

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 23, 2005

8:37 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Hollis French
Senator Gretchen Guess via teleconference
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 109

"An Act relating to fines for offenses committed within school zones."

MOVED CSSB 109(JUD) OUT OF COMMITTEE

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."

HEARD AND HELD

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."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 109

SHORT TITLE: INCREASE FINE FOR SCHOOL ZONE VIOLATIONS

SPONSOR(S): SENATOR(S) WILKEN

02/16/05 (S) READ THE FIRST TIME - REFERRALS
02/16/05 (S) JUD, FIN
02/23/05 (S) JUD AT 8:30 AM BUTROVICH 205

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
02/14/05 (S) Moved SB 83 Out of Committee
02/14/05 (S) MINUTE(HES)
02/16/05 (S) HES RPT 1DP 4NR
02/16/05 (S) DP: DYSON
02/16/05 (S) NR: ELTON, WILKEN, OLSON, GREEN
02/23/05 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Gary Wilken
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of SB 109

Mr. Bob Myers
Fairbanks, AK

POSITION STATEMENT: Testified in support of SB 109

Lt. Todd Sharp
Division of Alaska State Troopers
Department of Public Safety
3700 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of SB 109

Ms. Stacie Kraly, Senior Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Introduced SB 83

Ms. Marcie Kennai, Deputy Commissioner
Office of Children's Services
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Commented on SB 83

Ms. Marcy Schmidt
POSITION STATEMENT: Testified in support of SB 83

Mr. Scott Calder
Fairbanks, AK
POSITION STATEMENT: Commented on SB 83

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:33 AM](#). Present were Senators Hollis French, Charlie Huggins, Chair Ralph Seekins, and Gretchen Guess participating via teleconference.

^#SB 109

SB 109-INCREASE FINE FOR SCHOOL ZONE VIOLATIONS

SENATOR GARY WILKEN, sponsor of SB 109, described the purpose of the bill was a measure to create double fines for traffic violations in school zones during school hours.

[8:40:26 AM](#)

SENATOR WILKEN introduced Crossing Guard Bob Myers and Lt. Todd Sharp.

SENATOR HUGGINS asked Senator Wilken whether buses were considered in the bill.

[8:43:11 AM](#)

SENATOR WILKEN stated his belief that buses are well accounted for in existing legislation.

SENATOR FRENCH drew attention to a paragraph in the Alaska State Troopers fiscal note concerning modification of the current bail schedule. He asked Senator Wilken to clarify.

SENATOR WILKEN deferred to Lt. Sharp.

LT. TODD SHARP, Alaska State Troopers, advised the current bail schedule would need to be modified.

SENATOR FRENCH asked Lt. Sharp to explain the difference between the bail amount and the fine amount.

LT. SHARP responded the penalty would be set at twelve dollars per mile per hour and the fine would be doubled.

[8:48:30 AM](#)

LT. SHARP clarified the fine amount is based on the bail for the amount of speed over the limit. The penalty is the incremental unit through which the fine is determined.

SENATOR FRENCH asked if the bail was the amount posted when contesting a ticket.

LT. SHARP affirmed.

CHAIR SEEKINS asked the reason the Anchorage Police Department has a disproportionate amount of traffic citations and whether there was a specific area with a regular patrol that accounts for the disproportionate number of tickets.

LT. SHARP did not know.

[8:51:23 AM](#)

SENATOR HUGGINS asked whether SB 109 would require a sign alerting people of the double fines.

SENATOR WILKEN responded the bill only stipulates flashing lights.

SENATOR THERRIAULT asked Lt. Sharp if the fine always matches the bail.

LT. SHARP said if someone contests the citation, a judge could reduce the fine. She or he could not exceed the fine.

CHAIR SEEKINS noted sometimes blinking lights are not visible. He asked if it was possible to ensure that such a light is visible to all drivers.

SENATOR WILKEN said the visibility of the light would be determined by Department of Transportation (DOT) specifications.

SENATOR THERRIAULT asked Lt. Sharp to describe the computation of how the surcharge [funding police office training] is figured.

LT. SHARP responded the surcharge would be ten dollars for any variation of the penalty.

SENATOR GUESS asked Senator Wilken to explain the reason the bill stipulates flashing yellow lights. She said most lights in her districts don't have flashing yellow lights.

SENATOR WILKEN responded flashing lights define when an area is active.

8:57:48 AM

MR. BOB MEYER, crossing guard, introduced himself in support of the bill. He described the pertinent aspects of his work. Children cross the street unattended after 3:00 pm. Speeding is common in the areas he has worked.

9:00:08 AM

Peak time for student crossing coincides with morning rush hour. Drivers sometimes run stop signs or slide through them.

