

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

February 28, 2008

3:05 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Bob Roses, Vice Chair
Representative Anna Fairclough
Representative Wes Keller
Representative Paul Seaton
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 50

"An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

-MOVED CSHB 50(HES) OUT OF COMMITTEE

HOUSE BILL NO. 354

"An Act relating to subsidies for a hard-to-place child; relating to criminal sanctions for unlawful disclosure of confidential information pertaining to a child; relating to child support orders in child-in-need-of-aid and delinquency proceedings; and providing for an effective date."

-MOVED CSHB 354(HES) OUT OF COMMITTEE

HOUSE BILL NO. 304

"An Act establishing a cancer drug repository for redistribution to recipients of medical assistance within the Department of Health and Social Services; and authorizing the Board of Pharmacy to set standards for the cancer drug repository and redistribution program."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 50

SHORT TITLE: CHILD PLACEMENT COMPACT

SPONSOR(s): REPRESENTATIVE(s) COGHILL, NEUMAN, WILSON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	HES, JUD
02/21/08	(H)	HES AT 3:30 PM CAPITOL 106
02/21/08	(H)	Heard & Held
02/21/08	(H)	MINUTE(HES)
02/28/08	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 354

SHORT TITLE: HARD-TO-PLACE CHILD SUBSIDY/CHILD SUPPORT

SPONSOR(s): REPRESENTATIVE(s) COGHILL

02/06/08	(H)	READ THE FIRST TIME - REFERRALS
02/06/08	(H)	HES, JUD, FIN
02/28/08	(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

RYNNIEVA MOSS, Staff
to Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearings on HB 50 and HB 354.

MARCIA PICKERING, Social Services Program Coordinator
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 50.

JAN RUTHERDALE, Senior Assistant Attorney General
Child Protection Section
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 354.

MIKE LESMANN, Community Relations Manager; Legislative Liaison

Office of Children's Services
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing on HB 354.

CHAD HUTCHINSON, Family Law Attorney
Cook Schuhmann & Groseclose, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 354.

CRAIG PARTYKA, Family Law Attorney
Cook Schuhmann & Groseclose, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 354.

SUSAN COX, Senior Assistant Attorney General
Torts and Workers' Compensation Section
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 354.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order [3:05:48 PM](#). Representatives Gardner, Roses, Seaton, Keller, Fairclough, and Wilson were present at the call to order. Representative Cissna arrived as the meeting was in progress.

HB 50-CHILD PLACEMENT COMPACT

[3:06:35 PM](#)

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." [Before the committee was CSHB 50, Version 25-LS0265\E, Mischel, 2/19/08.]

[3:07:11 PM](#)

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, speaking on behalf of Representative Coghill, one of the joint prime sponsors, stated that HB 50 has been previously introduced to the committee and offered to answer questions. In answer to a question, she said that the Interstate Compact for the Placement of Children (ICPC) must be approved by 35 states to go into effect.

[3:08:36 PM](#)

REPRESENTATIVE SEATON asked whether the committee substitute (CS) incorporates all of the amendments.

CHAIR WILSON said yes.

[3:08:59 PM](#)

REPRESENTATIVE GARDNER asked whether the objections raised by the attorney general applied to the original version of the bill.

MS. MOSS indicated yes. She stated that the version before the committee is CSHB 50 [Version E] and accompanying fiscal note. She explained that the original fiscal note was for FY 09 and FY 10, however, allowing time for the ratification by other states, the fiscal impact is not expected for two years.

[3:10:05 PM](#)

MARCIA PICKERING, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), estimated that ratification will take two years. Within the next 12 months, the interstate commission will review rules, by-laws, and the dues structure for each state. In fact, it may be three years before costs to the state are known.

[3:10:56 PM](#)

REPRESENTATIVE GARDNER asked whether Alaska sends out more children than are sent to Alaska.

MS. PICKERING said yes. Alaska sends out twice as many children as it receives.

[3:11:27 PM](#)

REPRESENTATIVE GARDNER further asked about the state's continuing responsibility for a child placed out-of state.

MS. PICKERING responded that after placement, Alaska maintains jurisdiction until the child is 18 years old, is adopted, goes into a guardianship, or is returned to a parent.

[3:11:55 PM](#)

REPRESENTATIVE GARDNER asked whether a day-to-day manager, in the state that receives the child, is paid by Alaska.

MS. PICKERING explained that the receiving state provides supervision services, such as home visits and supervision reports; however, Alaska retains primary case management responsibilities.

[3:12:58 PM](#)

CHAIR WILSON closed testimony.

