

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 25, 2018

1:06 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Louise Stutes
Representative Gabrielle LeDoux
Representative Charisse Millett (alternate)
Representative Tiffany Zulkosky (alternate)

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 81(HSS)

"An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; relating to child protection information; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 81

SHORT TITLE: DHSS CENT. REGISTRY;LICENSE;BCKGROUND CHK

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/08/17	(S)	READ THE FIRST TIME - REFERRALS
03/08/17	(S)	HSS, JUD
02/02/18	(S)	HSS AT 1:30 PM BUTROVICH 205
02/02/18	(S)	Heard & Held
02/02/18	(S)	MINUTE(HSS)
02/05/18	(S)	HSS AT 1:30 PM BUTROVICH 205
02/05/18	(S)	-- MEETING CANCELED --
03/14/18	(S)	HSS AT 1:30 PM BUTROVICH 205
03/14/18	(S)	Heard & Held
03/14/18	(S)	MINUTE(HSS)

03/16/18 (S) HSS AT 1:30 PM BUTROVICH 205
 03/16/18 (S) Moved CSSB 81(HSS) Out of Committee
 03/16/18 (S) MINUTE(HSS)
 03/19/18 (S) HSS RPT CS 2DP 2NR NEW TITLE
 03/19/18 (S) NR: WILSON, MICCICHE
 03/19/18 (S) DP: BEGICH, VON IMHOF
 04/16/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/16/18 (S) <Above Item Removed from Agenda>
 04/16/18 (S) MINUTE(JUD)
 04/18/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/18/18 (S) Heard & Held
 04/18/18 (S) MINUTE(JUD)
 04/19/18 (S) JUD RPT CS(HSS) 1DP 3NR
 04/19/18 (S) DP: COGHILL
 04/19/18 (S) NR: WIELECHOWSKI, SHOWER, KELLY
 04/19/18 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)
 04/19/18 (S) Moved CSSB 81(HSS) Out of Committee
 04/19/18 (S) MINUTE(JUD)
 04/20/18 (S) TRANSMITTED TO (H)
 04/20/18 (S) VERSION: CSSB 81(HSS)
 04/23/18 (H) READ THE FIRST TIME - REFERRALS
 04/23/18 (H) JUD
 04/25/18 (H) JUD AT 1:05 PM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: During the hearing of CSSB 81, offered an overview and a detailed sectional analysis of the legislation, and answered questions.

REPRESENTATIVE TAMMIE WILSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, testified regarding barrier conditions and the legislation.

MARGARET BRODIE, Director
 Division of Healthcare Services
 Department of Health and Social Services
 Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSSB 81, answered questions.

ACTION NARRATIVE

[1:06:17 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Claman, Eastman, Kopp, Reinbold, and Kreiss-Tomkins were present at the call to order.

SB 81-DHSS CENT. REGISTRY;LICENSE;BCKGROUND CHK

[1:06:46 PM](#)

CHAIR CLAMAN announced that the only order of business would be CS FOR SENATE BILL NO. 81(HSS), "An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; relating to child protection information; and providing for an effective date."

[1:07:26 PM](#)

STACIE KRALY, Chief Assistant Attorney General, Statewide Section Supervisor, Human Services Section, Civil Division (Juneau), Department of Law (DOL), advised that this legislation was crafted because participation in federal programs, such as Medicare and Title 40 for foster care, requires that states conduct background checks for licensure and payment of services. Alaska statutes have required background checks for all persons paid in whole or in part by the Department of Health and Social Services (DHSS) since 2005. Apart from the federal requirements, she advised, DHSS wants to make sure our children and vulnerable adults are safe, and that those watching over them have not engaged in any abusive or neglectful behavior that puts the state's most vulnerable people at risk of exploitation. In 2010/2011 DHSS, the Department of Law (DOL,) and the Ombudsman's Office, identified a number of issues in the 2005 adopted framework related to the civil history check, this legislation cleans up those concerns and clarifies the process for the public and the individuals at DHSS who operate this program.

