, so they already have seen the notice come in the mail as the guardian who signs [the] child's library card; they already receive the notice when the material goes lost or missing it's been so long overdue. So the right of privacy is gone the minute the overdue collection notice goes out. And the same applies for ... the spouse: [he/she] can pick up a book for a spouse if they know what the item is - if they come and say [his/her spouse] "has asked me to pick up this item."

Number 2212

But what we don't do is read out a long list of what people have on hold over the phone. For one thing, the phone contact is very, very problematic, to know if the person you're talking to at the other end of the line is actually a person who has any right to the information at all. And ... I remain very concerned that the staff at the front desk, who may be a trained librarian or may be a clerk who is there part-time ... a few days a week, is going to be put in the decision-making position of having to decide if the person on the other side of the desk actually has a right to that information or not. ...

And I also want to say - as I mentioned - I'm the mother of two grown sons, and I always tried to be involved in their learning and their reading life, and had open discussions with them, and didn't try to restrict what they read, and they shared with me what they were doing. In fact, at [ages] 30 and 26 they still share with me most of what they're doing and their major life decisions. And I think that's a tack that caring parents should take, is work with them and keep the channels of communication open, and they will continue to communicate with you their entire lives.
...

REPRESENTATIVE HOLM surmised, then, that Ms. Berg's testimony is that the child's right of privacy eclipses the right of parents, and paraphrased some of Ms. Berg's comments regarding notice of overdue/lost materials.

MS. BERG reiterated that by the time the money is owed, the notice has already been sent to the person who signed as the child's guardian, the person who has agreed to take financial responsibility for the materials.

REPRESENTATIVE HOLM offered the analogy that a runaway child has the right to run away, that the parent has the right to be responsible for that child, but the state doesn't have the right to inform the parent where the child is. He said he finds it curious that [an entity] has the right to withhold from the parent information critical to parenting.

TAPE 04-84, SIDE B

Number 2374

MS. BERG suggested that Representative Holm's analogy didn't fit with the issue at hand.

CHAIR MCGUIRE acknowledged that the bill strikes many cords with people. Although the state expects parents to be responsible for their children's wellbeing, healthcare, and behavior, parents don't automatically get to know what their children are reading; on the other hand, when it comes to teenagers who are in bad family situations, or who are suicidal or depressed, or who have questions regarding religion, vocation, or sexuality, a delicate balance is called for. Her concern, however, is that with regard to public libraries, there is no way to know that the person requesting a child's information is really the custodial parent. How, from a practical standpoint, can such a relationship be ascertained? What if the person seeking the information is really someone who wanted to harm the child? For example, what if it were an abusive [parent or] stepparent, or what if it were a sexual predator? The question that remains with regard to the bill is whether there is some way to ensure that the financially responsible parties - the parents and guardians - are given information before situations get to the point of a family owing money for lost or overdue material.

MS. BERG said she shares Chair McGuire's concerns regarding the difficulty of identifying custodial parents and guardians, but doesn't have any suggestions for a solution. She brought up the point that family situations change, so someone who originally registers a child for a library card may in the future have a restraining order placed against him/her. If something terrible were to happen to a child as a result of the library disclosing information, it could put the library in a questionable situation with regard to legal liability. With regard to the

privacy/financial issue, she remarked, "we have always assumed that if a child really wanted to keep their information private, they would take care to not lose the materials, and get them back to the library; [also], parents who are concerned about children [having] ... too many 'overdues,' and we have seen this, ... retain control of the card - that's ... an option they have."

CHAIR MCGUIRE asked Ms. Berg whether she has ever seen a child check out material pertaining to suicide.

MS. BERG relayed that she doesn't work at the circulation desk a lot and so doesn't know if such is occurring.

Number 2111

REPRESENTATIVE SAMUELS remarked that if one's 16-year-old daughter is seeking information on sex or contraception, one would probably want her to have that information and not be uncomfortable, because of privacy issues, with going to the library to get it. On the flip side, if one's teenager is seeking information on how to make a bomb or acquire automatic weapons, one would probably want to know about it. He said he is inclined to err on the side of the teenagers seeking information about sex, AIDS, and contraception, and thus allow the information to remain private.