[3:13:08 PM](#)

REPRESENTATIVE GARDNER moved to report CSHB 50, Version 25-LS0265\E, Mischel, 2/19/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 50(HES), was reported out of the House Health, Education and Social Services Standing Committee.

[3:13:34 PM](#)

HB 354-HARD-TO-PLACE CHILD SUBSIDY/CHILD SUPPORT

[3:14:03 PM](#)

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 354, "An Act relating to subsidies for a hard-to-place child; relating to criminal sanctions for unlawful disclosure of confidential information pertaining to a child; relating to child support orders in child-in-need-of-aid and delinquency proceedings; and providing for an effective date."

[3:14:25 PM](#)

REPRESENTATIVE GARDNER moved to adopt HB 354, Version 25-LS1414\C, Mischel, 2/25/08, as the working document. Hearing no objection, Version C was before the committee.

[3:14:33 PM](#)

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, speaking on behalf of the prime sponsor, Representative Coghill, informed the committee that the need for HB 354 was brought to Representative Coghill's attention by the Office of Children's Services (OCS), Department of Health and Social Services (DHSS), to address three issues of concern. First, she spoke of the issue of child support orders for minors in the custody of OCS and the Division of Juvenile Justice. Under existing child support law, parents can get child support order changes on custody without going to court; however, OCS has to go to court to get changes. This law will allow OCS to get orders changed by administrative order for a child in its custody. Also, the wording in existing state statute [AS 25.23.210], needs to be changed to allow situations where there is no need for a subsidy for a hard-to-place child. Another result of the changes in Version C is that persons over 18 years of age could be adopted without the consent of his or her birth parents. Lastly, Ms. Moss presented an amendment that concerns possible civil liability on the part of OCS if a child is injured or dies while in its custody. In answer to a question, she clarified that the state is not exempt from civil liability if a child dies or is injured due to negligence on the part of a state worker.

[3:18:27 PM](#)

REPRESENTATIVE SEATON referred to page 3, line 14 and 15, and asked for clarification of a subsidy that "may not exceed the existing rate for foster care."

MS. MOSS explained that this provision allows for the amount of the subsidy to be determined by the DHSS, rather than the commissioner. In addition, it allows DHSS to say that a subsidy is not always required for a hard-to-place child.

[3:19:57 PM](#)

REPRESENTATIVE SEATON further asked whether the subsidy rate for a hard-to-place child is no more than that for a foster child.

MS. MOSS stated that there are other costs, beyond the foster care rate, such as counseling and medical expenses. The foster care subsidy referred to in the bill is just for room and board; other subsidies are determined on a case-by-case basis.

[3:20:51 PM](#)

REPRESENTATIVE SEATON asked for further clarification of the "base foster care rate."

[3:21:26 PM](#)

JAN RUTHERDALE, Senior Assistant Attorney General, Child Protection Section, Civil Division, Department of Law, informed the committee that this change came from the federal government and was inspired by the plight of foster parents who were reluctant to adopt foster children, due to the loss of the federal subsidy. The limitation is that, after the adoption, foster parents can not receive more money than before. However, if the adoptive child has special needs, those special services will be paid. Ms. Rutherforddale opined that all hard-to-place children qualify for Medicaid and support for special services above and beyond Medicaid will be decided by this subsidy. She further explained that the subsidy is fluid and can be increased if more services are needed at a later date. Furthermore, the total amount of the subsidy can not be lowered without consent, but more can be requested. With respect to HB 354, this provision is a clean-up action because the DHSS has a provision in regulations to apply to newborns whose problems may not be apparent until later in life.

[3:26:07 PM](#)

REPRESENTATIVE ROSES expressed his understanding that the amount and length of time of a subsidy can not exceed the existing rate for foster care.

MS. RUTHERDALE agreed. She added that the subsidy can be set from zero dollars to the existing rate for foster care.

[3:26:55 PM](#)

CHAIR WILSON asked whether this provision is automatic for every adoption.

MS. RUTHERDALE pointed out that there is a lot of regulation that determines whether a child qualifies for a deferred subsidy or a subsidy at the point of adoption; for example, one of the criteria of federal regulation is that Native children are hard-to-place, thus a Native child may qualify on that basis alone. In addition, siblings are identified as hard-to-place, and may

qualify for a subsidy. Nevertheless, to receive funds from a subsidy from newborn to age three years, at the point of adoption, there must be evidence of special needs at that time. If there is no evidence of special needs, the deferred subsidy applies, and the situation can be re-negotiated after three years. Ms. Rutherford stressed that the original statute did not allow for the zero dollar amount, and thereby created a conflict with the federal regulations.

[3:29:44 PM](#)

REPRESENTATIVE GARDNER observed that there may be foster parents who are interested in adopting a child with special needs, but who may not be able to afford to be fully responsible for the unknown expenses of that child.

