

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 26, 2012

1:05 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Lindsey Holmes
Representative Mike Hawker (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 343

"An Act relating to disclosure of records of the Department of Health and Social Services pertaining to children in certain circumstances; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 343

SHORT TITLE: DISCLOSURE OF CHILDREN'S RECORDS

SPONSOR(S): REPRESENTATIVE(S) MUNOZ

02/22/12	(H)	READ THE FIRST TIME - REFERRALS
02/22/12	(H)	HSS, JUD
03/15/12	(H)	HSS AT 3:00 PM CAPITOL 106
03/15/12	(H)	Moved CSHB 343(HSS) Out of Committee
03/15/12	(H)	MINUTE(HSS)
03/16/12	(H)	HSS RPT CS(HSS) 3DP 3NR
03/16/12	(H)	DP: SEATON, MILLER, KERTTULA
03/16/12	(H)	NR: MILLETT, HERRON, KELLER
03/26/12	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE CATHY MUNOZ

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the sponsor, presented HB 343.

TONY NEWMAN, Social Services Program Officer
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 343.

STACIE KRALY, Chief Assistant Attorney General - Statewide
Section Supervisor
Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of
HB 343.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with Sections 1 and 2 of
HB 343.

NAOMI HARRIS, Community Relations Manager
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 343, and
answered questions.

BARBARA HENJUM, Director
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 343, and
answered questions.

ACTION NARRATIVE

[1:05:59 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing
Committee meeting to order at [1:05] p.m. Representatives

Thompson, Pruitt, Gruenberg, Lynn, and Keller were present at the call to order. Representative Gatto was excused.

HB 343 - DISCLOSURE OF CHILDREN'S RECORDS

[1:06:28 PM](#)

VICE CHAIR THOMPSON announced that the only order of business would be HOUSE BILL NO. 343, "An Act relating to disclosure of records of the Department of Health and Social Services pertaining to children in certain circumstances; and providing for an effective date." [Before the committee was CSHB 343(HSS).]

[1:07:52 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, sponsor, explained that HB 343 would address issues first brought to her attention by the Division of Juvenile Justice (DJJ) and the Office of Children's Services (OCS), both agencies of the Department of Health and Social Services (DHSS). The bill has three primary purposes: first, to clarify that the DJJ and the OCS can exchange information [about their mutual clients] - although such exchange is allowed under current law, misunderstanding on that point has occurred; second, to allow individuals with a legitimate interest, such as former clients - or their parents or legal guardians - to receive personal information from the DJJ that could, for example, help them apply for jobs, join the military, or obtain health care; and third, to simplify and streamline current law regarding public disclosure of information pertaining to juveniles. She noted that members' packets contain two flowcharts: one that illustrates the public disclosure process under current law - which she characterized as cumbersome, hard to interpret and implement, and in need of streamlining; [and one that illustrates that process under the bill].

REPRESENTATIVE MUNOZ explained that under the bill, when cases involving certain crimes - enumerated in Section 4's proposed AS 47.12.315(a)(1)-(7) - are petitioned to the court and probable cause is established, information about those cases can then be disclosed to the public, though Section 4's proposed AS 47.12.315(c) stipulates that the only information which may then be disclosed are the name of the minor, the name of each legal parent or guardian, the specific offense alleged to have been committed, and the final outcome of the court proceedings related to the offense. The crimes listed in Section 4's

proposed subsection (a)(1)-(7) are all serious crimes: a felony offense against a person under AS 11.41; arson in the first or second degree; burglary in the first degree; distribution of child pornography; promoting prostitution in the first degree; misconduct involving a controlled substance in the first, second, or third degrees involving distribution or possession with intent to deliver; and misconduct involving weapons in the first through fourth degrees. She noted that proposed paragraph (7) no longer contains a reference to the crime of misconduct involving weapons in the fifth degree due to an amendment made in the bill's prior committee of referral.

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TONY NEWMAN, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), remarked that improving the ability of agencies like the OCS and the DJJ to work together - as Sections 1 and 2 of HB 343 would do for the OCS and the DJJ, respectively - is embraced by advocacy organizations nationwide, including the Child Welfare League of America (CWLA), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the Center for Juvenile Justice Reform (CJJR). The changes proposed by [Sections 1 and 2], if adopted, would demonstrate to everyone that [the DHSS] is dedicated to improving services and outcomes for children and families through collaboration. Section 3's proposed AS 47.12.310(f) will enable the DJJ to be more responsive to requests for information, particularly requests from former clients seeking their own information; he mentioned that he, himself, has received such requests, which, he added, have become more commonplace for a variety of reasons, and Section 3 will make it easier for the DJJ to help its former clients as they pursue various ways of improving their lives.

