

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

February 14, 2005

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 83

"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."

MOVED SB 83 OUT OF COMMITTEE

SENATE BILL NO. 82

"An Act relating to child protection, including forensic interviews and transportation of children; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 83

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

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/05	(S)	READ THE FIRST TIME - REFERRALS
01/26/05	(S)	HES, JUD
02/14/05	(S)	HES AT 1:30 PM BUTROVICH 205

BILL: SB 82

SHORT TITLE: CHILD PROTECTION INTERVIEW/TRANSPORT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/05 (S) READ THE FIRST TIME - REFERRALS
01/26/05 (S) HES, JUD
02/14/05 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

Stacie Kraly, Senior Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Supports SB 83 and SB 82.

Marcia Kennai
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supports SB 83 and SB 82.

Scott Calder
Fairbanks, AK
POSITION STATEMENT: Opposes SB 83 and SB 82.

Betty Rollins
Fairbanks, AK
POSITION STATEMENT: Opposes SB 83 and SB 82.

Rosemary Hagevig
Catholic Community Services
Juneau, AK 99801
POSITION STATEMENT: Supports SB 82.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:33:10 PM](#). Present were Senators Kim Elton, Lyda Green and Chair Fred Dyson.

SB 83-TERM. PARENTAL RTS/CINA/DELINQUENCY CASES

CHAIR DYSON announced SB 83 to be up for consideration.

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STACIE KRALY, Senior Assistant Attorney General, Department of Law (DOL) thanked the committee for the opportunity to present SB 83. SB 83 relates to child protection systems. Specific provisions include a proposal to amend AS 25.23.180 to permit parents to relinquish their parental rights while retaining certain privileges such as ongoing communication and visitation. SB 83 adds language to AS 43.23.005 which allows for children placed temporarily outside of the State of Alaska, but who are in custody through either the Office of Children's Services (OCS) or the Division of Juvenile Justice (DJJ), to maintain their eligibility to receive their Permanent Fund Dividend (PFD).

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CHAIR DYSON asked Ms. Kraly if she was referring to Section 2.

MS. KRALY answered yes. Sections 3 and 4 of SB 83 provide language to AS 47.10.020, which clarifies the existing law to allow OCS to obtain writ of assistance from the courts in investigating reports of harm in other child related matters. The second component of the section clarifies that the DOL or OCS is not required to obtain authorization from the court prior to initiating an investigation on a report of harm.

CHAIR DYSON asked if the clarification involves getting a warrant.

MS. KRALY answered yes.

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MS. KRALY said Sections 5 and 6 would allow the DOL to dispense with some of the evidentiary formalities in a court hearing and would allow the DOL to create an offer of proof to the court that it would be contrary to the welfare of the child to be returned to an absent parent. Section 5 creates a limited evidentiary premise for absent and unlocateable parents.

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The final provision of SB 83 relates to amending the term of mental health professional to allow an out of state professional to testify on behalf of an Alaskan child who is placed out of state, but who is in state custody.

SENATOR OLSON joined the committee at 1:41.

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SENATOR GREEN asked Ms. Kraly to describe the out of state facilities where children are being placed.

MS. KRALY said the placement facilities are out of state residential psychiatric treatment facilities. They are the types of residential secure facilities that do not currently exist in Alaska.

SENATOR GREEN mentioned her concern about the acceptability of allowing out of state mental health professionals to testify on behalf of Alaskan children.

MS. KRALY said if a child has been at an out of state facility, the professionals at that facility probably know the child best, but under the current law, they cannot testify on behalf of that child in Alaska as an expert witness.

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SENATOR GREEN said eliminating the requirement of a committee referral might affect the state's ability to independently assess whether or not these children should return to Alaska. She said that she was concerned about deferring this ability to an out of state organization that has an interest in maintaining it's cliental.

MS. KRAILY said this statutory change would only relate to those children who are in state custody. The OCS goes through a thorough process to make a determination that a child needs secure residential psychiatric treatment. Then the superior court must approve the placement of that child after it reviews expert testimony on the case. By statute, every 90 days the child must come back before the superior court for an additional review.

