

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

February 2, 2018

1:30 p.m.

**MEMBERS PRESENT**

Senator David Wilson, Chair  
Senator Natasha von Imhof, Vice Chair  
Senator Cathy Giessel  
Senator Peter Micciche

**MEMBERS ABSENT**

Senator Tom Begich

**COMMITTEE CALENDAR**

SENATE BILL NO. 128

"An Act establishing the marijuana education and treatment fund; and relating to the duties of the Department of Health and Social Services to administer a comprehensive marijuana use education and treatment program."

- MOVED SB 128 OUT OF COMMITTEE

SENATE BILL NO. 81

"An Act relating to criminal and civil history requirements and a registry regarding certain licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 128

SHORT TITLE: MARIJUANA EDU/TREATMENT FUND/PROGRAM

SPONSOR(S): SENATOR(S) GIESSEL

01/16/18	(S)	PREFILE RELEASED 1/8/18
01/16/18	(S)	READ THE FIRST TIME - REFERRALS
01/16/18	(S)	HSS, FIN
01/31/18	(S)	HSS AT 1:30 PM BUTROVICH 205
01/31/18	(S)	Heard & Held
01/31/18	(S)	MINUTE(HSS)

02/02/18 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 81

SHORT TITLE: DHSS CENT. REGISTRY; LICENSE; BACKGROUND 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

**WITNESS REGISTER**

JAY BUTLER, M.D., Chief Medical Officer/Director  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on SB 128.

STACIE KRALY, Chief Assistant Attorney General  
Department of Law, Juneau, Alaska

**POSITION STATEMENT:** Presented information on SB 81.

KATHY MONFREDA, Chief  
Criminal Records and Identification Bureau  
Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** Presented information on SB 81.

KATE BURKHART, Ombudsman  
Alaska Office of the Ombudsman  
Juneau, Alaska

**POSITION STATEMENT:** Commented on SB 81.

**ACTION NARRATIVE**

1:30:50 PM

**CHAIR DAVID WILSON** called the Senate Health and Social Services Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators von Imhoff, Giessel, Micciche, and Chair Wilson.

**SB 128-MARIJUANA EDU/TREATMENT FUND/PROGRAM**

1:31:17 PM

**CHAIR WILSON** announced the consideration of SB 128 and opened public testimony.

[1:32:04 PM](#)

CHAIR WILSON closed public testimony.

SENATOR GIESSEL said some are asking why SB 128 only sets aside 25 percent of the marijuana tax revenue for the marijuana education fund, with another 25 percent going into the general fund.

[1:32:48 PM](#)

JAY BUTLER, M.D., Chief Medical Officer/Director, Department of Health and Social Services (DHSS), answered questions on SB 128. He said additional allocations to the fund could be used for afterschool programs and other programs focused on preventing youth initiation of marijuana.

SENATOR GIESSEL said, to restate, the legislature, as the appropriative authority, has the authority to exceed the 25 percent contribution to the marijuana education fund if it chooses.

Dr. Butler said that was his understanding also. In the Tobacco Education Use and Cessation Fund, the tax revenue goes into the fund, but appropriations are done by the legislature through the usual budgetary process.

SENATOR GIESSEL mentioned an article in the Anchorage Daily News about pregnant women using marijuana. The article noted the cognitive changes in infants' brains and THC detected in breast milk and the newborn. Education needs to begin even earlier.

Dr. Butler said use during pregnancy is a concern. There is less outcome data, but some are concerning. Cannabinoid receptors are present very early in the developing brain. Much is unknown about exogenous cannabinoids, such as what would be taken into the bloodstream either through smoking or ingestion, that would affect brain development. Some animal data suggest that exposure to exogenous cannabinoids might increase the susceptibility to the effects of alcohol exposure during fetal development.

[1:36:50 PM](#)

At ease.

[1:38:01 PM](#)

CHAIR WILSON reconvened the meeting and entertained a motion to move SB 128 out of committee.

[1:38:06 PM](#)

SENATOR VON IMHOF moved to report SB 128 from committee with individual recommendations and attached fiscal notes.

[1:38:13 PM](#)

CHAIR WILSON announced that without objection, SB 128 is moved from the Senate Health and Social Services Standing Committee, with the understanding that Legislative Legal is authorized to make any necessary technical and/or conforming adjustments.

[1:38:57 PM](#)

At ease.

**SB 81-DHSS CENT. REGISTRY; LICENSE; BACKGROUND CHECK**

[1:40:16 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SB 81 and opened public testimony. [SB 81, version 30-GS1676\A, was before the committee.]