MS. KRALY advised that this bill will improve fairness for applicants without compromising the health, safety, and welfare of the recipients who receive services by fixing the redundancies and loopholes in the current statute. Specifically, she noted, this bill clarifies that the civil history check is a check of already existing registries and databases. The current statute contemplates that the DHSS will create a standalone civil history registry, except the department has not created that database due to the expense and redundancy of having such a database. This legislation will clarify that the background check process applies not only to the entities licensed by the state, but also as to those who work for those entities. The current statute contains two registries, a Central Registry and a Centralized Registry. This legislation will remove confusion and identify that one registry is a Civil History Database check, and the other is the Child Protection Registry.

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MS. KRALY advised that this legislation will clarify the types of civil offenses subject to a Civil History Database review, and the focus is on those offenses that jeopardize health, safety, and welfare, rather than technical violations such as, failure to turn in paperwork. She offered that this legislation will amend the existing licensing statutes under AS 47.32, by addressing the licensing function of DHSS. These amendments include: clarifying what constitutes an enforcement action requiring an evidentiary hearing; allows licensing to share information automatically with law enforcement agencies in joint investigations; allows all DHSS divisions with licensing functions to share information with each other; and it allows the division to investigate individual employees of a licensed facility, and not just the entity, for behavior that constitutes abuse, neglect or exploitation of a person or resident in care. The goal is to catch the bad actor, which sometimes is an individual employee and not the employer.

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MS. KRALY paraphrased the sectional analysis as follows [original punctuation provided]:

Section 1. Amends Title 12 of the Alaska statutes to bring the Department of Public Safety criminal background check process into compliance with federal law; specifically, this amendment allows public safety

to share criminal history information with the Department of Health and Social Services.

Section 2. This section makes conforming edits to rename "Centralized Registry" to the "the civil history database check" (AS 47.05.330) to more accurately describe the current practice and avoids confusion with the "the central registry" in AS 47.17.040 (see section 14).

Sections 3 and 4. These sections would amend AS 47.05.310(b) and 47.32.310(d) to clarify that barrier crimes apply to individuals as well as entities.

Section 5. This section would amend AS 47.05.310(e) to allow an individual to seek a background check. Under the current law, only entities can seek a background check. This section would also remove, at the request of the Department of Public Safety, the designation of the Department of Health and Social Services (DHSS) as a criminal justice agency for purpose of the background check program. (see also section 1).

Section 6. This section would amend AS 47.05.310(f) to make it clear that DHSS may - in addition to exceptions to the barrier crime provisions - approve a variance for a barrier crime.

Section 7. This section would amend AS 47.05.310(h) to address how a non-licensed provider, such as a relative who is receiving payment by the Office of Children's Services, is treated under the statute. This amendment would make it clear that such providers, while not being paid by DHSS, are still subject to background checks prior to placement.

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MS. KRALY advised that Section 8 is new section in this bill, but it exists in the original legislative scheme, it not a new concept. Ms. Kraly continued paraphrasing as follows [original punctuation provided]:

Section 8. This section would add a new section to AS 47.05.310 to address immunity from civil or criminal liability for reporting during the background check process.

Section 9. This section would provide a similar framework for the civil history database checks as background checks (see AS 47.05.310). This means that the same process applies to a person who is found to have a barring criminal conviction under AS 47.05.310 as well as a barring civil finding under AS 47.05.330.

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MS. KRALY advised that Section 10 is a major change, and it was crafted in consultation with the Ombudsman's Office, as well as the House Health and Social Services Standing Committee and the Senate Health and Social Services Standing Committee. Ms. Kraly continued paraphrasing as follows [original punctuation provided]:

Section 10. This section would repeal and reenact current statute to outline how the department will review existing databases, rather than create a separate database for the civil history checks. This section further provides that information reviewed would be confidential and is not subject to a public records request. Specifically, this section:

Clarifies that we are looking to evaluate health, safety, and welfare issues when reviewing databases related to licensed entities, not technical violations that may lead to a nonrenewal, suspension or revocation of a license;

Clarifies that we are looking to identify persons whose children are subjects of a child in need of aid petition;

Clarifies that we are looking to evaluate health, safety, and welfare issues when reviewing databases related to licensed providers (occupational licensing under AS 08), not unrelated technical violations;

Adds that a person who works for the state - not just the Department of Health and Social Services - is subject to a barring condition if they are terminated from employment for a substantiated allegation of assaultive, neglectful, or exploitive behavior.

