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5. HESS A-98
AB 34 "An Act Relating to Placement of
Children in State Custody"

28

Introduced 1-16-79

Logged 1-16-79

Referrals - NONE

Committee Meeting 1-17-79

" action - held in abeyance

Db 34

V

January 15, 1979

President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill relating to the placement of children in state custody.

The bill would exempt delinquent children from a provision which requires that, in the absence of a showing supported by clear and convincing evidence that harm to the child will result, all children in the custody of the Department of Health and Social Services be turned over to blood relatives upon demand. The department believes that this provision overlooks the potential dangers to society presented by delinquent children as well as their frequent need for a program of rehabilitation. In addition, I believe that it was not the legislative intent, in enacting sec. 37, ch. 126 SLA 1977 (which added (e) to AS 47.10.230), to prevent placement of delinquent children in an institution. The bill would thus limit the mandate contained in AS 47.10.230(e) to children who have been placed in state custody after an adjudication that they are children in need of aid.

Sincerely,

S/JS

Jay S. Hammond
Governor

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST... Session

SENATE ... BILL NO. ...34...

By ... THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act relating to the placement of children in state custody."

placement of children

Introduced in the Senate ... 1/16/... 19... 79

HISTORY IN THE SENATE

19 79

1 16

Read first time and referred to Committee on Health, Education & Social Services
Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

Article 2. Juvenile Institutions.

Section

150. General powers of department over juvenile institutions

Sec. 47.10.150. General powers of department over juvenile institutions. The Department of Health and Social Services may

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of children in need of aid or delinquent minors;

(am § 25 ch 63 SLA 1977)

Effect of amendments.

The 1977 amendment substituted "children in need of aid" for "dependent" in paragraph (1).

As the rest of the section was not affected by the amendment, it is not set out.

Article 3. Care of Children.

Section

230. Powers and duties of department over care of child

Supplemental

Sec. 47.10.230. Powers and duties of department over care of child.

(a) Subject to (e) and (f) of this section, the Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing him in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(d) In addition to funds paid for the maintenance of foster children under (b) of this section, the department shall pay the costs of caring for physically or mentally handicapped foster children, including the additional costs of medical care, habilitative and rehabilitative treatment, services and equipment, special clothing, and the indirect costs of medical care, including child care, transportation expenses, and respite care. In this subsection "respite care" means child care not to exceed 12 hours in any 30-day period; it also means child care for a period not to exceed seven days in a year for the purpose of providing emergency protection for the child when the foster parent is away from the home because of an emergency and no other care is available for the child or when the foster parent is on vacation and the child, because of age or infirmity, cannot be placed in any other type of temporary care facility.

(e) A child may not be placed in a foster home or in the care of an agency or institution providing care for children if a blood relative exists who requests custody of the child. However, the department may retain custody of the child and provide for its placement in the same manner as for other children if it makes a determination, supported by clear and convincing evidence, that the custody of the child by the blood relative will result in physical or emotional damage. In making that determination, poverty, including inadequate or crowded housing, on the part of the blood relative, is not considered prima facie evidence that physical or emotional damage to the child will occur. This determination may be appealed to the superior court to hear the matter de novo.

(f) If a blood relative of the child specified under (e) of this section exists and agrees that the child should be placed elsewhere, before placement elsewhere the department shall fully communicate the nature of the placement proceedings to the relative. Communication under this section shall be made in the relative's native language, if necessary. Nothing in this section or in (e) of this section applies to child placement for adoptive purposes.

(am § 1 ch 76 SLA 1976; am §§ 36, 37 ch 126 SLA 1977)

Effect of amendments.

The 1976 amendment added subsection (d).

The 1977 amendment added "Subject to (e) and (f) of this section" to the beginning of subsection (a) and added subsections (e) and (f).

As the rest of the section was not affected by the amendments, it is not set out.

Editor's note. — Section 1, ch. 126, SLA 1977, effective July 1, 1977, provides: "PURPOSE. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, district attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is required to provide public assistance grants for basic maintenance requirements when parents

fail to meet their primary obligations. The state, therefore, exercising its police and sovereign power, declares that the common law and Alaska statutes pertaining to the establishment and enforcement of child support obligations shall be augmented by additional remedies in order to meet the needs of minor children. It is declared to be the public policy of this state that this Act be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare and welfare-related programs.

Section 35, ch. 126, SLA 1977, provides: "INTENT. It is the intent of secs. 36 and 37 of this Act to provide for placement of children in surroundings which are socially and culturally desirable and with persons who are able to meet their special needs. Placement of children with blood relatives will work to prevent loss of identity and self-esteem, and provide for increased family and cultural stability, security and solidarity."

regulations which the department considers proper, if it appears to the satisfaction of the department that there is a reasonable probability that the juvenile will remain at liberty without violating the law. (§ 10 art II ch 145 SLA 1957)

Sec. 47.10.210. Youth counsellors. The department may employ youth counsellors. Youth counsellors shall exercise the duties of probation officers and shall prepare preliminary investigations for the information of the court. They shall also carry out other duties in the care and treatment of minors which are consistent with the intent of this chapter. Youth counsellors have the powers of a peace officer with respect to the service of process, the making of arrests of minors who violate state or municipal law, and the execution of orders of the court relating to juveniles. The youth counsellors shall assist and advise the courts in the furtherance of the welfare and control of minors under the court's jurisdiction. (§ 11 art II ch 145 SLA 1957)

Sec. 47.10.220. Grants-in-aid. The Department of Health and Social Services may accept grants-in-aid from the federal government or private foundations and may accept other gifts consistent with the purposes of this chapter. (§ 13 art II ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 "Health and Social Services" for amendment substituted "Department of Health and Welfare." "Department of Health and Welfare."

