

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

March 3, 2008

2:40 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Thomas, Vice Chair
Senator John Cowdery
Senator Kim Elton
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 267

"An Act requiring certain persons licensed by the State Medical Board to document an infant's prenatal exposure to alcohol in the infant's medical file."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 267

SHORT TITLE: DOCUMENT PRENATAL ALCOHOL EXPOSURE

SPONSOR(s): SENATOR(s) DAVIS

02/13/08	(S)	READ THE FIRST TIME - REFERRALS
02/13/08	(S)	HES, FIN
02/25/08	(S)	HES AT 1:30 PM BUTROVICH 205
02/25/08	(S)	Heard & Held
02/25/08	(S)	MINUTE(HES)
03/03/08	(S)	HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

RIC IANNALINO, Coordinator
Juneau FASD Diagnostic Clinic
Tribal Family Youth Services
Central Council of the Tlingit & Haida Indian Tribes of Alaska
Juneau, AK

POSITION STATEMENT: Supported SB 267.

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

POSITION STATEMENT: Opposed SB 267.

ALPHEUS BULLARD, Attorney at Law
Legislative Legal and Research Services Division
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Answered questions regarding legal aspects of SB 267.

CATHERINE EDWARDS, representing herself
Juneau, AK

POSITION STATEMENT: Supported SB 267.

MICHAEL BALDWIN, Clinician, representing himself
Anchorage, AK

POSITION STATEMENT: Supported SB 267.

TRISH SMITH, representing herself
No address provided

POSITION STATEMENT: Supported SB 267.

TIM KELLY, Lobbyist
Alaska State Medical Association
Anchorage, AK

POSITION STATEMENT: Supported SB 267 but highlighted some concerns.

ACTION NARRATIVE

CHAIR BETTYE DAVIS called the Senate Health, Education and Social Services Standing Committee meeting to order at [2:40:22 PM](#). Present at the call to order were Senators Thomas, Cowdery, Elton, Dyson and Davis.

SB 267-DOCUMENT PRENATAL ALCOHOL EXPOSURE

CHAIR DAVIS announced consideration of SB 267.

[2:41:31 PM](#)

SENATOR THOMAS moved to adopt the committee substitute (CS) to SB 267, labeled 25-LS1471\C, as the working document. There being no objection, version \C was before the committee.

[2:42:47 PM](#)

RIC IANNALINO, Coordinator, Juneau FASD Diagnostic Clinic, Tribal Family Youth Services, Central Council of the Tlingit & Haida Indian Tribes of Alaska, said this bill would not be necessary if medical providers were reporting prenatal alcohol exposure routinely, as was indicated by some of the testimony. He pointed out that it was not illegal for women to drink during pregnancy, and children exposed to alcohol during pregnancy could not be diagnosed for several years after birth. With respect to mandatory reporting of suspected alcohol abuse affecting a child, as required by Title 47 Child Protection statute, it was his contention that the practice was a reactive one and counter to the intent of the current legislation. SB 267 would provide a non-punitive, proactive means for mothers to self-report their prenatal alcohol use.

MR. IANNALINO said that as coordinator of the Juneau FASD Diagnostic Clinic, one of 13 in the state, his experience was that some mothers died, some lost their children or lost custody of their children. Their families often could not confirm the mother's alcohol use during the nine months of her pregnancy; as a result, it was impossible to obtain a diagnosis of FASD. Children were often diagnosed as early as two years old, but that was too late to get them into infant learning for testing and remediation. FASD must be identified much earlier than that in order to mitigate some of the behaviors and cognitive deficits [that could result].

SENATOR COWDERY asked for confirmation that this bill would limit the use of this information to medical diagnosis and treatment. He also wondered whether the question of insurance company access to this information had been resolved.

MR. IANNALINO could not speak to the issues raised by Senator Cowdery.

[2:46:53 PM](#)

JAN RUTHERDALE, Senior Assistant Attorney General, Civil Division, Child Protective Section, Department of Law, said she had followed up on the insurance issue after the previous hearing on this bill and was told it would not effect coverage.

SENATOR ELTON asked Ms. Rutherfordale, in the language "providing medical diagnosis, treatment, or care of the infant," whether the adjective "medical" applied also to treatment and care, or if it applied only to diagnosis.

MS. RUTHERDALE affirmed that, according to drafting rules, the adjective "medical" applied to everything.

CHAIR DAVIS asked if Ms. Rutherfordale would like to testify.

MS. RUTHERDALE replied that she signed up only to answer questions and that she had proposed the CS to address some of her concerns about the bill. She feared a mother might be able to prevent a physician from recording FASD related information and observations not provided by her, such as physical characteristics of the child. She was still not sure the bill would accomplish what it set out to.

SENATOR THOMAS commented that some of them felt this type of reporting should be done without a legal mandate, and he was also concerned about the confidentiality of the information. If confidentiality would not be compromised, he wondered whether the new language eliminated the need for maternal consent.

[2:50:58 PM](#)

MS. RUTHERDALE explained that the language in this committee substitute would allow a physician to record information in the child's file without the mother's permission; but her statements could not be released to an FASD clinic for example, without either her consent or a court order. If an adult child requested a copy of his or her medical records, any statements recorded without maternal consent would have to be excised.

