ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
March 29, 2016
3:03 p.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Liz Vazquez, Vice Chair
Representative Neal Foster
Representative Louise Stutes
Representative David Talerico
Representative Geran Tarr

MEMBERS ABSENT

Representative Adam Wool

COMMITTEE CALENDAR

HOUSE BILL NO. 200
"An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 334
"An Act relating to visitation and child custody."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 200
SHORT TITLE: ADOPTION OF CHILD IN STATE CUSTODY
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/16/15	(H)	READ THE FIRST TIME - REFERRALS
04/16/15	(H)	HSS, JUD
03/29/16	(H)	HSS AT 3:00 PM CAPITOL 106

BILL: HB 334
SHORT TITLE: CHILD CUSTODY;DOM. VIOLENCE;CHILD ABUSE
SPONSOR(s): MUNOZ

02/22/16	(H)	READ THE FIRST TIME - REFERRALS
02/22/16	(H)	HSS, JUD
03/22/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE(HSS)
03/24/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/24/16	(H)	<Bill Hearing Rescheduled to 3/29/16>
03/29/16	(H)	HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

CHRISTY LAWTON, Director
Central Office
Office of Children's Services
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Presented the sectional analysis and answered questions during the discussion of HB 200.

KATIE LYBRAND, Assistant Attorney General
Child Protection Section
Civil Division
Department of Law
Juneau, Alaska
POSITION STATEMENT: Answered questions during discussion of HB 200.

CRYSTAL KOENEMAN, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions on HB 334 on behalf of the bill sponsor, Representative Munoz.

PAUL GRANT, Attorney
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 334.

FRED TRIEM, Attorney
Petersburg, Alaska
POSITION STATEMENT: Testified in support of HB 334.

BRENDA STANFILL
Interior Alaska Center for Non-Violent Living (IAC)
Fairbanks, Alaska
POSITION STATEMENT: Testified in opposition to HB 334.

SAMANTHA WEINSTEIN, Attorney
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 334.

JANE ANDREEN
Douglas, Alaska
POSITION STATEMENT: Testified in opposition to HB 334.

REPRESENTATIVE CATHY MUNOZ
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as the sponsor of the bill, HB 334.

ACTION NARRATIVE

3:03:55 PM

CHAIR PAUL SEATON called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m. Representatives Seaton, Talerico, Stutes, and Vazquez were present at the call to order. Representatives Foster and Tarr arrived as the meeting was in progress.

HB 200-ADOPTION OF CHILD IN STATE CUSTODY

3:04:21 PM

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 200, "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

3:05:53 PM

REPRESENTATIVE VAZQUEZ moved to adopt the proposed committee substitute (CS) for HB 200, labeled 29-GH1262\W, Glover, 3/24/16, as the working draft.

CHAIR SEATON objected for discussion.

3:06:17 PM

CHRISTY LAWTON, Director, Central Office, Office of Children's Services, Department of Health and Social Services, said that proposed HB 200 offered "something for everybody and has a lot

of positive attributes that will really improve services and access for child in need of aid (CINA) matters. She described the legal background for an adoption case, listing a Supreme Court case in Alaska, Native Village of Tununak v. State of Alaska, Department of Health and Social Services, Office of Children's Services, and H.S. and K.S., case number 334 P.3d 165, as well as the U.S. Supreme Court case, 133 S.Ct 2552, Adoptive Couple v. Baby Girl, in South Carolina. She explained that the U.S. Supreme Court case had been settled prior to settlement of the Alaska case, and it stated, in sum, that in order to be considered for adoption of the child, there must first be filed a formal petition to adopt the child. The Alaska Supreme Court had then taken its lead from the decision by the U.S. Supreme Court. She relayed that in the Alaska case, although the foster family had filed a formal petition to adopt, the grandmother had not filed, even though at that time it was not a requirement to be considered. She reported that the Alaska agencies, along with the governor's office, the Alaska Federation of Natives, and other tribal entities came together to seek a solution reconciling the U.S. Supreme Court decision and the federal law recognized since 1978 under the Indian Child Welfare Act (ICWA). She explained that this law specified placement preferences when children were going to be adopted or placed. She added that non-native children also had placement preferences that needed to be followed. Under ICWA, native child placement preferences were extended to tribal members of the child or the parent. She explained that, as the formal application for adoption could be a very bureaucratic process to formally recognize consideration, it was now suggested to instead use a proxy for adoption, in lieu of the formal petition. She said that the proxy could be submitted "orally, in writing, via fax, in a meeting, in a hearing, in a number of different ways where they basically just state their intent to be considered for the immediate and permanent placement of the child." She pointed out that this would not negate the eventual requirement to file a formal petition to adopt, as it was still necessary to provide this documentation to the court. The proxy would preserve and protect the intention for recognition by the ICWA preferences, and would subsequently initiate the policy of evaluation for appropriateness of placement. This report would then be filed with the courts for consideration by all the parties. She further explained that the adoption hearings would be conjoined with the CINA case. She stated that the proposed bill provided for a mechanism to streamline a number of different legal decisions that could impact a child in the state child welfare system. She pointed out that, currently, adoption, guardianship, and civil custody matters all happened

in different courts, often with different judges and at different times, which often created redundancies and delays for the involved parties in the quest for permanency for the child. She stated that the proposed bill would provide a one judge, one child, one family model, such that all the hearings would be conjoined under a CINA hearing, thereby allowing the judge to be most informed and best equipped to provide a good judicial determination. She offered her belief that this would create significant efficiencies for all the involved parties, and would expedite children to permanency.