REPRESENTATIVE HOLM remarked that the Internet is another resource for those seeking information about certain topics.

MS. BERG said that is good point. She added:

When children ... or young adults come to the library, we hope we have a selection of materials [wherein] they are getting accurate information. If they go to the Internet or ask their friends, they may or may not be getting reliable information. And we certainly would rather have them continue to get that information from a reliable source rather than something questionable. And if they come to the library, they can ask for assistance and we can help them find accurate information on the Internet, too, or on the public library's databases that we subscribe to that have that kind of information (indisc.).

REPRESENTATIVE GARA remarked that Internet searches via a home computer wouldn't be an option for a teenager in an abusive

family situation. He acknowledged, though, that there are some compelling reasons for giving parents access to their children's library records. For example, if a child is seeking information about suicide, that could be something that a parent should know about. He predicted that regardless of what the legislature does, there will be unintended consequences.

MS. BERG remarked that a young adult checking out a book on suicide may not be suicidal, is instead perhaps just doing a research paper on the issue. Librarians don't know that, though, and they don't ask patrons why they are seeking information. "We provide them with information, we try [to] give them the most accurate information that meets the scope of their inquiry, and so if we were to overreact, then, and instantly call the parent and say, ... 'Your child is suicidal,' because they checked out a book on suicide, that may or may not be the case," she pointed out. She said she tends to think that the problems the bill engenders will be fewer if the age referenced in the bill is lowered - for example, to the age of 14 as is referenced in a proposed amendment - since those who retain their children's library cards are most often the parents of younger children. She also pointed out that when children are unable to check materials out of the library, they simply take those materials.

Number 1867

CHAIR McGUIRE asked Senator Green what mechanism the library should use to ensure that a person is really the child's custodial parent or guardian.

SENATOR GREEN opined that the mechanisms currently used by the Juneau Public Libraries, such as allowing a person to pick up a book held for child if the person knows the name of the book, are in violation of state statute. She suggested that different library systems across the state use different methods to determine exceptions for nondisclosure rules. She also opined that the likelihood of a noncustodial parent using the library to gain access to a child's information is remote. She also suggested that if a child is concerned about privacy, he/she can still access material at the library and just not check it out. She expressed disapproval of the notion that a librarian has access to information about a child and yet can withhold that same information from a parent.

SENATOR GREEN went on to note that the aforementioned legal opinion acknowledges that Article I, Section 22, of the Alaska

State Constitution directs the legislature to implement the state right of privacy and that the legislature has done so with respect to library borrower's information by enacting AS 40.25.140. Therefore, she opined, passage of SB 269 would not overstep or threaten the constitutional right of privacy. She offered her understanding that the children responsible for the tragedy at Columbine High School had accessed information at the library.

REPRESENTATIVE GARA offered an example of a child living in an abusive home seeking information about parental or spousal abuse. He asked Senator Green whether she is concerned that the abusive parent will find out that the child is seeking such information at the library. He also questioned how effective the bill will be given that a child can simply read the material in the library instead of checking it out and thereby having it included in his/her record.

Number 1592

SENATOR GREEN replied:

My issue has never been to intrude upon the reading material, to set the agenda, or to set aside a provision for determining what someone else may be allowed to read, should read, or can read. That is nothing to do with my ... issue here. Mine is simply the fact that some very frustrated parents called me and said, "Can you believe, I have a 7- and a 8-year-old [and] I can't find out the names of the books that are overdue," ... [and] "I can't go pick up my child's books unless he's with me." ...

That speaks to the issue [that] every library is doing this inconsistently. ... Juneau [Public Libraries] has a system in place, they also have ... [forms] that are filled out by the parents ..., and they do a very good job, but somehow, in the process, they have determined "this" [person] is the parent that can sign the form for this child. If they can do that, they can determine who is rightfully eligible for the information. ...

I don't see this as a complicated issue. It just says the current system is in place, and if that parent calls and said, "When are those books due?" ... but -- and I have to tell you, when my children were growing

up, I was so proud they were reading, it never entered my mind to be concerned about the text And I would never go there, and I don't want that to be part of the emphasis on it. This is the fact that parents deserve the right to have the information about their children's library records much more than a library does.

