

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 6, 2012

1:31 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Dennis Egan
Senator Johnny Ellis
Senator Kevin Meyer
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATIONS: CITIZEN REVIEW PANEL & OFFICE OF CHILDREN SERVICES

- HEARD

SENATE BILL NO. 134

"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 134

SHORT TITLE: CHILD SUPPORT AWARDS

SPONSOR(s): SENATOR(s) KOOKESH

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	HSS, JUD
02/06/12	(S)	HSS AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DOROTHY SHOCKLEY, Staff
Senator Albert Kookesh
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 134 on behalf of the sponsor.

STACY STEINBERG, Chief Assistant Attorney General
Office of Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Addressed legal issues in SB 134.

NANCY MEADE, General Counsel
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 134.

SCOTT CAULDER, representing himself
Fairbanks, Alaska

POSITION STATEMENT: Spoke in favor of SB 134.

SUSAN HEUER, Chair
Citizen Review Panel (CRP)
Anchorage, Alaska

POSITION STATEMENT: Presented information about CRP.

CHRISTY LAWTON, Director
Office of Children Services (OCS)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Gave a presentation on OCS.

ACTION NARRATIVE

[1:31:27 PM](#)

CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Egan, Meyer, Ellis, and Chair Davis. Senator Dyson arrived shortly thereafter.

SB 134-CHILD SUPPORT AWARDS

[1:31:38 PM](#)

Chair Davis announced that the first order of business would be SB 134, Child Support Awards.

[1:35:29 PM](#)

SENATOR ALBERT KOOKESH, sponsor of SB 134, explained that this measure would put the Child Support Civil Rule 90.3 guidelines into statute. Alaska Supreme Court Civil Rule bills can only be changed every four years. One of the advantages of putting Child

Support Civil Rule 90.3 into statute is that it can then be changed at the whim of the legislature. He summarized that SB 134 addresses the amount of money a child could receive through custody cases.

DOROTHY SHOCKLEY, staff to Senator Kookesh, reported that SB 134 changes how child support is allocated from a percentage-of-income system for only the non-custodial parent, to an income shares model where both parents' income is used to calculate the amount of child support. The bill came about due to frustrations following the statewide review process of Rule 90.3 in 2008. Ms. Shockley related that she was advised to put the guidelines into statute so that people could have a voice in custody support hearings. The Alaska Supreme Court admitted that it was a substantive law and could be replaced any time.

MS. SHOCKLEY added that Senator Kookesh's office has received many calls from people who feel there are problems with custody procedures and guidelines. It was suggested that the new guidelines use the income shares model. She noted that 35 states consider the income of both parents in determining child support payments. She said the main goal of the legislation is to give people a voice and to be fair, as well as provide for the child's best interest.

[1:38:11 PM](#)

CHAIR DAVIS requested a sectional analysis.

MS. SHOCKLEY described the information in the sections of the bill. She related that Section 25.28.010 provides guidelines for calculations regarding primary physical custody cases. It also contains an economic table. Section 25.28.020 provides child support guidelines for shared, divided, and hybrid custody awards. Section 25.28.030 provides for a margin of error in the economic table where exceptions to support awards may be needed. Section 25.28.040 addresses health care expenses. Section 25.28.050 provides confidentiality annual income documentation requirements. Section 25.28.060 provides for travel expenses. Section 25.28.070 provides modification to child support awards. Section 25.28.080 addresses third-party custody. Section 25.28.090 provides for dependent tax deductions. Section 25.28.300 is the definitions section.

[1:42:55 PM](#)

MS. SHOCKLEY read from the following sponsor statement:

SB 134 puts the Child Support Civil Rule 90.3 guidelines into statute. In 1987, the Alaska Supreme

Court enacted Civil Rule 90.3. The Supreme Court admitted this was a substantive law that the Legislature could replace at any time. In the 25 years since then, the legislature has not replaced civil rule 90.3 with an actual law. This bill proposes to correct that long-standing deficiency.

One of the major problems with having the child support guidelines set by a court rule is the people affected by current guidelines have not had the opportunity to speak to the individuals with the power to make changes. Instead every four years they are encouraged to write letters or testify before a review committee made up of lawyers and judges who then submit their recommendations to the Supreme Court Justices who make the final decisions. With the rule in statute, individuals will have the opportunity to speak to lawmakers who have the power to make changes. Proposals to amend can be made in the future through the legislative process.

The bill proposes enactment of the current rule into statute with the exception of how the child support obligation is calculated. Currently, the non-custodial parent's support obligation is based solely on his or her income, without regard to what the other parent makes. With this bill it will be changed to an income shares model which calculates support as the share of each parent's income estimated allocation to the child, if the original household were intact.