SENATOR GREEN asked whether a child who leaves Alaska falls under Medicaid after 90 days.

MS. KRAILY answered they do.

SENATOR GREEN remarked the state put children on Medicaid and children in state custody in the same classification; so it should not make any difference whether a child starts out in state custody and ends up on Medicaid. She asked if this bill would affect children on Medicaid.

MS. KRALY answered no. It would require an internal review within the DOL to ensure the child still meets medical necessity to maintain Medicaid payments.

SENATOR GREEN remarked that review boards in other states do not have the same committee concept of Alaska and this has created difficulties. She said that she wants to be sure that this bill does not further contribute to these difficulties.

MS. KENNAI, Department of Health and Social Services (DHSS) said SB 83 only refers to children under custody, who consequently have been through a long review process. The bill does not refer to private-pay children at all.

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SENATOR ELTON asked the jurisdiction of a child placed out of state transfers to the new state if the parent or guardian of the child leaves the state. He noted under the provisions of the Permanent Fund Dividend statutes, one must demonstrate one's intent to return to the State of Alaska and it would be difficult for a parent or guardian who leaves the state to demonstrate their child's intent to return.

MS. KENNAI said no, the child is in the custody of the State of Alaska. If a parent moves out of state and the child returns to the State of Alaska, a hearing is held to either reunify the two or to relinquish custody. In either case, the PFD trust follows the child.

SENATOR ELTON said it seems that if the state relinquishes custody and there is no one in the state for whom to assign custody, the child may be released to someone outside the state.

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MS. KENNAI acknowledged that although it could happen, it would only happen rarely. In any event a permanent fund dividend in trust for that child would go wherever that child goes.

CHAIR DYSON asked if Section 2 is subject to a best interest finding by the court.

MS. KRALY answered yes. It is also subject to a determination by the foster or adoptive parent.

CHAIR DYSON referred to the last sentence of Section 1 and asked Ms. Kraly to clarify what the language means.

MS. KRALY said it means that a parent's failure to utilize a certain privilege is not sufficient to invalidate his relinquishment.

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CHAIR DYSON said he reads it to say the relinquishment may not be withdrawn or invalidated.

MS. KRALY advised she would look at it again.

SENATOR GREEN asked, "In the decision making of best interest, do you open yourself to determinations, appeals, and lawsuits from a parent who is not pleased with the court's best interest findings?"

MS. KRALY admitted it was always a possibility and added the parent has a right to appeal a decision by the court. The current status of the law says you can have no conditional relinquishments. She noted that there are not very many appeals for relinquishment rulings.

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SCOTT CALDER, Fairbanks resident, stated his concern that the term relinquishment is used in such a way that it makes the process seem voluntary despite other language in the bill which indicates that it is not always voluntary. He said that the language of the bill conflicts with the 4th amendment rights of children and parents since it allows seizure without due process. He suggested replacing the term "reasonable search" with "diligent search" on page 2, section 5, lines 7 to 10. He suggested including an explicit definition of the word "diligent" in the bill.

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CHAIR DYSON asked whether the term "diligent" is a term of art in the legal field.

MS. KRALY answered it is not.

The premise through which the department can establish proceeding against an absent parent through the court rules is very prescribed. There are due process requirements for those kinds of proceedings. We have to provide notice to parents and relatives. If we are looking for a termination prescription we have to file a petition with the court. We make extraordinary efforts to find parents and if we can't find them,

then per the Civil Rules, we must conduct a diligent inquiry. We file an affidavit with the court and ask the court for permission to provide service by publication, which is authorized under Civil Rule 4 of the Code of Civil Procedure rules. If the parent is still not found after publication, we provide the court with an affidavit of diligent inquiry to establish that the parent is not locatable. This would include an affidavit from the social worker involved in the case, a department paralegal, a department attorney, who will indicate that they have worked with child enforcement, the state troopers, the department of corrections, the local police, et cetera. We have to present all of that to the court before the court will agree that the parent is unlocateable. It's not a term of art, but a reasonable search is not just a social worker saying, "Well, we can't find them", or an attorney standing up and saying, "We can't find them" We have to go through a very thorough process through the civil rules to establish that.