[3:30:32 PM](#)

CHAIR WILSON asked whether adoptive parents would qualify for help with court costs.

MS. RUTHERDALE indicated that she did not know.

[3:31:09 PM](#)

MIKE LESMANN, Community Relations Manager; Legislative Liaison, Office of Children's Services, Department of Health and Social Services, asked for the question to be repeated.

[3:31:34 PM](#)

CHAIR WILSON asked whether this provision would address the costs of special services that become needed after a child is adopted.

REPRESENTATIVE GARDNER suggested that Chair Wilson was referring to a deferred subsidy.

[3:32:34 PM](#)

CHAIR WILSON than asked what happens in a normal situation with a hard-to-place child.

MR. LESMANN stated that he did not know of a normal situation; however, factors to be considered are the age of the child and the child's special needs that are already on the record and known to the foster parent, the prospective adoptive parent, and

the case worker. Regarding the potential liability of an adoptive parent, he said that he will provide the committee with further information at a later date.

[3:33:58 PM](#)

REPRESENTATIVE SEATON surmised that this bill is an attempt to move hard-to-place children into adoptive home and protect the adoptive parents from unknown liabilities that might occur from the child's situation.

[3:34:44 PM](#)

MS. RUTHERDALE stated that the bill does not go that far; it is strictly a change from the words "some monthly amount," which implies at least one dollar, to wording that gives the state the authority to set the subsidy at a "zero amount" for the first three years. She pointed out that the bill also includes the child support enforcement action change to formalize what the DHSS has been doing by regulation.

[3:36:22 PM](#)

REPRESENTATIVE GARDNER asked for more information regarding the change in child support.

[3:36:50 PM](#)

There followed a brief review of the first change described under the bill.

[3:37:28 PM](#)

CHAD HUTCHINSON, Family Law Attorney, Cook Schuhmann & Groseclose, Inc., stated his support for CSHB 354 [Version C]. In response to a question, Mr. Hutchinson related the story of an adoption that was complicated by the existing law that requires an 18-year-old to get approval for his adoption from his long absent biological father. Mr. Hutchinson's law firm requested the change to AS 25.23.050 that withdraws the requirement of notice to a biological parent that abandons a child, and the change to AS 25.23.100 that establishes 18 as the age of consent for adoption.

[3:42:31 PM](#)

REPRESENTATIVE GARDNER asked for the outcome of the adoption case.

MR. HUTCHINSON indicated that the outcome is unknown at this time.

[3:43:02 PM](#)

CRAIG PARTYKA, Family Law Attorney, Cook Schuhmann & Groseclose, Inc., expressed his agreement with the proposed changes except for his concern that an absent parent's action can be misrepresented by false testimony from the plaintiff.

[3:47:39 PM](#)

REPRESENTATIVE GARDNER asked whether, after false claims of no contact were made and an adoption was completed, the revelation of the truth would overturn the adoption.

MR. PARTYKA stated that civil rule allows one year to overturn a judgment for fraud. He encouraged the House Judiciary Standing Committee to examine this question.

[3:49:10 PM](#)

CHAIR WILSON noted the possibility that the biological father attempted contact, but was unable to locate the child.

[3:49:46 PM](#)

REPRESENTATIVE GARDNER agreed. On the other hand, the rights of the child versus the rights of the parent must be balanced.

[3:49:59 PM](#)

REPRESENTATIVE SEATON asked whether notification is required for the adoption of a 30-year-old person.

MR. PARTYKA opined that no parental notice would be required.

MS. MOSS confirmed that notification is not required for a person 19 years of age and older.

[3:51:10 PM](#)

REPRESENTATIVE SEATON stated that the age of adulthood in the state is 18; therefore, he recommended that the language be changed to "the age of adulthood."

[3:53:09 PM](#)

CHAIR WILSON closed testimony.

[3:53:14 PM](#)

SUSAN COX, Senior Assistant Attorney General, Torts and Workers' Compensation Section, Civil Division, Department of Law, informed the committee that the amendment is in the proper format and was taken from a proposal drafted by the Department of Law (DOL) for Representative Gara. The amendment would add a subsection (b) to existing statute AS 47.10.960, thereby making changes in Sec. 7 and Sec. 8. She further noted that the language will not be changed in AS 47.10.960; however, Sec. 8 will be deleted and replaced by the handwritten amendment that read:

(b) Nothing in this section shall be construed to prohibit a civil action for common law negligence or an action under AS 09.55.580 on behalf of a child who is injured or dies while in the custody of the state.

