

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 1, 2005

8:04 a.m.

**MEMBERS PRESENT**

Representative Paul Seaton, Chair  
Representative Carl Gatto, Vice Chair  
Representative Jim Elkins  
Representative Jay Ramras  
Representative Berta Gardner  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Bob Lynn

**COMMITTEE CALENDAR**

HOUSE BILL NO. 116

"An Act relating to the liability of certain persons for entry and remaining on licensed premises."

- MOVED CSHB 116(STA) OUT OF COMMITTEE

HOUSE BILL NO. 114

"An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 121

"An Act relating to consolidating or abolishing certain service areas in second class boroughs."

- HEARD AND HELD

HOUSE BILL NO. 12

"An Act relating to televisions and monitors in motor vehicles."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 34

"An Act relating to the expungement of records relating to conviction set asides granted after suspended imposition of sentence."

- BILL HEARING POSTPONED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 116

SHORT TITLE: MINORS ON LICENSED PREMISES

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/28/05 (H) READ THE FIRST TIME - REFERRALS  
01/28/05 (H) STA, JUD  
03/01/05 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 114

SHORT TITLE: TERM. PARENTAL RTS/CINA/DELINQUENCY CASES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/05 (H) READ THE FIRST TIME - REFERRALS  
01/26/05 (H) STA, HES, JUD  
03/01/05 (H) STA AT 8:00 AM CAPITOL 106

BILL: HB 121

SHORT TITLE: SERVICE AREAS IN SECOND CLASS BOROUGHS

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

02/02/05 (H) READ THE FIRST TIME - REFERRALS  
02/02/05 (H) CRA, STA  
02/15/05 (H) CRA AT 8:00 AM CAPITOL 124  
02/15/05 (H) Heard & Held  
02/15/05 (H) MINUTE(CRA)  
02/24/05 (H) CRA RPT CS(CRA) NT 1DP 5NR  
02/24/05 (H) DP: THOMAS;  
02/24/05 (H) NR: CISSNA, NEUMAN, SALMON, LEDOUX,  
OLSON  
02/24/05 (H) CRA AT 8:00 AM CAPITOL 124  
02/24/05 (H) Moved CSHB 121(CRA) Out of Committee  
02/24/05 (H) MINUTE(CRA)  
03/01/05 (H) STA AT 8:00 AM CAPITOL 106

**WITNESS REGISTER**

REPRESENTATIVE KEVIN MEYER  
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 116.

DOUGLAS B. GRIFFIN, Director  
Alcohol Beverage Control Board ("ABC" Board)  
Department of Public Safety  
Anchorage, Alaska

POSITION STATEMENT: Answered questions on behalf of the department during the hearing on HB 116.

MIKE PAWLOWSKI, Staff  
to Representative Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 116, on behalf of Representative Meyer, sponsor.

CINDY CASHEN, Executive Director  
Mothers Against Drunk Driving (MADD)  
Juneau Chapter  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 116.

DIANNE OLSEN, Chief Assistant Attorney General  
- Statewide Section Supervisor  
Human Services Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Introduced HB 114 on behalf of the department.

LINDA WILSON, Deputy Director  
Central Office, Public Defender Agency  
Department of Administration  
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of the agency in support of certain aspects of HB 114, and to specify other aspects of the bill as problematic.

KACI SCHROEDER, Staff  
to Representative Bill Thomas  
House Community and Regional Affairs Standing Committee  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Introduced HB 121 on behalf of the House Community and Regional Affairs Standing Committee.

RYNNIEVA MOSS, Chair  
Road Commission  
Fairbanks, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 121.

RENE BROKER, Attorney at Law  
Fairbanks North Star Borough  
Fairbanks, Alaska

POSITION STATEMENT: Testified on behalf of the Fairbanks North Star Borough in support of HB 121.

DAN BOCKHORST, Local Boundary Commission  
Central Office  
Division of Community Advocacy  
Department of Commerce, Community, & Economic Development  
Anchorage, Alaska

POSITION STATEMENT: Made observations regarding HB 121 on behalf of the department.

#### **ACTION NARRATIVE**

**CHAIR PAUL SEATON** called the House State Affairs Standing Committee meeting to order at [8:04:52 AM](#). Representatives Gatto, Elkins, Gardner, and Seaton were present at the call to order. Representatives Ramras and Gruenberg arrived as the meeting was in progress.

#### HB 166-VETERANS' MEMORIAL CERTIFICATES

[8:06:09 AM](#)

CHAIR SEATON announced that the first order of business was HOUSE BILL NO. 116, "An Act relating to the liability of certain persons for entry and remaining on licensed premises."

[8:06:21 AM](#)

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, as sponsor of HB 116, said the proposed legislation would protect minors who work with peace officers in sting operations.

[8:06:37 AM](#)

REPRESENTATIVE ELKINS moved to adopt the committee substitute (CS) for 116, Version 24-LS0379\G, Luckhaupt, 2/9/05, as a work

draft. There being no objection, Version G was before the committee.

