

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

February 7, 2005

1:31 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

Senator Lyda Green

COMMITTEE CALENDAR

SENATE BILL NO. 84

"An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 51

"An Act relating to contracts for the provision of state public assistance to certain recipients in the state; providing for regional public assistance plans and programs in the state; relating to grants for Alaska Native family assistance programs; relating to assignment of child support by Alaska Native family assistance recipients; relating to paternity determinations and genetic testing involving recipients of assistance under Alaska Native family assistance programs; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 84

SHORT TITLE: CHILD PROTECTION CONFIDENTIALITY

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/05 (S) READ THE FIRST TIME - REFERRALS
01/26/05 (S) HES, JUD, FIN
02/07/05 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 51

SHORT TITLE: PUBLIC ASSISTANCE PROGRAMS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/12/05 (S) READ THE FIRST TIME - REFERRALS
01/12/05 (S) CRA, HES, FIN
01/26/05 (S) CRA AT 1:30 PM FAHRENKAMP 203
01/26/05 (S) Moved SB 51 Out of Committee
01/26/05 (S) MINUTE (CRA)
01/27/05 (S) CRA RPT 4DP
01/27/05 (S) DP: STEVENS G, WAGONER, KOOKESH, ELLIS
02/07/05 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

Marcia Kennai
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supports SB 84

Jan Rutherfordale
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Supports SB 84

Scott Calder
Fairbanks, AK
POSITION STATEMENT: Opposes SB 84

Katherine Farnham
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supports SB 51

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:31:58 PM](#).

Present were Senators Kim Elton, Gary Wilken, Donny Olson, and Chair Dyson.

SB 84-CHILD PROTECTION CONFIDENTIALITY

CHAIR DYSON asked Marcia Kennai and Jan Rutherfordale to present SB 84.

MARCIA KENNAI, deputy commissioner, Office of Children's Services (OCS), and Jan Rutherfordale, assistant attorney general, Department of Law introduced SB 84. Ms. Kennai said SB 84 would protect children's rights while providing disclosure of some agency information. SB 84 opens all child-in-need-of-aid (CINA) hearings to the public except in certain circumstances. It expands the circumstances under which the department is required to share confidential information on CINA proceedings. SB 84 would increase accountability and increase public awareness and trust.

[1:36:51 PM](#)

MS. RUTHERDALE offered historical background on the issue. Child protection cases were open hearings in the past due to the fear of children being sold into slavery. Hearings were later closed to protect children and the stigma attached. Federal law provides confidentiality of records, presuming it includes court hearings. In the last 10 years, the press has exposed problems in the system.

[1:40:16 PM](#)

SENATOR ELTON asked Ms. Rutherfordale, "Since federal law has changed to open up court proceedings, how many other states have done so?"

MS. KENNAI advised 13 states were open with judicial discretion and 5 states are completely open.

SENATOR ELTON asked how it works when a judge admonishes people who fail to keep secrecy.

MS. RUTHERDALE replied if the court asks for secrecy and a person divulges information, next time they come to court they could be excluded from proceedings. The press is generally respectful of abuse victims.

[1:43:36 PM](#)

CHAIR DYSON asked whether the person would be subject to contempt of court.

MS. RUTHERDALE answered yes. Alaska allows the court to open proceedings if no one objects. The courts announce when the proceedings are confidential.

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CHAIR DYSON asked whether Paragraph (11) on page 6 takes care of allowing for critical information to be dispersed to professionals who provide services to the child.

MS. RUTHERDALE answered it does not. Paragraph (11) deals with issues such as a sex offender living in a neighborhood. The Office of Child Services, (OCS) could warn the mother of a child living next door. That section allows the release of information to a child at risk. The term caregiver is a broad definition.

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MS. RUTHERDALE advised an existing provision in subsection 9, subparagraph 2, "a person or agency requested by the department to provide consultation or services" that would include a professional to give services to a child or parent. That section allows appropriate information to be shared.