3:13:48 PM

MS. LAWTON paraphrased the changes from Version A to Version W, Detailed Sectional Analysis, [included in members' packets], which read:

> Section 1: adds to the legislative intent "guardianship and civil custody matters" in addition to adoptions.
>
> Section 2: adds language to allow petitioners n adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-aid case objects.
>
> Section 3: adds reference to AS 13.20.050(b).
>
> Section 4: adds language to allow petitioners in adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-aid case objects.
>
> Section 5: changed "must" to "shall" and adds reference to AS 25.23.030(d).

3:15:18 PM

MS. LAWTON moved on and stated that there were no changes to Section 6, and paraphrased the changes to Section 7 in the sectional analysis, which read:

> Section 7: This section now includes that in addition to guardianship and adoption cases needed to be heard within the child-in-need-of-aid matter, so too, shall civil custody matters where there is action which

involves divorce or legal separation proceeds regarding a child in state's custody.

3:15:49 PM

MS. LAWTON continued and advised there were no changes to Section 8, and paraphrased the changes to Section 9 in the sectional analysis, which read:

Section 9: adds reference to three newly created sections AS 47.10.111/112/113. AS 47.10.111 provides further clarity about what happens when a petition is filed, how it will be held in abeyance until the permanent plan is reviewed by the court. It further establishes timeframes the department must meet. It further adds clarity about party status and who would be considered a party or not.

AS 47.10.112 provides the clarity and language about the use of a "proxy" and describes how the "proxy" seeks to preserve the placement preferences outlined under the Indian Child Welfare Act for those children where the Act applies. It also further defines extended family member within the meaning of ICWA, and that a biological parent individually or through counsel may also request a "proxy" made to the department on behalf of an extended family member, member of the Indian child's Tribe, or other Indian family member.

CHAIR SEATON requested clarification that Section 9 created the proxy system.

MS. LAWTON replied yes.

3:17:18 PM

MS. LAWTON continued paraphrasing the changes from Version A to Version W of the proposed bill, which read:

Section 10: clarifies that the definition of "adult family member" is in statute, and adds the ICWA language for extended family member.

Section 11: clarifies that the definition of "adult family member" is in statute, and adds the ICWA language for extended family member.

3:17:45 PM

MS. LAWTON continued:

> Section 12: added new paragraphs to more clearly define "Indian child" and "Indian child's Tribe".
>
> Section 13: adds further detail to the definition of "family friend" that now includes members of Indian child's Tribe, a member of the Tribe in which the child's biological parent is a member or another Indian family member.
>
> Section 14: adds language indicating the petition to adoption can also be brought in the district where the petitioner resides.

MS. LAWTON shared there were no changes to Section 15, and moved to Sections 16 and 17, which read:

> Section 16: further states that Alaska Adoption Rules now indicate that a proceed shall be heard as a part of the child-in-need of-aid matter or in the judicial district in which the petitioner resides if notice is provided to the parties and no one objects.
>
> Section 17: adds clarity that the court rules now include petitions for adoption or legal guardianship. Also, details about the findings the court must make about whether the petitioner is entitled to placement preferences under ICWA or state statute, whichever apply as well as the compliance of placement preferences in relation to a proxy or if there is good cause to deviate from those preferences.

3:19:21 PM

MS. LAWTON then directed attention to Section 18, which read:

> Section 18: adds reference to new subsections related applicability.

MS. LAWTON stated that there were no changes to Section 19, and continued to Sections 20 and 21, which read:

Section 20: clarifies that regulations can be adopted upon the signing of the bill but all the other provisions are not effective until January 1, 2017 to give time for implementation.

Section 21: clarifies that regulations can be adopted upon the signing of the bill but all the other provisions are not effective until January 1, 2017 to give time for implementation.

3:20:02 PM

REPRESENTATIVE STUTES asked whether this proxy was related solely to the Indian children.

MS. LAWTON replied that the use of a proxy was only applicable if the child was qualified under ICWA, and then family members, both native and non-native, could use the proxy for that process.

REPRESENTATIVE STUTES said that her problem with the proposed bill was that, as there were many children in foster homes wishing to be adopted, this "excludes the Filipino community, this excludes the Caucasian community, this excludes any other minority." She advised this was problematic for her, to focus on "just the Indian or the Native Alaskan group." She shared a conversation with Representative Gara, in which he expressed the possibility of incorporating an amendment which would include children of all ethnicities.

