

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

April 16, 2004

1:38 p.m.

TAPE (S) 04-23

MEMBERS PRESENT

Senator Fred Dyson, Chair

Senator Bettye Davis

Senator Gretchen Guess

MEMBERS ABSENT

Senator Lyda Green, Vice Chair

Senator Gary Wilken

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Board of Education and Early Development:

Sylvia J. Reynolds

Carol (Bunny) J. Schaeffer

Alaska Mental Health Trust Authority Board of Trustees:

Dr. William H. Doolittle

Tom J. Hawkins

CONFIRMATIONS ADVANCED

CS FOR HOUSE BILL NO. 25(JUD)

"An Act relating to health care decisions, including do not resuscitate orders, anatomical gifts, and mental health treatment decisions, and to powers of attorney relating to health care, including anatomical gifts and mental health treatment decisions; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 243

"An Act relating to immunization of postsecondary students for meningitis; and providing for an effective date."

MOVED SB 243 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 385(JUD)

"An Act relating to awarding child custody; and providing for an effective date."

MOVED CSHB 385(JUD) OUT OF COMMITTEE

SENATE BILL NO. 376

"An Act relating to public assistance and subpoena powers."

MOVED CSSB 376(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 25

SHORT TITLE: HEALTH CARE SERVICES DIRECTIVES

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

01/21/03	(H)	PREFILE RELEASED (1/10/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(H)	HES, JUD, FIN
02/13/03	(H)	HES AT 3:00 PM CAPITOL 106
02/13/03	(H)	Heard & Held
02/13/03	(H)	MINUTE(HES)
02/27/03	(H)	HES AT 3:00 PM CAPITOL 106
02/27/03	(H)	Heard & Held
02/27/03	(H)	MINUTE(HES)
03/06/03	(H)	HES AT 3:00 PM CAPITOL 106
03/06/03	(H)	Moved CSHB 25(HES) Out of Committee
03/06/03	(H)	MINUTE(HES)
03/10/03	(H)	HES RPT CS(HES) NT 7DP
03/10/03	(H)	DP: GATTO, WOLF, HEINZE, SEATON,
03/10/03	(H)	CISSNA, KAPSNER, WILSON
03/26/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/26/03	(H)	-- Meeting Canceled --
03/28/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/28/03	(H)	Heard & Held
03/28/03	(H)	MINUTE(JUD)
03/31/03	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/03	(H)	Moved CSHB 25(JUD) Out of Committee
03/31/03	(H)	MINUTE(JUD)
04/07/03	(H)	JUD RPT CS(JUD) NT 5DP
04/07/03	(H)	DP: SAMUELS, HOLM, GARA, OGG, MCGUIRE
04/07/03	(H)	FIN REFERRAL WAIVED
05/06/03	(H)	TRANSMITTED TO (S)
05/06/03	(H)	VERSION: CSHB 25(JUD)
05/07/03	(S)	READ THE FIRST TIME - REFERRALS
05/07/03	(S)	HES, JUD

05/16/03 (S) HES AT 1:30 PM BUTROVICH 205
 05/16/03 (S) Heard & Held
 05/16/03 (S) MINUTE(HES)
 03/08/04 (S) HES AT 1:30 PM BUTROVICH 205
 03/08/04 (S) Heard & Held
 03/08/04 (S) MINUTE(HES)
 03/24/04 (S) HES AT 1:30 PM BUTROVICH 205
 03/24/04 (S) Heard & Held
 03/24/04 (S) MINUTE(HES)
 04/02/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/02/04 (S) Bill Postponed to 04/07/04
 04/07/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/07/04 (S) -- Rescheduled to 5:30 pm 04/07/04 --
 04/07/04 (S) HES AT 5:30 PM BUTROVICH 205
 04/07/04 (S) -- Rescheduled from 1:30 04/07/04 --
 04/14/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/14/04 (S) Heard & Held
 04/14/04 (S) MINUTE(HES)
 04/16/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 243

SHORT TITLE: POSTSECONDARY STUDENT IMMUNIZATION
 SPONSOR(s): SENATOR(s) ELTON

01/12/04 (S) PREFILE RELEASED 1/2/04
 01/12/04 (S) READ THE FIRST TIME - REFERRALS
 01/12/04 (S) HES
 04/05/04 (S) HES AT 1:30 PM BUTROVICH 205
 04/05/04 (S) Heard & Held
 04/05/04 (S) MINUTE(HES)
 04/16/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: HB 385