MR. NEWMAN explained that Section 4's proposed AS 47.12.315 would clarify when information about a [juvenile offender] is subject to public disclosure and when it is not. It is time-consuming and challenging to interpret current law on that point, and the bill's proposed changes will ensure that the public can continue to access information about [perpetrators of offenses] that represent the most serious risk to public safety, while also protecting the confidentiality of juvenile offenders who pose little or no risk. He assured the committee that HB 343 will not change the laws [requiring confidentiality in] child abuse and neglect cases, or the laws regarding victim notification - victims will continue to receive the information they need regarding their [juvenile perpetrators] - and law

enforcement agencies, schools, foster parents, and others with well-established rights to [juvenile-offender] information will continue to receive the information they need to do their work effectively.

MR. NEWMAN, in conclusion, proffered that HB 343 will improve the DJJ's ability to manage, exchange, and disclose juvenile offender information, while also respecting the state's desire for its juvenile justice system to both serve public safety and help children put their delinquent behavior behind them.

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REPRESENTATIVE KELLER observed that HB 343 - [via its Section 1's proposed AS 47.10.093(b)(15), and its Section 2's proposed AS 47.12.310(b)(2)(M)] - will add stipulations that appropriate information regarding a case shall be disclosed to a state or municipal agency of Alaska or another jurisdiction [responsible for delinquent minors, or responsible for child protection services, respectively]. He characterized [such provision] as very, very broad, and expressed interest in amending the bill such that it would additionally stipulate that any such other jurisdictions be ones that have what he termed, "similar rules" for protecting children. To clarify, he referred to several amendments included in members' packets that all contained the heading, "CONCEPTIONAL [sic] AMENDMENT", and ventured that their proposed changes will ensure that the best interests of the children are being considered; those amendments, additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, 27-LS1394\M.1.b, [and 27-LS1394\M.2,] respectively, read [original punctuation provided]:

[27-LS1394\M.1, addressing Section 1's existing AS 47.10.093(b)(6)]

Page 2, Line 9

Insert:

(6) a law enforcement agency of this state or another jurisdiction **with similar rules for protection** as necessary for the protection of any child or for actions by that agency to protect public safety;

[27-LS1394\M.1.a, addressing Section 1's proposed AS 47.10.093(b)(15)]

Page 3, Line 2

(15) a state or municipal agency of this state or another jurisdiction with similar rules and are responsible for delinquent minors, as may be necessary for the administration of services, protection, rehabilitation, or supervision of a child or for actions by the agency to protect the public safety.

[27-LS1394\M.1.b, addressing Section 2's proposed AS 47.12.310(b)(2)(M)]

Page 4, Line 18

(M) a state or municipal agency of this state or another jurisdiction with similar rules and responsible for child protection services, as may be necessary for [sic] the administration of services, protection, rehabilitation, or supervision of a minor or for actions by the agency to protect the public safety; and

[27-LS1394\M.2, addressing Section 4's proposed AS 47.12.315(b)(3)]

Page 4 [sic], Line 21
Delete all language and insert:

(3) the court has entered a notice of conviction or received a guilty plea from the defendant through legal counsel.

[1:16:45 PM](#)

REPRESENTATIVE MUNOZ relayed that she has discussed the amendments additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, and 27-LS1394\M.1.b with the Department of Law (DOL), and indicated that the concern with the changes proposed by those amendments is that any investigatory process that would have to be undertaken in order to ensure that other jurisdictions have similar rules will simply become another "bureaucratic hurdle" to getting necessary information.

REPRESENTATIVE KELLER suggested as an alternative amending Sections 1 and 2 such that disclosing the information to other jurisdictions would be permitted but not mandatory. He then referred to Section 4's proposed AS 47.12.315(b)(3), and questioned the rationale for providing that information may be disclosed to the public if, after a petition has been filed and

the minor has been arraigned, a finding of probable cause that the minor committed the crime has been entered by the court. Under Section 4 as currently written, a court could enter such a finding, with the result being that information about the minor is then disclosed to the public, even though ultimately the minor is never convicted of the crime.