3:21:46 PM

MS. LAWTON reiterated that the provision for the proxy was specific to Alaska Native children under the Indian Child Welfare Act, which is specific to this group. She reported that all other children had placement preferences for adoption, as well as temporary placement that outlined a hierarchy for looking at family relatives and family friends prior to looking at strangers. She expressed concern for a proposed amendment because currently there is a zero fiscal note, and any changes would make it difficult to manage without additional resources.

3:23:10 PM

KATIE LYBRAND, Assistant Attorney General, Child Protection Section, Civil Division (Juneau), Department of Law, in response to Representative Stutes, clarified that the other provisions of

the proposed bill related to guardianship and adoption being heard as part of the child-in-need of aid proceedings applied to all children coming into state custody. She stated that there were placement preferences, outlined in state statute, for children not subject to the Indian Child Welfare Act (ICWA), and that the proposed bill did not change these preferences. She explained that the adoptive placement preferences under ICWA were triggered by a formal petition to adopt, as supported by the U.S. Supreme Court. She stated that the proposed bill only addressed this barrier, hence its focus on Indian children.

REPRESENTATIVE STUTES relayed that she was clear that this "relates to some kids in foster home and not others." She stated that this troubled her as there were so many children in foster care and the state was proposing legislation that was not treating everyone equally. She questioned the cost to give this advantage to all children.

3:25:49 PM

REPRESENTATIVE VAZQUEZ directed attention to the proposed committee substitute, Version W, page 1, line 9, and asked about the "additional flexibility" referenced.

MS. LAWTON explained that this "additional flexibility" referred to the initial use of a proxy in lieu of the formal petition during the identification of interest for temporary and permanent placement.

REPRESENTATIVE VAZQUEZ asked if the proxy was a less formal means of communication of the desire to adopt.

MS. LAWTON said that this was the current mechanism which allowed individuals to identify themselves to the courts and the Office of Children's Services as interested in the immediate and permanent placement of children.

REPRESENTATIVE VAZQUEZ asked if the proxy would comply with the U.S. Supreme Court decision.

MS. LAWTON said that it would.

REPRESENTATIVE VAZQUEZ asked for the copy of the U.S. Supreme Court decision.

REPRESENTATIVE VAZQUEZ referenced page 2, line 1 - line 7, of Version W, and asked if a "tribal customary adoption" was within the inherent authority of the tribe.

MS. LAWTON explained that there were currently three tribes in Alaska that had exclusive jurisdiction over child welfare matters, while the remaining 226 tribes had concurrent jurisdiction with the State of Alaska in these child welfare matters. This allowed for assertion of jurisdiction for movement of a case to tribal court at any time, with the state no longer involved. She noted that tribal customary adoptions could be kept in the state courts with the tribe and family working in conjunction with the state; however, as the final adoption was often implemented through the tribal customary adoption, there was a mechanism to carry out the adoption while allowing the family to continue receiving support from the state. She stated that this was more culturally appropriate.

MS. LYBRAND, in response to Representative Vazquez, added that the main difference was for the entire adoption being performed by the tribe, whereas the other situation was to have the adoption take place in tribal court although the family would continue to receive support and have involvement from the state.

REPRESENTATIVE VAZQUEZ asked which sections applied to both native and non-native children in custody.

MS. LYBRAND directed attention to Version W and said that in Section 9 only the added AS 47.10.112 specifically applied to children subject to the Indian Children Welfare Act; all other parts of Section 9 applied to all children. She said that many of the sections, including Sections 2, 3, 4, 5, 6, 7, and 8 applied to both children subject to ICWA and those who were not. She noted that the specific amendment in Section 10 only applied to Indian children, as well as the amendments clarifying definitions for Indian children in Sections 11, 12, and 13. She relayed that Section 14, 15, 16, 17, 18, 19, and 20 applied to all children in state custody.

REPRESENTATIVE FOSTER stated his support of the proposed bill, and although it was not all inclusive, there were many good things. He stated his support for any efforts to include non-natives, and emphasized that the ICWA provisions were very important to his Alaska Native constituents.

3:35:32 PM

REPRESENTATIVE VAZQUEZ asked for clarification that, as the proxy makes it more accessible to individuals, why it was only applicable to Alaska Native children.

MS. LAWTON explained that this was specific to Alaska Native children to ensure that the adoption placement preferences and provisions as outlined by ICWA were recognized and considered by the courts and the parties.

REPRESENTATIVE VAZQUEZ said she that she still did not understand.

MS. LYBRAND explained that the intent of the proxy procedure was to preserve the adoption placement preferences in ICWA which only applied to Indian children. She reiterated that there were existing placement preferences which applied to all children when they came into state custody. She stressed that the department was always striving to first place children with family, and those preferences already existed in statute. She relayed that this was seeking to address that specific issue for Indian children in light of the recent U.S. Supreme Court decision that a formal petition was necessary to trigger the adoptive placement preferences. The proposed bill would reduce that barrier by allowing for the proxy procedure.