SHORT TITLE: AWARDING CHILD CUSTODY
 SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

01/20/04 (H) READ THE FIRST TIME - REFERRALS
 01/20/04 (H) JUD
 02/25/04 (H) JUD AT 1:00 PM CAPITOL 120
 02/25/04 (H) <Bill Hearing Postponed>
 02/27/04 (H) JUD AT 1:00 PM CAPITOL 120
 02/27/04 (H) <Bill Hearing Postponed>
 03/01/04 (H) JUD AT 1:00 PM CAPITOL 120
 03/01/04 (H) Moved CSHB 385(JUD) Out of Committee
 03/01/04 (H) MINUTE(JUD)
 03/03/04 (H) JUD RPT CS(JUD) 6DP
 03/03/04 (H) DP: OGG, GRUENBERG, SAMUELS, HOLM,

03/03/04 (H) GARA, MCGUIRE
04/01/04 (H) TRANSMITTED TO (S)
04/01/04 (H) VERSION: CSHB 385(JUD)
04/02/04 (S) READ THE FIRST TIME - REFERRALS
04/02/04 (S) HES, JUD
04/16/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 376

SHORT TITLE: PUBLIC ASSISTANCE AND SUBPOENA POWER
SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

03/24/04 (S) READ THE FIRST TIME - REFERRALS
03/24/04 (S) HES, FIN
04/14/04 (S) HES AT 1:30 PM BUTROVICH 205
04/14/04 (S) Bill Postponed To 4/16/04
04/16/04 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

MS. SYLVIA REYNOLDS
Soldotna, Alaska

POSITION STATEMENT: Confirmation Hearing: Candidate for Board of Education and Early Development.

WILLIAM H. DOOLITTLE, M.D., F.A.C.P.
Fairbanks, Alaska

POSITION STATEMENT: Confirmation Hearing: Candidate for Alaska Mental Health Trust Authority Board of Trustees.

MR. TOM HAWKINS
Anchorage, Alaska

POSITION STATEMENT: Confirmation Hearing: Candidate for Alaska Mental Health Trust Authority Board of Trustees.

MR. HEATH HILYARD
Staff to Representative Lesil McGuire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HB 385 on behalf of the sponsor.

MR. ALAN BAILEY, Attorney
Anchorage, Alaska

POSITION STATEMENT: Answered legal questions pertaining to HB 385.

MS. TRACY GOULD
No address provided

POSITION STATEMENT: Testified that HB 385 would help with child custody and domestic violence.

MS. CHRISTINE PATE
Attorney, Alaska Network on Domestic Violence
Sitka, Alaska

POSITION STATEMENT: Provided legal expertise relevant to HB 385.

MS. RONDA BLOUGH
Kenai, Alaska

POSITION STATEMENT: Proposed an amendment to HB 385.

MS. PAIGE HODSON
Anchorage, Alaska

POSITION STATEMENT: Testified that HB 385 brings Alaska's child custody statutes in line with the Legislature's intended child protection statutes.

MR. WILLIAM BOBRICK
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 385.

MS. PAULA CADIENTE
Staff to Senator Kim Elton
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 243 on behalf of the bill's sponsor.

MR. JIM DALMAN
Division of Public Assistance
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Explained the necessity for SB 376.

MR. ANTHONY LOMBARDO
Director, Division of Public Assistance
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions pertaining to SB 376.

MR. JAY MARLEY
Manager, Fraud Control
Department of Health & Social Services
PO Box 110601

Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions pertaining to SB 376.

MS. SHARON BARTON

Director, Permanent Fund Dividend Division

PO Box 110460

Juneau, AK 99811-0460

POSITION STATEMENT: Expressed interest in amending SB 376 to include the PFD Division.

ACTION NARRATIVE

TAPE 04-23, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:42 p.m. Present at the call to order were Senators Davis, Guess, and Chair Dyson. Senators Green and Wilken were excused.

CONFIRMATION HEARINGS

Board of Education and Early Development:

Sylvia J. Reynolds

Carol (Bunny) J. Schaeffer

Alaska Mental Health Trust Authority Board of Trustees:

Dr. William H. Doolittle

Tom J. Hawkins

CHAIR DYSON asked Ms. Reynolds if she was presently on the board.