[8:07:04 AM](#)

REPRESENTATIVE MEYER continued with his introduction of the bill. He noted that Version G would add a second section to the original version, applying the intent to both instances of civil liability as it pertains to alcohol beverage status. Version G corrects an oversight in the civil liability provisions of AS 4.16.049 and .065. He reminded the committee that, in the last legislative session, he had brought forth House Bill 428, which created a civil liability penalty for violations of AS 4.16.060. AS 4.16.049 and .065 allow a person with an alcoholic beverage license to bring civil action against a minor who violates the provisions of those statutes, including: a minor who is knowingly entering or remaining on a licensed premise; a minor soliciting others to purchase alcohol for them; and a minor presenting false identification. The fine can be up to \$1,000. Representative Meyer said the problem is that when the original legislation was passed, [underage] volunteers who may be working with law enforcement on various sting operations were not exempted.

REPRESENTATIVE MEYER said the compliance checks done are a good enforcement tool. Some establishments follow the law better than others. He related first-hand experience in having been asked by a minor to buy alcohol. When he refused, the minor told him that she was working with the Mothers Against Drunk Driving (MADD) Youth For Action group, and she was with a law enforcement officer who was in an unmarked car. He said [HB 116] would try to fill a loophole. He added, "I don't think we ever intended for establishments to take action against kids who were actually working with law enforcement on sting operations."

[8:09:56 AM](#)

REPRESENTATIVE ELKINS asked how many youth have been prosecuted.

[8:10:15 AM](#)

REPRESENTATIVE MEYER said he doesn't know the actual numbers, but it's "in the 100s."

[8:10:55 AM](#)

REPRESENTATIVE ELKINS asked how many of the youth who signed up for the program may have been in trouble for minor consuming and did so to try to "clean up their slate."

[8:12:20 AM](#)

REPRESENTATIVE MEYER indicated that others present to testify may be better able to answer that question.

[8:13:35 AM](#)

DOUGLAS B. GRIFFIN, Director, Alcohol Beverage Control Board ("ABC" Board), Department of Public Safety, in response to Representative Elkins' question, said generally that's not the manner in which underage people are recruited; however, he said he's not 100 percent certain the situation Representative Elkins described doesn't exist. He listed some of the places from which youth are recruited, including: the Youth In Action program in Juneau, MADD, underage military personnel, college coeds, and some high school students. He noted that the youth are paid about \$10 an hour.

[8:14:43 AM](#)

REPRESENTATIVE ELKINS asked who runs the program.

[8:14:56 AM](#)

MR. GRIFFIN responded that he has run the program through local police and it's still possible for local police to get their own grant to do this type of work; however, since moving the ABC Board over to the Department of Public Safety, the board has opted to have Alaska State Troopers run the operations. He emphasized that the intent is not to be deceptive; the desire is to use underage people who look their age. Mr. Griffin reported that since the program's inception, the failure rate has dropped from 50 percent to below 10 percent.

[8:17:47 AM](#)

MR. GRIFFIN, in response to questions from Representative Ramras, said fake identification (ID) is not used and often an ID is not used at all. Sometimes a youth participant may use his/her existing ID. The average age of the youth is 18, while some 19 or 20 years of age are used. If someone is used who is approaching the age of 21, they are dressed to look young. He reiterated that the intent is not to fool people regarding the

person's age. He added, "We prefer to call these compliance checks."

[8:20:40 AM](#)

REPRESENTATIVE RAMRAS said the program is successful; however, he expressed concern that hard-working servers would think that a person showing an ID wouldn't do so unless he/she was 21 or older.

[8:22:02 AM](#)

MR. GRIFFIN said that's unfortunate, but a server must do his/her job. If the action is fought, perhaps a prosecutor would decide not to prosecute, but it's not the ABC board's decision.

[8:24:00 AM](#)

CHAIR SEATON asked the committee members to keep their questions within the context of the bill.

[8:24:23 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the phrase "otherwise observes" on [page 1 of Version G], lines 7 and 13, and he remarked that that implies visualization. He asked if there is a possibility of using wiring in the future.

[8:25:01 AM](#)

MR. GRIFFIN said that's a good point for possible instances where there may not be direct visualization.

[8:25:54 AM](#)

REPRESENTATIVE GRUENBERG said he would work on that in the House Judiciary Standing Committee. He said there are similar kinds of situations regarding underage persons purchasing cigarettes, and he suggested considering similar language for that.

[8:26:47 AM](#)

MR. GRIFFIN said cigarettes are outside the ABC Board's jurisdiction.

[8:27:15 AM](#)

REPRESENTATIVE GRUENBERG asked about a possible cooperative sting involving someone underage trying to buy both alcohol and cigarettes in a bar.

[8:27:57 AM](#)

MR. GRIFFIN reiterated that the ABC Board does not do anything related to tobacco and, to his knowledge, said the tobacco industry doesn't oversee anything related to the sale of alcohol. He said there are situations where a person old enough to buy tobacco, but not old enough to buy liquor, gets his/her license revoked because of going into a liquor store to buy the tobacco.

