

HB

97

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

N' 1
Bill Version: HB 97
(H) Publish Date: 2/10/93

Revision Date: _____ Dept. Affected: Health and Social Services
Title: "An act clarifying responsibilities for children in custody of department" BRU: Purchased Services
Sponsor: House HESS for DHSS Component: Foster Care
Requestor: _____ COMPONENT SERIAL NO. 0252

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill is critical to the Division of Family and Youth Services. There will be no increased costs incurred if this bill passes, but there is a serious potential for a sizeable increase in foster care costs if it does not pass.

Prepared by: Deborah R. Wine, Director
Division: Department of Health & Social Services
Approved by Commissioner: Theodore A. Mala, MD, MPH
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/02/93
Date: 2/5/93

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HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

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HB 97

CLARIFYING PARENTAL RESPONSIBILITIES

FOR A CHILD IN STATE CUSTODY

HB 97 clarifies the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents.

The bill responds to an Alaska Supreme Court decision that will incur new and substantial costs to the state.

In the August 1991 decision in the case of In re E.A.O., the court reversed a lower court decision and ruled that the state must pay for the medical costs of a child in state custody even though the child lives with his or her parents.

Prior to this decision, the state interpreted the law to pay for medical care costs of children in physical custody of the state. Holding the state responsible for medical costs of children in its custody who are placed at home would result in less protection for these children and other children in need of aid.

The ramifications of this decision may also lead to the state's being held liable for other costs of child rearing such as food, shelter, and education. HB 97 will free the state from the fiscal complications arising the August 1991 court decision.

HB 97 passed the House with 39 Yeas - 1 Excused. We urge your favorable consideration of this legislation.

HOUSE BILL 97

For An Act Entitled: "An Act clarifying the responsibilities for the Department of Health and Social Services and parents for children who are committed to the custody of the Department and are placed by the Department with the parents; and providing for an effective date"

Analysis/Program Impact

The Department of Health and Social Services strongly supports HB 97, which clarifies the responsibilities of the Department for children committed to its legal custody who continue to reside with the parent or parents. The Bill amends AS 47.10.084 (a) to expressly require a parent or parents to provide for the day to day care of their children if the children are residing with them when the state has legal custody as a result of child protection services purposes.

This bill was made necessary as a result of the Alaska Supreme Court ruling in the case of In re E.A.D., 816 P.2d 1352 (Alaska 1991), in which the court ruled that the current AS 47.10.084 requires the Department to pay for medical costs associated with the care of children, even though they live with their parents. The Department has never interpreted the statute in this manner in the past. Therefore, absent an amendment, the Department will incur substantial additional financial expenses for these medical costs and may also be exposed to legal suits to resolve the responsibility for other costs of child rearing, including food, shelter, and education, while a child is placed at home by the Department. The Department has not budgeted for these types of costs, and these cost would significantly impact our budget, as well as the Medicaid budget. Although the court did acknowledge a possible right of reimbursement from the parents, the collection would not be practical nor cost effective.

The bill provides for a retroactive effective date to August 30, 1991, the date that the court issued its ruling. A retroactive effective date is necessary to avoid the additional unbudgeted expenses and to resolve a legal question as to the Department's responsibilities for other expenses, such as shelter, which the court did not directly address in its decision.

POSITION PAPER

STATE OF ALASKA ★ DEPARTMENT OF HEALTH & SOCIAL SERVICES

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Department's Position The Department of Health and Social Services urges the passage of this bill.

Recommended: Deborah R. Wing Date: 2/5/93
Deborah R. Wing, Director
Division of Family and Youth Services

Approved: Theodore A. Mafa Date: 2/5/93
Theodore A. Mafa MD, MPH
Commissioner
Department of Health and Social Services

MEMORANDUM

State of Alaska

Department of Law

TO: Elmer Lindstrom
Department of Health and
Social Services
Juneau, Alaska

DATE: January 5, 1993

FILE NO.:

TEL. NO.: 269-5100

SUBJECT: Legislation

FROM:

Dianne Olsen
Dianne Olsen
Assistant Attorney General
Human Services Section

Last year, the department introduced legislation to modify AS 47.10.084, which outlines the responsibilities of the department to children in its legal custody. The statute states that when the department has legal custody of a child, it has

the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child and the duty of providing the child with food, shelter, education, and medical care.

In the case of In the Matter of E.A.O., 816 P.2d 1352 (Alaska 1991), the department had argued that when children in state custody are placed by the department in the home of their parents, it is the parents who are responsible for such things as food, shelter, education, and medical care. The Alaska Supreme Court, on the basis of strict statutory construction, disagreed. Therefore, the legislation was introduced to modify the statute. Although the legislation did not pass last year, we urge the department to work toward getting it introduced and passed this year.

Since the E.A.O. decision, defense attorneys have been relying upon the decision to make requests for the Department of Health and Social Services to pay for various expenses of children and their families when those children are in the legal custody of the state. In Anchorage, defense attorneys have filed motions in at least two cases to require the department to pay for housing costs of children and their parents. The department has resolved those cases prior to a judicial ruling. In Kenai, a defense attorney used the decision to support a request that the department pay for unapproved counseling costs for a child. The department was willing to arrange for counseling at an agency with which it had a contract, but the parents arranged for the child to be in counseling with someone with whom it did not have a contract and for whom federal funds would have been unavailable.

Elmer Lindstrom

January 5, 1993
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Although there have not been a large number of cases where such requests have been made, it is clear that defense attorneys will continue to make the argument that the department is required to pay for food, shelter, housing, and medical care no matter where the child resides. For instance, if a child in the custody of the state lives at home and that child suffers an injury, the department is responsible for payment for the medical expenses. Because the child is not in foster care, the child is not likely to be eligible for medicaid funds. Therefore, the expenses will come from the department's limited budget.

Please let me know if there is any further information that would be helpful to you.

DO/jlb