

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 11, 2009

1:35 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Lesil McGuire

**MEMBERS ABSENT**

Senator Kim Elton  
Senator Gene Therriault

**COMMITTEE CALENDAR**

SENATE BILL NO. 96

"An Act relating to nonpayment of child support; relating to certain judicial and administrative orders for medical support of a child; relating to periodic review and adjustment of child support orders; relating to relief from administrative child support orders; relating to child support arrearages; relating to medical support of a child and the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 96

SHORT TITLE: CHILD SUPPORT/ CASH MEDICAL SUPPORT

SPONSOR(S): HEALTH & SOCIAL SERVICES

02/04/09	(S)	READ THE FIRST TIME - REFERRALS
02/04/09	(S)	HSS, JUD, FIN
02/25/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/25/09	(S)	Heard & Held
02/25/09	(S)	MINUTE(HSS)
03/02/09	(S)	HSS AT 1:30 PM BUTROVICH 205
03/02/09	(S)	Moved CSSB 96(HSS) Out of Committee
03/02/09	(S)	MINUTE(HSS)
03/03/09	(S)	HSS RPT CS 2DP 2NR NEW TITLE
03/03/09	(S)	DP: DAVIS, PASKVAN
03/03/09	(S)	NR: THOMAS, ELLIS
03/11/09	(S)	JUD AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

LYNDA ZAUGG, Staff

to Senator Bettye Davis  
Alaska Capitol Building  
Juneau, AK

**POSITION STATEMENT:** Introduced SB 96 on behalf of the sponsor.

JOHN MALLONEE, Director  
Child Support Services Division  
Department of Revenue  
Anchorage, AK

**POSITION STATEMENT:** Provided a sectional analysis of SB 96 and responded to questions.

EDDIE BRAKES, Director  
Title IV-D Tribal Child Support Unit  
Central Council Tlingit and Haida Indian Tribes of Alaska  
Juneau, AK

**POSITION STATEMENT:** Testified in support of SB 96.

JESSIE ARCHIBALD, Attorney  
Tribal Child Support Program  
Central Council Tlingit and Haida Indian Tribes of Alaska

**POSITION STATEMENT:** Provided support and responded to questions related to CCTHITA perspective on SB 96.

ROBERT W. LOESCHER, Subcommittee Chair  
State and Tribal Relations of the Judiciary Committee  
Central Council Tlingit and Haida Indian Tribes of Alaska  
Juneau, AK

**POSITION STATEMENT:**

STACY STEINBERG, Assistant Attorney General  
Civil Division  
Collections and Support Section  
Department of Law (DOL),

**POSITION STATEMENT:** Provided information related to SB 96.

GINGER BLAISDELL, Director  
Administrative Services  
Department of Revenue (DOR)

**POSITION STATEMENT:** Provided information and stated support for SB 96 on behalf of the Governor.

**ACTION NARRATIVE**

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**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1: 35 p.m. Present at the call to order were Senators McGuire, Wielechowski and French.

**SB 96-CHILD SUPPORT/ CASH MEDICAL SUPPORT**

CHAIR FRENCH announced the consideration of SB 96.

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LYNDA ZAUGG, Staff to Senator Bettye Davis, sponsor, introduced SB 96 by reading the sponsor statement into the record as follows:

In July 2008, the federal government issued new medical support regulations that require states to have guidelines addressing how either or both parents will provide for a child's healthcare needs through accessible health insurance coverage, cash medical support, or both. Under the federal regulations, states must order either or both parents to purchase reasonably-priced, accessible health insurance coverage, provide cash medical support or both. Cash medical support may be required in those cases where no reasonably-priced health insurance coverage is accessible to the child. If a parent is ordered to pay cash medical support, the Child Support Services Division (CSS) must enforce the ongoing cash medical support obligation as well as collect any cash medical support arrears. Failure to satisfy these mandated jeopardizes 17 million dollars in federal funding for the state's child support program.