According to 2005 statistics (Legislative Research Report, November 2010):

Twenty four (24) states establish their child support guidelines statutorily through their legislature while 16 states use court rule only, and 11 states use a combination of rule, commission and or agency.

Thirty five (35) states consider the income of both parents in determining child support payments.

SB 134 changes the word 'court' to 'tribunal' in some cases back to 'court' and adds number (6) to the definition in Sec. 25.28.300 (page 18) to read 'tribunal means the superior court or the child support services agency created in AS 25.27.010.'

[1:45:38 PM](#)

MS. SHOCKELY noted the removal of a section which ordered one or more grandparent to pay child support. Also removed were sections that dealt with the support order form and the commentary.

[1:47:18 PM](#)

STACY STEINBERG, Chief Assistant Attorney General, Office of Attorney General, Department of Law, addressed legal issues in SB 134. She stated that the Department of Law does not take a position on the bill. She explained that Section 25.28.040, the health care expenses section, requires a definition of "reasonable cost", which is necessary to meet federal regulations. One option is to define it as "the cost of insurance does not exceed 5 percent of the net monthly income of the parent required to purchase insurance."

[1:49:44 PM](#)

MS. STEINBERG addressed a federal provision which states that child support cannot be retroactively modified, which is addressed in two sections of SB 134, Section 25.28.050 and Section 25.28.070. The first instance refers to when a parent can request information about the other parent's income. A sentence on page 15, in lines 29 - 31, "If a party has made a reasonable demand for documentation under this subsection, a tribunal may modify a child support arrearage retroactively," violates a federal law on retroactivity. She recommended deleting that sentence.

MS. STEINBERG said the second instance where child support cannot be retroactively modified is on page 16, lines 24 and 25. There is a violation of federal law in the sentence, "A tribunal may not modify a child support arrearage retroactively, except as authorized by AS 25.27.1666(d) and AS 25.28.050(b)." This could be corrected by deleting "and AS 25.28.050(b)."

MS. STEINBERG addressed the advantages of having a delayed effective date of about a year. The new legislation changes the formula for calculating child support. Potentially, this could result in a large number of modifications. She spoke of court modifications that would be necessary. There are currently about 20,000 existing child support orders, of which half are expected to request some sort of modification. Of those, half would be court modifications and would be an increase of up to 5,000 from 700 a year. Regulations would also need to be changed, which would take time. She suggested a one-year delay for the effective date.

[1:55:37 PM](#)

MS. STEINBERG addressed a fourth issue. Federal law requires revisions to Child Support Guidelines every four years to ensure that guidelines meet current regulations, reality, and the economy. The revision process is currently conducted by the Court System; however, if SB 134 becomes law, the Court System would no longer be responsible for that service. That is another issue to consider before passage of SB 134.

[1:57:33 PM](#)

CHAIR DAVIS asked if the sponsor agrees with the changes.

CHAIR KOOKESH said he did agree with the changes and pointed out that amendments addressing the changes are forthcoming. He had no problem with a delayed effective date. He stressed the importance of the income share model, which is the ultimate goal of the bill.

MS. SHOCKLEY explained the fiscal notes. Child Support Services will need an additional 24 temporary staff for a total of \$6 million, \$4 million of which would be from federal receipts and \$2 million in general fund. The Department of Law fiscal note shows an increase in 19 temporary staff the first year in order to process modifications.

[2:00:36 PM](#)

CHAIR DAVIS requested more information about the effect of the bill on Court System positions.

NANCY MEADE, General Counsel, Alaska Court System, addressed a potential fiscal note from the Alaska Court System. She anticipated a need for temporary employees to address the expected influx of parental requests for modification of custody orders. She said she thought changing the current four-year review responsibility to the legislature would not save the court money because it does not cost money. The Chief Justice appoints an existing sitting judge to chair the review committee, which is comprised of six or seven volunteer attorneys.

[2:04:41 PM](#)

CHAIR DAVIS suggested that the amendments could be incorporated into a new Senate Health and Social Services Standing Committee CS, which would give departments time to work on fiscal notes.

[2:05:58 PM](#)

SCOTT CAULDER, testifying on behalf of himself, spoke in favor of the bill. He shared a negative personal experience related to child custody. He referred to a letter from Beth Adams which he said contains excellent suggestions. He thought SB 134 would correct some of the problems with the guidelines and provide greater justice and fairness. He suggested a revision on page 18, lines 18 and 26, to change "shall" to "may".