CHAIR DYSON noted the amendment added the word "confidential" on line 21.

MS. RUTHERDALE advised it was done as a housekeeping measure.

MS. KENNAI stated item 11 refers to childcare providers, and the department can now share any vital information with a parent or municipality.

[1:50:20 PM](#)

CHAIR DYSON clarified the issue is whether the professional treating the child can access necessary information in order to treat the child.

MS. RUTHERDALE answered SB 84 has that issue covered.

SENATOR ELTON asked whether the state determines the information to be released.

MS. RUTHERDALE answered it is at the discretion of the records holder. The person determining what is released has the complete record. This saves time. Some information is private even to relatives.

[1:52:57 PM](#)

CHAIR DYSON said some information in the record is not relevant even to the people treating the child.

MS. RUTHERDALE advised the system has checks and balances. Information can be released as a court order.

CHAIR DYSON reminded the committee that due to previous legislation, legislators could get access to those records.

[1:54:07 PM](#)

SENATOR DONNY OLSON mentioned the situation with the Mat-Su abuse case and said SB 84 seems to give a broad ability for information to be too available to the public.

MS. KENNAI answered a lot of erroneous information comes out anyway. When a parent or foster parent gets charged, the documents are public.

SENATOR OLSON said reading into SB 84 appears to further open information to the public.

SENATOR OLSON asked what happens if you have parents who are separated and they disagree regarding disclosure.

MS. RUTHERDALE emphasized there are two sections to SB 84. One has to do with court hearings and records and the other, agency records. There are two parts of agency records, one is the "shall release appropriate information", and the other section allows for release to the public, but only in three narrow situations.

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OCS is allowed to respond to the report of harm, the outcome, the services provided, and the course of action. The task force addressed the issue of parents trying their cases through the press. SB 84 allows the state the ability to respond to such situations. SB 84 is tailored to respond to a particular parent, or a narrow report of harm having to do with the parent. The reason it is so narrow is there are still federal requirements for confidentiality. Federal law allows parents to waive their right for confidentiality.

[2:00:34 PM](#)

CHAIR DYSON asked whether anything in SB 84 would have prevented what happened in the Mat-Su valley situation. He added in that

case the children had been adopted and once the adoption process is finished, the state is finished.

MS. KENNAI replied it would not have prevented that particular situation and agreed with Chair Dyson's comments.

SENATOR ELTON stated Paragraph (11) appears to allow a broader release of information, but it removes the requirement to adopt regulations that might determine to whom information can be released. He asked who makes the determination on whether it is appropriate to release information.

MS. RUTHERDALE responded the verbiage was moved to Section 13, subparagraph (N) that allows the agency to adopt regulations.

[2:03:30 PM](#)

SENATOR ELTON asked Ms. Rutherfordale to speak to the issue of dropping the word "shall" and introducing "may".

MS. RUTHERDALE could not reply.

CHAIR DYSON advised he is open to amending SB 84 and addressing it in judiciary.

SENATOR ELTON reported he is not sure how he feels about SB 84.

[2:04:42 PM](#)

CHAIR DYSON advised his interest in Section 16, page 8. "However, the court may limit the presence of those persons in a hearing that has been closed."

[2:05:59 PM](#)

MS. RUTHERDALE clarified it is not a change it is the current law.

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SCOTT CALDER, Fairbanks, testified via teleconference that SB 84 is intrinsically related to a history of problems. He finds Sections 1 and 2 acceptable. Section 3 has problems on lines 9-13 where hearings are closed to the public during an initial court hearing and a hearing following an initial hearing in which a parent, child, or other party of a case is present but has not had an opportunity to obtain legal representation. The first few court hearings are when the family is most violated by agency activity. This is when public scrutiny is most needed.

[2:11:00 PM](#)

CHAIR DYSON asked Mr. Calder if initial hearings should be open to the public.

MR. CALDER replied the DOL often relies on the appearance of judicial review on its activities. In the early stages, many times the people are at a disadvantage.