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CHAIR DYSON asked whether that was established in Alaska court rules.

MS. KRALY answered it was established in the Child In Need of Aid (CINA) and Civil Rules.

MR. CALDER agreed with the aforementioned explanation and asked if there could be some reference made to it in SB 83.

CHAIR DYSON advised he would send a note with SB 83 so that the Judiciary Committee could consider it.

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BETTY ROLLINS, Fairbanks resident, testified in agreement with Mr. Calder. She expressed concern with Section 1 and asked if it negated case law that says the child shall become a stranger to the biological family. She shared Senator Dyson's hesitation over the last section because it has no teeth. She disagreed with the assertion in section 4 saying the court would order an investigation, since she has never seen a court order any type of investigation.

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SENATOR WILKEN moved SB 83 out of committee with individual recommendations and zero fiscal note. There being no objections, the motion carried.

SB 82-CHILD PROTECTION INTERVIEW/TRANSPORT

CHAIR DYSON announced SB 82 to be up for consideration.

[2:15:23 PM](#)

STACIE KRALY, Senior Assistant Attorney General, Department of Law, (DOL) introduced SB 82.

This legislation would allow the DOL and Office of Child Services (OCS) to transport a child for medical examination and or forensic interview without parental consent in cases where the department has reasonable cause to suspect that a child has been severely physically or sexually abused. Interviews of children who appear to have suffered severe physical or sexual abuse would be conducted in an appropriate environment that is not threatening to the child.

It is not always possible to obtain parental cooperation to transport a child for examination and interview. This bill considers that children are usually transported to an advocacy center, which are designed to be safe, neutral, child-friendly environments where children can be interviewed by professionals with special training in those areas. They are also designed to minimize the number of interviews in an effort to minimize the trauma of the child as much as possible. This bill includes notifying a non-offending parent, when appropriate, that his child is being transported to the advocacy center for an interview. There are cases, however, when either there is neither no alleged non-offending parent that is both parents are involved in the abuse, or the department is unsure that the non-offending parent would be cooperative and we do not want to provide notice to them.

As the statute currently exists, in order for the department or the OCS to transport a child to an advocacy center for these interviews, the department theoretically would have to assume emergency custody of that child and we want to avoid having to assume

emergency custody in those instances when, after interview, it is not warranted.

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CHAIR DYSON asked Ms. Kraly how the bill differs from a case in which a law enforcement officer removes a child from what he considers a dangerous situation and takes him to be evaluated.

MS. KRALY said SB 82 covers cases in which there are no law enforcement personnel available to transport children to be evaluated.

CHAIR DYSON asked if this law would give an OCS investigator the same authority as a police officer.

MS. KRALY said SB 82 would give an investigator such authority.

CHAIR DYSON said he is uncomfortable with the words "without notifying parents." There is a difference between notifying and giving permission and OCS has a responsibility to notify the parent.

MARCIE KENNAI, Department of Health and Social Services (DHSS), said that the current practice is to always notify the non-offending parent. Currently DHSS has the authority to take a child to a hospital in the case of physical abuse, but it does not have that authority in the case of sexual abuse. He is concerned about sexual abuse cases since research demonstrates that most children tend to be telling the truth and sending a child home to that parent is a concern because the child can be coached on the way to the advocacy center.

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CHAIR DYSON expressed his concern about a parent not knowing the location of his child. He said even if the parent is the abuser, the parent ought to be notified. He said he did not like the term "non-offending parent" because most abused children come from single-family homes.

MS. KRALY said SB 82 addresses Senator Dyson's concern about notification and permission and referenced Version \A, page 1, lines 11-13, as follows:

The department shall notify the parents, guardian, or custodian of a child as soon as possible after taking action under this subsection with regard to the child.

MS. KRALY said the aforementioned referent ensures that notice is provided, but it does not give the department permission to take a child.

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CHAIR DYSON asked why a definition of "child advocacy center" is included.

MS. KRALY answered the definition was added to clarify the function of the center.

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SENATOR GREEN suggested an amendment to the definition might satisfy the committee. She added changing the language would change the focus of SB 82 since its primary purpose is to expedite the process of getting children to safety.