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REPRESENTATIVE GRUENBERG observed that the amendment additionally labeled 27-LS1394\M.2 - addressing Section 4's proposed AS 47.12.315(b)(3) - contains an incorrect page reference, and clarified that it should instead read:

Page 5, Line 21

Delete all language and insert:

(3) the court has entered a notice of conviction or received a guilty plea from the defendant through legal counsel.

REPRESENTATIVE KELLER expressed concern that disclosing information to the public after only a mere finding of probable cause could result in litigation. He said it seems as if the criterion should instead be one of the minor having been convicted of, or of having confessed to, the crime.

MR. NEWMAN explained that in the juvenile justice system, the term, "conviction" isn't used, but acknowledged that it's entirely possible that a minor could initially be arraigned - and a finding of probable cause entered - but then not be adjudicated delinquent. He offered his understanding, however, that under the bill, current information would be disclosed, so in a situation wherein the minor wasn't adjudicated delinquent, that point would be disclosed as well.

REPRESENTATIVE KELLER reiterated his concern that under Section 4 as currently written, inappropriate disclosure could occur.

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REPRESENTATIVE GRUENBERG indicated that he shared Representative Keller's concerns with the bill.

MR. NEWMAN, in response to questions, mentioned that under Section 3's proposed AS 47.12.310(f), the DHSS shall adopt

regulations that will govern the release of information [about a minor under its jurisdiction to persons with a legitimate interest, and shall adopt standards for identifying what would constitute a legitimate interest]. He also mentioned that the information referenced in Section 3 has no statute of limitation with regard to when the information can be released, whereas the information referenced in Section 4 has a five-year statute of limitation [as stipulated in Section 4's proposed AS 47.12.315(f)]; furthermore, Section 4 only applies to information related to certain types of offenses. He said that with a great many of the DJJ's clients, their information doesn't fit the criteria for public disclosure under Section 4, but they, too, would like to be able to obtain their own information, and so could do so under the changes proposed via Section 3.

REPRESENTATIVE GRUENBERG indicated favor with Section 3.

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STACIE KRALY, Chief Assistant Attorney General - Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law (DOL), in response to comments, stated that one of the primary purposes of HB 343 is to clarify that the OCS and the DJJ are allowed to share information [about mutual clients]; Sections 1 and 2 of the bill were precisely drafted to address the fact that existing Title 47 doesn't expressly authorize those two agencies to share client information. Section 1 addresses statutes pertaining to the OCS, with the language of its proposed AS 47.10.093(b)(15) referencing the DJJ - specifically via its wording, "**agency of this state ... responsible for delinquent minors**"; and Section 2 addresses statutes pertaining to the DJJ, with the language of its proposed AS 47.12.310(b)(2)(M) referencing the OCS - specifically via its wording, "**agency of this state ... responsible for child protection services**". She cautioned against unwittingly gutting those sections by adopting [the amendments additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, and 27-LS1394\M.1.b,] which would add to Sections 1 and 2 stipulations that any other jurisdictions that are being provided information be ones with rules similar to Alaska's.

MS. KRALY, in response to a question, explained that the wording, "**or another jurisdiction**" was intentionally included in those provisions of Sections 1 and 2 in order to allow the sharing of information with sister agencies in other states; for example, if the OCS in Alaska needed to share information with

Idaho's division of juvenile justice, then under Sections 1 and 2 as currently written, that could occur, thereby avoiding duplication of services or previously-failed treatment.

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REPRESENTATIVE KELLER - referring to the wording in the amendments additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, and 27-LS1394\M.1.b, "**with similar rules**" - questioned whether adding that wording would enable the DHSS to ensure that other jurisdictions being provided information have at least some standards for protecting children similar to Alaska's standards.

MS. KRALY indicated that counter to what the bill is intended to effectuate, adding that wording would create a bar to quick and efficient disclosure of information, by essentially requiring that a comparative analysis be conducted by an OCS social worker, his/her managers, and the DOL in order to address the legal question of whether a particular jurisdiction does indeed have sufficiently similar standards. She also pointed out that tied to federal funding, federal oversight of both types of organizations already occurs, thereby providing overarching consistency between the states with regard to such standards.

REPRESENTATIVE GRUENBERG noted that the wording, "**or another jurisdiction**" could refer to a jurisdiction in a foreign country - not all of which provide children with [adequate] protection - and suggested that the bill be amended to give deference to what he termed, "domestic" jurisdictions, particularly given that disclosure of the information would be mandatory under the bill.

