

HB

214

FISCAL NOTE

No. 3

E Bill Version: CS HB 214 (Jud)

(S) Publish Date: 1-20-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: December 14 1993
Title: ...allowing the parent or legal guardian of a minor to disclose certain records and information about the minor...
Sponsor: House Rules/Reg. of Legislative Council
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: December 14, 1993
 Approved by Commissioner: Richard I. Peques / HCR
 Agency: Department of Law Date: December 14, 1993
 Approved by: Charles E. Cole, Attorney General

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 214 (JUD)

ANALYSIS CONTINUATION:

The Judiciary Committee Substitute for HB 214 amends the state statute providing for the confidentiality of juvenile records, AS 47.10.090, to permit the parent or legal guardian of a minor to disclose records or other information about the minor to certain state officers for review or use in their official capacity. Under the bill, the persons to whom disclosure is made would be prohibited from disclosing the confidential or privileged information to anyone about the minor who is not authorized to receive the information. A person who violates this safeguarding provision would be guilty of a misdemeanor, and upon conviction could be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or both. The bill would also amend Alaska Child in Need of Aid Rule 22, by providing an exception to the confidentiality of information pertaining to a minor who is subject of Child in Need of Aid proceedings. The Department of Law would not usually be involved in this process and, consequently, there should not be a fiscal impact for the department.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: CSHB 214 (JUD)
(S) Publish Date: 1-20-94

Revision Date: 01/18/94 Dept. Affected: Health and Social Services
 Title: An Act allowing the parent or legal guardian of a minor to disclose certain records and information... BRU: Family & Youth Services
 Sponsor: House Rules Committee Component: Southeast, Southeast, Northern & Central Office
 Requestor: Senate HES COMPONENT SERIAL NO. 0258,0254,0255,0259

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 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 (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law. The department would not be required to provide any additional administrative or line services as a result of this bill.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing* Phone: 465-3191
 Division: Division of Family & Youth Services Date: 01/18/94
 Approved by Commissioner: Margaret R. Lowe *Margaret R. Lowe* Date: 01/18/94
 Agency: Department of Health & Social Services

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Representative Ramona Barnes

POSITION PAPER

HB 214

HB 214 amends AS 47.10 which will allow a parent or legal guardian of a minor who has a complaint against DFYS to voice this complaint to the Commissioners of H&SS, Administration, Public Safety, the Ombudsman, the Attorney General, their legislators, the Governor and Lt. Governor who may review this information in their official capacity. These public officials will still be prohibited from disclosing information to anyone not authorized to receive said information.

This bill was introduced to eliminate a problem that came to light in 1991. At the request of a constituent I questioned the way DFYS was taking care of two children placed under their authority. The guardian ad litem in this case went to court and was granted a gag order preventing my constituent, the parent of these children, from talking to me about her concerns regarding the care her children were receiving in foster care. At no time were any confidential documents involved in her complaint.

This "gag order" violated my constituent's right to freedom of speech and her right to convey her displeasure with a state agency to me, her elected representative, and the Governor and Lt. Governor. My constituent's attorney has filed an appeal with the Alaska Supreme Court, and Legislative Council has agreed to participate in this appeal by filing an amicus brief which has been accepted by the court.

I ask for your support of HB 214 to aid in maintaining open lines of communication between our constituents and their elected representatives.

Rep. Barnes'
Position Paper



State of Alaska
Ombudsman

Duncan C. Fowler

Reply to:

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MEMORANDUM

DATE: April 1, 1993

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Duncan C. Fowler, Ombudsman

SUBJ: Ombudsman's Position
Committee Substitute for House ~~Bill~~

BACKGROUND

This bill attempts to resolve problems with judicial interpretation of AS 47.10.090 which came to light last year. That statute by its terms restricts access to court records and prohibits disclosure of information and records which are prepared by federal, state or city agencies when those records pertain to a minor.

This statute has been interpreted by a superior court judge to prohibit a parent involved in a Child In Need of Aid (CINA) proceeding from providing specific information on the matter to their legislator, other elected officials or the ombudsman. While the court's order was eventually modified to allow the parent to provide information to the ombudsman, the limitations on discussions with elected officials remained in place.

This matter is being appealed to the Alaska Superior Court by the mother involved in the CINA case. The Legislative Council did authorize the submission of an Amicus brief supporting a parent's right to contact their elected officials in such matters

EFFECT OF PROPOSED LEGISLATION

This committee substitute provides parents or guardians an affirmative right to provide information about state actions involving a minor to elected officials or other selected state officials who would be in a position to correct any allegedly inappropriate acts by the state agencies involved. The substitute prohibits re-disclosure of confidential information by these officials.

It is broad enough to overcome any disclosure prohibitions in other state statutes, regulations and court rules such as CINA Rule 22 and Delinquency Rule 27 which, along with AS 47.10.090, also prohibit disclosure of information.

While it stops short of affirmatively exempting parents and guardians from coverage of disclosure restrictions or specifically allowing parents to disclose information not obtained from agency records to persons other than state officials, it clarifies that it should not be interpreted to limit existing parental rights by implication.

Memorandum from the
Ombudsman

Representative Porter

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April 1, 1993

OMBUDSMAN'S POSITION

The ombudsman supports the position that parents should be allowed to contact state officials to seek relief from agency actions that have such a significant impact on their personal lives. That cannot be done effectively unless parents are allowed to share information with those officials.

The ombudsman believes this committee substitute is preferable to the original bill. It provides an affirmative right and, unlike the original bill, it does not limit existing rights by implication, i.e. that parents and guardians may only provide information to selected state officials, even if that information was obtained from non-confidential sources.