HB

125

CS FOR HOUSE BILL NO. 125(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Toohey, Bunde

A BILL

FOR AN ACT ENTITLED

"An Act relating to disclosures to school officials of information about certain minors."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 47.10.060(e) is amended to read:

(e) A person who has been tried as an adult under this section, or the department on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect and further finds that the person has fulfilled all orders of the court entered under AS 47.10.080(b), the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil

rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The court may not, under this subsection, seal records of a criminal proceeding

(1) **that are subject to disclosure under AS 47.10.090(f);**

(2) initiated against a person if the court finds that the person has not complied with a court order made under AS 47.10.080(b); or

(3) [(2)] commenced under AS 47.10.010(e) unless the minor has been acquitted of all offenses with which the minor was charged or unless the most serious offense of which the minor was convicted was not an offense specified in AS 47.10.010(e)(1) or (2).

* **Sec. 2.** AS 47.10.090(c) is amended to read:

(c) Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor, the court shall order all the court's official records pertaining to that minor, **except the records that are subject to disclosure under (f) of this section,** sealed. **The court order directing that the records be sealed must include the** [, AS WELL AS] records of all driver's license proceedings under AS 28.15.185, **of all** criminal proceedings against the minor **except the records of criminal proceedings that are subject to disclosure under (f) of this section,** and **of all** punishments assessed against the minor, **except records of punishments that are subject to disclosure under (f) of this section**. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The provisions of this subsection relating to the sealing of records do not apply to records of traffic offenses.

* **Sec. 3.** AS 47.10.090(d) is amended to read:

(d) **Except as provided by (f) of this section, the** [THE] name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court.

* Sec. 4. AS 47.10.090(e) is amended to read:

(e) The court's official records **that,** under this chapter, **are required to be confidential or that have been sealed** may be inspected only with the court's permission and only by persons having a legitimate interest in them. A person with a legitimate interest in the inspection of an official record maintained by the court includes a victim who suffered physical injury or whose real or personal property was damaged as a result of an offense that was the basis of an adjudication or modification of disposition. If the victim knows the identity of the minor, identifies the minor or the offense to the court, and certifies that the information is being sought to consider or support a civil action against the minor or against the minor's parents or guardians under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records and information in connection with the civil action:

(1) a petition filed under AS 47.10.010(a)(1) seeking to have the court declare the minor a delinquent;

(2) a petition filed under AS 47.10.080 seeking to have the court modify or revoke the minor's probation;

(3) a petition filed under AS 47.10.060 requesting the court to find that a minor is not amenable to treatment under this chapter and that results in closure of a case under AS 47.10.060(a); and

(4) a court judgment or order entered under AS 47.10.010 - 47.10.142 that disposes of a petition identified in (1) - (3) of this subsection.

* Sec. 5. AS 47.10.090 is amended by adding a new subsection to read:

(f) If a minor who has been adjudicated delinquent is enrolled in school, the clerk of the court in which the adjudication order is entered

(1) shall transmit a copy of the court's adjudication order to the principal of the minor's school if

(A) the minor has been adjudicated delinquent for committing an offense on the school's property; or

(B) the minor has been adjudicated delinquent for committing one or more of the following acts that, if committed by an adult, would be a

violation of

(i) AS 11.41 and the violation is punishable as a felony;

(ii) AS 11.46.100 - 11.46.490 and the violation is punishable as a felony;

(iii) AS 11.71 and the violation is punishable as a felony; or

(iv) a statute defining a criminal offense if the offense involved the possession or use of a deadly weapon, as that term is defined by AS 11.81.900(b);

(2) shall provide with the copy of the adjudication order a notice to the principal that the copy of the order may not be disclosed except as provided in AS 47.10.093(h); and

(3) shall maintain a record of the adjudication order released to the principal under this subsection and the basis for its release.

* **Sec. 6.** AS 47.10.093(a) is amended to read:

(a) Except as specified in AS 47.10.092 and (b) - (f), **and (h)** of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty, including driver's license actions under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without a court order.