MS. SYLVIA REYNOLDS confirmed this was correct, and that she had been the principal at Soldotna High School. She offered that she brings strengths to the board; she has worked in rural Alaska, Nome, Juneau, and currently in Kenai. She has been a teacher, assistant principal and principal. She has worked at the college level as well as K-12. She is a practitioner and deals first-hand with legislation affecting students.

SENATOR GRETCHEN GUESS asked for her perspective on home schooling, correspondence schools, and on regulations versus statutes.

MS. REYNOLDS responded these issues are contentious and that today's society is a smorgasbord. She said as a parent, she believes in choice and also in having a level playing field. At

the last board meeting she commented, "We really need to be careful when we're paying for trips" even though many trips are educational. She said although home schooling is a wonderful opportunity, care needs to be taken with expenditures and abuses. It's not a level playing field if at one school, choices need to be made between music and physical education while at another school, kids are afforded private lessons.

SENATOR GUESS said according to the foundation formula, funding for correspondence students is 80 percent. She asked about there being no requirement that the entire funding actually be spent on those students.

MS. REYNOLDS said care needs to be taken to ensure proper mechanisms and checks and balances; she said this would be taken up in June but she didn't have further information.

CHAIR DYSON commented there is support among committee members for charter schools and he looks forward to suggestions regarding their viability.

MS. REYNOLDS asked if he was referring to paperwork loads.

CHAIR DYSON said he wouldn't exclude that, but he was thinking that charter schools struggle financially and he would appreciate advice along those lines before reconvening in January [2005].

CHAIR DYSON asked if Dr. Doolittle was currently on the Mental Health Trust Board.

DR. WILLIAM H. DOOLITTLE replied he was not, but the governor had made the appointment.

CHAIR DYSON asked why he wanted to serve on this board.

DR. DOOLITTLE responded that in his limited exposure to the Mental Health Trust Authority, he was impressed with its broad potential. His 40 year background of clinical experience would make him sensitive to the "trenches-side" of problems; he was looking forward to trying to make services available to more people with less front-end difficulty.

CHAIR DYSON noted he would be a good advisory resource.

CHAIR DYSON asked Mr. Hawkins why he was interested in serving on the board.

MR. TOM HAWKINS replied he has 30 years experience managing resources in Alaska and mental health clients are an important and difficult set of beneficiaries. The Mental Health Trust has one million acres of resources, and as chair of the resources management committee, strides have been made in managing those resources; he would like to continue.

Mr. Hawkins said he works at the Bristol Bay Native Corporation and stays in touch with folks from Dillingham, although he doesn't live there any longer.

CHAIR DYSON noted that Ms. Carol Schaeffer from Kotzebue, a candidate for the Board of Education and Early Development, was not on-line. He said he was comfortable forwarding her name to the larger body; he asked for the will of the committee.

SENATORE BETTYE DAVIS said this was fine, as there would still be an opportunity to speak with Ms. Schaeffer.

SENATOR DAVIS moved to forward the names of the four candidates to the larger body for confirmation.

CHAIR DYSON asked if there was any objection. Seeing and hearing none, it was so ordered.

HB 25-HEALTH CARE SERVICES DIRECTIVES

The committee took up CSHB 25(JUD).

CHAIR DYSON asked Jason Hooley, HES committee aide, to distribute copies of the latest proposed committee substitute (CS) for the bill. He told members several outstanding issues remain, such as considering a second medical opinion regarding decisions about withdrawing/withholding life support systems. Modifying that provision was being considered because when dealing with somebody who is comatose, second opinions are available in hospital settings; however, second opinions may not be available in the field. Also, a second issue, stopping CPR after going through the widely understood protocols may also come up. He noted that Senator Guess and Senator Davis might have a proposed amendment dealing with pregnancy. In addition, some language about severability will probably be inserted, in case any portion of the bill is challenged and declared as unconstitutional. "I'm told by the bill's sponsor that this is already in Alaska law and doesn't need to be reiterated, but it does no harm to reiterate it in the bill," he said.

SENATOR DAVIS moved [to adopt] the Senate committee substitute (CS) for CSHB 25 (HES), version C [labeled 23-LS0137\C, Bannister, 4/16/04] as the working document before the committee.