MS. LAWTON clarified that the court system was working on the petition form to adopt, in order to make it easier for all petitioners and remove the need for an attorney. She pointed out that in all the scenarios, it would be necessary for completion of the formal petition "at some point along the continuum." She reported that, for people interested in adopting children not covered under ICWA, there could be a formal petition to adopt or just a verbal request for adoption to initiate the consideration for evaluation of placement. She stated that for the ICWA adoption placement preferences to be adhered to, the proxy could be submitted in lieu of the petition.

REPRESENTATIVE STUTES asked if the proxy would eliminate some of the time involved during the formal petition process.

MS. LAWTON explained that, ultimately before an adoption could be finalized, an adoption petition would have to be filed.

REPRESENTATIVE STUTES asked if, as the proxy eliminated some of the up-front time, why this was not applicable to all everyone.

MS. LAWTON replied that this was a timing issue.

REPRESENTATIVE STUTES asked why this option could not be tailored to offer to all children.

CHAIR SEATON offered his understanding that, as the proxy allowed for the ICWA priorities to be in place, it was offered to tribal members. The proxy allowed for the preference of tribal members. He mused about a way to add another proxy for a new set of preferences other than those preferences used every time a child was brought into custody. He pointed out that there was not a tribal membership preference defined for other groups.

MS. LAWTON expressed her agreement that this was a good representation.

REPRESENTATIVE STUTES reiterated her interpretation for the proxy.

MS. LAWTON, in response to Representative Stutes, said that there may have been some miscommunication. She explained that the proxy was a timing issue, it did not change the efficiency or speed for the case, but simply provided the court a formal means to give recognition to the federal law for placement provisions offered to Indian children which were different than all other children for the reasons outlined in the act [ICWA] when it was created in 1978. She noted that these reasons still existed. She stated that this preserved that decision for the record when discussion arose for permanent placement of the child.

REPRESENTATIVE STUTES questioned whether the proxy had anything to do with timing.

MS. LAWTON replied that she did not understand the question about timing. She reiterated that, in order for the court to recognize that there were placement preferences for children covered by the ICWA, it was not necessary to file a petition "to call that out."

REPRESENTATIVE STUTES said that it did not make sense to her.

3:48:14 PM

REPRESENTATIVE TARR asked to clarify that, as tribal governments had sovereignty, a relationship that the federal government did

not have with other ethnic groups, this made the placement preferences unique.

MS. LAWTON replied "yes."

REPRESENTATIVE TARR asked if, as the standard practice was to first place a child with a family member, then all children were being treated in the same way in order to respect cultural and ethnic background. She relayed that the standard practice ensured that initial efforts were made to "match that up."

MS. LAWTON replied that other federal laws map out the responses and standard practice of child welfare for any ethnicity.

REPRESENTATIVE TARR pointed out that the tribal relationship did not exist with other cultural groups.

MS. LAWTON expressed her agreement that this was a unique situation, as the significant difference with ICWA was not race based, but was based on a political status as Alaska Natives had an inherent right to govern and have jurisdiction over their families, a government to government relationship. She pointed out that no other ethnicity benefited from such a relationship.

REPRESENTATIVE STUTES asked if she could file a proxy to stop the adoption process in order for the courts to recognize that she was a relative and that she wanted custody of the child.

MS. LAWTON replied that, unless the child was covered under ICWA, she could not file a proxy, but that she could file a petition in court or contact the Office of Children's Services (OCS) and state her interest. At that point, OCS would notify the parties that there was an interested relative and would work with her to establish placement.

REPRESENTATIVE STUTES interrupted Ms. Lawton and said, "So, the short answer is no."

MS. LAWTON continued and stated that OCS would collaborate with her, regardless.

REPRESENTATIVE STUTES reiterated, "So, the short answer is no."

MS. LAWTON stated that the proxy would not apply if this was not an Indian child.

REPRESENTATIVE STUTES said, "Yes, the answer is no."

MS. LAWTON replied, "[The answer to] your original question, if that would apply to -- assuming you weren't talking about a child covered under the Indian Child Welfare Act, yes, is no."

3:53:11 PM

CHAIR SEATON directed attention to the proposed committee substitute, Version W, page 1, line 9, and read: "an individual seeking immediate permanent placement of an Indian child in state custody with additional flexibility to preserve and apply the placement preferences outlined in the Indian Child Welfare Act with respect to that individual." He stated his understanding that an individual with one of these preferences, under federal law that was different than state preferences, including tribal membership, who wanted to seek immediate and permanent placement would use this to notify the court that they wanted to apply these placement preferences as outlined in ICWA.

MS. LAWTON replied that the proposed bill would provide for the recognition of those preferences by the courts.

CHAIR SEATON asked whether, before a court could act on these in a final adoption, it was necessary for the standard application to be filed.

MS. LAWTON replied that the court would be overseeing the people wanting the child for adoption, assisting in determination of the best placement for the child, and providing its input, before an adoption was finalized. She relayed that it might not necessarily be the person who had filed the proxy.

3:55:26 PM

REPRESENTATIVE TALERICO asked if a proxy could be filed on your own behalf.

MS. LAWTON explained that the proxy could be filed on behalf of a family member or other tribal member through the tribe, or the parent could identify someone through the parent's council.

