

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 24, 2005
8:40 a.m.

MEMBERS PRESENT

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

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 CSSB 83(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 84(HES)

"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

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
 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
 02/23/05 (S) Heard & Held
 02/23/05 (S) MINUTE(JUD)

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
 02/07/05 (S) Heard & Held
 02/07/05 (S) MINUTE(HES)
 02/09/05 (S) HES AT 1:30 PM BUTROVICH 205
 02/09/05 (S) Moved CSSB 84(HES) Out of Committee
 02/09/05 (S) MINUTE(HES)
 02/14/05 (S) HES RPT CS 4DP 1NR SAME TITLE
 02/14/05 (S) DP: DYSON, ELTON, WILKEN, GREEN
 02/14/05 (S) NR: OLSON
 02/23/05 (S) JUD AT 8:30 AM BUTROVICH 205
 02/23/05 (S) Scheduled But Not Heard

WITNESS REGISTER

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

POSITION STATEMENT: Commented on SB 83 and SB 84

Ms. Marcia Kennai, Deputy Commissioner
 Department of Health & Social Services
 PO Box 110601
 Juneau, AK 99801-0601

POSITION STATEMENT: Commented on SB 83 and SB 84

Ms. Linda Wilson, Deputy Director
 Alaska Public Defender Agency
 900 W 5th Ave Ste 200
 Anchorage, AK 99501

POSITION STATEMENT: Commented on SB 83 and SB 84

Mr. Scott Calder
Fairbanks, AK

POSITION STATEMENT: Testified in opposition to SB 84

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:40:12 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

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

CHAIR SEEKINS announced SB 83 to be up for consideration.

SENATOR HUGGINS moved Version \G as the working document before the committee. Hearing no objections, the motion carried.

[8:41:28 AM](#)

CHAIR SEEKINS noted no additional witnesses were signed up to testify on the bill.

[8:42:23 AM](#)

MS. STACEY KRALY, senior assistant attorney general, Department of Law (DOL) and Ms. Marcia Kennai, deputy commissioner, Department of Health and Social Services (DHSS) seated themselves at the witness table.

SENATOR HUGGINS asked the witnesses whether there was a problem involving military service personnel regarding child custody. He referred to Section 2.

[8:43:33 AM](#)

Senator Therriault joined the committee.

MS. KRALY admitted the language in Section 2 was baffling. She offered to research it and get back to the committee.

SENATOR GUESS explained the language was moved to another paragraph so as to keep the language referring to a national military emergency in the bill.

[8:45:28 AM](#)

MS. LINDA WILSON, attorney, public defender agency, asked for the working version.

CHAIR SEEKINS had his aide fax the document to her.

8:47:59 AM

MS. WILSON said she supervises the handling of child in need of aid (CINA) cases. Section 1 [allowing the parent to retain conditional privileges] re-establishes old practice. It can be used to the best interest of the child but needs to go further because it is not enforceable. If a parent relinquishes rights and then is not allowed visitation they are not allowed to withdraw their relinquishment. The termination proceeding happens in the CINA courts but the adoption is a different proceeding. Section 1 is commendable but should do more for the parents.

8:50:33 AM

CHAIR SEEKINS asked Ms. Wilson whether it would be a detriment to adoptive parents if termination were enforceable.

MS. WILSON said possibly. A mechanism in the adoption statutes for the parents to stay involved post-termination would help.

CHAIR SEEKINS said people are trying to look out for the best interest of the child and a certain amount of authority for adoptive parents should go along with that. He does not want to cause prospective adoptive parents to be deterred from the adoption.

MS. WILSON said the adoptive court would consider that circumstance.

CHAIR SEEKINS noted often adults twist the minds of children for their own benefit.

8:54:04 AM

CHAIR SEEKINS said if the court has terminated a relationship there is a problem with the relationship. Prospective adoptive parents can offer stronger relationships. Children can be manipulated by their birth parents.

SENATOR FRENCH said in terms of finality it seems inefficient to add provisions that undo all the work of the conditions to which the parents are allowed visitation.

MS. KRALY said the purpose of the sentence is to have finality with the relinquishment in the proceedings. The CINA proceedings are separate and distinct from the adoption proceedings.