CHAIR DAVIS asked the representative from Legislative Legal Services whether they would still have to obtain the mother's permission in order to release the information.

[2:54:49 PM](#)

ALPHEUS BULLARD, Legislative Legal and Research Services Division, said there was a presumption that whenever a mother shared information with a medical provider, she had the expectation of confidentiality. If that information were recorded in the infant's medical file, anyone who reviewed the infant's file would have access to the information that the mother shared, and the expectation of confidentiality would be defeated. So if the mother shared information that was recorded outside her own medical file, in a sense it was already released and she should be informed that the information could be shared with people other than her medical provider(s).

MS. RUTHERDALE testified that the "Child In Need of Aid" rules contained no client/therapist privilege so, although alcohol

records for example, are very confidential, a court could waive [the confidentiality]. She maintained that the courts and the legislature should balance the privacy rights of the mother against the rights of the child and should favor those of child in this case.

SENATOR THOMAS questioned the language on line 10 [through 12], "Information described in this section that was obtained from statements of the mother made during the postnatal examination that is confidential medical information of the mother...." and asked if observations made by the doctor without confirmation or comment by the mother would not be considered confidential.

MS. RUTHERDALE responded, "Absolutely." She said she had spoken to two doctors about the bill and they told her that they would record the information even without the mother's consent; they would simply note that she objected to it. She felt it would be wrong to pass a bill that, because of the doctors' ethical standards, they would not follow.

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SENATOR ELTON said that other attorneys have "weighed in" on the topic, and one suggested that the language on page 2, beginning on line 2 "(b) Except as provided in AS 47.17.024, information received under section may not be used except for the purposes of providing medical diagnosis, treatment, or care of the infant" limited the evidence which could be used in a court proceeding and therefore might need a 2/3 majority vote in the legislature. He asked Ms. Rutherforddale to comment on that.

MS. RUTHERDALE admitted she had not really thought that through, but it seemed like it could. She reiterated that, in children's cases, parents don't enjoy the patient/therapist privilege that they would under normal evidence rules, but she was not sure that would be true of this information.

SENATOR THOMAS continued Senator Elton's line of questioning. If the language of the bill did not specify what the information could be used for and something else was added, legal proceedings or something, people might be even more concerned both about collecting the information and providing it. He asked if the mother's drinking after the birth of the child could also create problems through her breast milk or something.

CATHERINE EDWARDS worked with Mr. Iannalino at the tribe but was testifying as an adoptive parent and the aunt of two children with FASD. She was able to get her adopted daughter into the

clinic and diagnosed before she was two years old; her niece had not been diagnosed because her mother refused to disclose that she drank while she was pregnant. The school was going to force her to repeat kindergarten and schedule her for behavior modification classes, but these things would not help. They could not fix the brain damage that was done.

SENATOR ELTON told Ms. Edwards she did a great job for the first time testifying before a legislative committee.

SENATOR COWDERY asked what happened if the mother died and the father got custody; could the father release that information.

3:07:09 PM

MR. IANNALINO replied that a father sometimes assumed custody, but he might not have been with the mother throughout the pregnancy and witness to her drinking. More often, it was the mother's family that was involved. If the mother died and custody went to the father, they might make a diagnosis based on his statement that the mother drank, but would note it as "unknown." If the mother or the mother's family stated that she drank while pregnant, they would consider it confirmed.

CHAIR DAVIS asked Senator Cowdery whether Mr. Iannalino had addressed his question or whether he was asking if the father could authorize release of the mother's information.

SENATOR COWDERY said that was the point he was trying to determine.

MR. IANNALINO responded that, if the father had legal custody, he could release or refuse to release that information.

MS. RUTHERDALE interjected this bill was only talking about what a mother says to her doctor during a confidential relationship; any parent or guardian could release the child's records, but not the specific statements made by the mother.

MICHAEL BALDWIN, Clinician, Anchorage Alaska, said he worked for 19 years with children, adults, adolescents and families affected by alcohol and other drug use. For the past 7 years he had been more directly involved with those affected with FAS and FASD. He said that current research indicated 1 in 83 people were affected by prenatal alcohol exposure; 20 percent of people evaluated by the diagnostic team had exposure to alcohol during gestation.

The team was frequently hampered by its inability to pin down the diagnostic history for a variety of reasons, primarily due to lack of documentation. With regard to testimony that the information was already being captured by OCS and elsewhere, he noted that the diagnostic team did not necessarily have access to that information.

TRISH SMITH, representing herself, said she came to show support for the bill.

[3:15:54 PM](#)

TIM KELLY, Lobbyist, Alaska State Medical Association, pointed out a letter in the committee packets from the association supporting SB 267, but highlighting some concerns. He thanked the committee for providing him with a copy of the CS and said he had forwarded it to the attorney for the association and was awaiting his response.

CHAIR DAVIS said after listening to the testimony, she does not want this bill to move forward.

SENATOR ELTON offered his help if she decides to work on it over the Interim.

CHAIR DAVIS explained that this is a mirrored bill from the House and Representative Doll would be the one who would do further work. SB 267 was held in committee.

There being no further business to come before the committee, Chair Davis adjourned the meeting [3:19:13 PM](#).