9:02:41 AM

MR. MEYER thanked Senator Wilken for sponsoring SB 109. Several more people violate the crossing zone than are caught. Children are often hit, injured, and killed.

9:05:08 AM

CHAIR SEEKINS asked whether there is a flashing yellow light on Danby road.

MR. MEYER responded yes.

SENATOR WILKEN added SB 109 would be effective immediately in 95 zones across the state.

MS. NONA WILSON, legislative liaison for DOT, offered to answer questions.

CHAIR SEEKINS asked Ms. Wilson the standard for flashing yellow lights.

MS. WILSON responded DOT focuses on consistency. The control devices [flashing yellow signs] are placed outside the lanes. The standard is two installations. Sometimes a third light is applied.

9:08:52 AM

Criteria for placing signs are complicated and are determined by speed of traffic, volume of traffic, and the age of the students. The cost for sign installation is \$70,000.

CHAIR SEEKINS mentioned he has experienced rampant speeding on Minnesota Avenue in Fairbanks. He has often missed the sign himself. He questioned the responsibility of posting such a sign.

[9:12:47 AM](#)

CHAIR SEEKINS wondered whether the bill should include a mention of visibility of signs.

MS. WILSON noted the alternative for DOT would be to try and provide additional advanced warning signage.

[9:14:46 AM](#)

SENATOR HUGGINS wondered whether the bill included school parking lots. He expressed concern about the hazards in the parking lots.

[9:18:03 AM](#)

SENATOR THERRIAULT asked Lt. Sharp if the department usually tickets for three miles per hour over the speed limit.

LT. SHARP responded usually not.

SENATOR WILKEN moved Amendment 1.

Page 2, line 2 after the word "area" insert the word "clearly". After the word "lights" insert "visible from all lanes of traffic."

Hearing no objections, Amendment 1 was adopted.

SENATOR THERRIAULT asked how Alaskans would be informed of the new law.

MS. WILSON said the DOT would be responsible for an ad campaign.

SENATOR HUGGINS moved CSSB 109(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

[9:25:48 AM](#) < Recess > [9:31:06 AM](#)

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

[9:31:06 AM](#)

CHAIR SEEKINS announced SB 83 to be up for consideration.

[9:33:20 AM](#)

MS. STACIE KRALY, senior assistant attorney general, Department Of Law (DOL), introduced the bill, which would amend AS 25.23.180 to permit parents to relinquish their parental rights while retaining certain privileges such as ongoing communication or visitation with the child. The proposal also adds language to AS 43.23.005 to allow children who are placed temporarily by the Department of Health and Social Services (DHSS) outside of the state to maintain eligibility for permanent fund dividends (PFDs). SB 83 also adds language to AS 47.10.020, which clarifies the court may issue any orders necessary to aid the DHSS in its investigation of an allegation of child abuse or neglect.

[9:36:31 AM](#)

SB 83 amends the definition of the term "mental health professional" in AS 47.30.915. The DOL offered an amendment to sections 5 and 9 of the bill, which would effectively amend AS 47.10.080(L) and would directly affect child in need of aide (CINA) rule 17.2. The amendment would require the court to rule on whether DHSS has made reasonable efforts toward permanency of the child.

A M E N D M E N T 1

Page 1, line 4, following "**delinquency proceedings;**":

Insert "**relating to findings in permanency hearings in child in need of aid proceedings; amending Rule 17.2, Alaska Child in Need of Aid Rules;**"

Page 3, following line 6:

Insert a new bill section to read:

"* **Sec. 5.** AS 47.10.080(1) is amended to read:

(1) Within 12 months after the date a child enters foster care as calculated under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following

provisions:

(1) the persons entitled to be heard under AS 47.10.070 or under (f) of this section are also entitled to be heard at the hearing held under this section;

(2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether

(A) and when the child should be returned to the parent or guardian;

(B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department; and

(C) the child should be placed in another planned, permanent living arrangement and what steps are necessary to achieve the new arrangement;

(3) if the court is unable to make a finding required under (2) of this subsection, the court shall hold another hearing within a reasonable period of time;

(4) in addition to the findings required by (2) of this subsection, the court shall also make appropriate written findings related to

(A) whether the department has made the reasonable efforts required under AS 47.10.086 to offer appropriate family support services to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

[AND]

(C) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(D) whether the department has made reasonable efforts to finalize the permanent plan for the child;

(5) the court shall hold a hearing to review the permanent plan at least annually until successful implementation of the plan; if the plan approved by the court changes after the hearing, the department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the department."

Renumber the following bill sections accordingly.