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This bill adds to existing law the authority for a tribunal to order either or both parents to pay cash medical support, if warranted. In addition, the bill directs CSSD to review child support orders for modification on a federally mandated three-year cycle. The bill adds cash medical support to the definition of arrearage and the definition of support order thereby enabling CSSD to use its existing enforcement tools to collect a cash medical support obligation on behalf of the child. Finally, the bill removes the language limiting who may request the correction of a clerical mistake in an administrative order or request

the vacation of an administrative order based upon a default income.

This bill puts Alaska in compliance with the federal requirements. As explained above, this bill will assure that Alaska's children receive the medical support to which they are entitled.

MS. ZAUGG added that her understanding of the bill is that it brings the state into federal compliance.

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JOHN MALLONEE, Director, Child Support Services Division (CSSD), Department of Revenue (DOR), provided the following sectional analysis:

Section 1 adds a reference to cash medical support to the crime of aiding and abetting the nonpayment of child support in the second degree. Basically this is to bring that criminal statute into compliance with the fact that we're now going to have a cash medical support order. So it simply adds that to the other regular child support orders that can be prosecuted under that particular item.

CHAIR FRENCH asked if there will only be one child support order. It may order many things including medical support and cash medical support will be a subsection of that.

MR. MALLONEE said in the vast majority of cases there will be only one umbrella order that has both child support and the cash medical support. However, there might be some areas where there would be just a cash medical support order, because of issues such as a zero child support order or a support order that addresses only medical.

CHAIR FRENCH asked if the bill will create an automatic increase to existing orders or be added to future orders.

MR. MALLONEE said it will be added to future orders, but it will also be added to existing orders as they are modified.

CHAIR FRENCH asked if he foresees CSSD making an omnibus amendment to the current orders.

MR. MALLONEE said no; in the past when things changed prospectively in a particular area, CSSD waited until someone

brought a motion to modify the order and then included that change in the new order.

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CHAIR FRENCH asked if the addition of the phrase "cash medical support" will increase a person's calculated child support payment or will the payment stay the same and part of it be directed to cash medical support.

MR. MALLONEE said the cash medical support would be in addition to the existing child support that is computed under Civil Rule 90.3. Currently all orders that are issued have a requirement for medical insurance to be provided if it is reasonably available to either party. If it is not reasonably available, one party, either party, or both parties could be subject to paying an additional amount of child support.

CHAIR FRENCH observed that is a way to defray the cost the state is incurring for providing insurance for the child.

MR. MALLONEE said in most cases it does that and it also provides the custodial parent cash to pay medical expenses.

CHAIR FRENCH asked if the money has to be spent on medical expenses or if it's inferred that it will be used for medical issues.

MR. MALLONEE said the assumption is that the money would be spent on medical care, but it's not necessarily the case and it can't be enforced. Through the years some have pushed for an accounting of how child support is spent, but the courts have ruled against that.

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SENATOR WIELECHOWSKI asked if this would require someone to get health insurance for their child.

MR. MALLONEE said child support orders already require medical insurance if it's reasonably available. If it's not reasonably available there is no requirement. If an individual does get health insurance there is a credit or debit depending on which party gets it.

SENATOR WIELECHOWSKI asked what this really adds.

CHAIR FRENCH said it sounds like this is reaching a middle ground. Currently if an individual doesn't provide insurance

because it's too costly, there is no contribution to the child's medical bills.

MR. MALLONEE said that's basically true although other parts of the statute talk about splitting the cost of uncovered medical expenses.

MR. MALLONEE continued the sectional analysis as follows:

Section 2 adds the Virgin Islands and Indian tribes to the definition of "state" in the Uniform Interstate Family Support Act statute that Alaska has.

Section 3 amends the order of support provision to include both parents, medical support, and insurance. ... this is just a definition ... where we put cash medical support into that particular statute and the "or both" in the statute.

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Section 4 adds medical support to provisions authorizing the initiation of administrative action to establish a duty of support. Again, that's basically statute authorizing us to establish support. This allows us to establish that cash medical support order.

Section 5 amends periodic review of support orders to require [a] three year cycle of review. This is another federal requirement ... we review orders at the request of the parties. However, the federal requirement wants the orders reviewed at least once every three years. And so this simply inserts a section in there requiring us to do those within that three year federal cycle.