Section 11. This would amend the current immunity section to reflect the change to civil history database check.

Section 12. This would establish a new section to address the ability to seek a variance for any finding under this chapter and how to appeal a decision if there is disagreement with any decision made by DHSS, including providing a legal mechanism to share information held by the Office of Children's Services for proposes of pursuing a variance.

Section 13. This section would amend AS 47.05.390(6) to expand the definition of "entity" to include an individual service provider.

Section 14. This section amends AS 47.10.093(b) to allow for the sharing of information in the possession of OCS that will be necessary to pursue a variance as provided in section 12 of this bill.

Section 15. This section would rename the central registry maintained by the Office of Children's Services to the "child protection registry" to avoid confusion. It also clarifies what is maintained on this registry, including substantiated findings under AS 47.10 or AS 47.17.

Section 16. This new subsection would clarify that before a substantiated finding can be placed on the child protection registry, the person must have been afforded notice of the finding and the opportunity to challenge the finding.

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Section 17. This section would make a conforming edit to AS 47.32.010(c) replacing the centralized registry with civil history database check.

Section 18. This section would amend AS 47.32 to provide authority for DHSS to consider prior adverse licensing findings in determining whether to grant or deny a license or whether to place a condition on a license.

Section 19. This would add a new section to make it clear that when there is an allegation that an employee or individual affiliated with a licensed entity is alleged to have engaged in any behavior that would impact the safety or welfare of a resident, the department may investigate that individual and issue a report on the findings of that investigation. This section would further provide that if a finding of abuse or neglect is substantiated then that finding will be part of the civil registry process and may result in a person being prohibited from employment or licensure in the future. This section would also make it clear that before such a finding can be used, due process must be afforded.

Section 20. This is technical fix to rename the "registry" to the "civil history database."

Section 21. This is technical fix that would clarify when formal hearings are required when an enforcement action is taken after a licensing investigation.

Section 22. This would add a new section to clarify that when law enforcement is investigating a crime that is also the subject of a licensing investigation, the material gathered by DHSS may be shared with the law enforcement as a matter of law in a concurrent investigation.

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Section 23. This section would clarify that all divisions who implement AS 47.32 may share information with each other for the purpose of administering the licensing programs at DHSS.

Section 24. This section would repeal reference to provisions of the current law that are no longer necessary as a result of the prior sections of this bill.

Section 25. This is an applicability section for purposes of applying the criminal and civil background checks before, on, or after the effective date of this act.

Section 26. This section would advise the revisor regarding title changes to reflect amendments in this act, including the change to include the civil history registry.

Section 27. This provides for an immediate effective date.

[1:18:56 PM](#)

REPRESENTATIVE KOPP asked Ms. Kraly to describe the difference between the Central Registry and the Centralized Registry.

MS. KRALY responded that the Centralized Registry is the registry that is contemplated under the background check process by the Department of Health and Social Services (DHSS), and it is envisioned to be a review of civil history matters that have arisen in a person's history. Including, for example, some of "the things we look at;" the Certified Nurses Aid registry; the Office of Inspector General's federal database dealing with Medicare and Medicaid exclusions; and so forth. It was contemplated that DHSS would, at some point, gather all of the existing information in all of these other databases and upload that information into a standalone database. The database would include all of those civil history backgrounds, licensing violations, Child-in-Need-of-Aid (CINA) findings, and so forth, she explained.