* **Sec. 7.** AS 47.10.093(c) is amended to read:

(c) A state or municipal law enforcement agency

(1) shall disclose information regarding a case that is needed by the person or agency charged with making a preliminary investigation for the information of the court under AS 47.10.020;

(2) may disclose to the public information regarding a criminal offense in which a minor is a suspect, victim, or witness if the minor is not identified by the disclosure;

(3) **shall notify the principal who shall notify the appropriate teacher of the school attended by a minor who is subject to AS 47.10.010 -**

47.10.142 and [MAY] disclose to that school official information

(A) about an incident occurring within the agency's jurisdiction if the law enforcement agency has probable cause to believe that the minor has committed an offense that would be a crime if committed as an adult and

(i) that the victim of the offense is a student or staff member of the school and that notice to the school is reasonably necessary for the protection of the victim; or

(ii) is an offense described in AS 47.10.090(f)(1)(B); or

(B) [OFFICIALS INFORMATION] regarding a case not required to be disclosed under (A) of this paragraph [AS MAY BE NECESSARY] to protect the safety of school students and staff;

(4) may disclose to the public information regarding a case as may be necessary to protect the safety of the public; and

(5) may disclose to a victim information, including copies of reports, as necessary for civil litigation or insurance claims pursued by or against the victim.

* Sec. 8. AS 47.10.093 is amended by adding new subsections to read:

(h) When information or a record is disclosed to a school principal under (c)(3) of this section or under AS 47.10.090(f), the school principal may disclose the information only to persons employed by that school district or to the chief administrative officer of a school district to which the minor transfers.

(i) Notwithstanding (c)(3) of this section, a state or municipal law enforcement agency is not required to notify the principal of a school under (c) of this section if the agency determines that notice would jeopardize an ongoing investigation.

(j) In this section, "school" means a public or private elementary or secondary school.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 125

Revision Date:
Title: Disclosures to school officials
Sponsor: Rep. Green
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	7.5	7.5	7.5	7.5	7.5	7.5
TRAVEL						
CONTRACTUAL	0.1	0.1	0.1	0.1	0.1	0.1
SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	7.7	7.7	7.7	7.7	7.7	7.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	7.7	7.7	7.7	7.7	7.7	7.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	7.7	7.7	7.7	7.7	7.7	7.7

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: $ None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System
Phone: 264-8228
Date: 02/22/95

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/22/95

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Rev 1/95 09:32 AM

FISCAL NOTE - ALASKA COURT SYSTEM - TRIAL COURTS

Alaska Court System
Fiscal Analysis
HB 125

HB 125 provides that if a minor who has been adjudicated delinquent is enrolled in school, the clerk of the court in which the adjudication order is entered shall transmit a copy of the court's adjudication order to the principal of the minor's school if the minor has been adjudicated delinquent for committing an offense on the school's property, or if the minor has been adjudicated delinquent for certain felonies or misdemeanors. These include felonies under AS 11.41; felonies under AS 11.46.100 - 11.46.490; felonies under AS 11.71; and felonies or misdemeanors involving the possession or use of a deadly weapon.

The clerk of court is further required to provide a notice to the principal that the copy of the order may not be disclosed except as provided in AS 47.10.093(h), and is required to maintain a record of the release.

According to statistics provided by the Division of Family and Youth Services (DFYS), in FY 94 approximately 295 minors were adjudicated delinquent for the offenses listed above. An large but indeterminate number were also adjudicated delinquent for offenses committed on school property; these include a variety of misdemeanors such as minor consumption and trespass. This note assumes that clerks of court will be required to determine if a minor is subject to HB 125 and notify school principals approximately 350 times per year.

Alaska Court System
Fiscal Analysis
HB 125

	Amount
Personal Services	
This legislation will require clerical staff to research case files, prepare forms and mail notices to school officials. The procedures required by this legislation will not require additional staff, but will require the payment of overtime to the clerical staff. The current personal services authorization is not adequate to cover the cost of the additional overtime compensation.	$7,500
Contractual	
Postage to mail 350 notices	112
Supplies	
Envelooes, forms and duplicator supllies	100
Total estimated cost	$7,712

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB125

Revision Date:
Dept. Affected: Health and Social Services
Title: Relating to Disclosures to school officials of information about certain minors
BRU: Family and Youth Services
Component: DFYS Central Office
Sponsor: Representatives Green, Toohey,Bunde
COMPONENT SERIAL NO. 259
Requestor: House (HES)
See also (SN#): 255,258,254

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
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						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact for the Division if this bill were to become law.