[2:12:31 PM](#)

CHAIR DYSON asked about a handbook for parents explaining their rights.

MR. CALDER said it was never produced. The agency did produce a "fill-in-the-blank" publication, which causes the parent to feel subservient.

CHAIR DYSON asked Ms. Rutherfordale if parents have a clear right to ask the judge for legal help.

MS. RUTHERDALE answered yes.

CHAIR DYSON asked whether they have the right to ask the judge to postpone the action until they have legal representation.

MS. RUTHERDALE replied she was not sure.

[2:14:30 PM](#)

MS. RUTHERDALE explained in an emergency state custody hearing, the judge would inform the parents of their rights and give them the option of leaving the child in state custody until their attorney was available.

MR. CALDER said the public should be involved early and often. Section 7 puts the parent in a disadvantaged position unless authorized by the court. He advised the committee to eliminate Section 7. Section 8 is unacceptable. Section 9 should have the parent at the top of the list of people who can receive information. Confidentiality has been used as a weapon against children and families by the DOL. Parents should have all information regarding the child unless good cause to do otherwise has been shown.

[2:17:12 PM](#)

CHAIR DYSON asked Ms. Rutherfordale why the parent isn't on the list.

MS. RUTHERDALE answered parents are parties in the action. The attorney may share any documents concerning the case with their client.

CHAIR DYSON asked what is the reason for not having parents on the list.

MS. RUTHERDALE answered the reason is that attorneys are given full access to the information and they can share the information with their clients. There have been instances where parents have left sensitive information in a public place.

[2:20:11 PM](#)

CHAIR DYSON said the list involves a lot of people who have less interest in the case. He asked if they could add parents to the list.

MS. RUTHERDALE advised she would get back to the committee regarding that issue. The court order allows the parents to get any necessary information they need. AS 47.10.093 (a) says you cannot release records without a court order. Subsection (b) says you can disclose the appropriate information under certain circumstances without the court order. It's a known provision.

[2:23:03 PM](#)

CHAIR DYSON asked whether that works for parents who are representing themselves.

MS. RUTHERDALE said they would have to go back to the court.

CHAIR DYSON noted in the case of parents who live remotely from court, it could be inconvenient.

MR. CALDER cited a US Supreme Court ruling that says, "Parents are not any other person". He maintained parents are innocent until proven guilty. Section 9 refers to a review panel established by the DOL to review actions by the DOL. Mr. Calder maintained that this is unacceptable.

[2:25:17 PM](#)

The DOL should receive public scrutiny. Section 11 should be broadened to include parents generally, in terms of the interest of their own children. Section 13 should point out the fact that the parent has the authority to request the information. Section 14 should not allow immunity from liability.

[2:27:53 PM](#)

Page 9, Section 17, (a) and (b) [version\A] should be eliminated because it denies public access to the initial court hearing.

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MR. CALDER summed up his testimony advising that there is a history of abuse of power by the state government.

[2:31:26 PM](#)

CHAIR DYSON asked Mr. Calder for his written testimony.

SENATOR ELTON asked regarding page 6, line 26 [version\A], what is the purpose of saying information could only be disclosed to a departmentally established review panel.

MS. RUTHERDALE said anything could be discussed within the department. On a specific case the DOL will have an internal review, Section 9 allows them to bring in a member of the public who is knowledgeable of the case.

[2:33:14 PM](#)

SENATOR ELTON said this would preclude the review established by the Governor. The Governor may want to move the review outside the department.

MS. KENNAI said the DOL has a public citizen review panel that reviews policy and procedure, but this section of SB 84 refers to the commissioner or deputy commissioner being able to establish an internal review panel, which allows the department to bring in someone from the outside who is knowledgeable about the particular case.

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CHAIR DYSON asked the reason the citizen review panel is not on the list of people able to access the information.

MS. RUTHERDALE answered the citizen review panel addresses system problems not specific cases.