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MS. KRALY explained that the Central Registry is found under AS 47.17, and it is basically the Office of Children's Services (OCS), Online Resource for the Children of Alaska (ORCA) database, which is its case management database. This legislation proposes that since DHSS is not creating a centralized registry or a standalone registry, DHSS asks that the statute reflect that it will look at already existing Civil History Databases. Ms. Kraly referred to a document titled, "SB 81 (Centralized Registry; Background Checks)" and noted that the existing Civil History Databases are identified in that flow chart. The DHSS also recommends renaming the Central Registry for OCS to the Child Protection Registry, which is a much more clarifying name for that database and registry. She added that it includes all of the records OCS maintains for purposes of federal compliance.

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REPRESENTATIVE KOPP referred to the Centralized Registry and asked whether there must be a finding of guilt that a person either exploited a vulnerable adult or a minor, or committed Medicaid fraud, or had a licensure action against them, or whether they would be added to the Centralized Registry due to any complaint leading to one of those investigations.

MS. KRALY answered that the only offenses DHSS reviews under the Centralized Registry or the Civil History Database check are those findings that have been fully adjudicated through a formal process, wherein a complaint is not sufficient to have a barring condition. She explained that it must be something where notice is provided and there is either an opportunity to challenge and they fail to challenge, or the person challenged it and lost, and that becomes a final decision. For example, she said, if there is a licensing action on a Civil History Database check, the person would have been provided notice of the report of investigation, given the opportunity to challenge and present evidence in an administration hearing to rebut the evidence against them. In the event the person was to prevail in that hearing, the person would not be on any sort of registry or database that DHSS checks. In the event the person lost at that hearing and that finding was affirmed by an administrative hearing officer or a superior court judge, that would be subject to review and a finding, she explained.

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REPRESENTATIVE KOPP referred to the Central Registry and asked whether an allegation alone, even if unsubstantiated, would put someone on the registry as far as going forward.

MS. KRALY answered that as a matter of federal requirements, an allegation is maintained on the Central Registry or the Child Protection Registry, but as to whether it constitutes a barring condition, which would be subject to other review under this legislative scheme, it can only get to that point if there had been the due process considerations she previously identified.

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CHAIR CLAMAN noted that Ms. Kraly talked about a Central Registry and a Centralized Registry, and a registry that was supposed to be created under the existing statutes but due to cost reasons it was not created. He requested clarification about what was supposed to be have been created, what was not

created, what is being taken out, and what the state will be left with if this legislation passes.

MS. KRALY replied that the Centralized Registry is the registry of civil history information, which is the registry that DHSS never created. This legislation will remove the requirement or the inference that such a massive database exists, and in its place, DHSS will have identified that it will review existing Civil History Databases, and those databases listed on the flow sheet are the list of registries DHSS would review in that context. She reiterated that the Centralized Registry was never created and DHSS does not want to create a Centralize Registry. This legislation would remove that inference, that expectation, and substitute the Civil History Database check for that premise, she further reiterated.

[1:25:36 PM](#)

CHAIR CLAMAN noted that in CSSB 81, Sec. 15, page 10, lines 19-22, there is reference to a Child Protection Registry. He asked what the Child Protection Registry is, distinct from APSIN, CourtView, and JOMIS.

MS. KRALY responded that the Child Protection Registry is the Online Resource for the Children of Alaska (ORCA) OCS database, listed in the flow chart as "ORCA/Prober." She explained that DHSS is simply renaming the registry from the Central Registry to the Child Protection Registry; thereby, more clearly identifying to the public that the information contained in that database is child protection information.

CHAIR CLAMAN asked whether that is a registry the state has already created.

MS. KRALY replied that it is a registry that exists as a requirement of federal law, it is the ORCA database that OCS uses to manage its case management and it contains all child protection and child welfare information obtained through OCS.

CHAIR CLAMAN surmised that this legislation is calling on creating that database.

MS. KRALY replied that it already exists, DHSS is simply renaming the registry.

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REPRESENTATIVE REINBOLD noted that this legislative session is at day 100, it is a special session, and asked why this legislation, why at this time, and why is it such a priority.