CHAIR DYSON asked if there was any objection. There being none, it was so ordered.

CHAIR DYSON asked if anybody wanted to testify today who would not be able to testify at the next HES meeting scheduled for Monday [4/19]. Seeing and hearing no response, Chair Dyson announced that CSHB 25(JUD) would be held in committee until Monday.

HB 385-AWARDING CHILD CUSTODY

The committee took up CSHB 385(JUD).

MR. HEATH HILYARD, staff to Representative Lesil McGuire, presented CSHB 385(JUD) on behalf of the sponsor. He said the bill went through several iterations before today, and in looking at version W, he reflected that during the interim, concerns were raised on behalf of the Alaska Court System. During deliberations in the House Judiciary Committee, work was done with Doug Wooliver from the Alaska Court System and Representative Gruenberg, who had similar concerns, to present a clean bill, today. HB 385 establishes a rebuttable presumption that must be overcome by a preponderance of evidence in a situation where there is a custody debate and there has been prior domestic violence in the relationship. The general concern is that it's nearly as harmful to children's development and growth to witness domestic violence as it is for them to experience the violence.

MR. HILYARD referred to page 4, lines 4 to 14, (h) as the essence of the rebuttable presumption. It can be overcome, but to do so, the perpetrating parent has to successfully complete an intervention program for batterers, where reasonably available. He noted "where reasonably available" was inserted at the request of the Alaska Court System. He read, "that the parent does not engage in substance abuse, and the best interests of the child require that parent's participation as a custodial parent because the other parent is absent, suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse..." Mr. Hilyard said this is a child protection measure and the intent is to look

towards the child's best welfare. There may be instances where an abusive parent may ultimately be a better choice, at least for temporary custody, he added.

CHAIR DYSON said he assumes there has been a conviction of domestic violence, not just an accusation.

MR. HILYARD replied correct. He said there have been concerns regarding domestic violence claims being made at any time, and abusively using those claims in a custody battle. Clarifying that a parent has a history of perpetuating domestic violence under (g) of this section would address those concerns; we're looking for frequency, severity, and recency. There has to be an established history or pattern recognizable by the court, he added.

CHAIR DYSON noted Mr. Hilyard did not use the word, "conviction" in his response.

MR. HILYARD said perhaps Mr. Bailey could address that question.

MR. ALAN BAILEY, an Anchorage attorney, testified via teleconference and informed members that HB 385 does not require a conviction for domestic violence. In normal child custody actions, the burden of proof is by the preponderance of evidence. A criminal conviction would require proof beyond a reasonable doubt. That would benefit the batterer to the detriment of family members.

CHAIR DYSON asked if Mr. Bailey was comfortable with HB 385 indicating that the mere accusation, or repeated accusations, wouldn't be enough to prejudice the situation.

MR. BAILEY said otherwise it would be necessary for the court to find by a preponderance of evidence that incidents of domestic violence occurred. That would be after a contested hearing whereby the victim's evidence and the alleged batterer's evidence would be heard in court by the judge.

CHAIR DYSON acknowledged that both he and Mr. Bailey have seen cases where both the accusation and the restraining orders were issued. Until the subject of the restraining order could get into court and make a case, there was a restraining order in place. He said, "And may I infer that the judge would not automatically take the fact that a restraining order had been issued by some other judge as 'prima facie' evidence that domestic violence had occurred."

MR. BAILEY confirmed this was correct. Those emergency orders are called "ex parte orders" and don't involve the other party being served and having a chance to present evidence. Those types of orders would only be useful in a custody case to demonstrate, "Yes, this victim did report it to someone," but it would not eliminate the necessity of proving that domestic violence occurred in a contested setting.

SENATOR GUESS referred to Section 5, which deals with domestic violence, but doesn't deal with sexual assault. She referred to (g) and asked why sexual assault wasn't included in that section.

MR. HILYARD responded he couldn't think of a particular reason that it was omitted.

MR. BAILEY responded that it wasn't specifically mentioned because any assault under AS 11.41, which would include sexual assault, was a part of the domestic violence definition in AS 18.66.990; "Therefore, it's covered," he said.

SENATOR GUESS asked if sexual assault is included in the definition of domestic violence, so that sexual assault of another parent, child, or domestic living partner would be included under the definition of domestic violence.