Page 3, following line 28:

Insert new bill sections to read:

"* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of Aid Rules, is amended to read:

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid; [AND]

(3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(4) whether the Department has made reasonable efforts to finalize the permanent plan for the child.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 5 of this Act takes effect only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the remaining bill section accordingly.

SENATOR THERRIAULT asked whether the bill related to criminal incarceration.

[9:39:12 AM](#)

MS. KRALY responded there are two provisions within SB 83 that address children in state custody. They deal with the PFD dividend and allow the child to remain eligible for the dividend. The bill does not relate to criminal incarceration.

SENATOR HUGGINS asked Ms. Kraly to describe the PFD restitution process.

MS. KRALY informed the state applies for the PFD for the child in custody and the dividend goes into a trust account. When the child is released, the PFD goes to their legal guardian, adoptive parents, or to them if they have aged out. The DOL may request permission to use the PFD to repay restitution for a criminal infraction.

[9:42:18 AM](#)

SENATOR FRENCH asked the Alaska Supreme Court decision that brought about the first part of SB 83 [allowing parents to retain communication with the child.]

MS. KRALY responded it was Keith MW79P3rd 6/23/2003.

SENATOR FRENCH asked what happened.

MS. KRALY said the general premise was there was no mechanism within the current statutory frame for a relinquishment to contain any residual privileges or rights to a parent relinquishing.

SENATOR FRENCH noted the relinquishment is voluntary and a termination is caused through action by the department. He asked whether they were two different processes.

MS. KRALY said historically the DOL and the Office of Children's Services (OCS) have looked at them as two different processes. There are instances where it makes sense to allow for parental contact, such as when another family member adopts the child.

[9:45:47 AM](#)

The relinquishment with the conditions is an effort to allow a parent to make a difficult decision easier and still allow for some contact.

CHAIR SEEKINS asked whether the foster parents could choose to allow the contact and could they also discontinue the contact.

[9:47:47 AM](#)

MS. KRALY said the foster parent always has the ability to make those kinds of decisions.

SENATOR HUGGINS asked Ms. Kraly whether SB 83 is part of a larger strategy to modify how the DOL and OCS operate.

MS. KRALY advised SB 83 is a technical amendment to the current statute. Over the course of hundreds of court cases, the DOL has discovered some hitches that need fixed in order to successfully litigate some cases. The bill would help the DOL more than the OCS as a tool to manage caseloads.

[9:50:37 AM](#)

CHAIR SEEKINS noted he would ask the drafters to consider the amendment for the next time the committee looks at SB 83.

SENATOR HUGGINS moved Amendment 1 be adopted for staff rewrite for consideration.

SENATOR FRENCH objected for the purpose of discussion. He asked Ms. Kraly to summarize the amendment.

MS. KRALY said currently the court is required to make certain findings in CINA hearings. An omission that the federal government requires for foster care funding was discovered. Under state and federal law after 12 months of a child taken into custody, it is required there be a new hearing to discuss a permanency plan. The government requires that the court make a special judicial finding that the DOL has made reasonable efforts to finalize the permanency plan for the child. Judges are uncomfortable to make those findings. The amendment proposes to make it a required finding so the department can continue to receive foster care funding under Title 40.

SENATOR FRENCH assumed the department wouldn't get the funding if the finding didn't occur.

MS. KRALY said correct.

[9:53:58 AM](#)

MS. MARCIE KENNAI, deputy commissioner, Office of Children's Services, said what the finding is is irrelevant; they just need a finding to continue to receive the federal funding. It is a check and balance.

[9:55:15 AM](#)

SENATOR FRENCH removed his objection.

MS. MARCY SCHMIDT testified in favor of SB 83.

[9:57:16 AM](#)

MR. SCOTT CALDER testified in favor of the proposed amendment to SB 83. He expressed concern with the word "privilege" in Section 1. He is not in favor of Section 4. It would be appropriate for the court to authorize the department to conduct an investigation to the extent of search and seizure of a child. Section 5, line 10 should say "diligent search" instead of "reasonable search."

[9:59:56 AM](#)

SENATOR FRENCH asked Mr. Calder to explain his reference to the US Constitution Fourth Amendment.

MR. CALDER explained the department could say that in conducting an investigation they may want to conduct an action to or upon a person. That should be a point where the court should authorize the action.

CHAIR SEEKINS asked Mr. Calder whether his concern is the extent of the investigation.

MR. CALDER said yes, if the investigation amounts to more than just a phone call. Search and seizure requires greater scrutiny and should be required through judicial oversight.

CHAIR SEEKINS held SB 83 in committee and adjourned the meeting at [10:05:41 AM](#).