REPRESENTATIVE TALERICO offered that, although the customary definition of proxy was to take action on behalf of someone else, someone was allowed to submit a proxy on their own behalf.

MS. LAWTON expressed her agreement.

CHAIR SEATON clarified that it would only be inclusive of those outlined on the preference established in ICWA, and would not include anyone outside this system.

MS. LAWTON expressed her agreement and stated that the preferences for a relative to an Indian child often included relatives who were non-Native, and they would be included.

3:57:23 PM

REPRESENTATIVE TARR reflected on why the tool of a proxy could not be used in other adoption cases. She listed the process for any adoption, which included the immediate search for family members for possible placement early in the process. She mused that, by final adoption, the proxy was not as important. She asked if this was a fair comparison, and if it was necessary for a proxy in these other cases.

MS. LAWTON expressed agreement that the law mapped out specific timeframes, such that once a child came into custody, there had to have been an exhaustive relative search, then relatives were noticed for their right to be considered for placement. She pointed out that this was an on-going process. She said that, in all adoption proceedings, relatives denied for placement had an opportunity to have the decision reviewed. She offered her belief that the use of a proxy allowed for many family members to be notified and the placement preferences [under ICWA] to be considered. She pointed out that, although they may not dictate, the placement preferences had to be recognized and considered by the court in acknowledgement of the federal law.

[HB 200 was held over.]

HB 334-CHILD CUSTODY;DOM. VIOLENCE;CHILD ABUSE

4:01:48 PM

CHAIR SEATON announced that the final order of business would be HOUSE BILL NO. 334, "An Act relating to visitation and child custody."

4:02:14 PM

CRYSTAL KOENEMAN, Staff, Representative Cathy Munoz, Alaska State Legislature, reminded the committee that HB 334 was introduced to give judges discretion in determining child custody schedules, in the best interest of the child. She

shared that during the numerous discussions with judges and attorneys regarding the statutes surrounding the child custody schedules, there had been a request for discretion, as the rebuttable presumption could result in unintended consequences. She acknowledged that this was an emotional issue, and she expressed a desire to protect the children while not damaging the bonds between parents and children. She mentioned that nothing in the proposed bill prevented a judge from consideration of any evidence of domestic violence or sending someone to a batterer's intervention program or to substance abuse counseling.

4:05:07 PM

MS. KOENEMAN paraphrased from the sectional summary [included in members' packet], which read:

> Section 1. Changes the phrase "has committed a crime involving domestic violence" to "has been convicted of a crime involving domestic violence" for purposes of the court's authority to set certain conditions for visitation in proceedings involving domestic violence.
>
> Section 2. Changes the phrase "a history of perpetrating domestic violence" to "has been convicted of a crime involving domestic violence" for purposes of the rebuttable presumption against delegating a deployed parent's visitation rights to certain family members in a custody or visitation proceeding.

4:05:50 PM

MS. KOENEMAN moved on to Section 3, Section 4, and Section 5, which read:

> Section 3. Changes the phrase "a history of perpetrating domestic violence" to "has been convicted of a crime involving domestic violence" for purposes of the rebuttable presumption against delegating a deployed parent's visitation rights to certain family members in a proceeding for modification of a custody or visitation order.
>
> Section 4. Changes the phrase "if one parent shows that the other parent has sexually assaulted or engaged in domestic violence" to "if one parent has been convicted of a crime involving sexual assault or

domestic violence" relating to the factors that a court may consider in determining the best interests of the child for custody. Adds evidence of sexual abuse in the proposed custodial household to the list of factors a court may consider in determining custody.

Section 5. Changes the phrase "a history of perpetrating domestic violence" to "has been convicted of a crime involving domestic violence" relating to a rebuttable presumption in custody judgments.

4:06:43 PM

MS. KOENEMAN discussed Section 6, Section 7, and Section 8, which read:

Section 6. Deletes the reference to the rebuttable presumption against granting custody to a parent who has a history of perpetrating domestic violence.

Section 7. Changes the phrase "a history of perpetrating domestic violence" to "has been convicted of a crime involving domestic violence" for purposes of custody determinations in cases where the court finds that both parents have been convicted of a crime involving domestic violence.

Section 8. Changes the phrase "a history of perpetrating domestic violence" to "has been convicted of a crime involving domestic violence" for purposes of the conditions a court may set before allowing supervised visitation.

4:07:44 PM

MS. KOENEMAN concluded with Section 9, which read:

Section 9. Limits the applicability of the changes made by the bill to visitation and custody orders issued on or after the bill's effective date.

4:08:04 PM

CHAIR SEATON asked Ms. Koeneman to discuss rebuttable presumption and review its interpretation and function.

MS. KOENEMAN explained that currently, if there had been one serious incident of domestic violence or more than one instance of domestic violence, then the rebuttable presumption would take place. In determining the history of domestic violence, the judges used a preponderance of evidence. She relayed that the application could include a domestic violence order or a restraining order that had been put in place. She indicated that [even one] incidental contact violation of a restraining order would invoke the rebuttable presumption. She declared that this would result in the loss of sole or joint legal or physical custody of the child, and there could be only a supervised visitation. She explained that a judge could order attendance at a batterer's intervention program, although a prerequisite was the admission of guilt. She pointed out that not admitting guilt, even when a person truly felt they had not done anything wrong, would prevent entry into the batterer's intervention program.