Article 3. Care of Children.

Section	Section
230. Powers and duties of department over care of child	250. Standards of care
240. Adequacy of home or institution	260. Payment of costs

Sec. 47.10.230. Powers and duties of department over care of child.
(a) The Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing him in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance which are necessary to assure adequate care of the child, and may accept funds from the federal government which are granted to assist in carrying out the purposes of this chapter, or which are paid under contract entered into with a federal department or agency. No child under the care of the department may be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement may include provisions for payment, in whole or in part, to the department for the minor's care and treatment. The agreement entered into shall not operate to prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendments. — The first 1971 amendment added subsection (c).
 The second 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in the first sentence of subsection (a).

Sec. 47.10.240. Adequacy of home or institution. (a) A representative of the department shall visit, as often as is considered necessary, every foster home or institution in which a child is placed, and if not satisfied as to the care given, may remove the child from the foster home or institution and place him elsewhere.

(b) The person or institution receiving a child shall submit the reports the department requires as to the education, health and welfare of the child and the conditions under which he is living. (§ 2 art III ch 145 SLA 1957)

Sec. 47.10.250. Standards of care. The Department of Health and Social Services shall establish standards of care and regulations desirable for the welfare of every child under its care. (§ 3 art III ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Cross references.—As to the general powers of the department over juvenile institutions, see AS 47.10.150. As to the operation of juvenile detention homes and facilities, see AS 47.10.180.

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare."

Standards and formal conditions for use of adjustment rooms in juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Department ordered to promulgate standards for operation of juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Sec. 47.10.260. Payment of costs. The department shall pay the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in the enforcement of §§ 230 — 260 of this chapter. (§ 4 art III ch 145 SLA 1957)

POSITION PAPER / Department of Health and Social Services

POSITION PAPER

SENATE BILL NO. 34

"An Act relating to the placement of children in state custody."

The Department of Health and Social Services and the Division of Corrections is in support of this legislative amendment.

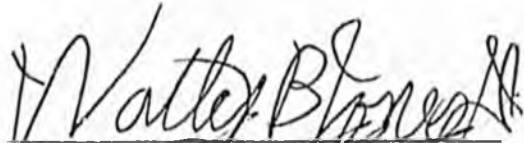
Under present statute, 47.10.230(e), a delinquent child could be removed from the custody of the Department of Health and Social Services (i.e., foster care, treatment facility or detention facility), upon the request for custody by a blood relative. This is viewed as a potentially dangerous situation in cases where the delinquent youth has committed violent crimes (assault, rape, robbery by use of firearms, etc.) and who continues to have the propensity to commit such acts. Returning a child with this type of behavior to the community may jeopardize the state's responsibility to protect society.

In addition, removing a youth from the milieu of a structured setting or treatment program could be detrimental to the rehabilitation process. To date, no delinquent has been removed from the Department's custody under this statute (enacted two years ago in conjunction with the new Children's Code legislation) because there has been no case in which a blood relative has requested custody. This does not preclude this happening in the future.

Presently, the Division of Corrections has 661 children under probation supervision. Approximately 630 of these children are residing in their own homes. Even though these children have been adjudicated delinquent, the majority of the children are under supervision in the community. Only in cases where a youngster has special treatment needs which cannot be met in the community or where the youngster presents a potential danger to himself/herself or to the community is a child placed in an institutional setting.

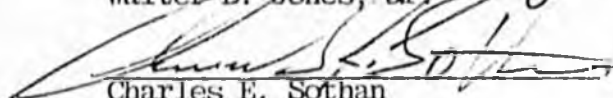
It should be noted that legislation allows review hearings at any time concerning youth commitments; thus, the youth's rights are adequately protected. Any citizen or relative may file for a review hearing.

Recommended by:



Walter B. Jones, Jr.

Date:

1-17-79

 Director
Charles E. Sothan
Division of Corrections

Approved by:


Helen D. Beirne, Commissioner
Department of Health and Social Services

Date:

1-17-79

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Proposed Amendment to 47.10.230 (e)
 Title Amend to exclude youngsters who have been adjudicated delinquent minor by Court.
 Requested by Department of Health and Social Services Date 1/9/79

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Administration of Justice
 Budget Request Unit(s) Affected Juvenile Confinement

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE January 9, 1979 PREPARED BY Leland T. Dally
 AGENCY Division of Corrections
 PHONE 465-3376
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)