[8:29:09 AM](#)

REPRESENTATIVE GRUENBERG suggested finding a way to combine tobacco and alcohol as they relate to compliance, and to consider narrowing the title of the bill.

[8:29:17 AM](#)

REPRESENTATIVE MEYER said he is concerned about youth having access to tobacco; however, he said, "I don't believe we have the civil liability with the tobacco as we do the alcohol."

[8:29:37 AM](#)

REPRESENTATIVE GATTO asked if there are people "unaccompanied, unobserved, and unwired" who are simply patrolling areas to calculate which areas need the most concentration.

[8:30:41 AM](#)

MR. GRIFFIN answered no. He said that does not comport with the way the ABC Board operates its program. He outlined the program again and added that all the stores are blanketed, and some bars as well.

[8:31:20 AM](#)

REPRESENTATIVE GATTO asked if it is possible to say someone is "otherwise observed" if he/she comes back with a voice recording, video recording, or photograph.

[8:31:47 AM](#)

MR. GRIFFIN said that may be a legal question. He reiterated that recording equipment is not currently used. An attempt is made to have direct observation, with a police officer or state trooper nearby.

[8:32:44 AM](#)

CHAIR SEATON directed attention to page 1, [lines 11-12], which read as follows: "if a person performs an act proscribed under this section". He asked if that refers to participation in the project or the purchasing of alcohol.

[8:33:06 AM](#)

MIKE PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, testifying on behalf of Representative Meyer, sponsor, clarified that the language refers to the acts listed in AS 04.16.060 [which read as follows]:

Sec. 04.16.060. Purchase by or delivery to persons under the age of 21.

(a) A person under the age of 21 years may not purchase alcoholic beverages or solicit another to purchase alcoholic beverages for the person under the age of 21.

(b) A person may not influence the sale, gift, or service of an alcoholic beverage to a person under the age of 21 years, by misrepresenting the age of that person.

(c) A person may not order or receive an alcoholic beverage from a licensee, an agent or employee of the licensee, or another person, for the purpose of selling, giving, or serving it to a person under the age of 21 years.

(d) A person under the age of 21 years may not enter licensed premises where alcoholic beverages are sold and offer or present to a licensee or an agent or employee of the licensee a birth certificate or other written evidence of age, that is fraudulent or false or that is not actually the person's own, or otherwise misrepresent the person's age, for the purpose of inducing the licensee or an agent or employee of the licensee to sell, give, serve, or furnish alcoholic beverages contrary to law.

(e) A person under the age of 21 who is seeking to enter and remain in a licensed premises under AS 04.16.049(a)(2) or (3) may not misrepresent the person's age or having obtained the consent of the parent or guardian required by that section.

8:34:24 AM

CINDY CASHEN, Executive Director, Mothers Against Drunk Driving (MADD), Juneau Chapter, stated her support of HB 116. She told the committee that the Juneau Chapter's Youth In Action members are trained to do the compliance checks. She confirmed that those picked to participate are young - one of them is a 14-year-old with braces - and in no way are supposed to look 21 to fool people. Ms. Cashen noted that those who are following the law are publicly thanked.

8:37:08 AM

MR. GRIFFIN, in response to a question from Representative Elkins regarding how many cases involve minors buying liquor in a store versus how many involve minors asking someone outside the store to purchase the liquor for them, said he would have to investigate an answer. He said the main focus of the ABC Board has been to get clerks trained, and he expressed pleasure at the numbers dropping under 10 percent. He said the secondary step is getting people not to buy for those underage. Mr. Griffin said the "shoulder tap" method of getting an of-age person to buy for an underage person [in a compliance check] is relatively new.

8:39:08 AM

REPRESENTATIVE ELKINS offered his understanding that most people who buy alcohol for underage people are in their early twenties.

8:39:31 AM

MR. GRIFFIN responded that one study shows "that 65 percent of the alcohol provided to underage people [is] provided by parents of ... old-enough friends or siblings." He stated that the compliance check will not, in and of itself, solve the problem of underage access to alcohol, but it's one step to solving the problem. He said the next step is to try to educate the public, which will probably be done initially with a media campaign. He said several groups are working together to pool money for the media effort.

8:41:11 AM

REPRESENTATIVE ELKINS asked Mr. Griffin how he would rate the Techniques in Alcohol Management (TAM) program, overall.

8:41:35 AM

MR. GRIFFIN replied that the program is not perfect, because the participants probably don't learn everything they need to know in a four- to five-hour class; however, it provides a certain level of understanding and professionalism to people who sell alcohol.

8:42:26 AM

MR. GRIFFIN, in response to a question from Chair Seaton, explained that TAM is one of about three alcohol server programs that the ABC Board has approved. The training is required and those who have it must get recertified every three years. Anyone working in an establishment that serves alcohol must be able to show their certification to a police officer or ABC Board member upon demand.