REPRESENTATIVE GRUENBERG offered his observation that there are four issues or possible criteria to address: the age of the child; the subject matter; which standards for which libraries; and who decides. He mentioned that he has a concern with the federal government telling Alaskan communities what to do regarding these issues. In that same vein, however, should the state be doing the same thing, he questioned, or should local governments be allowed to develop their own standards. With the latter, local parents could take a role in developing local standards regarding issues of concern to them. He surmised that the bill proceeds from the assumption that the standards should be determined by the age of the child, by which library the material is being checked out of, and by the state legislature making decisions for the entire state.

Number 1287

REPRESENTATIVE GARA, noting that he has to leave shortly, opined that Senator Green has the right to have her bill debated on the House floor and so he isn't against moving the bill from committee regardless of whether the current version is altered.

CHAIR MCGUIRE mentioned that the proposed HCS, Version S, incorporates the aforementioned proposed amendment, which reads [original punctuation provided]:

Delete subsection (b) and replace with a new subsection (b) to read:

(b)(1) Records of a public elementary or secondary school library identifying a child under 18 years of age shall be made available on request to a parent or guardian of that child.

(2) Records of a library operated by the state, a municipality, the University of Alaska or by a public library nonprofit corporation identifying a child under 14 years of age shall be made available on request to a parent or guardian of that child or may

be disclosed upon the written consent of the library user or when used to seek reimbursement for or the return of lost, stolen, misplaced or overdue library materials.

CHAIR McGUIRE said she would entertain a motion, either to adopt CSSB 269(CRA) as the work draft - and then consider the proposed amendment - or to adopt Version S as the work draft.

SENATOR GREEN, turning to Representative Gruenberg's question of whether the state should determine this issue for all communities, reiterated that the legislature has already done so by enacting AS 40.25.140 originally.

CHAIR McGUIRE suggested that the questions that remain are whether there should be any distinction between different types of libraries and whether there should be any age distinction and, if so, whether 14 is the right age.

Number 1125

SENATOR GREEN recapped current law.

CHAIR McGUIRE explained that the HCS, Version S, proposes to keep the section of law pertaining to confidentiality of library records the same with regard to the types of libraries it addresses and just adds public library nonprofit corporations, proposes to change the exception regarding records of public elementary or secondary school libraries such that it pertains to children under 18 years of age, and proposes to stipulate another exception for all other types of libraries regarding children under 14 years of age.

SENATOR GREEN opined that changing the age reference to those under the age of 14, as Version S proposes to do, will create confusion and will be a step backward, and relayed that she does not support Version S.

REPRESENTATIVE GARA indicated that he'd still like to hear more testimony regarding his hypothetical example of a child seeking material on suicide.

REPRESENTATIVE HOLM expressed disapproval that a librarian has access to information about a child without there being some assurance that the librarian hasn't been found guilty of molesting a child.

Number 0857

JACQUELINE TUPOU, Staff to Senator Lyda Green, Alaska State Legislature, sponsor, added that the legislature has the duty to make policy regarding where it wants parental rights to go. She noted that legislation passed during the 22nd legislature increased parental accountability for children who vandalize public school property. She opined that [the change proposed via Version S] would be a step backward and would send a mixed message with regard to parental accountability. She stated that if a teenager wants information about pregnancy, he/she can simply go to a "Barnes & Noble" bookstore and purchase it. For instances where public money is used, however, the legislature needs to make a policy for families and for parental accountability, she concluded.

CHAIR MCGUIRE said that the bill strikes a cord that reminds her of times when book burnings [as a form of censorship] were taking place. Some parents don't allow their kids to read "Harry Potter" books because they think it [promotes] witchcraft, she noted, and opined that this is a sad thing because those are some of the best books she's ever read. Interspersed within the arguments against the bill is the American concept of freedom of ideas and information and books that set one free, and some children don't have parents that encourage their desire to seek out knowledge.

REPRESENTATIVE GRUENBERG, turning to Ms. Tupou's argument favoring a consistent policy with regard to parental rights, pointed out that the law is not necessarily going to be consistent; "just because somebody is financial responsible, that doesn't necessarily mean that they control all aspects of the person for whom they're responsible."