MS. KRALY reiterated that DHSS identified a number of issues within the existing statutory scheme, those issues were developed and discussed, and there is a robust Ombudsman's Report regarding the civil history or the Centralized Registry portion of the statutory scheme. The report includes a number of critical findings as to how that system is set up, and problems with the statute, she offered. Since 2011, DHSS has worked collaboratively with the Ombudsman's Office, DHSS, and within the Department of Law (DOL), to do what they could through regulation, practice, policy, and protocol. There are certain things in the statute that DHSS believes need to be fixed which are just fundamental flaws. She acknowledged that it is late in the session, but DHSS is two-thirds of the way to the goal line and it would be helpful to the folks the department regulates, as well as to the individuals of DHSS who administer these programs, to have these issues clarified. The department wanted these changes for many years, and while realizing that it is late in the day, it believes the legislation is critical to good government, she related.

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REPRESENTATIVE REINBOLD commented that she is happy "you are doing this today, but my people are wondering why." Vehicle theft has now surpassed last year and, she asked, why is addressing this legislation now more important than vehicle theft.

CHAIR CLAMAN interjected that Ms. Kraly does not work for the criminal division.

MS. KRALY responded that she is interested in seeing this legislation move forward for the reasons she had identified and because it will be helpful to her office, DHSS, and the individuals DHSS regulates.

[1:29:49 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to federal background checks and submitting fingerprints to the FBI, and noted that two bills have come through this committee that relate to this subject. He asked that in the domain of this legislation what the fingerprinting requirements are, if any, for people on the

federal level for submission to the FBI. He referred to the flow chart, criminal history check flowing to fingerprint-based criminal history at the state and national/FBI level, and asked whether there are any recurring fingerprint requirements currently in statute or changed in this legislation.

MS. KRALY asked whether Representative Kreiss-Tomkins was asking whether there are any recurring or duplications to those requirements. She said she was unsure anyone from the Department of Public Safety (DPS) was available online to answer questions, but her understanding is that a fingerprint-based background check is ... a criminal history check contemplates an array of things, such as a state history check through APSIN, and the federal fingerprint database. She explained that a person submits their fingerprints to the FBI through the DPS, the FBI runs the fingerprints and sends that information back to DPS, and DPS, by virtue of how this system is set up, shares that information with DHSS.

CHAIR CLAMAN explained to Representative Kreiss-Tomkins that "in some of the earlier bills that we were authorizing non-state agency -- we were authorizing certain state agencies to submit fingerprint requests here because the Department of Public Safety is the one that is submitting the request, we don't need to give them authority because they already have it to submit the fingerprints."

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REPRESENTATIVE KREISS-TOMKINS asked whether Ms. Kraly is aware of any recurring requirements for background checks to be re-run on a federal level every five years or ten years, or whatever frequency.

MS. KRALY answered that the DHSS background system is good for six-years; however, there is a requirement at the federal level that a criminal background check or a fingerprint-based background check is not basically a "one off," new fingerprints must be submitted if a certain period of time has passed, or a person is seeking employment, or authorization, or permission to do something that is not related to the original request. Therefore, she said, there is a requirement to, at times, submit more than one fingerprint card even if the person is applying to be a teacher and applying to be a foster parent, they would have to submit two fingerprint-based requests in order to obtain the federal approvals because it is a federal requirement.

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REPRESENTATIVE KREISS-TOMKINS asked Ms. Kraly to clarify what she meant by her statement that the DHSS background system is good for six-years.

MS. KRALY clarified that as a matter of efficiency and process, the DHSS requires a new fingerprint-based background check every six years. Except, she explained, that is a different standard than what the federal government may require, that is just for this program. In the event "you are doing something that is not regulated by this, you may have to submit a background check more frequently than that," she said.

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CHAIR CLAMAN opened public testimony on CSSB 81.

[1:34:36 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, advised that her office performed work on "barrier conditions" and because this bill will not come before the House Finance Committee, she wanted to put statements on the record in the House Judiciary Standing Committee. She referred to CSSB 81, Sec. 6, AS 47.05.310(f) page 3, lines 23-25, which read as follows:

(f) The provisions of this section do not apply if the department grants an exception from a requirement of (a)-(e) of this section under a regulation adopted by the department or if the department grants a variance under AS 47.05.360.