8:44:49 AM

MR. GRIFFIN, in response to a question from Representative Gatto, said to his knowledge there have not been any studies done to find out whether one particular age clerk is more likely to sell to a minor than another. In response to Representative Gatto's example that a 21-year-old clerk may be more likely to sell to a minor, he pointed out that there actually may be an advantage to a younger clerk's knowing who's of age. He emphasized that he doesn't want to jump to any conclusions regarding a certain age clerk being better than another.

8:46:43 AM

REPRESENTATIVE GRUENBERG suggested it may be a good idea to add a subsection (e) to AS 04.16.065 specifically saying that a minor not be subject to civil penalty.

8:47:50 AM

MR. PAWLOWSKI responded that "the civil liability in [AS 04.16.065] doesn't trigger until there's a violation of [04.16.060]."

[8:49:32 AM](#)

REPRESENTATIVE GRUENBERG explained that the purpose of HB 116 is to provide some immunization and assurance that if a young person works for ABC Board in conducting a compliance check, they are not going to be "hit with a civil penalty."

[8:51:03 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. Griffin if there is a statutory requirement in regulations that requires bartenders and servers to have training.

[8:51:35 AM](#)

MR. GRIFFIN answered yes. He noted that the regulation is 13 AAC 104.465 and the statutory requirement is AS 04.21.025. In response to a follow-up question from Representative Gruenberg, he said there is no provision in AS 04.24.025 that requires that a person who sells to a minor be ordered to undergo additional training. He said it may be something that occurs, but very often that person is fired.

[8:53:51 AM](#)

REPRESENTATIVE GRUENBERG asked if the ABC Board would like to have the authority in AS 04.24.025 to require the licensee and clerk to have additional training.

[8:54:15 AM](#)

MR. GRIFFIN said he would like to think about that. He said he thinks the board has the authority to do that now. Something in statute making it clear that the board has that option wouldn't hurt, he added, but it may not be necessary.

[8:55:26 AM](#)

CHAIR SEATON asked the committee to refocus on the issue of exempting liability.

[8:55:46 AM](#)

REPRESENTATIVE RAMRAS congratulated the ABC Board on its "splendid approach" over the last few years. Notwithstanding that, he said he would oppose [HB 116]. He indicated that there

is a difference between using the word "compliance" versus the word "sting," and he mentioned being on "the receiving end of this." He related an anecdote regarding a young woman he overheard on a plane who was worried about using her real ID to buy alcoholic drinks at bars on her twenty-first birthday, because she had been using her sister's ID for many years in those same bars.

[8:58:07 AM](#)

REPRESENTATIVE RAMRAS referred to a sentence in the letter from the ABC Board [included in the committee packet], which read as follows:

One tactic that has been raised by liquor licensees that do not like this increased oversight and enforcement is the claim that law enforcement agents are breaking the law to enforce the law by sending underage persons on to licensed premises in violation of AS 04.16.049.

REPRESENTATIVE RAMRAS said, "I guess that's my issue." He observed that people who work in the food service industry are often there because it's the best fit for them. He said he is in favor of prosecuting people who [serve alcohol] to people who say they have left their IDs at home, for example; however, he expressed concern for those who are being shown IDs, but don't catch that they aren't valid. Representative Ramras said his professional bartenders take the time to really look at an ID, but he indicated that his servers are often in a rush and dealing with many customers. Some of them have been in the industry for a short time, and it's those servers who, he indicated, are being preyed upon. He asked, "How long do you look at a piece of ID for?"

[9:03:55 AM](#)

CHAIR SEATON asked, "Is the law that you can't serve to someone under 21, or is the law that you have to check everyone's ID?"

REPRESENTATIVE RAMRAS answered, "Both."

[9:04:37 AM](#)

CHAIR SEATON asked if it would be in violation of law if someone over 21 is served alcohol, "with or without ID."

9:04:50 AM

REPRESENTATIVE ELKINS noted that most establishments have a form that a person can fill out swearing that they are 21.

9:06:20 AM

CHAIR SEATON said it's obvious that showing the [ID] is not law, or everyone would have to show their ID every time. He asked the committee to refocus on the intent of the bill, which he said is to allow a minor to participate in a compliance check without fear of civil action.

9:07:44 AM

REPRESENTATIVE GARDNER said she thinks everyone present is aware of Alaska's problem with alcohol. She said the state has agreed to a minimum drinking age, and those serving alcohol cannot do so to those underage. She indicated that there are a lot of programs to ensure the law is followed; HB 116 would protect those minors working with law enforcement. She stated her support of [HB 116].

9:09:29 AM

REPRESENTATIVE GATTO revealed that in his 26 years working in an ambulance and fire truck he has responded to more traffic accidents than he can count, and many of those accidents were caused by either someone "drinking too much or drinking too young." He said the innocent people are often the ones who are the victims.

9:09:56 AM

CHAIR SEATON asked the committee to refocus on the bill.

9:10:14 AM

REPRESENTATIVE GRUENBERG, in response to Representative Gatto's reference to the ABC Board's letter, said there are many instances where the law is broken to enforce law, and he said that's an issue that should be considered.