[8:57:04 AM](#)

CHAIR SEEKINS asked Ms. Wilson the solution to her concern.

MS. WILSON said Section 1 was good but somewhat illusory. It would allow the parent to retain a privilege but in reality it is not enforceable. She suggested putting a retained privilege in the adoption decree so the biological parent could address their court appointed visitation rights.

CHAIR SEEKINS asked whether she was suggesting an amendment to SB 83.

MS. WILSON said no.

[8:59:38 AM](#)

MS. WILSON continued Section 6 would present problems with ICWA law [Indian Child Welfare Act], which requires that before you can terminate parental rights, the state must show evidence. You cannot terminate parental rights unless the state can prove beyond a reasonable doubt (and it has to include testimony of a qualified expert witness) that continued custody is likely to result in serious emotional or physical damage to the child. That is federal law. Allowing an offer of proof situation without having an expert could be challenged legitimately.

[9:01:39 AM](#)

MS. WILSON continued there were many conditions in Section 6 for someone to reach some sort of judicial notice.

CHAIR SEEKINS clarified her interpretation is a court could say "A qualified witness would have found this way so therefore I rule this way."

MS. WILSON said that is exactly what the paragraph is trying to do and that is inappropriate. An expert witness is not difficult to get.

SENATOR FRENCH said he thinks it pertains to a narrow finding in a set of narrow circumstances. The parent would be willfully absenting himself or herself from the child and the situation is that the parent cannot be found.

[9:04:30 AM](#)

CHAIR SEEKINS agreed.

SENATOR THERRIAULT suggested changing the wording on line 20 to say "...the court may conclude that the continued custody of the child is not in the child's best interest."

CHAIR SEEKINS speculated there was tension between state and federal law.

SENATOR FRENCH said that was his guess.

CHAIR SEEKINS said they would be accomplishing the step by allowing the court to insert its judgment as a qualified expert witness.

SENATOR FRENCH agreed.

SENATOR THERRIAULT noted the witness has to actually come into court.

CHAIR SEEKINS said no.

SENATOR FRENCH said, "Not if we pass this law."

SENATOR THERRIAULT asked if the extra verbiage was to satisfy the federal law.

MS. KRALY said yes.

[9:06:38 AM](#)

CHAIR SEEKINS asked Ms. Kraly whether it was the department's opinion the extra verbiage would satisfy tension between the state and federal law.

MS. KRALY said we believe so. ICWA requires a finding by a qualified expert and the offer of proof, which is basically what this would be.

CHAIR SEEKINS asked Ms. Wilson the best interest of the child.

MS. WILSON responded to run the proceedings the way federal law set them up. The bill does not specify a time frame or whether it was a reasonable search for the parent.

[9:08:32 AM](#)

CHAIR SEEKINS asked whether the opinion of a qualified expert witness could be done by affidavit.

MS. WILSON stated the bill says testimony.

MS. KRALY said she hadn't thought it out. There are other issues regarding affidavits. The premise under Section 6 is four months to a year. The court would also make the burden of proof. Conditions safeguard the absent parent.

[9:11:19 AM](#)

SENATOR FRENCH asked the number of notices sent to a parent.

MS. KRALY informed currently they attempt contact through the Department of Corrections both in state and out; child support enforcement, PFDs, taxes, and they contact other jurisdictions. They use certified mail and the public defenders.

CHAIR SEEKINS noted there was no one else slated to testify.

SENATOR HUGGINS said Section 6 needs clarification regarding the presence of the expert witness.

[9:16:49 AM](#)

CHAIR SEEKINS noted the only thing being eliminated was physical presence of the expert witness.

MS. KRALY agreed. The DOL offers numerous proofs in CINA cases.

CHAIR SEEKINS said he is satisfied the safety and best interest of the child was being provided for because qualified expert witnesses would have already made their conclusions.

SENATOR FRENCH added expert witnesses were not being dispensed of. It is just on one narrow point about absent parents.

SENATOR HUGGINS asked Ms. Kennai whether there is generally prior evidence of the parents history that would leave a reasonable person to conclude the parents did not care about the child's fate.

MS. KENNAI said many cases are looking at parents who could never be found from the very beginning.