MR. BAILEY said correct. AS 18.66.990 contains a list of definitions, including "domestic violence." Chapter 11.41, "Offenses Against the Person" includes everything from murder to fourth degree assault.

SENATOR GUESS asked how "a child" is defined throughout the bill. She referenced page 3, line 22 or page 4, line 1.

MR. BAILEY replied this was included because sometimes children in the household are not children of the family; they may be stepchildren, or visiting children. The purpose is to reduce, as much as possible, incidences of violence in a child's life.

SENATOR GUESS said she agreed, but wanted statutory clarification.

MR. BAILEY referred Senator Guess to AS 18.66.990 for a definition of "domestic violence," and to Chapter 11.41, "Offenses Against The Person" to find "sexual assault."

MS. TRACY GOULD testified in support of the amended status of HB 385. She relayed on June 21, 2001, a divorce primary custody case was granted in Fairbanks. During the hearing the judge refused to consider restraining orders and ignored a frightening court-ordered custody investigator's report. The judge followed that up with instructions for both parties to co-parent, despite the dangers in the situation. Four days later, on June 25, with the children a short distance away, there was [indisc.] thirty-six times by her ex-husband. She said this was her best friend and a dedicated mother and unfortunately she wasn't the only parent murdered in that area; there were two, maybe three others. She told members HB 385 would help with child custody and domestic violence.

MS. CHRISTINE PATE, an attorney with the Alaska Network on Domestic Violence and Sexual Assault, a family law attorney for approximately ten years with Alaska Legal Services, and director of the shelter program in Sitka for 2.5 years, said she has been in her current position for approximately five years where she runs a pro bono program for victims of domestic violence and sexual assault in civil cases. She screens women who are trying to leave violent relationships and are confronting obstacles in the divorce and custody context. She said the answer to why women in violent situations don't leave is because there are many obstacles, whether financial, safety, or family. Separation is the most frequent time of brutality for victims, so they may decide to stay because it is safer. Many people stay because they are afraid of losing their children in divorce/custody cases. Once a victim has made the physical decision to leave the batterer, custody litigation often becomes a new front for the batterer to exercise power and control over the victim. Batterers often threaten that victims will lose custody if they leave the relationship.

MS. PATE continued that some studies have shown that abusive fathers who contest custody cases win up to 70 percent of the time. In Alaska courts she has seen a battered woman going into court and ending up with either joint custody or losing custody just because of daring to allege domestic violence or sexual assault. There are many reasons for this, such as financial, since the woman may not have as many financial resources. The nature of domestic violence itself is that sometimes batterers present better in court than the victim. Also, there is often a lack of evidence; there isn't corroborating evidence since these are things that happen in private. In addition, there is a lack of training of many judges, child custody investigators, and guardians ad litem, who are the decision-makers in many of these

cases. While the general understanding of domestic violence has increased over the last 20 years, the evolution of state custody laws has moved away from holding battering parents accountable in the family law arena.

2:19 p.m.

MS. PATE told members Alaska family supports are focused on mediation, joint custody, and family parenting. These concepts stand in sharp contrast to social science literature about domestic violence, and the recommendations of several national organizations. [Indisc.] concepts of family law to protect the safety of victims of domestic violence and the well being of children. The rebuttal presumption against the parent in HB 385 would take some discretion out the hands of judges, discretion that has been very harmful to victims of abuse. To the extent victims feel they will lose custody in court or will get unsupervised visits, they may not leave the relationship. She referred to a specific situation where she had to explain to a woman whose husband had been convicted of felony assault and who had repeatedly abused her and her children, that there was no guarantee the woman would get supervised custody in court. The court process traumatized the woman. Victims continue to be baffled by the court's lack of focus on their safety, and it causes them to lose faith in the court system; when victims lose faith in the system, they stop using it.

MS. PATE addressed joint legal custody, and said courts routinely order an abusive parent to have joint legal custody of children. Currently there is presumption in the law that joint legal custody is in the child's best interest. The Alaska Supreme Court has found that a history of abuse between parties should make joint legal custody inappropriate. Despite the precedent and knowledge that it's dangerous for victims to have continuing communication and contact with abusers, family court judges continue to put joint legal custody orders in place in domestic violence cases.