9:11:28 AM

CHAIR SEATON clarified that if the committee were to pass HB 116, those underage youth who work with law enforcement on

compliance checks would not be breaking the law, because there would be a built-in exception to the law.

[9:12:02 AM](#)

REPRESENTATIVE GRUENBERG concurred. He referred to AS 11.81.420 [(a)], which read as follows:

Sec. 11.81.420. Justification: Performance of public duty.

(a) Unless inconsistent with AS 11.81.320 - 11.81.410, conduct which would otherwise constitute an offense is justified when it is required or authorized by law or by a judicial decree, judgment, or order.

[9:12:29 AM](#)

REPRESENTATIVE GATTO moved to report HB 116 out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR SEATON noted that an objection had been voiced.

[9:13:51 AM](#)

A roll call vote was taken. Representatives Gardner, Gruenberg, Gatto, and Seaton voted in favor of CSHB 116, Version 24-LS0379\G, Luckhaupt, 2/9/05. Representatives Elkins and Ramras voted against it. Therefore, CSHB 116(STA) was reported out of the House State Affairs Standing Committee by a vote of 4-2.

[9:14:02 AM](#)

REPRESENTATIVE GRUENBERG asked that the record show that the bill passed by a majority of the committee.

HB 114-TERM. PARENTAL RTS/CINA/DELINQUENCY CASES

[9:14:32 AM](#)

CHAIR SEATON announced that the next order of business was HOUSE BILL NO. 114, "An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid

proceedings and juvenile delinquency proceedings; and providing for an effective date."

[9:14:59 AM](#)

DIANNE OLSEN, Chief Assistant Attorney General - Statewide Section Supervisor, Human Services Section, Civil Division (Anchorage), Department of Law, testifying on behalf of the department, introduced HB 114. She noted that the proposed legislation includes several distinct provisions relating to the child protection system; each constitutes a step toward making Alaska's children safer, healthier, and more secure, without unreasonably expanding governmental powers.

MS. OLSEN said [HB 114] would amend AS 25.23.180, to permit parents to relinquish their parental rights to a child, while retaining certain privileges, such as ongoing communication or visitation with the child. The amendment is in response to a recent Alaska Supreme Court decision, holding that the current law prohibits a parent from retaining any rights or privileges in a relinquishment. She said that in some cases ongoing contact with the parent is in the child's best interest, especially when that child is adopted by a relative or a family acquaintance.

MS. OLSEN noted that the proposed amendment would also add language to AS 43.23.005, to allow children - who are placed temporarily by the Department of Health & Social Services outside of the state - in out-of-state treatment facilities, in order to maintain eligibility for Alaska permanent fund dividends (PFDs). She noted that some children require long-term treatment of a nature that is currently unavailable in Alaska, and such children are in risk of losing the PFD eligibility if they remain out of the state in excess of the statutorily proscribed period of time and are unable to return to the state. She said the department feels that these Alaskan children should not lose the privilege [of receiving a PFD] as a result of having been placed in the treatment facility which is not available in the state.

MS. OLSEN said HB 114 would also add language to AS 47.10.020, to clarify that the court may issue any orders necessary to aid the department in its investigation of an allegation of child abuse and neglect. She noted that the language would resolve any ambiguity toward the ability of judges to issue orders across the state through various jurisdictions. A new subsection would also be added to the statute to clarify that

the department is not required to obtain authorization from the court to conduct an investigation of a protective services report, formerly know as a "report of harm," or to file a petition in court.

MS. OLSEN stated that existing federal law requires the testimony of a qualified expert witness in order for the court to authorize the out-of-home placement of or termination of parental rights to an Indian child. A new section would be added to AS 47.10.145 to permit the courts to conclude, as a matter of law, that the testimony of a qualified expert witness would support a finding that placing a child with a parent that cannot be located, is absent, or is unknown, would place that child at substantial risk of harm.

MS. OLSEN concluded that [HB 114] would amend the definition of the term "mental health professional" in AS 47.30.915, for purposes of child in need of aid (CINA) and juvenile delinquency proceedings. In order to authorize placement of children in secure residential psychiatric treatment facilities, the court must hear the testimony of a mental health professional. The current definition excludes professionals who may be licensed to practice in states other than Alaska. The testimony of such a professional is often critical in cases involving Alaska children who are already placed out-of-state by the department. Ms. Olsen said the expansion of the existing definition is necessary to ensure that Alaska children who are placed outside of the state receive the psychiatric treatment that they need.

[9:19:13 AM](#)

CHAIR SEATON said no one has had a chance to read the committee substitute (CS) for HB 114, Version 24-GH1108\G, Mischel, 2/28/05; therefore, he plans to hold the bill after the committee has asked questions of the witnesses.

[9:19:34 AM](#)

REPRESENTATIVE GARDNER asked Ms. Olsen to clarify how HB 114 would change the ability of the expert witness to give testimony.