[1:40:56 PM](#)

STACIE KRALY, Chief Assistant Attorney General, Department of Law, presented information on SB 81. She said SB 81 relates to criminal background checks and licensing statutes administered by the Department of Health and Social Services (DHSS). Participation in federal programs, such as Medicare and foster care, requires states to conduct criminal background checks for licensure or payment for services. In 2005, the legislature codified AS 47.05.300, which requires a background check for all persons who are paid in whole or in part by DHSS. The background check is comprised of a two-part process, a fingerprint-based review of criminal history, both state, federal, and nationwide, administered by DHSS with the Department of Public Safety. It also consists of checks of various databases to identify civil actions that are inconsistent with licensure or the ability to provide care to vulnerable adults or children.

She said that over the past 15 years, many language issues have been identified that that need to be fixed in statute.

She said SB 81 clarifies what constitutes a civil history check. State law references two registries, a Central Registry and a Centralized Registry, which is very confusing. The bill also clarifies that the civil history check applies to both the entity that seeks licensure by DHSS and to its employees.

MS. KRALY said a gap in the language does not make it clear that the employees are also subject to a civil history check. It

also clarifies that the department is not required to create standalone database. The statute intimates that DHSS will create its own civil history database, which is cost prohibitive and programmatically difficult. The statute should make clear that DHSS is not creating its own database but reviewing existing databases.

She said SB 81 makes amendments to Title 47 Chapter 32, licensing statutes in DHSS. It allows DHSS to share information with law enforcement on concurrent investigations.

[1:45:36 PM](#)

MS. KRALY said the amendments allow divisions doing licensing investigations to share information among themselves.

She said one of the most important things that SB 81 clarifies is that if an individual abuses, neglects, or exploits an individual in care, the individual, and not only the entity, can be subject to investigation. For example, if someone employed in an assisted living home abuses or neglects an individual in care, only the licensed entity, the assisted living home, can be investigated. The bill allows individuals to be investigated and if it is determined that the individual committed the offense, the person's name will be in the civil registry.

SENATOR VON IMHOF said past audits suggested that the Department of Education and Early Development (DEED) is duplicating efforts in its background checks for teachers because other departments do background checks. She wondered why efforts across departments could not be combined so one department does all the background checks.

[1:48:43 PM](#)

KATHY MONFREDA, Chief, Criminal Records and Identification Bureau, Department of Public Safety, presented information on SB 81. She said having one central background check for a variety of purposes violates the FBI's law on how national background checks can be used. They must have one authorized statutory purpose.

SENATOR VON IMHOF asked if she were referring to a federal statute.

MS. MONFREDA said yes, it is public law 92-544 that governs national background checks.

SENATOR VON IMHOF asked if that meant that the exact same background check is done in multiple departments.

MS. MONFREDA said most of the agencies have different criteria for their licensing, so it is not one size fits all. The background check is only good the day that it is received. Any delay in using a background check could be a risk.

SENATOR VON IMHOF said she is not suggesting doing a background once and then being done with it. She is suggesting centralizing background checks among all state employees, but she understands a statute prohibits that.

MS. MONFREDA said 92-544 permits shared information for the same purpose.

[1:52:12 PM](#)

MS. KRALY presented the sectional analysis.

**Section 1.** This section would make conforming edits to rename the centralized registry to the civil registry to avoid confusion under the current law with the centralized registry (AS 47.05.330) and the central registry in AS 47.17.040 (see section 14).

**Sections 2 and 3.** These sections would amend AS 47.05.310(d) and 47.32.310(d) to clarify that barrier crimes apply to individuals as well as entities.

**Section 4.** 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.

**Section 5.** This section would amend AS 47.05. 310(f) to make it clear that the DHSS may, in addition to exceptions to the barrier crime provisions, approve a variance for a barrier crime.

**Section 6.** 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.

**Section 7.** This section would make a conforming edit to AS 47.05.310(i) to rename the centralized registry to the civil registry (similar to section 1).

**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 registry 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.

**Section 10.** This section would be repealed and reenacted to outline how the department will review existing registries, rather than create yet another separate database. This section would also identify what DHSS will be looking for in terms of civil findings that are inconsistent with licensure or payment (e.g., CINA findings, terminated from DHSS for assaultive/neglectful or exploitative behavior). Information contained or obtained via the registry would be confidential and not subject to a public records request.

**Section 11.** This would amend the current immunity section to reflect the change to civil registry from centralized registry.

**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 you disagree with any decision made by DHSS.

**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 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 15.** 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.

**Section 16.** This section would make a conforming edit to AS 47.32.010(c) replacing centralized registry with civil registry (similar to section 1).

**Section 17.** 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 18.** 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 19.** This is technical fix that would clarify when formal hearings are required when an enforcement action is taken after a licensing investigation.