Section 6 deletes motion requirement for correcting an administrative mistake in a support order. Basically, the way that statute reads right now, the only person who could raise the question of a clerical [error] in an administrative support order was, in fact, the obligor. This changes it so that [if] either party or the state itself finds a clerical error they can administratively fix it.

CHAIR FRENCH commented that it makes sense; anyone who is aware of an error should be able to make a motion to fix it.

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SENATOR WIELECHOWSKI referred to the three year cycle for review in Section 5 and asked if these reviews will significantly burden the courts.

MR. MALLONEE said in the cases that are enforced through CSSD, either party may ask for a review and modification. When that happens CSSD starts the process of doing a modification. Unfortunately, the way it's done now is that a new modification will be started anytime a party makes a request - even if the last modification was just three months ago. Nonetheless, CSSD does the modification in-house if it's an administrative order. If it's a court order, CSSD prepares the information for the attorney general's office and they motion to the court to do the modification.

SENATOR WIELECHOWSKI asked how often the court sua sponte asks for a review. He can't imagine it would happen very often.

MR. MALLONEE said it doesn't happen at all.

SENATOR WIELECHOWSKI said this requires the courts to calendar three years forward.

MR. MALLONEE clarified that the requirement is for CSSD to do the review.

SENATOR WIELECHOWSKI questioned why there isn't a fiscal note for that.

MR. MALLONEE explained that CSSD does reviews based on a request and he doesn't believe the number of requests will change. The current automated system maintains income information on individuals who have child support orders, and once a year it checks to see if each order appears to meet the qualifications for a modification. If it does appear to qualify, both parties are notified and they can each or together decide whether or not to do a modification. As long as this continues, CSSD will probably meet the requirement for the three-year modification. This probably won't increase the workload.

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MR. MALLONEE continued the sectional analysis as follows:

Section 7 deletes a motion requiring vacating a support order that is based on the default amount. ... the current statute says upon motion of the obligor. ... the way this would be changed, we would simply want to be able to do it based on either our own or the obligor or the custodial parent's request.

SENATOR WIELECHOWSKI worried about the implications of changing decisions without having to go to court. He asked if he expects this to be controversial because he can't imagine that the obligors will be happy.

MR. MALLONEE said it's done now, but the obligor must make the request. Most of the time the obligor appreciates it; the order will probably go down because it was based on a default amount rather than the ability to pay. Although a child support order should be based on a person's ability to pay, it's actually based on: department of labor statistics, gender and age within the state, AFDC needs or sanctions based on the highest amount for a particular order at a particular time. These are based on some amount other than the obligor's actual ability to pay.

CHAIR FRENCH noted that Senator Davis had joined the committee.

For clarification purposes, he explained that the obligor is the person who is providing the child support and the obligee is the person receiving it.

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MR. MALLONEE added that they are also referred to as custodial parent and noncustodial parent. He continued with the sectional analysis as follows:

Section 8 redefines "arrearage" for child support purposes. Basically, that now includes the cash medical support.

Section 9 amends the definition of "support order" to include cash medical support. I think that's self-explanatory; it just puts that payment of cash medical support in that definition.

Section 10 amends garnishment provision to include insurance and cash medical support. Again, [it] just brings that statute in alignment to include the cash medical support.

Section 11 amends the Alaska Native family assistance program to include obligations for cash medical support. So it just adds that cash medical support into the other types of support.

Section 12 provides an indirect court rule amendment to Civil Rule 90.3, Alaska Rules [of Civil Procedure] for changes made in the bill. That's to include the cash medical support in 90.3.

Section 13 makes bill changes applicable to child support actions filed on or after the bill's effective date.

Section 14 authorizes the Department of Revenue to proceed to adopt regulations needed under the bill. We will adopt regulations to further finish out the cash medical support and medical support itself.

Section 15 provides for a conditional effect for the court rule amendment in sec.12 only for two-thirds [majority vote]. That's a change in the court rule.

Section 16 makes Section 14 effective immediately. date.