[9:20:00 AM](#)

MS. OLSEN responded that under the Indian Child Welfare Act it is currently required that, in order to place a child in foster care, or to terminate parental rights, there must be evidence

supported by a qualified expert witness that returning the child to the parent is likely to result in serious physical or emotional harm. In the case of an absent parent, she said it's simply a matter of common sense that the child can't be put back with that parent, because the department has no idea where they are. She offered further details.

[9:22:31 AM](#)

REPRESENTATIVE GARDNER stated her understanding that, in summary, Ms. Olsen was saying that the bill would eliminate the necessity of having an expert witness and would codify the assumption that if a parent is absent, an expert witness would not be necessary.

[9:22:46 AM](#)

MS. OLSEN said yes.

[9:22:51 AM](#)

REPRESENTATIVE GRUENBERG indicated he was uncomfortable with the language of Section 5, but not certain why. He asked Ms. Olsen to provide him with the court cases to which Sections 1 and 5 pertain.

[9:25:01 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 1, line 13 [of the CS that was not yet adopted], which read: "A relinquishment may not be withdrawn or invalidated". He observed, "It seems to divest the court of jurisdiction to invalidate such a relinquishment." He said he would have serious problems with divesting a court of its jurisdiction. He turned to the language beginning on the top of page 2, which read: "that a retained privilege has been withheld from the relinquishing parent". He said there could be a child in state custody, whose parent was promised visitation, and the state could deliberately withhold visitation from that parent. The parent would have no legal recourse, at all. He said, "I think that's terrible public policy. Why would you justify that?"

[9:26:12 AM](#)

MS. OLSEN responded that the section to which Representative Gruenberg referred is intended to apply to a relinquishment that is taken prior to an adoption. The relinquishments, as a matter

of policy by both the department and the attorney general's office, would not be taken unless they were agreed to by the adopted parent. She stated her belief that there is currently a state statute that does not allow an adoption to be overturned for any reason after one year, and, under the Indian Child Welfare Act, it's two years "if it's a matter of duress."

[9:27:34 AM](#)

REPRESENTATIVE GRUENBERG said a provision already exists that "allows conditions for retaining privileges," so he questioned if Section 1 would be necessary. He noted that there is a one-year statute of limitations in the Adoption Act, and "this would seem to run contrary to that." He also remarked, "This may very well be unconstitutional if it were intended to conflict with the federally enacted Indian Child Welfare Act, which would retain supremacy under the supremacy clause."

[9:29:15 AM](#)

CHAIR SEATON reiterated that the [unadopted] CS was just received by the committee. He asked the witness to get back to the committee with answers to Representative Gruenberg's questions in writing. Chair Seaton said he would like to get a synopsis of "where we're going with that section and how you interpret that, as well."

The committee took an at-ease from [9:30:22 AM](#) to [9:30:47 AM](#).

[9:31:41 AM](#)

REPRESENTATIVE RAMRAS said other groups outside of Alaska, such as athletes training out-of-state and Peace Corps volunteers, do not qualify for the Alaska permanent fund dividend (PFD). He asked why a distinction is being drawn between them and an individual who is in custody of the Department of Health & Social Services and placed outside of the state for medical and behavioral treatment.

[9:32:19 AM](#)

MS. OLSEN replied that she doesn't know if the department has considered that or thought that there was a distinction. She said primarily the focus has been on the children who were in custody of the department and sent out of the state, sometimes against their will or the will of their parents, and thought

that "this would be a good opportunity to resolve that issue for them."

[9:32:41 AM](#)

CHAIR SEATON opened public testimony.

[9:32:58 AM](#)

LINDA WILSON, Deputy Director, Central Office, Public Defender Agency, Department of Administration, said she currently supervises the Family Law Section of the department, which is a section that includes attorneys who represent parents in child protective proceedings in cases that [HB 114] would affect. She said she also supervises attorneys who represent juveniles in juvenile delinquency cases.

MS. WILSON stated that [the agency] supports some aspects of the bill, particularly Section 2, that would allow for PFD eligibility. She said the "spirit of Section 1," regarding retaining privileges in a relinquishment, is well intended; however, it doesn't do as much as it could. She said, "Retaining a privilege that really is not enforceable - has no teeth in it - is ... almost like false advertisement; you're telling the parent, 'You can retain a privilege, but it's non-enforceable, and you can't void the relinquishment or the adoption with it.'" She opined that it would be better to "put something in the adoption decree." She said she thinks the policy behind finality in adoption is a sound one. She clarified as follows:

The fact that you maybe couldn't void the relinquishment or the adoption may be a sound policy, but I think there needs to be something in the adoption decree to require that visitation - if it's in the best interest of the child - be enforceable, so that, down the road, if the adopted parents are withholding visitation, and that's not in the child's best interest, ... a biological parent could initiate some action in the probate court that handles the adoption, to try to get that visitation that they thought they were going to get when they relinquished.