REPRESENTATIVE WILSON asked whether the exemption that someone could be granted would be a permanent exemption. She offered the following example: a young mother got into trouble, possibly a fight or whatever, and OCS removed her child from the home. The young mother then completed whatever type of treatment she needed, she did everything she was supposed to do and her child was returned to her. Representative Wilson described that as a barrier condition, except the mother didn't think about it at the time because she was distressed. Twenty years later, one of her children has an issue and the parents need grandma to watch the child while they go through those same issues with OCS. Except, the grandmother is denied because she has a barrier condition that goes with her for life, it is a life sentence.

She described that a barrier condition is unlike a barrier crime wherein if a person commits specific crimes, it is on their record for a certain number of years. This legislation does put some question to the variance position, but currently if a person decides they want to work in a childcare facility, a background check is performed. The background check revealed that the person had a substantiated OCS case because something had gone wrong at one point in that person's life, and now they are denied the opportunity to be a childcare worker unless they go through this variance process. She described that it is a gamble as to whether it would be determined that the person was acceptable. The issue is not that the person had to submit their fingerprints once, but if the person lost their job and applied for another job where a background check must again be performed, the person must go through that process again.

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REPRESENTATIVE WILSON referred to CSSB 81, AS 47.05.360, page 8, lines 13-26, and noted that the variance request is addressed here and "they can request one," but the legislation does not talk about whether a person can [go through the variance process] just once because it is the same issue. She noted that she is still trying to clarify whether [the variance process] must be performed for every job. The variance process, she explained, sometimes can take a couple of weeks and, in fact, many people have lost their jobs due to the variance process.

[1:37:17 PM](#)

REPRESENTATIVE WILSON referred to CSSB 81, Sec. 10, AS 47.05.330(a)(4) page 7, lines 10-12, which read as follows:

(4) who was a biological or adoptive parent, guardian, custodian, or Indian custodian of a child at the time the child was the subject of a child-in-need-of-aid petition under AS 47.10;

REPRESENTATIVE WILSON described that it shows the whole issue about a child-in-need-of-aid (CINA), and a lot of parents will not fight back because they are usually told that if they fight back, their children will be gone longer. Therefore, she stressed, many parents will say they are guilty and not fight it, not realizing they will have something on their record for the rest of their lives, making it difficult for them to obtain a job even if they are able to straighten out their lives.

[1:37:45 PM](#)

REPRESENTATIVE WILSON referred to CSSB 81, Sec. 10, AS 47.05.330(a)(5) page 7, lines 13-15, which read as follows:

(5) who, in the course of employment with the state, has been terminated from employment or has had an allegation of assaultive, abusive, neglectful, or exploitive behavior or actions substantiated;

REPRESENTATIVE WILSON referred to the phrase "or has had an allegation of assaultive, abusive, neglectful, or exploitive behavior or actions substantiated," and asked whether the committee is really going to bar people from working simply based on an allegation. She said that she has no problem with the language being, "terminated from employment because you have been found guilty of something," but not simply on an allegation.

REPRESENTATIVE WILSON referred to CSSB 81, Sec. 10, AS 47.05.330(b), page 7, lines 25-30, which read as follows:

(b) The information gathered under this section is not a public record under AS 40.25.110 and is not subject to public inspection or copying under AS 40.25.110-40.25.125. However, information gathered under this section may be released to an entity, an individual who is included in a database, a governmental agency, and a political subdivision of the state in a manner provided under this section and regulations adopted under this chapter.

REPRESENTATIVE WILSON offered a scenario wherein someone had a CINA case and they wanted to know whether they had this barrier condition on their record. She asked whether there is there a manner in which a person can be pro-active rather than waiting until they apply for a job, to then be denied, and then try to figure out how the whole system works.