SENATOR ELTON asked whether there is anything in SB 84 or current state law that allows confidential information to be shared with either a governor's panel or a legislative panel staff member.

MS. RUTHERDALE said in specific cases there are mechanisms in existence.

[2:39:16 PM](#)

SENATOR ELTON asked if a legislative audit staff has access to confidential information.

MS. KENNAI answered legislators can request a legislative audit.

SENATOR ELTON asked whether both the legislator and the audit staff could have access to confidential information.

MS. RUTHERDALE did not know the answer.

SENATOR GARY WILKEN repeated earlier questions regarding why parents are not included in the list of people able to access confidential information.

[2:41:47 PM](#)

MS. RUTHERDALE advised the committee that mechanisms already exist and those mechanisms are adequate. This is a partial discovery tool. More records are available through the court.

SENATOR WILKEN asked Ms. Rutherfordale to give an example of what trouble could be caused by adding a line with qualifications that speaks to the parent privileges.

[2:45:04 PM](#)

MS. RUTHERDALE could not think of one.

CHAIR DYSON said it seems strange to not have parents on the list. He advised the committee that he would hold SB 84 until the next committee meeting.

CHAIR DYSON asked whether the Indian Child Welfare Act (ICWA) representatives should be on the list.

[2:47:18 PM](#)

MS. RUTHERDALE said the system is already set up to share information. If a tribe intervenes in a case, the order will allow free flowing exchange of information.

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SENATOR OLSON suggested eliminating Section 8.

MS. RUTHERDALE said it would open up everything.

SENATOR OLSON announced he would like to have everything open to the parent. He stated he is in favor of parents raising children as opposed to the government raising children.

MS. RUTHERDALE: answered AS 47.10.093(a) refers to children who fall within the chapter, meaning there has been a petition filed. Parents and attorneys do have full access in formal cases. SB 84 addresses non-parties.

MS. KENNAI pointed out most of the information they have comes from the parent.

[2:52:30 PM](#)

CHAIR DYSON noted this would be a case involving a child who comes to the state through abuse. Chair Dyson suggested the committee take SB 84 up again in the next committee meeting and asked to have "parent" added to the list or have a solid reason why they would not be added.

[2:56:10 PM](#)

SB 51-PUBLIC ASSISTANCE PROGRAMS

CHAIR FRED DYSON announced SB 51 to be up for consideration.

[2:56:51 PM](#)

KATHRYN FARNHAM, Department of Health and Social Services (DHSS) introduced SB 51. In 1996 the federal welfare reform program allowed states flexibility in the implementation of welfare reform with an emphasis on employment. That legislation has been successful in Alaska. The caseload reduction is 58 percent since 1994, saving the state \$66 million dollars. The block grant program allows the states to create programs that emphasize work. This same flexibility was offered to Tribal organizations in the 1996 law, which allows them to run a tribal Temporary Assistance to Needy Families (TANF) program. Native organizations may apply for a federal block grant for the families in their region and serve them directly.

To run a fair and equitable program that is on par with what the Native families could have received from the state, it is necessary to provide state funds. In 2000 the Alaska Legislature created and passed the Native TANF program providing the opportunity to help fund locally relevant programs. The law was made to sunset in June 2005. It was also designated to four of the 13 original entities. The four included the Tanana Chiefs Conference (TCC), the Association of Village Council Presidents (AVCP), Tlingit Haida Central Council (TLCC), and Metlakatla.

[3:00:03 PM](#)

Reports show the tribal TANF programs are working. They are achieving migration to self-sufficiency through employment. This year they are in discussions with three new native organizations

that are interested in running a tribal TANF program. The three are Cook Inlet Tribal Council, Bristol Bay Native Association and the Maniilaq Association.

[3:02:22 PM](#)

The recommendation in SB 51 is to extend the program and make it permanent in the statute, and to extend it to the 12 regional non-profits plus Metlakatla. Many of the regional non-profits have been contractors to the State of Alaska providing case management services. If Cook Inlet establishes their TANF program there will be fiscal impacts. The attached fiscal note pertains to Cook Inlet.