[9:36:42 AM](#)

MS. WILSON turned to Section 5, regarding the expert witness. She said Section 5 would take away the qualified expert from the

scene. She noted that, under the federal Indian Child Welfare Act, the state has to "put on an expert witness." To eliminate that requirement is problematic. She said Ms. Olson had previously remarked that "in cases currently, it may be stipulated." She emphasized that stipulated is different than having the court "impose it without a stipulation." She offered further details. Ms. Wilson said she thinks there are good reasons for having a qualified expert.

[9:38:38 AM](#)

CHAIR SEATON said the issue before the committee is a complicated one and a subcommittee may be formed to look at the problems in more detail.

[9:39:08 AM](#)

REPRESENTATIVE GARDNER asked if an attorney appointed to an absent parent, who may never have met that parent, could stipulate to an agreement to dispense with the requirement of an expert witness in the absence of the parent.

[9:39:32 AM](#)

MS. WILSON said she suspects the attorney could do so, but she said she thinks there are many attorneys who would have a problem with that.

[9:40:07 AM](#)

REPRESENTATIVE GRUENBERG stated that he thinks an attorney cannot stipulate on behalf of a client he/she has never met. In regard to the standard of clear and convincing evidence, he recollected that the Indian Child Welfare Act requires "proof beyond a reasonable doubt." He questioned whether grafting in state law a lesser standard of clear and convincing evidence would violate the supremacy clause.

[9:40:52 AM](#)

MS. WILSON offered her belief that the standard of clear and convincing evidence has to do with the specific fact of whether or not the parent can be located. She said, "I don't think language in the statute affects the 'beyond a reasonable doubt' requirements that are in the Indian Child Welfare Act for other things that need to be determined under a 'beyond a reasonable doubt' standard."

[9:41:50 AM](#)

REPRESENTATIVE GRUENBERG recommended that the Office of Public Advocacy and the Family Law Section be involved with hearings regarding [HB 114].

[9:42:07 AM](#)

CHAIR SEATON asked Representative Gatto, Gardner, Gruenberg, and Seaton to serve on a subcommittee. He said he would also take part, but Representative Gatto would chair the subcommittee.

[9:43:05 AM](#)

MS. WILSON, in response to a request from Chair Seaton, said she would be available to the subcommittee, and she said she would contact the Office of Public Advocacy.

[9:43:28 AM](#)

CHAIR SEATON announced that HB 114 was heard and held.

HB 121-SERVICE AREAS IN SECOND CLASS BOROUGHES

[9:43:49 AM](#)

CHAIR SEATON announced that the last order of business was HOUSE BILL NO. 121, "An Act relating to consolidating or abolishing certain service areas in second class boroughs."

[Before the committee was CSHB 121(CRA), Version 24-LS0396\Y.]

[9:44:06 AM](#)

KACI SCHROEDER, Staff to Representative Bill Thomas, House Community and Regional Affairs Standing Committee, Alaska State Legislature, introduced HB 121 on behalf of the House Community and Regional Affairs Standing Committee. Ms. Schroeder explained that when the state revenue sharing program was in place, residents of subdivisions located outside of city limits were able to rely on state money to form road service areas. Now that the revenue sharing program is over, those residents are no longer able to rely on that state money, and some of the service areas are not taxing themselves adequately enough to maintain services to the roads. Without adequate service, those roads are deteriorating and becoming unsafe.

MS. SCHROEDER noted that the borough bears ultimate financial responsibility for the service areas; however, the borough cannot assess a borough-wide tax and apply it to the service areas. The proposed legislation would allow second-class boroughs to consolidate or abolish service areas that are either nonfunctional or functioning below minimum standards. At the same time, the bill would protect those service areas that are taxing themselves adequately and performing their services adequately.

[9:46:01 AM](#)

CHAIR SEATON asked if the reason the borough can't tax and distribute "to the road service areas" is because it doesn't have the taxing power, or because it can't allocate money.

[9:46:08 AM](#)

MS. SCHROEDER said she doesn't know the specifics of the taxing scheme for the borough, but she indicated that someone was online to testify who could answer that question.

[9:46:34 AM](#)

REPRESENTATIVE GATTO asked if the bill addresses groups or areas that are capable of taxing themselves and elect not to.

[9:46:39 AM](#)

MS. SCHROEDER answered yes.

[9:47:00 AM](#)

CHAIR SEATON asked if the revenue sharing went to the districts themselves, or to the borough to be distributed.

[9:47:11 AM](#)

MS. SCHROEDER said she doesn't know.

[9:47:42 AM](#)

REPRESENTATIVE GRUENBERG asked what the difference is between the committee substitute (CS) and the original bill.

[9:47:55 AM](#)

MS. SCHROEDER replied that the CS simply adds an effective date.

[9:48:08 AM](#)

RYNNIEVA MOSS, Chair, Road Commission, said she recognizes that the [Fairbanks North Star Borough] has a problem with service areas that choose not to tax themselves and maintain the roads. Those roads create a safety hazard for the borough, and they are used by ambulances, fire trucks, and school buses. She said there is a chance that something could happen and the borough would be held liable. She stated, "This simply gives a borough an opportunity to get rid of the risk of being responsible for service areas that aren't maintained."