MS. PATE said she wanted to speak in support of amending the prime friendly parent factor in the best interest factors to make an exception for victims of domestic violence. Explaining the friendly parent provision of Alaska law to victims of abuse is one of the hardest and most confusing things that she counsels victims about. Harmonious co-parenting envisioned by this factor is impossible and often dangerous in a family law case. If the court believes there was domestic violence, it might relax a parent's responsibilities under this factor.

However if the court does not believe the domestic violence accusation or minimizes it, the protective parent is penalized under this factor and perhaps accused of "parent's alienation syndrome." That syndrome is a false syndrome started by Dr. Richard Gardener (ph) and is widely discredited by professionals and courts across the country. Under the current law, despite concerns about safety, the woman must appear to be friendly to the other parent and permit visitation or risk losing her children. "Clearly this isn't the message we should be sending to victims of abuse."

MS. RONDA BLOUGH, Kenai, referred to her proposed amendment to HB 385, and said domestic violence could probably be prevented if there were better custody laws. She said verbal violence has been discredited; she believes with the addition of equal custody access to both parents at the beginning of a divorce or separation, a lot of one-time offenders or violations by people who aren't normally offenders would probably be alleviated.

MS. PAIGE HODSON, Anchorage, testified as follows:

I am the person that brought this issue to the attention of Representative McGuire. I'd like to tell you a little bit about the background behind this bill to put a personal face on it.

I am a divorced single mother of two children, ages 13 and 6. I am also a court-appointed special advocate for abused and neglected children, a former volunteer at the Intermission Crisis Nursery, PTA president, a businesswoman, and a domestic violence survivor.

I was in an abusive marriage for 11 years. Physical abuse occurred 1-2 times per year, and the remainder of the time was permeated almost daily by verbal and mental abuse. I was shoved, pushed into walls, thrown against furniture, thrown off a deck, spit upon, and called many unmentionable and profane names. I was told I was stupid, ugly, and worthless. Most of these things happened in front of my eldest child-- my daughter.

I worked hard on trying to fix my marriage, naively thinking it was something I could fix. I never believed the police could help me. I thought I had to handle it on my own. I struggled to help my family and eventually convinced my husband to go to marriage

counseling. After four years of counseling, I realized things were not going to change. In fact, the therapist eventually had to see us separately in fear for my safety.

As my daughter grew older, I saw more clearly the impact of my husband's behavior on her. He was also beginning to direct his abusive behaviors at her. I knew I had to leave for her and my new infant son's well being. I felt it was my responsibility as a good parent to serve as an appropriate and safe role model.

TAPE 04-23, SIDE B

MS. HODSON continued:

When I told my husband of my wish to divorce he told me, "I will say or do anything to prove you an unfit mother. And if I can't, I will take the kids and you will never see them again". I believed he would act upon his threats. He did not prove me wrong. He filed for custody and set about making every outrageous allegation possible.

I trusted the judicial system, at the outset. I trusted that the children and I would be protected and the judge would construct visitation that was safe and stable. As the process moved forward, however, I found my world turned upside down. All the literature, public service announcements and common sense told me I was responsible for getting out and protecting my kids, yet in the court deciding custody issues, I was pressured and even threatened not to raise those concerns.

The system was fraught with pressure at every turn to accept an unstable and unsafe 50/50 custody schedule, even for a nursing infant. I was blamed equally for the violence. Amazingly, mine and my children's reasonable fears about their father's abuse and inappropriate parenting were pathologized. It was implied by the court that if I didn't cave in to the shared physical custody I would be punished by having sole custody awarded to the children's father

Suddenly, the domestic violence I experienced was euphemized as "high conflict divorce." His verbal

abuse of the children and me was deemed "communication problems." Moreover, incidents of child abuse and physical domestic violence were minimized and called a "difference in parenting styles."

The toll on our eldest child of unsupervised and increasing visitation [indisc.] the court was enormous. She would kick, struggle, scream and cry as he carried her bodily from my home for visitation. She chewed her hair and pulled it out. She picked at her skin so often it bled. She had stomachaches prior to visits with her father, crying jags, and although tested as a gifted child, she nearly failed fourth grade. She reached out to many trusted adults for help, yet the court failed to respond.