Number 0572

CLARK GRUENING, Lobbyist for the Alaska Library Association (AkLA), indicated that Chair McGuire has articulated the AkLA's concerns, and relayed that he is available for questions. He mentioned that as a parent, he read to his children when they were very young and still shares reading experiences with them.

REPRESENTATIVE GRUENBERG indicated a willingness to move adoption of Version S as a work draft.

MR. GRUENING pointed out that Version S does address the issue of financial responsibility; under Version S, parents would be

able to get information about overdue books. Version S also addresses the concern regarding when a young adult - which is what teenagers are becoming, he remarked - gets to keep his/her library records confidential. He opined that the committee is aptly suited to make the determination regarding those distinctions.

CHAIR McGUIRE asked Senator Green whether she envisioned a cause of action arising from a violation of the proposed law.

Number 0313

SENATOR GREEN opined that a better question would be whether a cause of action could arise now, under current law, if a library discloses information [inappropriately], and said she doesn't know of anyone bringing a lawsuit for that. She suggested that the annoyance of not being able to get information is more of a driving factor. With passage of the bill, parents could take a complaint to the library's governing body if they were unable to get information they felt entitled to. She opined that the bill will give clear direction to librarians that children's library records are available to parents. She expressed a preference for keeping the age reference as it is in CSSB 269(CRA), characterizing that action as being "a much cleaner way to do this."

REPRESENTATIVE GRUENBERG, addressing Senator Green, said:

I'm going to offer the [HCS], but I would be prepared to accept, as friendly amendments, two different things. ... Number one would be if people wanted to look at the age on page 2, line 3, to make it 15 or 16 or something like that. ... And secondly, something that hasn't been discussed, to put another provision in here conceptually that would allow a locality, by ordinance, to set a different standard; so this would essentially be a default if the local government chose not to act. Would you care to comment on either of those?

SENATOR GREEN said she is not in favor of Representative Gruenberg's second suggestion because she doesn't feel it would be appropriate to delegate the legislature's authority on this issue in that manner. With regard to the suggestion to change the age reference, she offered her belief that having the bill say "under 18 years of age" will ensure that the age of majority will be speaking in the legislature's favor and that the bill

will be much cleaner. In response to a question, she noted that the question of changing the age has been discussed in prior committees but not to the extent that it's being discussed in this committee.

TAPE 04-85, SIDE A

Number 0001

SENATOR GREEN said she thinks using something other the age of majority will create confusion.

CHAIR McGUIRE sought confirmation that the bill will not be interpreted to say that a minor cannot check out a book without a parent's consent.

SENATOR GREEN indicated that such an interpretation would not align with her intent. She also indicated a reluctance to add a provision that would require a person to prove he/she is the custodial parent or guardian, mentioned the FERPA and federal funding, and offered her belief that there are probably very few libraries that haven't been started with federal, state, or local government public funds. She opined that this acceptance of public funds does give the state a compelling interest in how libraries are run.

Number 0283

REPRESENTATIVE GRUENBERG moved to adopt the proposed HCS for SB 269, Version 23-LS1457\S, Mischel, 5/10/04, as the work draft.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA said he still has a concern regarding providing proof that the person is really the custodial parent or guardian.

SENATOR GREEN reiterated her belief that libraries already have a mechanism in place to determine whom a custodial parent or guardian is.

REPRESENTATIVE HOLM reiterated his concern that librarians aren't subject to criminal history background checks.

Number 0413

A roll call vote was taken. Representatives Ogg, Gara, Gruenberg, and Samuels voted in favor of adopting Version S as

the work draft. Representatives Holm, Anderson, and McGuire voted against it. Therefore, Version S was before the committee by a vote of 4-3.

Number 0536

REPRESENTATIVE GARA said if the committee is going to consider amending the age reference, he would move to amend it to "13". He then withdrew that amendment [which did not get labeled].

REPRESENTATIVE GRUENBERG in response to a question, explained that the bill would not apply to enrolled university students, regardless of age.

SENATOR GREEN concurred, and, in response to a comment, pointed out that university libraries are open to the public and thus books can be checked out by anyone including those under the age of majority.

REPRESENTATIVE ANDERSON expressed a preference for not amending Version S.