MS. MOSS revealed the reason she is following the bill is that she wants to be assured that it isn't going to disrupt service areas that do their job properly. She said, "I am very comfortable with the language here - that it does protect service areas that are doing their job right, and allows them to continue doing their job."

MS. MOSS, regarding Chair Seaton's previously stated question about revenue sharing, said, "That was money that was appropriated to the borough, and then the borough distributed it on a per-mile basis."

[9:50:20 AM](#)

MS. MOSS, in response to a question from Chair Seaton, explained that the borough sends out the bills, while the service area determines what the mill rate is for road maintenance. In response to a follow-up question from Chair Seaton, she noted that service areas are formed by election of an area; rural services assist in deciding what the boundaries will be, then the borough clerk arranges for an election.

[9:51:17 AM](#)

REPRESENTATIVE GATTO noted that he had served on a road service area. He asked whether the road service area board is submitting a mill rate that is being rejected by the borough, or if it is submitting a request "for zero" that the borough is accepting.

[9:52:19 AM](#)

MS. MOSS explained that, in Fairbanks, several service areas don't have boards anymore, because the money dried up. The borough acted as though it had the authority to authorize maintenance, even though it didn't, because it felt a responsibility to keep the roads safe.

[9:53:11 AM](#)

REPRESENTATIVE GATTO asked "If there's no board, but a community decides ... [to] pave the main road leading into a subdivision, are we saying that can't be done anymore by dissolving the board?"

[9:53:28 AM](#)

MS. MOSS answered, "Yes, you are saying that."

[9:53:40 AM](#)

CHAIR SEATON offered his understanding that there's nothing [in the bill] to prevent a new service area from forming again.

[9:53:53 AM](#)

MS. MOSS answered that's correct.

[9:53:59 AM](#)

REPRESENTATIVE GARDNER offered her understanding that the bill would actually eliminate the liability that the [road service area] board currently has for unsafe conditions, but would in no way address the issue of unsafe roads.

[9:54:08 AM](#)

MS. MOSS answered that's correct.

[9:54:16 AM](#)

REPRESENTATIVE GRUENBERG asked if the borough would remain responsible for the roads if the road service area was abolished.

[9:54:38 AM](#)

MS. MOSS answered no. She clarified that, currently, as long as a service area exists, it is not a separate entity from the

borough, as far as liability is concerned. The purpose of the bill is to dissolve a service area that creates some risk, which would take away the liability from the borough. In response to a follow-up question from Representative Gruenberg, she stated that the borough does not have road service powers; therefore, nobody would be responsible. She noted that there are hundreds of roads in the [Fairbanks North Star Borough] today that do not fall under service areas. She offered examples.

[9:55:40 AM](#)

CHAIR SEATON offered his understanding [HB 121] would only address second class boroughs.

[9:56:04 AM](#)

MS. MOSS answered yes. She added, "Home rules operate by charter, so they do have the capability to do this, just in a different manner."

[9:56:14 AM](#)

REPRESENTATIVE RAMRAS thanked Ms. Moss for her testimony. He stated that this issue is a significant one, and he noted that Fairbanks has the full support of the Fairbanks North Star Borough assembly.

[9:56:49 AM](#)

RENE BROKER, Attorney at Law, Fairbanks North Star Borough, stated the borough's support of HB 121. She said the borough has 107 road service areas. She said the borough has been confronted with the cessation of state funding and has service areas that are unable or unwilling to tax themselves and thus have essentially been legally nonfunctional and/or dysfunctional. She stated, "We don't believe that it's ever a good policy decision to completely separate control from responsibility, which is where the borough is at right now with its service areas. So, we're just simply urging that we regain some control, but continue to respect the autonomy of those service areas that are functioning as legally intended."

[9:58:09 AM](#)

DAN BOCKHORST, Local Boundary Commission, Central Office, Division of Community Advocacy, Department of Commerce, Community, & Economic Development, stated that the department

endorses the measure to give borough governments the flexibility to provide for the efficient delivery of services, and [HB 121] would do that for second class boroughs. Notwithstanding that, he said the department would like to make two observations regarding the bill: First, there is nothing unique about a second class borough that would suggest that the measures in the bill are needed for that particular class of borough, but not for other classes of borough. He said, as noted in previous testimony, home rule borough governments have the capacity to exempt themselves from "this provision," but AS 29.35.450 (d) applies to home rule borough governments. He noted that there is a petition currently pending that would change the current classification of the Ketchikan Gateway Borough from second class to home rule. The provisions of HB 121 would not extend to Ketchikan if it were to become a home rule borough government.

MR. BOCKHORST stated his second observation is that the bill, as written, gives greater flexibility and authority to a general law, second borough than it does to a home rule borough government, and under Alaska's constitution, home rule is intended to provide for maximum local self government.

[10:00:24 AM](#)

CHAIR SEATON closed public testimony.

CHAIR SEATON announced that HB 121 was heard and held.

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [10:00:33 AM](#).