The baby was returned from each visitation dehydrated, hungry and with diaper rash so severe he was bleeding. Once, as a toddler, he was returned with a black eye and disclosed his father had hit him.

Ultimately I prevailed, but it was only after being dragged through two full custody trials, which ended up being nearly five years of litigation. I have sole legal and primary physical custody, but my ex-husband was afforded substantial unsupervised visitation. The children are still not protected. My daughter now says that when the verbal abuse begins that she copes by "going off to another place in her head". My little boy tells me he tries to hide behind furniture or pretend he doesn't exist.

My story isn't as egregious as others you will hear today. While trying to understand what was happening to me in court, I found that my case was representative of the systemic failure of the courts to protect domestic violence victims and their children. I found women and children all over the country - moreso in Alaska - with similar experiences. I found an alarming percentage of abusive parents being awarded sole custody.

The bill before you is the result of nearly 3 years of researching and networking to find the best statutes in the country, with strong support from many professional organizations involved with the protection of children. This bill brings our child

custody statutes in line with what the Legislature has already intended in its child protection statutes and with what has been recommended by Congress and the National Council of Juvenile and Family Court Justices. It also brings our dated statutes in line with the voluminous current research about the effects of domestic violence on children and parenting.

CHAIR DYSON asked Mr. Hilyard if the sponsor had seen the proposed amendment, and received confirmation this was correct.

MR. WILLIAM BOBRICK, a private citizen from Anchorage, underscored the need for this legislation. He said he was the former chair of the board of the Alaska State Council on Domestic Violence and Sexual Assault, and testified this was a common sense approach of rewarding good behavior rather than bad behavior. The government should not be rewarding parents who beat up their spouse with either joint or sole custody. He said that kids figure out if one spouse beats up the other and still gets custody, the message is "that must be o.k." so that behavior continues.

CHAIR DYSON asked for Mr. Hilyard's response to Ms. Blough's amendment.

MR. HILYARD said Ms. Blough's concerns are more broadly applicable to the state's child custody laws, whereas this bill addresses the specific situation of temporary custody when there's been a history or pattern of domestic violence in the relationship. He did not express support of the amendment at this time because of wanting to review it with the attorney general's office and the court system. He said from a general legal perspective, Mr. Bailey thought it might not be most appropriate to place the amendment in HB 385.

CHAIR DYSON recommended that the sponsor and the attorney general's office research this, and amend it in Senate Judiciary, if necessary.

SENATOR GUESS commented she had researched how "sexual assault" fits in with "domestic violence." She suggested review of the definition of "household member" under the domestic violence statute to ensure that reference to "a child" was similar to the domestic violence statute regarding "household member."

MR. HILYARD asked if she was talking about the broader "a child" versus "the child."

SENATOR GUESS responded that yes, she agreed with Mr. Bailey on his definition of "a child," but was not sure, given the definition of domestic violence if his definition of "a child" fits.

MR. HILYARD said he would be happy to research this and let Senator Guess know by the end of the day.

SENATOR GUESS moved to report CSHB 385 (JUD), version W, out of committee with individual recommendations and the attached zero fiscal note.

CHAIR DYSON asked if there was any objection. There being none, it was so ordered.

The committee took a brief at-ease.

2:40 p.m.

SB 243-POSTSECONDARY STUDENT IMMUNIZATION

The committee took up SB 243.

MS. PAULA CADIENTE, staff to Senator Kim Elton, presented the bill on behalf of the sponsor, and said the bill was heard several weeks ago, when the question of whether it would be problematic for the universities had been brought up. She reported that most of the universities send out information about immunization or have information available on their websites. UAA currently mails information to students with the housing applications and has a form for students to indicate they've received the information. UAF's Center for Health and Counseling's website has a policy recommendation for optional immunization and lists the vaccine -which may be subject to a fee - as being available at the center. UAS does not mail anything to students, but possibly provides information on this at freshman orientation. When a freshman comes to the nurse's office, she recommends receiving an immunization at the student's expense. On the Alaska Pacific University's emergency medical and contact information form, immunization is recommended for students. As a private college, Sheldon Jackson College does not send out any information and said it is not subject to the requirement that students to provide proof of immunizations; however, it would be happy to send out information or post it on its health website. The Division of Public Health said that although meningococcal meningitis is a

top emergency priority, the division is concerned about liability of legislation only because a public health concern is heightened. The Division would be more comfortable with the bill if the requirement for a signature were eliminated.