[9:20:24 AM](#)

SENATOR THERRIAULT moved CSSB 83(JUD) from committee with individual considerations and attached zero fiscal notes. There being no objections, the motion carried.

SB 84-CHILD PROTECTION CONFIDENTIALITY

[9:21:13 AM](#)

MS. MARCIE KENNAI, deputy commissioner, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), advised SB 84 proposes new child protection confidentiality legislation that would allow DHSS to provide more information to the public about agency actions surrounding child abuse and neglect cases. The child's privacy would continue to be protected while providing for some disclosure of state agency information. The bill would make OCS more accountable to the public. The state, municipality, officers and employees would be immune from any action for damages based on information that might be disclosed.

SB 84 would do four major things:

Open all CINA hearings to the public except in certain circumstances

- Allow DHSS to release the name and picture of a child in a CINA proceeding for the purposes of achieving permanency
- Expand the circumstances under which DHSS is required to share confidential information
- Allow DHSS to share confidential information with the public under three circumstances:
 - Parental disclosure
 - Perpetrator charge with abuse or neglect
 - Report of harm resulting in fatality or near fatality

[9:25:47 AM](#)

States have been debating the pros and cons of relaxing the confidentiality statutes for years. Some pros include increasing public awareness and education of child abuse in general. It would provide for better accountability of staff and of the courts.

SENATOR THERRIault asked Ms. Kennai how the department would comment once a parent has gone public.

MS. KENNAI responded DHSS would respond with discretion and only concerning whether the department acted accordingly. The public deserves to hear how the department acted in certain cases.

[9:27:24 AM](#)

SENATOR FRENCH asked the section of SB 84 that describes that.

CHAIR SEEKINS advised the version before the committee was 24-GS1082/G.

MS. KRALY answered it was Section 13.

SENATOR FRENCH noted the type of information the department may disclose is in subsection (l).

[9:30:13 AM](#)

CHAIR SEEKINS asked whether there was a requirement that the department consult with an attorney before disclosing information.

MS. KRALY answered Page 8 line 4 contemplates consultation with a prosecuting attorney.

CHAIR SEEKINS noted the department could already do that.

[9:32:38 AM](#)

MS. KRALY clarified Section 13 would allow the DHSS and/or the DOL to respond to allegations and reports of what they have done in direct response to a case.

CHAIR SEEKINS asked Ms. Kraly the reason for subsection (l).

MS. KRALY advised it was to make sure of a coordinated effort between OCS and the district attorneys office.

CHAIR SEEKINS asked whether the department would respond to an interested individual or a neighbor.

MS. KRALY said under subsection (n) the statute requires the department to adopt regulations to interpret the duties under the section. There would be a limitation on who could ask for the information and whom the department could reply to.

SENATOR HUGGINS asked the definition of "persons of legitimate interest."

MS. KENNAI responded the parents and sometimes the press.

SENATOR HUGGINS expressed that notification of the press makes him nervous.

[9:37:08 AM](#)

SENATOR FRENCH asked who has authority within the departments.

MS. KENNAI advised the commissioner or commissioner's designee.

[9:40:33 AM](#)

SENATOR FRENCH asked whether the DHSS and the DOL would be opposed to adding language that identifies the commissioner or the commissioner's designee as the person responsible for disclosing information.

MS. KENNAI noted she thought it was already in the bill but couldn't locate it.

Chair Seekins announced a brief recess at [9:41:19 AM](#).

Chair Seekins reconvened the meeting at [9:47:36 AM](#).

MS. KENNAI clarified the DHSS has a clear policy on who speaks to media. For purpose of SB 84 she suggested to add verbiage in Section 13 to clarify the commissioner or the commissioner's designee as the person responsible for media communication.

CHAIR SEEKINS proposed Amendment 1.

Section 13(k), delete "the department", and insert "the commissioner or the commissioner's designee..."

Hearing no objections, Amendment 1 was adopted.

SENATOR GUESS asked Ms. Kraly to comment on why the bill uses the word "may" instead of "shall" in Section 13(l).

[9:49:57 AM](#)

MS. KRALY responded the reason is because of differing circumstances. The department wants the ability to keep information out on a case-by-case analysis.

[9:51:40 AM](#)

SENATOR FRENCH shared the concern of Senator Guess.