CHAIR SEATON asked for clarity to the rebuttable presumption.

MS. KOENEMAN explained that with a rebuttable presumption, after completion of the batterer's program, the person could return to the judge and ask for a change in the custody schedule.

4:12:05 PM

CHAIR SEATON opened public testimony on HB 334.

4:12:41 PM

PAUL GRANT, Attorney, shared his background in family law and as a volunteer with Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), although, as a legal practitioner, he stated his strong support of the proposed bill. He stated his philosophical objection to presumptions in general, and he opined that presumption meant an essential conviction of wrongdoing without any showing particular to the person.

MR. GRANT paraphrased from his written testimony [included in members' packets], which read as follows [original punctuation provided]:

> I write in strong support of HB 334. As a private practice lawyer with extensive experience in custody litigation, it has been my observation that the domestic violence provisions of AS 25.24.150 (g) et seq. are often used not for their intended purpose,

the protection of children from harm, but rather to gain a tactical advantage in custody disputes. It has been my further observation that “the presumption” is very often applied in cases in which there has been absolutely no documented harm to the child, but only situational or technical violations of the law having no possible bearing on the safety or best interests of the child. As an example, let me cite a hypothetical case – but one that is very similar to cases in which I have been involved. The father, during an argument with mother, slammed a door, causing damage to the door frame. The father was never charged with a crime. Their child was in the house but there is no evidence the child actually witnessed the incident (he may have heard the argument). The mother obtained a domestic violence restraining order, claiming that the door slam was an assault, and 1 also that the door damage was malicious destruction of property (both “crimes of domestic violence” within the meaning of AS 24.25.150). Subsequently, the father inadvertently violated the protective order by attempting to speak with the mother when he encountered her in the grocery store. Since no conviction of a crime is required under the statute, the father was now guilty of two incidents of domestic violence, and in the ensuing custody case, the court had no option but to apply the presumption of domestic violence. The father was reduced to minimal supervised visits with his son. Unfortunately, the only visitation supervisors he could find charged $75 per hour for supervision services. Because he was paying full child support, he simply could not afford to see his son, and consequently that relationship has been largely destroyed. What is remarkable about this very common scenario is that there was absolutely no demonstrated harm to the child caused by the supposed two acts of domestic violence. There was no physical violence directed at any person involved. There was no nexus between the acts of the father and the best interests of the child. Yet, on this flimsy showing, the strong relationship between the father and his son has been functionally destroyed. The provisions of HB 334 requiring actual conviction of crimes of domestic violence, rather than just “preponderance of evidence” allegations, will go a long way toward remedying these abuses. Another admirable feature of the bill is that it confines consideration of convictions to a

reasonable 5 year period under AS 25.20.061. However, I would suggest that the 5 year limitation set out in AS 25.20.061 be included also in AS 25.24.150. This would clarify the legislature's intent to limit consideration of domestic violence allegations to a reasonable time period. As interpreted currently by the Supreme Court, because there is no time limitation imposed under AS 25.24.150, the courts are required to consider allegations of domestic violence that have not been actively litigated, no matter how old, and no matter if the parties settled their custody dispute. Here is an example that shows the unjust results that can flow from this rule. I recently completed a six day trial in a custody modification case that was largely based on allegations of domestic violence that were 8 to 10 years old. The parties had settled their case without litigating the DV allegations in 2009. The mother now sought to have the court impose the DV presumption even though the parties had shared physical and legal custody since their separation in 2008. As you can imagine, the difficulty of disproving allegations that are ten years old is tremendous. Fortunately the mother was found not to be credible and the motion was denied; however, the parties spent six days of the court's valuable time getting to that result. Had there been a statute of limitations on allegations which might trigger the presumption in AS 25.24.150, the case would never have been brought. A final thought on the bill is this, and I recognize that it may be controversial. It seems to me that the current legislation conflates protection of the child with protection of the former spouse. In theory, there is no reason that the former spouse needs protection; to the extent that it is used that way without considering the negative impact on the relationship of the child to the alleged perpetrator, it can actually do harm to the child. I believe that there should be some consideration given to narrowing the list of triggering crimes of domestic violence to ones in which the petitioner/plaintiff can demonstrate a direct impact on the well-being of the actual children involved (rather than a hypothetical or theoretical impact on children in general, or an impact on the other parent). I would like to see the bill amended to require both conviction and a showing that harm occurred or is likely to occur to the child involved in the actual case before the court. With these minor

qualifications, I heartily applaud the legislation. This is a set of statutes that has been misused for far too long. Many parental relationships (usually, though not always of fathers to their children) have been destroyed based on completely hypothetical and theoretical harms that simply do not exist in the particular case before the court. HB 334 is a great step toward remedying the situation.