Prepared by: Kathy Tibbles, Acting Director
Phone: 465-3191
Division: Family & Youth Services
Date: 02/22/95

Approved by Commissioner: Karen Perdue, Commissioner
Date: 2/22/95
Agency: Department of Health & Social Services

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ZERO FISCAL NOTE - HSS

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 125

Revision Date:
Title: Juvenile Criminal Records to Schools

Department Affected: Education
BRU: Executive Administration
Component: Commissioner's Office

Sponsor: Representative Green
Requester: Representative Green

COMPONENT SERIAL NO. 185

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 (FY95) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)

House Bill 125 clarifies when state and municipal law enforcement agencies and the Alaska Court System are required to disclose information to public or private elementary and secondary schools regarding minors who commit offenses. Passage of this legislation will have no fiscal impact on the Department of Education.

Prepared by: Sheila Peterson, Special Assistant
Phone: 465-2803
Division: Commissioner's Office
Date: 2/1/95
Approved by Commissioner:
Jerry Covey
Agency: Education
Date:

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Rev 1/95

ZERO FISCAL NOTE - DEPARTMENT OF EDUCATION

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 26, 1995 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3/16/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 125

HOUSE BILL NO. 125 JUVENILE CRIMINAL RECORDS TO SCHOOLS

"An Act relating to disclosures to school officials of information about certain minors."

recommends it be replaced with the following committee substitute CS HB 125 (HESS) [X] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) AK Court System [ ] fiscal note(s) _____

(2) [X] zero fiscal note(s) Education [ ] zero fiscal note(s) _____
H+SS

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
				✓
			✓	
	✓			
	✓			
Carlton Kolenson				✓

CHAIR'S SIGNATURE Dan Bunde _____

ALASKA
CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

March 7, 1995

The Honorable Con Bunde and Cynthia Toohey
Co-Chairs -- House Health, Education,
and Social Services Committee
Alaska House of Representatives
State Capitol Building, Room 104
Juneau, AK 99801-1182

re: House Bills 104 and 125

Dear Representatives Toohey and Bunde:

I am writing to you on behalf of the Board of Directors and the members of the Alaska Civil Liberties Union (AKCLU) in regards to two related bills currently pending before your committee: HB 125 and 104 relating to the disclosure of information regarding juvenile offenders. These bills would expand the disclosure of information regarding juvenile offenders. House Bill 125 provides for release of information to school officials and HB 104 provides release of the minor's name, address and offense, if the minor is over 14 and the offense would have been a felony if the minor was an adult.

The AKCLU opposes these changes. One of the most serious problems faced by a person who has a juvenile record is the possibility that it will be discovered by prospective employers. For this reason, juvenile records are purportedly made confidential by statute in every state. Many states including Alaska provide procedures by which a juvenile record may be sealed or expunged upon the individual reaching the age of majority. The underlying philosophy of these laws is that young people who have not fully matured, should not be stigmatized for acts of indiscretion which could have a permanent impact on their lives. Instead, Alaska and other states have passed laws to guard the privacy of juveniles and to make rehabilitation, not punishment, the primary focus of the juvenile justice system.

Our opposition to these bills rests primarily on the privacy clause (section 22) and the right of rehabilitation (section 12) of the Alaska Constitution. We believe that these bills will certainly impede the juveniles ability to be rehabilitated. Release of information about juvenile offenses will also interfere with the juvenile's right of privacy.