REPRESENTATIVE KELLER characterized HB 343 as a very good bill, and acknowledged that the existing law is very confusing.

REPRESENTATIVE GRUENBERG - to address his concern about foreign jurisdictions, and referring to the language that the amendments additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, and 27-LS1394\M.1.b were proposing to add to Sections 1 and 2 - ventured that perhaps it would suffice to instead just add a stipulation that information shall be disclosed to foreign jurisdictions that have rules for protecting children; in this way, the question of whether any such rules are sufficiently similar to Alaska's need not be addressed.

[1:42:31 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said his concern with HB 343 is that in clarifying for everyone - including the court, which is currently addressing the issue of whether the OCS and the DJJ are statutorily allowed to share information - that the OCS and the DJJ shall share information about mutual clients, as Sections 1 and 2 as currently written will do, it could result in the child not being forthcoming with the OCS because he/she would know that the DJJ could obtain information about him/her from the OCS and then possibly use it against him/her during a DJJ adjudication; that knowledge that such sharing shall occur could ultimately undermine the OCS's efforts to help that child. In response to a question regarding a possible solution to his concern about the potential chilling effect such knowledge could have on how the child relates to the OCS, he acknowledged that perhaps a provision could be added to HB 353 to either require a court order prior to the sharing of information, or to require that notice and an opportunity to object be given prior to the sharing of information.

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NAOMI HARRIS, Community Relations Manager, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), said that the OCS is in support of HB 343 because it standardizes the information the OCS is allowed to share with the DJJ. Currently, some confusion exists, she acknowledged, and the bill will address that by clarifying for everyone that such sharing can occur. In response to questions, she said she does not agree with the PDA that HB 343 will impact how forthcoming a client is with the OCS. Instead, passage of the bill will enable the OCS and the DJJ to work together to support the best interests of the child and his/her rehabilitation.

REPRESENTATIVE GRUENBERG suggested that perhaps the bill should be amended to require the DJJ and the OCS to provide clients with notice that the two agencies share information about mutual clients with each other.

MR. NEWMAN, in response to questions and comments, remarked that both the DJJ and the OCS are agencies of the Department of Health and Social Services (DHSS), and both are dedicated to promoting the health and wellbeing of the children they serve. Both agencies already have access to each other's databases, and although there might still be some misunderstanding with regard to the nature of the OCS and DJJ's collaborative relationship, passage of HB 343, specifically its Sections 1 and 2, will be

helpful in both clarifying that point for everyone and in ensuring that the DJJ has the information it needs in order to take the best approach with each of its clients, individually, in terms of ensuring that his/her best interests are served. In response to further questions, he first acknowledged that with regard to the lawful disclosure of confidential information, existing law is not yet clear on the issue of whether an agency lawfully receiving such confidential information is then also required to maintain the confidentiality of that information; and then provided brief information regarding existing provisions of AS 47.10.093(b) and AS 47.12.310((b)(2) that would not be changed by HB 343.

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BARBARA HENJUM, Director, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), stated that the DJJ is very supportive of HB 343, believing that each of its three main components are necessary to assist the DJJ in furthering its goals of rehabilitating the children under its care and doing so in such a way that is sensitive to each child's particular situation and needs. To address the concern that information obtained from the OCS could be misused by the DJJ, she pointed out that that hasn't been a problem to date, adding that both the OCS and the DJJ have the same goal - protecting the children. In conclusion, she thanked the committee for its support of HB 343.

MR. NEWMAN, in response to comments and a question, relayed that he'd contacted former standing master William D. Hitchcock, who, until his recent retirement, presided over Anchorage's Family CARE (Community Assisted Recovery Effort) Court (FCC) - which specifically addresses child in need of aid (CINA) cases - and who said he didn't see anything problematic with HB 343 and thought it to be a good idea, particularly the public-disclosure streamlining the DHSS is trying to achieve with it.

REPRESENTATIVE GRUENBERG expressed a desire for Legislative Legal and Research Services to review the aforementioned amendments additionally labeled 27-LS1394\M.1, 27-LS1394\M.1.a, 27-LS1394\M.1.b, and 27-LS1394\M.2.

VICE CHAIR THOMPSON closed public testimony on HB 343, and relayed that [CSHB 343(HSS)] would be held over.

[2:10:28 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:10 p.m.