**Section 20.** This would add a new section to clarify that that when law enforcement is investigating a crime that is also the subject of a concurrent licensing investigation, the material gathered by DHSS may be shared with the law enforcement as a matter of law.

**Section 21.** 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 22.** This section would repeal reference to provisions of the current law that are no longer necessary or have been determined to be superfluous. Specifically, the section would repeal the reference to the civil registry when doing a background check, references to DHSS as criminal justice agency, and statutes stating an administrative hearing is not required when the enforcement action sought is a plan of correction.

**Section 23.** 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 24.** 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 25.** This provides for an immediate effective date.

[1:58:44 PM](#)

CHAIR WILSON said that on page 10, Section 20, starting from line 10, he did not see language specifying that sharing information would only be for concurrent investigations and that licensing would not be sharing past information on a provider. He asked if that could be clarified.

MS. KRALY said that she read that [if a law enforcement agency] "is investigating a crime that is also the subject of a licensing investigation" as being a concurrent investigation. But an amendment with clarifying language would be appropriate.

CHAIR WILSON asked whether people with variances can transfer them more easily through the system.

MS. KRALY said that regulations that amended the existing statute went into effect August 1, 2017. The regulations reframed the variance process, created an expedited variance process, and created a system for people with variances who

provide similar services, but work for various agencies, to use the same variance for multiple agencies.

2:01:06 PM

CHAIR WILSON opened public testimony on SB 81.

2:01:29 PM

KATE BURKHART, Ombudsman, Alaska Office of the Ombudsman, commented on SB 81. She said the Ombudsman's Office is a nonpartisan, independent, and objective organization that investigates citizens' complaints about state agencies. Information about SB 81 is meant to inform processes, not necessarily to advocate for the Ombudsman's recommendations.

She referenced a 2016 investigation and report about how background checks affect people as they try to secure a caregiving position. The background check is essential for people providing care to vulnerable Alaskans. Ms. Kraly said background checks rely on existing registries of information and a not a standalone database or registry. SB 81 provides clarity that this is a background check program that uses existing sources of information.

2:04:00 PM

MS BURKHART said SB 81 speaks to standards related to civil barriers. All her comments are about civil barriers because the report did not look at criminal barriers. A substantiated report of harm, child abuse or neglect, is used as basis for a civil barrier, but often reports of harm can be substantiated without a-child-in-need-of-aid proceeding being initiated. Parents do not always challenge the report without realizing that up to 10 years later, they can be barred from caregiving employment.

She said Alaskans need adequate notice about the impact of substantiated reports of harm and how it could impact the ability to pass a background check for 10 years.

She said the Ombudsman's investigation explored how people apply for variances if they need access to information in a child protection record, which is now closed. To have a meaningful opportunity at a variance requires access to that information. SB 81 provides clarity about providing that access. Through its work, the Ombudsman's office understands how critical this program is.

SENATOR GIESSEL asked if the department is looking at these suggestions.

MS BURKHART said the regulations regarding background checks, adopted last year, were a big overhaul. The regulations have a tiered approach to civil barriers. The department had said they would use the regulatory process to address previous concerns of the Ombudsman's Office. Ms. Burkhart added that SB 81 still refers to a registry when there is no registry. Background checks use existing lists.

[2:08:47 PM](#)

CHAIR WILSON closed public testimony on SB 81.

MS. KRALY said she reviewed Ms. Burkhart's letter and has taken it to heart. Their goal is to improve the program and clarify language and remove confusion. They will continue to work with the Ombudsman's Office to improve bill. There are policy considerations and differences they may not agree on, and the legislature will decide on policy.

SENATOR GIESSEL asked her to discuss an amendment offered on the House version of the bill.

MS. KRALY said it was a conforming edit related to removing the reference to criminal justice agency. She deferred further explanation to Ms. Monfreda.

MS. MONFREDA explained that it was a housekeeping issue because federal law spells out what must be in legislation for the Attorney General's approval of state statutes that seek approval of national background check results. The amendment makes sure that Alaska statutes meet the federal requirements.

[2:12:43 PM](#)

SENATOR GIESSEL asked if the amendment offered on the House side would need to be amended into the Senate version.

MS. MONFREDA said yes.

CHAIR WILSON asked if DHSS intended to refine SB 81 before bringing it back to committee.

[2:13:22 PM](#)

MS. KRALY said yes.

SENATOR VON IMHOF asked if DHSS would incorporate the conforming amendment into the committee substitute so no amendment would be needed.

MS. KRALY said yes.

2:13:42 PM

CHAIR WILSON said he would hold SB 81 in committee while the department worked on it.

2:14:00 PM

There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee at 2:14 p.m.