

HB

97

SENATE COMMITTEE REPORT

DATE: 4/18/93

FURTHER:

DATE TURNED INTO OFFICE: 5/6/93

JUDICIARY Committee considered HOUSE BILL NO. 97

"An Act clarifying 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; and providing for a: effective date."

and recommends:

- replace with _____ CS _____ ()
- or adopt previous _____ CS _____ ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DHESS	2-5-93	✓	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Suzanne Little No Rec

George Tacko NO REC.

Adrian L. Taylor Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
993 LEGISLATIVE SESSION

BILL NO. HB 97

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							
REVENUE FUND SOURCE							

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. Wing, 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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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

Position Paper
page 2
HB 97

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. Mala Date: 2/5/93
Theodore A. Mala 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
Page 2

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

predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977; am § 17 ch 57 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, in subsection (a), inserted "a victim im- pact statement reporting the information set out in AS 12.55.022" and added the second sentence.

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities.

NOTES TO DECISIONS

Department's responsibility for medical costs. — The department is responsible for the medical costs of children in its custody, whether the children are placed at home or in a foster home. L.O. v. State, 816 P.2d 1352 (Alaska Ct. App. 1991).

Sec. 47.10.097. Fingerprinting of minors. (a) A peace officer may fingerprint a minor under the same circumstances as an adult may be fingerprinted.

(b) Fingerprint records taken under this section are not subject to AS 47.10.090. (§ 3 ch 121 SLA 1988; am § 1 ch 32 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 9, 1991, rewrote the section.

Sec. 47.10.120. Support of minor. (a) When a child in need of aid or a delinquent minor is committed under this chapter, the court shall, after giving the parent or legal guardian a reasonable opportunity to be heard, adjudge that the parent or guardian pay to the department in a manner that the court directs a sum that is based on the fee schedule adopted under AS 44.29.022 to cover in full or in part the maintenance and care of the child or minor.

(b) If a parent wilfully fails or refuses to pay the sum fixed, the parent may be proceeded against as provided by law in cases of family desertion and nonsupport.

(c) The sum collected from a parent under this section shall be directly credited to the general fund of the state.

(d) *[Repealed, § 28 ch 90 SLA 1991.]* (§ 13 art I ch 145 SLA 1957; am § 1 ch 31 SLA 1959; am § 1 ch 141 SLA 1959; am § 23 ch 63 SLA 1977; am §§ 88, 89 ch 138 SLA 1986; am § 28 ch 90 SLA 1991)

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities. (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person 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. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

The phrase "reasonable visitation" in subsection (c) does not imply an absolute right to visitation; this section should be read in conjunction with the

rest of the chapter to allow parental visits to be barred when the visits are not in the best interests of the child. *K.T.E. v. State*, 689 P.2d 472 (Alaska 1984).