MS. KENNAI agreed with Senator Green. The intent of the bill is to enable the staff of OCS to do investigations.

SENATOR GREEN asked what would happen if "without the permission of the parents, guardian, or custodian." were deleted.

MS. KRALY answered AS 47.17.064 already uses that language with respect to a child believed to have been physically abused. The bill expands the applicability of the language in this subsection to include children who are believed to have been sexually abused.

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SENATOR ELTON remarked the scope of the following language on page 2 is very broad:

The state and the department, its officers, its employees, and its agents are not liable for civil damages as a result of actions taken or omissions that occurred in the transportation authorized under this section, except for conduct that constitutes gross negligence.

He said it seems to confer immunity on a driver who hits a pedestrian while transporting a child.

MS. KRALY explained the immunity provision was discussed with special litigation attorneys. She is unfamiliar with the wording and would get back to the committee with an explanation.

SENATOR ELTON asked if placing a child on a plane bound for a city with a regional center would constitute taking emergency custody of that child.

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MS. KRALY replied there are specifically delineated times when the department is allowed to take emergency custody. She said the DOL could determine that an emergency exists, take custody, and then later explain it to a judge. The DOL would seek to obtain emergency custody to take a child out of a village or rural area.

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SENATOR GREEN asked what "not liable for civil damages as a result of actions taken or omissions that occurred in the transportation authorized under this section" on page 2, line 5 means.

MS. KRALY explained if the state has custody of a child and if while transporting the child there is an accident involving a state employee, the bill would not subject the state employee to liability.

SENATOR GREEN said that is why there is insurance.

MS. KRALY said she is unfamiliar with why that particular wording is in SB 82.

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CHAIR DYSON said he had assumed, until Senator Elton's questions, that this section was just dealing with actions pertinent to the child in question. In light of Senator Elton's question it seems that it applies to anyone or anything affected during transport. He asked his aid to have legislative legal look at this section.

ROSEMARY HAGEVIG, Executive Director, Catholic Community Services (CCS), testified on behalf of the Safe Child Advocacy Center in Juneau and the Alaska Children's Alliance (ACA). She said the ACA chose this year to try and get child advocacy centers codified in law. She feels it is important for her organization to have a statutory definition of a child advocacy center.

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CHAIR DYSON referenced an amendment proposed by the CCS and asked Senator Green if she is concerned about the wording in the

proposed amendment under findings, "no child in Alaska should be denied access". He asked Senator Green if she thinks this implies an obligation of the state to either provide these everywhere or provide transportation for a child to where they might be.

SENATOR GREEN agreed that was a concern.

MS. HAGEVIG responded child advocacy centers are currently supported in Alaska by federal funding which may not be available forever. She hopes eventually the state might enter the funding scheme for child protective services.

CHAIR DYSON said the wording would have to be changed to get the bill by Senator Green and himself.

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SCOTT CALDER, Fairbanks resident, opposed SB 82 and SB 83. He said the use of the term non-offending parent in the bill is flawed. The term "forensic interview" is not defined in the legislation and is difficult to find elsewhere. He does not understand how children could be transported and tests be performed on them with complete disregard for some kind of due process with respect to their parents.

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MR. CALDER shared Senator Elton's concern about the immunity provision discussed earlier. He is concerned with the use of the term "emergency" on page 2, lines 2-4, and said if state agents are transporting children, then they are, by definition, dealing with an emergency and the fact that they aren't telling parents what they are doing with their children does not change that. He said people associated with child advocacy centers are not interested in due process provisions and people's rights should not be taken away from them on the basis of somebody's reasonable idea of whether there may be some wrongdoing.

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BETTY ROLLINS said this is the most dangerous bill that she has read in a long time and urged the committee not to pass SB 82. She said that lines 9 thorough 11 on page 1 wrongfully give police officers the authority to conduct forensic interviews. She remarked there was a case in Ohio wherein twenty girls were given a medical exam against their will because they were suspected of being sexually abused and their parents could do nothing because the state had a law similar to SB 82.

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CHAIR DYSON said SB 82 would be held until the next committee meeting.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at [2:58:04 PM](#).