[1:39:09 PM](#)

MS. KRALY, in response to the first issue raised by Representative Wilson which was with regard to the variance in a permanent barring condition, answered that the time period for barring conditions for a Civil History Database check is now 10-years, which was changed via regulation in 8/2017. Previously, she advised, it was a permanent barring condition and based upon

public comment and review, it was changed to a 10-year bar. She said that it is consistent with the federal rules for the Office of Inspector General (OIG) exclusion and the other issues DHSS looks at on a civil history check. Except, she said, the regulation provides, "unless you've had your parental rights terminated or relinquished, that becomes a permanent bar. But again, any of that, you can still obtain a variance during any of those time periods."

[1:40:21 PM](#)

CHAIR CLAMAN clarified that Representative Wilson's question about a variance was that if a person receives a variance today, do they have to re-apply for the variance tomorrow, or whether once a variance is obtained that it is permanent.

MS. KRALY said she wanted to be clear that the civil history bar is only a 10-year bar and it is not permanent, which was a recent change. As to the variance question, she advised that the variance process has also changed via the regulation packet adopted in 8/2017. The [regulation] contemplates that the variance now is transferrable, so if a person is a personal care attendant, for example, and works for four different agencies, the person does not have to obtain four separate variances because it is job specific. In the event a person works in child care as a foster parent, or in personal care, or is a respite provider under the Medicaid program, the person would obtain the variance to provide respite care and they could transfer that variance to any other employer. She offered that there is a more efficient or a shortened variance process wherein if a person has a variance, they can use that information "and come in." The Department of Health and Social Services (DHSS) does not believe variances should transfer from discipline to discipline because if a person has a civil history barring condition related to child care, for instance, and now the person wants to work in an assisted living home, those are two different considerations. The Department of Health and Social Services (DHSS) wants to look at those independently, but for job class, those variances are transferrable.

[1:42:01 PM](#)

CHAIR CLAMAN asked whether [variances] are permanent, wherein a person has a childcare variance because something happened 20-years ago, will they ever have to come back and obtain another variance or re-new that variance for purposes of providing childcare.

MS. KRALY answered that as long as nothing comes up in the person's history, the variance remains in place unless and until the person changes job classes.

CHAIR CLAMAN said that if a person is in one job class, it is a permanent variance and the person does not have to go back and submit fingerprints every six years.

MS. KRALY opined that that is the case, and deferred to Margaret Brodie, DHSS.

[1:43:12 PM](#)

MARGARET BRODIE, Director, Division of Healthcare Services, Department of Health and Social Services, advised that the way the variance process currently works is that when a person goes to re-new, if a variance is in place for the same job class, that will "pass along with it." She said that it will automatically renew with it unless (coughing) a hit on the original (audio difficulties) to now.

CHAIR CLAMAN surmised that if there some new incident arose, that is a whole other deal, but if there are no new incidents within a job class, it carries on forward.

MS. BRODIE answered in the affirmative.

[1:44:07 PM](#)

REPRESENTATIVE KOPP noted that in 2015, while he was working for a senator, a letter was written to the commissioner of the Department of Health and Social Services (DHSS) for a variance for a man in his 30's to serve on a board. He explained that this man needed a variance because the board had state money coming into the organization the board oversaw, which was related to DHSS. When that person was age 18, he got into a fist fight with his brother and ran afoul of the law, but he had been "good to go for a long time" with no issues. This person received his variance in 2015, and this year he came back asking for the same support again in order to receive a variance to serve on the same board again. He said he was unsure whether the reason was because that variance concluded with that term of office on the board, and he asked Ms. Brodie to explain so the committee could understand how that works.

[Audio difficulties.]

1:46:21 PM

The committee took an at-ease from 1:46 p.m. to 1:48 p.m.

1:49:09 PM

[CHAIR CLAMAN noted that due to the audio difficulties, Ms. Brodie would return tomorrow.]