SENATOR GUESS moved to report SB 243 out of committee with individual recommendations and attached zero fiscal notes.

CHAIR DYSON asked if there was any objection. Seeing and hearing none, it was so ordered.

2:42 p.m.

SB 376-SUBPOENA POWER: PUB ASS'TNCE & PERM FUND

The committee took up SB 376.

MR. JIM DALMAN, Chief of Program Integrity and Analysis, Department of Health and Social Services (DHSS), explained that when investigating allegations of welfare fraud, the department could not always obtain needed information from various sources even though a release of information is used. DHSS hopes the subpoena would allow information to be more readily collected. It provides a helpful tool to speed up the procurement of information from institutions or individuals to help validate the circumstances of a given allegation and to obtain information. This power is granted to other state agencies and is used as an administrative tool.

CHAIR DYSON asked the administration's position on amending SB 376 to include the Permanent Fund Dividend Division.

MR. DALMAN responded he didn't see this as a problem, and would probably help with their investigations.

CHAIR DYSON said he is pleased the administration is pursuing fraud in all areas.

MR. ANTHONY LOMBARDO, Director, Division of Public Assistance (DPA), noted there was no objection to having the PFD Division use this as a tool to pursue fraud.

MR. JAY MARLEY, Manager, Fraud Control Unit, said he was available to answer questions, and commented this was a valuable tool to prosecute and investigate fraud.

CHAIR DYSON said he would enjoy seeing published quarterly results of fraud control, as he was interested in who the perpetrators are, how easy it is to get convictions, what the sentences are, and how often there is success in getting restitution.

SENATOR GUESS said it is important to look at "why the fraud happens," noting she has constituents who are confused by the paperwork. She referred to the fiscal note's positive/negative aspect, and asked, "Are they both savings, or is there an actual cost?"

MR. MORLEY responded two types of figures are addressed when someone has gotten benefits illegitimately. The first is the actual recovery of benefits, the paying of benefits one wasn't entitled to. Second, disqualification for further benefits results in program savings. There are program savings, due to money coming back into the agency, and there are program savings resulting from not paying the benefit to those clients.

SENATOR GUESS suggested a review of the fiscal notes, as they don't necessarily mesh with that explanation; it looks like there is a cost, and it should be a savings.

CHAIR DYSON commented he would pay attention to this in the Senate Finance hearing.

MR. DALMAN said there is some cost associated with the activity and there is an offset in savings coming from recovery. The recoveries are expected to be offset by expenditures on the other side of the program. There is a commensurate reduction in the benefit levels of other programs, based on the anticipated increases in recovery. There is the positive recovery of a benefit, a small increment, and also a reduction in the authority in the other programs, an expenditure the department wouldn't, therefore, be making; he said he would confirm this.

MS. SHARON BARTON, Director, Permanent Fund Dividend Division, said its fraud unit is being re-built, and the desire is to get these essential tools and authorities in place because although the division can go to court for subpoena power, that process is cumbersome. She expressed interest in amending SB 376, using the same language as DPA. She reported the governor's liaison office is pleased for this opportunity, and DPA sees no problem with the PFD Division joining this.

SENATOR BETTYE DAVIS questioned whether there would need to be a title change.

CHAIR DYSON confirmed this was correct. He said conceptual amendment [Amendment 1] adds the PFD Division to the title on line 1, and the content change would be in Section 2.

SENATOR DAVIS moved to adopt Amendment 1.

CHAIR DYSON clarified this includes a new Section 2, as indicated by a document presented to the HES committee from the PFD Division, dated 4/14/04, accordingly numbered at the upper right side of the page as T-200, P.02, F-970.

CHAIR DYSON asked if there was any objection to Amendment 1. Seeing none, it was adopted.

SENATOR GUESS recommended that that SB 376 be referred to Senate Judiciary since it deals with subpoena powers. She also suggested that the title be fairly tight, since PFD was being added to the title.

CHAIR DYSON said he would mention this to the Senate President.

SENATOR DAVIS moved to report CSSB 376(HES) out of committee with [individual recommendations] and attached fiscal notes.

CHAIR DYSON asked if there was any objection. Seeing and hearing none, it was so ordered.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at 2:59 p.m.