There is little or nothing to be gained from changing the law as it currently exists, and much to lose. Under current law, juvenile records may be released for "good cause." It is typical practice under the current system for judges, prosecutors, probation officers, social workers and even school officials to have information about a juvenile offense. For example, if a juvenile is charged with an offense it is normal for prior offenses to be considered by the judge or magistrate when setting release conditions. Prosecutors frequently hinge charge bargaining decisions on whether juveniles have records. Juveniles who wish to be considered for probation are often required to cooperate with school officials or rehabilitation programs which involves divulging information about the offense to such people. In those situations where it is necessary to release a juvenile's record (e.g. where "good cause" exists), the current law permits for that information to be distributed.

By changing the law, two things will happen. First, the media will have access to information about any juvenile felony level offense of children over the age of 14. This could have a potentially devastating impact on the lives of children. Information about any felony level offense, no matter how minor, can be distributed to the public at large impacting that child's life dramatically by hampering his or her ability to seek employment, participate in community activities, and exposing him or her to community animosity. In this atmosphere, a child is more likely to suffer permanent consequences of what may have been a stupid mistake and less likely to be rehabilitated and reintegrated into the community. By stigmatizing a child, we greatly reduce the probability that the youth will see any value in attempting the hard work of putting his or her life back together. Having been already branded "criminal" he or she is likely to continue the same patterns and associate with the same people that led to involvement with the justice system. By giving up on our young people so early, we are effectively agreeing to "throw away" our youth.

Secondly, by automatically informing the school authorities about certain juvenile offenses, the juvenile will likely suffer adverse consequences. He or she may be suspended from school, forbidden to participate in extra-curricular activities, and suffer the criticism and ostracism of his peers, all of which will also hinder his or her likelihood of rehabilitation. Again, there is no reason to change the current law to allow for protection of the school community. If the prosecuting authorities or the court determine that there is "good cause" to release this information to school authorities, then the current law provides for the release of that information.

Thank you for your attention to this matter. We ask you to consider our concerns and reject these proposed bills.

Sincerely,

Randall Burns

Randall Burns
Executive Director

RCK:RPB

Rep. Joe Green

INFORMATION ON JUVENILE DISCLOSURE IN OTHER STATES.

Attachment B is a copy of a 1994 publication, "Confidentiality of Juvenile Court Records Statutes Analysis," conducted by Linda Szymanski of the National Center for Juvenile Justice (NCJJ), an independent, nonprofit research group. According to Ms. Szymanski's summaries, as of 1993, juvenile statutes provided specifically for the following:

- 36 states and the District of Columbia provide for the release of records to persons having a legitimate interest;
- 4 states provide specifically for release of information to persons in danger from the child;
- 25 states provide specifically for release of information to victims of the crime;
- 13 states provide for release of juvenile records to school officials;
- 2 states provide specifically for release of information to the news media under some limited circumstances; and
- **24 states provide for release of information about certain crimes to the general public under special circumstances.**

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[2]The state Division of Family and Youth Services (DFYS) and the DHHS consider Title IV-B--child welfare services--funding to be at risk along with funding for Title IV-E programs. According to Kathy Tibbles, acting director of DFYS, although the major share comes from the IV-E programs, funding from the two sources totals nearly $7 million dollars annually.

Of the [illegible]ates Ms. Szymanski cites as providing for release of information about certain crimes to the general public under special circumstances, 4 refer specifically to records of juveniles who have been transferred to adult courts. Although the particulars vary, **another 12 states provide specifically for public access to records of juveniles charged with or adjudicated for crimes that would be considered felonies if committed by adults**. (Since Ms. Szymanski published the report, at least one other state--Illinois--has passed a similar law, and at least one additional state--Utah--is considering a similar law.). Louisiana appears to be unique in requiring that the name of a serious violent offender be released only after the entire appeal process has been exhausted. The following states' provisions may be of particular note.

California, WI.676. The names of minors having committed serious violent offenses shall not be confidential, unless the court, for good cause, so orders. Any party may petition the court to prohibit disclosure, and the court shall grant the petition if it appears that the harm to the minor, victims, witnesses, or public from the disclosure outweighs the benefit of public knowledge.

Colorado, 15.1.119 (1)(b.5). Basic information in the court records of a juvenile charged or convicted of an act that would have constituted a class 1,2,3, or 4 felony if committed by an adult shall be open to the public.