MS. COX continued to explain that existing law does not intend to prevent the action of filing a lawsuit, on behalf of a child, if that child was hurt or died while in state custody. This amendment would add subsection (b) to the existing statute to clarify the law.

[3:56:11 PM](#)

REPRESENTATIVE ROSES moved to adopt Amendment 1, which read:

Page 4, lines 17-19;

Delete all material

Insert:

(b) Nothing in this section shall be construed to prohibit a civil action for common law negligence or an action under AS 09.55.580 on behalf of a child who is injured or dies while in the custody of the state.

[3:56:32 PM](#)

REPRESENTATIVE SEATON objected. He then asked for an explanation of the restriction that is in the amendment, but not in Version C, that says a lawsuit can be brought "on behalf of a child."

[3:57:09 PM](#)

MS. COX remarked:

What you see in the committee substitute, work draft C, Sec. 7 and 8, you have, the existing language is 47.10.960, the purpose of that, what is in existing law, is to say that the statutes in title 47 don't create a new basis for liability, an independent basis for liability, and that's what we would refer to as a duty. They don't create a tort duty that you can use as a basis for a lawsuit. And what you've got in Sec. 8 is a, something that is supposed to modify that, that says the state is not immune. The concept of whether there is a basis for suing or whether the state is immune, are actually not the same thing. They are two different doctrines and so we have reworded this in the amendment that is before you to be legally more accurate and more consistent with the intent of Representative Gara, which is say, what we have in statute is an accurate statement still, failure to comply with something in title 47 does not itself create a basis for liability, but, (b) you can still file a negligence action or a wrongful death action, that is the reference to 955.580, if a child in state custody is injured or dies. So it is just legally a more accurate and less confusing way to state what Representative Gara was trying to accomplish.

[3:58:45 PM](#)

REPRESENTATIVE SEATON then asked whether anybody can sue based on the death of a child.

MS. COX stated that, in the case of the death of a child or an adult, a personal representative would have to file a wrongful death action against the state. Normally, the court would appoint the personal representative, who is often a relative. She opined that the original purpose of the language of the amendment was to simply permit lawsuits when a child dies or is injured in state custody.

[4:00:17 PM](#)

CHAIR WILSON re-stated that in Version C, lines 17 through 19, the language would be changed to that of the handwritten amendment.

[4:00:41 PM](#)

MS. COX clarified that the handwritten amendment would delete what is in Section 7. Essentially, this would "replace what [Ms. Moss] has given you as a new (b) for 47.10.960, and delete what's in the bill as Section 7 and Section 8."

[4:01:02 PM](#)

CHAIR WILSON said that her question was not answered.

[4:01:12 PM](#)

MS. MOSS stated that the language in AS 47.10.960, before it was amended in 2005, stated that the DHSS did not have a duty or standard of care for children in state custody. House Bill 375, which was passed in 1998, adopted all of the federal requirements in order to qualify for federal funding of certain programs. Ms. Moss explained that the state, as a sovereign entity, has immunity; however, this legislation was an attempt to hold the state accountable for children in state custody, without relinquishing sovereignty.

[4:02:40 PM](#)

CHAIR WILSON gave an example of a child in foster care with a broken leg.

MS. MOSS pointed out that there must be an act of negligence on the part of the foster parent.

[4:03:31 PM](#)

REPRESENTATIVE ROSES clarified that Amendment 1 is conceptual.

[4:03:48 PM](#)

REPRESENTATIVE GARDNER opined further on an action of a foster parent that causes injury to a child.

[4:04:12 PM](#)

MS. MOSS agreed that it must be an intentional act that the person knew would cause injury or death.

[4:04:24 PM](#)

REPRESENTATIVE SEATON asked whether immunity for criminal liability is included.

MS. COX stated that the bill does not affect any type of criminal responsibility; in fact, the amendment does not deal with immunity.

[4:05:13 PM](#)

REPRESENTATIVE SEATON removed his objection.

[4:05:21 PM](#)

Hearing no further objection, Conceptual Amendment 1 was adopted.

[4:05:29 PM](#)

REPRESENTATIVE KELLER moved to report CSHB 354, Version 25-LS1414\C, Mischel, 2/25/08, as amended, out of committee with individual recommendations and zero fiscal note.

MS. MOSS recommended that the motion include "accompanying fiscal note," as there are fiscal impacts after 2010.

The committee took an at-ease from 4:06 p.m. to 4:07 p.m.

[4:07:04 PM](#)

CHAIR WILSON re-stated that the motion before the committee was to move CSHB 354, Version 25-LS1414\C, Mischel, 2/25/08, as amended, from the committee with individual recommendations and attached fiscal notes. There being no objection, CSHB 354(HES) was reported out of the House Health, Education and Social Services Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:07 p.m.