Section 17 provides for a July 1, 2009 [effective date for all other bill sections.]

CHAIR FRENCH thanked him for the overview and asked him to remain online to answer questions as they may come up.

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EDDIE BRAKES, IV-D Director, Tribal Child Support Unit (TCSU), Central Council Tlingit and Haida Indian Tribes of Alaska, said he is testifying in support of SB 96 and Section 2 in particular to add the Virgin Islands and Indian tribes to the definition of "state" under AS 25.25.101(19).

He explained that IV-D child support programs receive federal funding under Title IV-D of the Social Security Act. The final rule for tribal child support programs was published in March 2004 and provides regulations for tribes to receive federal funding to operate IV-D child support programs. The State of Alaska and CCTHITA both operate approved federally funded programs. Although the state and CCTHITA work together and

cooperate, CCTHITA receives no funding from the state to operate its child support program.

In March 2007 CCTHITA received federal funds to operate a comprehensive IV-D program and the state Child Support Services Division transferred approximately 700 child support cases to the tribe. Federal regulations for IV-D programs require states and tribes to work cooperatively to provide a full range of services but that's not available in Alaska because the phrase "Indian tribe" is not included in the statutory definition of "state." SB 96 will include that definition. According to the sponsor statement this will bring the state into compliance with the federal child support regulations and \$17 million in federal funding won't be jeopardized.

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CHAIR FRENCH asked if failing to adopt the language to include the Virgin Islands and Indian tribes would, by itself, jeopardize \$17 million in federal aid.

MR. BRAKES deferred the question to the council attorney.

JESSIE ARCHIBALD, Attorney, Tribal Child Support Program, said Mr. Brakes' statement about risking \$17 million in federal funding was his understanding of the language in the sponsor statement. The Child Support Services Division, not the tribe, is the agency that would be able to answer that question.

CHAIR FRENCH said he would put his question on hold and asked if she had testimony.

MS. ARCHIBALD said she is here to provide support and testimony as questions arise.

[2:04:04 PM](#)

ROBERT W. LOESCHER, Subcommittee Chair, State and Tribal Relations, Judiciary Committee, said CCTHITA represents 27,000 enrolled tribal members. The tribe president and executive council have passed a resolution supporting this provision and SB 96. They appreciate the efforts of this committee to address the broader issues of child support.

CHAIR FRENCH noted that Mr. Loescher is a well-known and respected Tlingit leader and he thanked him for taking time to come and speak to the committee.

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CHAIR FRENCH found no one else who wanted to testify and closed public testimony.

SENATOR MCGUIRE questioned who decides on what the medical support will be. There is preventative medical support to offer to children and there is emergency support, but there is also a range of support in between. Within the family unit there may or may not be disagreement on appropriate and necessary medical care for a child and her concern is how that decision will be made.

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MR. MALLONEE said the bill only addresses cash medical support. It would be the parents' responsibility to decide what the medical support or procedure would be. DOR will only be involved with establishing the cash amount.

CHAIR FRENCH summarized that CSSD will not vet, veto or analyze the procedures that the custodial parent decides on. It is just a mechanism to give the parent cash support from the obligor.

MR. MALLONEE said agreed.

SENATOR MCGUIRE suggested the department may want to consider the implications of her question. Child support is very formula driven and that formula was arrived at by a lot of subjective decisions about what it takes to support a child's life. Some cost more than others. The noncustodial parent pays a formulaic amount of child support and there are criminal penalties for nonpayment. This provision broadens the obligations for the noncustodial parent and her concern is that parents who are separated may not agree on treatment even if they have joint custody. Parents living in the same family unit have reasonable differences about what is affordable and what is necessary. If there isn't a vetting process, problems may arise. For example, if medical payments are repeatedly expended on behalf of a child by one parent, they could be outside the realm of the noncustodial parent's ability to provide. She asked if there have been discussions to that end.