[3:04:59 PM](#)

SENATOR ELTON asked Ms. Farnham the kind of provisions there are for auditing a contractor who provides services such as case management.

MS. FARNHAM advised current contracts are under an umbrella called "work services." Contracts have monitoring and performance tracks in them. In FY05 those contracts were pay for performance contracts.

[3:06:39 PM](#)

SENATOR WILKEN asked Ms. Farnham what percent would Anchorage be in the budget if the committee re-authorized the programs.

MS. FARNHAM replied they have not assessed the size of the Cook Inlet, Bristol Bay and Maniilaq caseloads. Cook Inlet will have close to 700 cases.

SENATOR WILKEN asked the guarantee that federal funding will continue and what is the obligation of the state.

MS. FARNHAM said the federal law authorizing Temporary Assistance for Needy Families is currently up for reauthorization. It has been reauthorized for several years without any substantial changes. If there are structural changes to the block grant, the program will have to be re-examined.

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SENATOR WILKEN asked Ms. Farnham if the federal money was reduced in the future could he expect the general fund to make up the difference or could the legislation pare back the program.

MS. FARNHAM was reluctant to speculate.

CHAIR DYSON noted in this program the caseload has diminished but recipients may be receiving other assistance.

MS. FARNHAM said she has seen cash assistance cases drop dramatically. Some cases are picking up bridge programs but she is also seeing families utilizing benefits that can help them stay off cash benefits, for example, child care assistance.

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CHAIR DYSON asked Ms. Farnham whether the fiscal note reflected state money fluctuations in programs.

MS. FARNHAM answered no, but the budget for the division of public assistance would show services trends.

[3:14:04 PM](#)

CHAIR DYSON asked Ms. Farnham the number of people reflected in the caseload reduction who have gone to work.

MS. FARNHAM answered there is a recent division study of why people leave TANF programs. Often they quit applying. A report is available on their website. Multiple issues affect a family.

[3:16:07 PM](#)

CHAIR DYSON said the federal TANF program encourages states to invest in making families stay together. He asked Ms. Farnham how the funding is used to accomplish those federally emphasized goals through the funding stream.

MS. FARNHAM answered the four purposes of TANF include promoting strong families and healthy marriages. Because of their high success rate, Alaska has received a high performance bonus for three straight years.

[3:18:50 PM](#)

CHAIR DYSON asked Ms. Farnham to talk about tribal fraud.

MS. FARNHAM replied part of the provisions for tribal organizations to have a TANF program is that they have fraud mechanisms in place.

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MS. FARNHAM pointed out the food stamp error rate in Alaska was the worst in nation in 2003. Under Tony Lombardo's direction they turned it around and Alaska is now on par with other

states. All the other programs have seen a marked improvement as well, by identifying trends and through training.

CHAIR DYSON said national statistics show that 60 to 70 percent of all welfare applications have errors or fraud and 25 to 30 percent are fraudulent to some degree. He would like to know how many people are prosecuted and are making restitution.

MS. FARNHAM said DHSS has a strong fraud unit. Of the number of cases that are suspected fraud and are reviewed, 30 percent pan out to be actual fraud.

[3:23:10 PM](#)

SENATOR WILKEN asked Ms. Farnham for clarification on the fiscal note.

MS. FARNHAM answered the details are on page four. The current funding level has been the same since 2001. Annually the budget includes 8.7 million dollars. Cook Inlet is in the fiscal note because it is new. The other three are already built into the budget.

[3:25:48 PM](#)

SENATOR WILKEN asked about Maniilaq and Bristol Bay.

MS. FARNHAM replied they were not factored because talks are ongoing.

CHAIR DYSON announced he would hold SB 51 until the next committee meeting. There being no further business to come before the committee, Chair Dyson adjourned the meeting at [3:26:47 PM](#).