SENATOR GREEN again reiterated her preference for having the age of majority be the cutoff, and added that she would then be willing to accept the language in proposed paragraphs (1)-(3) of Version S, since it would address the concerns members have.

CHAIR MCGUIRE said that that makes sense.

REPRESENTATIVE GRUENBERG agreed, but then added that he is not in favor of retaining proposed paragraph (1), which reads, "the parent or guardian of that child makes a written request for the records".

SENATOR GREEN, notwithstanding her earlier comment, then said she can't agree with any of the changes that Version S incorporates.

The committee took an at-ease from 1:12 p.m. to 1:20 p.m.

CHAIR MCGUIRE predicted that there will be an objection on the House floor to adopting Version S.

Number 0860

REPRESENTATIVE OGG made a motion to adopt Amendment 1, on page 2, line 3, replace "under 14 years" with "over 16 years of age and unemancipated".

REPRESENTATIVE GRUENBERG said he would accept that.

REPRESENTATIVE OGG then said, "'16 and over'."

REPRESENTATIVE GRUENBERG asked, "Why don't we say, "at least 16 years of age or unemancipated'?"

REPRESENTATIVE OGG said that would be fine.

REPRESENTATIVE GRUENBERG then said, "Well, conceptually, 'at least 16 years of age and unemancipated'."

REPRESENTATIVE GARA pointed out that that language means the same as "16 or older".

REPRESENTATIVE GRUENBERG responded, "Let's say, 'at least 16 years of age and unemancipated'."

REPRESENTATIVE OGG said Amendment 1 was inspired by Representative Samuels's comments, and noted that people are allowed to drive cars at the age of 16 without parental supervision.

Number 0942

CHAIR MCGUIRE asked whether there were any objections to Amendment 1, "to make it, 'over 16 years old and unemancipated'." There being none, Amendment 1 was adopted.

SENATOR GREEN asked how the bill would now read with Amendment 1.

CHAIR MCGUIRE said that the way she reads it is that a parent could access the information of a child 16 years of age and older and unemancipated if the criteria in paragraphs (1)-(3) are met, and for a child under that age, a parent could access the information without meeting the aforementioned criteria.

REPRESENTATIVE GRUENBERG offered that the intent is to create a right of privacy to those 16 years of age and over.

CHAIR MCGUIRE and REPRESENTATIVE OGG agreed.

REPRESENTATIVE HOLM suggested that they debate this amendment on the House floor.

CHAIR MCGUIRE pointed out, however, that Amendment 1 to Version S, which is the version before the committee, has already been adopted without objection.

SENATOR GREEN expressed her belief that the language inserted via Amendment 1 will be in conflict with the language in subsection (b).

REPRESENTATIVES ANDERSON reiterated Chair McGuire's interpretation of Amendment 1.

Number 1130

REPRESENTATIVE GRUENBERG said he would like to reword Amendment 1 such that the language on page 2, lines 3-4, would be changed to read in part: "identifying a child under 16 years of age and unemancipated".

Number 1157

CHAIR MCGUIRE suggested, then, that they should also delete paragraphs (1), (2), and (3). If paragraphs (1)-(3) remain, she opined, it would create a different burden than what is currently in [subsection (b)]. She offered her understanding that Representative Gruenberg's latest suggestion coupled with her suggestion would result in making the library records of a child under 16 years of age and unemancipated available to a parent or guardian of the child.

REPRESENTATIVE GRUENBERG said he would accept that as a friendly amendment.

SENATOR GREEN asked for clarification.

CHAIR MCGUIRE offered her belief that such a change would ensure that the language in subsection (c) comports with the language in subsection (b). She indicated that subsection (c) would then read: "(c) Records of a library operated by the state, a municipality, the University of Alaska, or by a public library nonprofit corporation identifying a child under 16 years of age and unemancipated shall be made available to a parent or guardian of that child."

Number 1257

CHAIR McGUIRE labeled the foregoing change as new Amendment 2. [Although no formal motion was made, no objection was heard and so Amendment 2 was treated as adopted.]

Number 1260

REPRESENTATIVE SAMUELS moved to report the proposed HCS for SB 269, Version 23-LS1457\S, Mischel, 5/10/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 269(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1265

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:30 p.m.