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STACY STEINBERG, Assistant Attorney General, Civil Division, Collections and Support Section, Department of Law (DOL), recapped the first part of the question, which deals with when the custodial parent incurs medical costs and decides what medical care the child will receive. Typically, uninsured medical costs are split equally and there is a provision that

one parent can go to court and ask for the other parent to pay half of the bill if they haven't already volunteered to do so. Child support orders do address how uncovered medical expenses should be split. Responding to the second part of the question, she said the way the cash medical support is calculated will be addressed through regulation. It will probably be a formula similar to Civil Rule 90.3.

SENATOR MCGUIRE said it's serious business when the Legislature passes policy measures that have associated criminal penalties and definite financial consequences. As a body they are obliged to think about what it means. Things that sound good on paper may need more work when put into practice. She appreciates that regulations will work, but often it's at that level that you drill down on the delicate policy matters. She said she would like to hear more about what the department envisions in the regulation, including percentages and dollar amounts.

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CHAIR FRENCH said his question about whether or not failing to adopt the language to include the U.S. Virgin Islands and Indian tribes would, by itself, jeopardize \$17 million in federal aid is still on the table. Some people may see the phrase "Indian tribe" in a state statute and focus on that. He's trying to make a record of the necessity of including that phrase and the financial consequences to the state for not doing so.

MR. MALLONEE said the child support program is federally mandated and state operated. The federal government provides 66 percent of the funding and to secure that funding the state must comply with Title IV-D of the Social Security Act and federal regulations 45 CFR 300 and 310. Failure to meet any of the requirements can jeopardize the federal portion of the child support funding. Last year that amount was just over \$17 million. The Alaska version of the Uniform Interstate Family Support Act was enacted in 1995. In 1996 Congress passed legislation mandating that states adopt the uniform act in order to continue to receive the federal funds. The definitions in Alaska's uniform family support act did not include the U.S. Virgin Islands or Indian tribes. By inserting those two entities, Alaska would meet that federal requirement to adopt the Uniform Interstate Family Support Act as passed in 1996.

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CHAIR FRENCH said it sounds like the answer is yes.

MR. MALLONEE said, "Mr. Chairman, you're correct."

SENATOR MCGUIRE asked what money the state has lost so far.

MR. MALLONEE said nothing; the federal government has not penalized the state to date. "This is our attempt to bring this into compliance, which was just brought to our attention back around July or August," he said.

SENATOR MCGUIRE said she assumes that if the phrase "Indian tribe" does not remain in the bill, DOR will continue to fight to get those federal funds.

MR. MALLONEE said yes, but since this was brought to their attention they have asked for waivers and the federal government has refused. He suspects the next step will be to send a letter of sanction requiring the amendment or face the possibility of loss of federal funding.

SENATOR MCGUIRE pointed out that, particularly with the new administration, there will be a more concerted federal effort to say that Indian tribes need to be recognized and in the statutes. She doesn't have a problem with that, but the concern that will play out in the Legislature and in the judiciary committees in particular is the question of sovereignty. Whether or not mentioning or describing Indian tribes as they currently exist means a wholesale look at the issue of sovereignty of Indian country and sovereignty of Indian tribes. She suggested that as that discussion plays out, that's a place to discuss why it's okay to include the phrase. Indian tribes exist. They exist here in our state and they administer important social dollars and programs. "They're an important part of Alaska's governing structure, but this mentioning of it in this particular statute to secure these dollars doesn't necessarily mean that it's part of an entire relook at whether or not Indian country exists or how tribes will have sovereignty or not in the state. Those are things to consider," she said.

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CHAIR FRENCH said it's a valid comment. One of the reasons he's holding the bill over is to give the committee time to mull these changes.

SENATOR WIELECHOWSKI asked if the Governor supports the bill.

GINGER BLAISDELL, Director, Administrative Services, Department of Revenue (DOR), said the Governor does support SB 96 and feels it is important. She noted that she is working with the

Department of Law on an instructional brochure. It may include a letter of intent to clearly describe how the definition of "Indian tribe" would impact anything in the state. "At this point, it does not impact anything other than clarifying Title IV-D." She offered to provide copies of the brochure when it's finished.

CHAIR FRENCH thanked her for providing that helpful information. Finding no further questions, he announced he would hold SB 96 until Monday.

2:22:00 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:22 pm.