1:49:36 PM

MS. KRALY noted that the two other questions offered by Representative Wilson were related to the issue of the allegation of assaultive, abusive, neglectful, or exploitive behavior by a state employee, language. She explained that the reason it is drafted in this manner is that DHSS believes there are instances wherein certain individuals who are at risk of termination due to evidence of a bad act, assaultive, abusive, neglectful, or exploitive behavior, decided to resign in lieu of termination. The goal is to capture those individuals who would be subject to this barring condition despite the fact they had not been terminated, she advised.

1:50:45 PM

REPRESENTATIVE REINBOLD commented that she understands the situation from the perspective that Ms. Kraly is coming from, and it is valid. However, she said, "it just seems like there should be, if that case goes away because there is a lot of potential loopholes for abuse in that area, that the condition has been lifted if they are found to be innocent or if there was never a conviction."

MS. KRALY clarified that the person DHSS is trying to capture here is the person who had been provided evidence of their assaultive, abusive, neglectful, or exploitive behavior, and that DHSS believes it can properly adjudicate through a termination hearing, but in lieu of being fired they decide to quit. In that instance, those people are not proven innocent and they are basically quitting their jobs to avoid an adverse employment action. The Department of Health and Social Services (DHSS) wants to be able to capture those individuals, she explained. Those individuals who are simply terminated from state employment for issues not relating to health, safety, and welfare, will not be captured in this issue. She further explained that these are the individuals who have assaulted,

abused, or neglected an individual's care, for instance, the Pioneer's Home, or API, or a public safety officer, and so forth.

[1:52:20 PM](#)

CHAIR CLAMAN referred to CSSB 81, Sec. 10, AS 47.05.330(a)(5) page 7, lines 13-15, which read as follows:

(5) who, in the course of employment with the state, has been terminated from employment or has had an allegation of assaultive, abusive, neglectful, or exploitive behavior or actions substantiated;

CHAIR CLAMAN commented that it appears it is not just the allegation because there is a secondary requirement that is "just not the allegation," but the department has to have performed enough of an investigation to substantiate the allegations.

MS. KRALY answered that Chair Claman is correct.

CHAIR CLAMAN surmised that the allegation alone is not enough.

MS. KRALY answered in the affirmative.

[1:52:49 PM](#)

MS. KRALY referred to Representative Wilson's final question under Sec. 10, AS 47.05.330(b), page 7, lines 25-30, which read as follows:

(b) The information gathered under this section is not a public record under AS 40.25.110 and is not subject to public inspection or copying under AS 40.25.110-40.25.125. However, information gathered under this section may be released to an entity, an individual who is included in a database, a governmental agency, and a political subdivision of the state in a manner provided under this section and regulations adopted under this chapter.

MS. KRALY advised that this section relates to the fact that none of this information is a public record, and not subject to public copying under the Alaska Public Records Act. She opined that Representative Wilson's question was how people would know how to obtain this information for purposes of variances. She

answered that the information will be identified in the letter they receive identifying the barring condition as it is a robust notice that identifies what DHSS has done, what it has identified, and how the person can go about obtaining a variance. She offered that the contemplation is that, for instance, it is a CINA finding and the person is looking for a variance, that CINA information will be automatically produced as part of that process. She explained that the information will be outlined in their notice so they know exactly what information is available, or potentially available, and how that information will be shared for purposes of a variance should they submit an application.

[1:54:30 PM](#)

REPRESENTATIVE WILSON referred to CSSB 81, Sec. 10, AS 47.05.330(a)(5) page 7, lines 13-15, and asked whether the person will be notified that something will be on their record, and also be advised of the appeal process. She noted that just because it was substantiated, they do not know what the proof was and they may have other information. Everyone should have an opportunity, if it is not going to court, to clear their name, she said.

MS. KRALY responded that DHSS has been in consultation and within its efforts in working with the Ombudsman's Office, has agreed to reframe and redraft its substantiation notices. The notices will provide a more robust explanation of what has happened, what their options and opportunities are in challenging that substantiation, and how it will all work. She reiterated that DHSS is in the process of revamping those notices so they are much more robust.

[1:55:51 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public hearing on CSSB 81.

[CSSB 81(HSS) was held over.]

[1:56:26 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:56 p.m.