[2:08:42 PM](#)

SENATOR KOOKESH called the bill simple, but complicated. He was amazed by the cost of the fiscal notes. He said his intent is to benefit the child and he hoped the fiscal note would not discourage passage of this legislation. He said he would continue to work with the Attorney General's Office on the amendments. He said he had no problem with a delayed fiscal note by the Alaska Court System.

[2:10:48 PM](#)

SENATOR DYSON asked if there were negative impacts from this type of legislation in any other states and if there was any opposition in Alaska to this bill.

SENATOR KOOKESH replied that there had been no opposition to the bill. He said the growing trend is the shared model, as depicted in the bill.

SENATOR DYSON asked if there had been any challenging suits in other states.

SENATOR KOOKESH didn't think so.

CHAIR DAVIS offered to provide that information at the next meeting.

SB 134 was heard and held.

At Ease from 2:13 to 2:14 p.m.

**Presentations: Citizen Review Panel & Office of Children
Services**

[2:14:29 PM](#)

SUSAN HEUER, Chair, Citizen Review Panel (CRP), reported that CRP is a federally mandated, voluntary group made up of eight members of varying expertise in child protection interests and concerns. She related that CRP provides oversight to the Office of Children's Services (OCS) and gathers public input on how

well child protection is being delivered statewide. The panel does this by visiting different regions and talking to OCS staff and partner agencies about how well the system is working. The panel provides an annual report to OCS and the legislature.

She said the panel does two site reviews a year based out of hubs, and talks to any partner that works with OCS, such as tribes, troopers, schools, and child advocacy centers. Ms. Heuer showed a list of the communities visited since 2008. OCS has been active since 2002.

She continued to say that CRP is mandated by state and federal law and was created through the federal Child Abuse Prevention & Treatment Act (CAPTA); Keeping Children & Families Safe Act of 2003 and through AS 47.14.205. A unique benefit of CRP in Alaska is that it is the only panel that works with its legislature. CRP identifies and advocates for ancillary services that OCS cannot request. The goal of CRP is to improve the child protection system for the children of Alaska.

[2:17:57 PM](#)

MS. HEUER highlighted the three focus areas of CRP this year: Wasilla, where Director Lawton is closely monitoring the situation and judges are seeing improvements; Bethel, where there is a nearly fully staffed office; and In-home Safety, whose purpose is to acquire data to determine safety of children in the home.

She related that CRP made three recommendations to (OCS) this year. One recommendation is that OCS use the data they are collecting as a management tool. Another recommendation is that when a report of harm is screened in for safety issues and a decision is made to work with the family and keep the child at home, OCS should evaluate the timeliness and effectiveness of the referrals and services to ensure the safety of children receiving "in-home" services. She detailed how the process would work.

[2:26:50 PM](#)

MS. HEUER stated that the third recommendation is that OCS address licensing issues. There is a perception by communities that there is currently no way to remove foster parent status when there is a problem. Another concern is the slow processing of paperwork.

MS. HEUER made suggestions to the legislature. Options need to be explored to obtain housing for OCS rural workers. There is a

need for support for more licensing workers and support staff, pending the upcoming workload study. Finally, there is a need for support for an additional OPA CINA attorney in the Palmer office to continue recent court improvements.

[2:33:57 PM](#)

CHAIR DAVIS commended CRP for working more closely with OCS.

SENATOR DYSON asked if the Child Advocacy Centers (CAC) are working well.

MS. HEUER reported on the Copper River CAC in Gacona that was not working well.

SENATOR DYSON spoke of the difficulty in finding foster placements due to potential foster parents having old criminal or misdemeanor charges which have prevented many from being licensed as foster parents.

MS. HEUER had not heard of that.

SENATOR DYSON asked if there was an impediment to removing bad foster parents.

MS. HEUER did not know, but said CRP will continue to investigate.

SENATOR DYSON spoke of situations where foster care is simply a funding source.

MS. HEUER had not heard of that problem recently. There were concerns expressed about an instance when there was a report of harm in a foster care home, children were removed, and other children replaced them.

SENATOR DYSON asked if it was due to a record-keeping problem or bad judgment.

MS. HEUER said it was bad judgment.

[2:38:36 PM](#)

SENATOR EGAN spoke of the importance of the small Southeast communities who did not receive reviews. He encouraged CRP to visit those communities.

MS. HEUER recalled a visit in 2008 to Southeast which had great OCS reports.

SENATOR EGAN encouraged CRP to visit again.

SENATOR MEYER inquired if children in foster homes are available for adoption.

MS. HEUER did not know.

SENATOR MEYER asked if CRP encourages adoption.