CHAIR SEEKINS noted the concern was regarding discretionary disclosure.

MS. KRALY agreed that made sense.

SENATOR GUESS proposed Amendment 2.

Section 13 (l)(1) delete "may" and insert "shall..."

Hearing no objections, Amendment 2 was adopted.

[9:54:26 AM](#)

CHAIR SEEKINS proposed Amendment 3.

Section 13 (l)(2) delete "may" and insert "shall..."

[9:55:51 AM](#)

SENATOR THERRIAULT objected and then withdrew his objection.

Hearing no further objections, Amendment 3 was adopted.

SENATOR THERRIAULT questioned the reason for the verbiage of "non-disclosure" in Section 14. He cited an example of why the department should be held responsible for not notifying someone of important information.

CHAIR SEEKINS asked whether Section 14 deals with information requested by individuals.

[9:58:05 AM](#)

MS. KRALY responded with respect to Section 13, yes.

CHAIR SEEKINS said he has no problem indemnifying disclosure or non-disclosure of requested information from people with a substantial interest.

SENATOR FRENCH asked the intersection and separation between juvenile delinquency information and CINA information.

MS. KRALY said it was an important distinction. The provisions in Section 14 deal with the disclosure or non-disclosure in CINA proceedings under Title 47.10. The juvenile justice process is a separate process governed by separate statutes. There are instances where they do overlap such as when a child in a CINA case is also under custody. If OCS has custody of the child Section 14 would apply for the purpose of the DOL with respect to the juvenile justice process. SB 84 doesn't envision addressing those issues.

[10:01:03 AM](#)

SENATOR FRENCH asked whether it would be a CINA case in the example of a 16 year old harming a 14 year old.

MS. KRALY said probably not.

SENATOR FRENCH asked what if it happens in the same household.

MS. KRALY noted it would depend on the situation.

SENATOR FRENCH expressed concern regarding immunity and total indemnification.

[10:04:28 AM](#)

MS. KRALY explained in a gross negligence scenario the DOL and DHSS would have a discussion. The grant of authority could be limited so that gross negligence could be excluded from immunity.

SENATOR THERRIAULT said there is now complication because of the separation of CINA and the juvenile justice system. He asked the recourse when non-disclosure results in harm.

[10:07:15 AM](#)

MS. KRALY said the general immunity provisions under Title 9 would provide some level of protection. An employee acting within the scope of their employment would be defended by the state. Currently AS 47.10.093 provides a list of circumstances where the department and its employees can disclose information to a guardian ad litem and to other agencies working with children. The non-disclosure component of the immunity section under Section 14 may be directly related to Section 13 where the committee just amended "may" to "shall."

[10:11:17 AM](#)

CHAIR SEEKINS said that makes sense.

MS. KRALY added now that the bill is changed there is no ability not to disclose so there wouldn't be a non-disclosure issue.

MR. SCOTT CALDER testified in opposition of SB 84.

[10:12:34 AM](#)

MR. CALDER identified two different classes of victims, those who society is trying to help and those created by the DOL and DHSS. People who have been victimized by the department can pin point circumstances of negligence by the department. He suggested the burden should be on the department to decide who has a legitimate interest. A parent absent any criminal priors has the highest need-to-know basis regarding information of their own child.

[10:17:39 AM](#)

CHAIR SEEKINS asked Mr. Calder his opinion about disclosing information that could interfere with a criminal investigation.

MR. CALDER said the interest of the parent to guard the best interest of the child is more important for the well being of society than it is the interest of the department. Most people do the right thing, he said, and it should be important to protect the rights of the majority of the people.

[10:21:00 AM](#)

MR. CALDER asserted the law should protect innocent people first.

[10:23:09 AM](#)

MS. LINDA WILSON, deputy director, Alaska Public Defender Agency, said the first part of SB 84 is a significant change to current statute. Eighteen states have open CINA hearings but the majority of states keep them closed. There is a lot of sensitive information disclosed in the court cases and it will require excessive litigation to close the hearings. Witnesses may hesitate to testify due to the open forum.

CHAIR SEEKINS held the bill in committee.

[10:29:59 AM](#)

There being no further business to come before the committee, he adjourned the meeting at