MR. GRANT offered his belief that the proposed bill was a very good start at resolution for some of the problems.

4:20:52 PM

FRED TRIEM, Attorney, paraphrased from a prepared document, [included in members' packets], which read as follows [original punctuation provided]:

Six arguments in support of the original bill first presented before CS:

#1 Original HB 334 eliminates a vague, ambiguous, ill-defined term: “a history of perpetrating” with a precise term: “convicted”.

#2 Vague law provokes disagreement – inspires, invites litigation.

#3 H&SS Comm Substitute is step backwards replaces precise with vague “clear and convincing evidence” which is not a precise legal term.

#4 Original HB 334 will streamline judicial proceedings by omitting collateral trials on side issues (a) “committed a crime”; (b) “a history of perpetrating DV”; “a history of perpetrating”; (c) “shows that the other parent has sexually assaulted or engaged in domestic violence”; [presumption of] “a history of perpetrating”; multiple: “a history of perpetrating” (8 times) ….

#5 Protects the parties by assuring that (a) DV accusation has been brought in a timely fashion (b) with fair advance notice to the accused, and (c) has been adjudicated by a judge and jury.

#6 Will conserve judicial resource: reduce judicial burdens, save court time, attorney efforts (public & private attorneys), will save court system money $ by lowering number of disputes and reducing extent of litigation.

Summary: HB 334 replaces vague, ambiguous law with accurate, precise law.

Beauty of the Original Bill: will reduce litigation and judicial work, save Alaska Court System time and money, discourage wasteful legal disputes.

4:27:09 PM

BRENDA STANFILL, Interior Alaska Center for Non-Violent Living (IAC), paraphrased from a prepared statement [included in members' packets], which read as follows [original punctuation provided]:

I am following up on a phone call that I made to your office yesterday. I know things are very busy and wanted to make sure I connected with your office to state my strong concerns with HB334 passed from House Health and Social Services. In the original bill the language for when the rebuttable presumption to the issue of domestic violence and custody would be raised was changed to require a conviction of domestic violence instead of a "history defined as two or more incidences or one serious injury event" There was strong opposition to this change in language as often times these cases are not pursued by the district attorney, some areas have no law enforcement to call, untrained law enforcement arrest the victim when not recognizing the difference between self-defense and primary aggressor, and that someone could have a conviction due to a very bad time in their life but not truly be an individual who uses abusive tactics to control their family. In response to the concerns the bill sponsor rewrote the bill, however, now the proposal is to require clear and convincing evidence of the domestic violence instead of the preponderance of the evidence that is normally required in custody consideration, replacing how history was determined as two instances to just be history determined at the discretion of the courts, or a conviction for domestic violence. In addition, it removes the rebuttable

presumption and treats domestic violence as just another issue considered in custody. Having worked on the Criminal Justice Commission this year I realize there are two sides to each issue coming before you and that you must weigh out what is best for our state in the larger scheme of things and not just based upon one or two cases. Currently the information being presented on why this bill is needed is based those one or two cases where it didn't appear to go as planned. I have heard a few Dad's feel they were unjustly impacted by this presumption when it was applied to them and a few attorneys that appear to have lost custody cases and feel that the domestic violence that had occurred in the case should not have been considered as hard as it was. As we know domestic violence is learned in the home and the largest predictor of a future batterer is what he or she observed in the home environment. Knowing this it is imperative that we have a process in place to identify when this behavior is happening and once it is recognized that we limit the child's exposure to this until the abusive individual get helps for their issue. The current "rebuttable presumption" provides a hearing for the mother and father to present the case and the judge makes a determination on whether it applies. If it does apply, the individual found as the abuser's time is limited and supervised until they complete the programs set out by the judge where they can learn skills that allow them to be a parent modeling healthy relationships instead of "growing" a new batterer. As you have heard me talk about in my testimony through the Criminal Justice Commission work and HB205, we have grown the offenders who are now in jail through the social issues they are experiencing as children and we have not intervened in. The presumption language passed in 2004 has saved victims lives and has provided an opportunity for children to interact with an abusive parent in a healthy way through monitoring and supervision until that parent gets the assistance they need to be able to model that healthy behavior without supervision. I have truly thought through whether there is a fix needed. I talked to judges, victims, lawyers, and advocates. The statute as currently written works and does not need fixing. I urge you to leave the current statute regarding the rebuttable presumption as currently written and to hold this bill.