MS. HEUER said absolutely; however the best outcome is for children to return home or "reunification." There is another category of foster parents that are set up as adoptive parents.

[2:42:36 PM](#)

SENATOR MEYER assumed some foster children did not have parents. He asked what happened to children when they turn 18.

MS. HEUER said children can stay in custody until they are 19. After that the child must consent to remain in custody. More funding and opportunities are needed for older foster children 18-21.

SENATOR MEYER asked if the older children are tracked after age 18.

MS. HEUER deferred to Ms. Lawton to answer.

[2:45:43 PM](#)

CHRISTY LAWTON, Director, Office of Children Services (OCS), Department of Health and Social Services (DHSS), addressed the recommendations of Alaska's Citizen Review Panel. She related how data is processed in OCS using the new electronic data management system. The data is used to track caseloads and look at individual office performance, and to assess progress on a performance improvement plan required by the federal government. Federal agencies rate Alaska's quality assurance reviews as "the best that they've seen" in that they mirror federal reviews. The field office is required to create a performance improvement plan to address areas of growth. She concluded that OCS is using data as a management tool on a daily basis.

[2:49:08 PM](#)

MS. LAWTON responded to in-home services recommendations. She explained how information is collected during initial assessments leading to a determination whether the child is safe or at high risk. The first attempt is to engage the family on a

volunteer basis. Only a small percentage of families are receptive to a safety plan. More likely, most of the cases require intervention and foster care. Once a child comes into foster care, other support systems are then put into place. In-home service delivery has been an area of growth for OCS the last two years. OCS has provided more training in Fairbanks and Anchorage, fine-tuning the level of skill needed to identify families that do and do not need foster care.

2:54:05 PM

MS. LAWTON addressed licensing concerns. She noted she would follow up on the example previously mentioned. She emphasized that if OCS receives a report of maltreatment in a foster home, and an investigation finds that is, in fact, the case, their license would be revoked. It is a process that takes time. OCS would not place other foster children in that home. She said placement is at the agency's discretion and OCS is not under obligation to place a child in a foster home that is inadequate.

MS. LAWTON highlighted improvement in the Wasilla office which had no complaints filed during the month of January, as compared to last year when 12 were filed. Bethel continues to be a challenge with complex, generational issues. Staff housing is also an issue in the Bethel area, and staff are often hired from out of state, which presents issues and high turnover. There is a need to recruit local employees.

CHAIR DAVIS suggested meeting with CRP to talk further about their recommendations. She appreciated the improvement in in-home services. She had no answers for the housing problem and invited Commissioner Streur to address the issue.

3:00:25 PM

WILLIAM STREUR, Commissioner, Department of Health and Social Services (DHSS), reported that the department has met with the Alaska Housing Finance Corporation (AHFC), which has provided financing for housing various entities. He said he has also approached the Yukon Kuskokwim Health Corporation (YKHC) because Bethel is the area that has the greatest housing challenges. He offered to be more aggressive about finding housing solutions.

SENATOR DYSON asked if it was difficult to find qualified rural foster parents.

MS. LAWTON responded yes.

SENATOR DYSON suggested not disqualifying potential foster parents who have an old criminal record. Turning to another topic, he asked if OCS receives reports of statutory rape sexual abuse.

MS. LAWTON said yes.

SENATOR DYSON requested last year's reports. He asked if the reports show who originates them.

MS. LAWTON did not know if the reports distinguished the type of sexual abuse.

SENATOR DYSON expressed sadness about the tragedy of the need for foster care. He mentioned the problem of meeting federal guidelines for permanent placement of children, which can take anywhere from 12 to 18 months. Historically, the problem has been court delays in processing the termination of parental rights. He asked how that process is currently going.

MS. LAWTON pointed out that significant progress has been made in that area by working with the court system to devise strategies to speed up the process.

[3:04:18 PM](#)

SENATOR DYSON asked if police have knowledge about which homes are foster homes.

MS. LAWTON said they do. Foster parents are flagged.

SENATOR MEYER asked if kids are tracked after they "age out" of foster care.

MS. LAWTON replied that they are tracked, but it is challenging.

SENATOR MEYER requested that information.

MS. LAWTON reported that 38 young adults are currently taking advantage of the college assistance program.

[3:06:24 PM](#)

CHAIR DAVIS thanked Ms. Lawton for the improvements in OCS. She expected the biggest problem was the ability to keep staff, not just in rural areas.

MS. LAWTON agreed. She said the staff turnover rate was 34 percent. Out of 495 employees, 168 positions are in transition.

3:07:40 PM

There being no further business to come before the committee,
Chair Davis adjourned the meeting at 3:07 p.m.