4:31:53 PM

SAMANTHA WEINSTEIN, Attorney, said the majority of her caseload is in Family Law, but she also works with the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA). She added that she offered pro bono legal service to the Aiding Women in Abuse and Rape Emergencies (AWARE Inc.) shelter. She stated that she had a greater concern for men in the domestic violence proceedings as the current laws allowed that a father would lose the moment any allegations were stated, as neither ex-parte orders nor violations of these orders required any proof of an act of violence. She declared that these fathers were guilty until proven innocent, and even while working to prove their innocence, they lost time with their children. She listed the fears facing many of these fathers as a result of the accusations. She declared that the law was "in place to protect all citizens and sometimes there are oversights in the way a particular law is written. These oversights can be remedied without losing protections for our most vulnerable citizens." She emphasized that this was a request for protection "for both categories," stating that the proposed bill did not try to protect batterers, abusers, and perpetrators of domestic violence, and it did not force children to stay with an abusive parent. She declared a desire for those with an actual history of domestic violence, who had been tried and convicted with evidence brought against them, to be held accountable for their actions and thereby protect children from these situations. She relayed that the American justice system prided itself on "innocent until proven guilty," and that the laws should reflect this under all circumstances. She stated that allowing a parent to obtain custody on unfounded claims was "in opposition to the mission of our justice system and we need to change that."

4:39:11 PM

JANE ANDREEN shared that she had spent 16 years working in domestic violence and sexual assault, recently working on prevention and health promotion in the public health arena, which included violence prevention, domestic dating, and sexual violence. She expressed her surprise at such a significant step backwards for protecting victims and children of domestic violence by the proposed bill. She directed attention to the Domestic Violence Act of 1996, which had set up a coordinated response, and included a look at the history of violence in determining custody cases. She shared her recent experience of attendance at the Alaska Public Health Summit, listening to a

presentation for a community coordinated response to domestic violence, with accountability and services to address this. She expressed concern for the perpetuation of adverse childhood experiences (ACEs) and the impact of children being raised around violence. She encouraged the committee to not pass the proposed bill.

4:42:18 PM

REPRESENTATIVE TARR questioned whether there was a middle ground option, if there were circumstances that the system was abused and resulted in unintended consequences. She shared that a suggestion from Legislative Legal and Research Services was for application of the "clear and convincing evidence standard." She asked if that would be beneficial and "the next step forward."

MS. ANDREEN replied that she would need to look more closely at the legal definition, as it appeared to be more in the direction to which they intended to move. She stated that basing the proposed bill on a conviction would eliminate about 90 percent of the domestic violence cases, as a vast majority of domestic violence was not reported, with the remainder of reported cases having a less than likely chance of prosecution and conviction.

CHAIR SEATON asked about the definition of domestic violence, which could include raised voices. He opined that this could be problematic when it carried with it the potential to lose custody of a child. He asked whether the definition of domestic violence should be modified for child custody cases.

MS. ANDREEN reported that she had never seen a raised voice being defined as domestic violence. She expressed agreement that the legal definition for domestic violence should be reviewed if this was the case. She added that it was necessary to do a better job with training judges about domestic violence. She said that a raised voice used when there had been a consistent history of domestic violence was a controlling behavior. She opined that the common sense approach had been lost.

4:45:58 PM

REPRESENTATIVE TARR directed attention to Section 5 of the proposed bill, which referenced the rebuttable presumption that a parent had been convicted of a crime involving domestic violence.

CHAIR SEATON said that the committee was struggling with the issue and would appreciate any recommendations to ensure that justice was well served and that kids, adults, and their relationships were protected.

4:47:38 PM

The committee took an at-ease from 4:47 p.m. to 4:50 p.m.

4:50:06 PM

CHAIR SEATON brought the committee back to order.

4:50:22 PM

CHAIR SEATON noted technical difficulties and asked the remaining two witnesses to forward written testimony to Chair Seaton's office. He closed public testimony on HB 334, and advised that if the committee so desires in the future, public testimony could be reopened.

4:51:05 PM

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, as prime sponsor of HB 334, shared an anecdote for the loss of child custody by a friend. She declared that she had felt obliged "to act and compelled to work toward a system that honors due process and that provides both parties in a custody dispute to have a fair hearing before the court." She expressed her belief that this was not the case currently, and that the law was broken.

CHAIR SEATON mused that there had been many suggestions for changes to the proposed bill and that the committee was trying to find a middle ground, including the suggestion by Representative Tarr that there should be "clear and convincing evidence" as opposed to "conviction." He surmised that there was consideration for changes to the definition of domestic violence in child custody cases.

REPRESENTATIVE STUTES stated her support of the proposed bill, and she offered an anecdote regarding her son. She declared that "it's just a cryin' shame" to allow these situations to destroy families.

REPRESENTATIVE MUNOZ expressed agreement that the definition for domestic violence was quite broad, as it could include an ex parte order, a violation of the order, a misdemeanor assault threat of violence, or property damage.

4:56:57 PM

REPRESENTATIVE VAZQUEZ, speaking as a co-sponsor of the proposed bill, offered her personal observations that the process can be manipulated during the custody proceedings. She suggested a review of the definitions and rebuttable presumptions, stating that it assumed guilt which then necessitated evidence to rebut the presumption. She suggested the need for a timeframe, as well.

CHAIR SEATON suggested a need for amendments, declaring that this was a very emotional issue. He opined that the proposed bill needed to be narrowed or modified to make it through the system.

5:00:59 PM

REPRESENTATIVE VAZQUEZ reflected that it was impressive that four attorneys who specialized in family issues had all declared there was an issue with the current statute.

[HB 334 was held over.]

5:01:34 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:01 p.m.