Florida, 39.045 (9). A law enforcement agency may release for publication the name and address of a child of 16 or more years who has been taken into custody for a violation of law which, if committed by an adult, would be a felony, or the name and address of any child 16 or older who has been found to have committed at least three or more violations which, if committed by an adult, would be misdemeanors, or the name and address of any child who has been adjudicated guilty of a capital felony, life felony, first degree felony, or a second degree felony involving violence against a person.

Montana, 41.5.601(2). Publicity may not be withheld regarding any youth formally charged with an offense that would be punishable as a felony if the youth were an adult.

New Jersey, 2A.4A.60(d). Information as to the identity of a juvenile, the offense, the adjudication and the disposition of a case shall be disclosed to the public where the offense for which the juvenile has been adjudicated delinquent, if committed by an adult, would constitute a crime of the first, second, or third degree, or aggravated assault, destruction or damage to property to an extent of more than $500, or the manufacture or distribution of a narcotic drug, unless upon application at the time of disposition the juvenile can demonstrate a substantial likelihood that specific harm would result from such disclosure.

Oklahoma, 10.51.1125.3. Confidentiality restrictions shall not apply if a juvenile is adjudicated for a serious act or for certain habitual criminal acts.

Virginia, 16.1.309.1. Where consideration of public interest requires, the judge may make public the name and address of a child and the nature of the offense for which the child has been adjudicated delinquent if for an act which would be a class 1,2, or 3 felony, forcible rape or robbery if committed by an adult, or in any case where a child is sentenced as an adult.

Wyoming, 14.6.240 (d). The court may release to the news media the name of a child who has been adjudicated a delinquent for a second or subsequent time pursuant to a petition filed under this act alleging the commission of a delinquent act constituting a felony.

I spoke with program representatives in Colorado, Florida, and Wyoming about Title IV-E funding in relation to the release of juvenile court records. **These states have experienced no funding problems in connection with access to juvenile justice records.**

- Sharen Ford, program administrator with the Division of Child Welfare Services in Colorado, notes that a few months ago, the juvenile justice and child welfare services functions were consolidated into a single department. The state's Title IV-E and IV-B funding has not been impacted--either before or after consolidation--by the release of juvenile records.

- Janet Ferris, general counsel for Florida's youth services program, notes that in the past, Florida has not sought Title IV-E and IV-B funding for delinquent youth. Thus, Florida has not had occasion to test the compatibility of Title IV-E confidentiality requirements and the state's release of juvenile records provision. With a potential of approximately $39 million annually, however, IV-E funding is currently a high priority. Ms. Ferris is not anticipating a problem in regard to confidentiality requirements.

- Jim Mitchell, management consultant for Wyoming's Division of Youth Services, Department of Family Services, notes that a law similar to their current one has been in effect in Wyoming since 1957. Mr. Mitchell, who is the former administrator of the division, states that both children's services and juvenile justice are administered within the Division of Youth Services, and that the IV-E funds serve delinquent children on a regular basis. Wyoming has never experienced a problem with their Title IV-E funding.

I also spoke with Dan Lewis, at the Children's Bureau, the Administration for Children, Youth, and Families, US DHHS. Mr. Lewis suggested that a I submit a formal request for an interpretation of the confidentiality requirements in regard to this issue to the associate commissioner of the Children's Bureau. I will forward copies of my request and the response when it arrives.

Legislative History and Intent--Confidentiality of Juvenile Court Proceedings

The Laws of Alaska in 1957 provided that the public be excluded from all juvenile hearings. Certain persons could be permitted to attend if, in the judge's opinion, such attendance was in the best interest of the minor. This aspect of the law has not changed, although in 1966 the legislature added a provision allowing for the presence of a "young adult advisory panel," and in 1991, the legislature passed a provision granting a victim the unlimited right to attend a hearing. The addition of the advisory panels was intended to allow for some measure of peer pressure for juveniles, as well as to provide a wider range of young adults with a look at the potential consequences of criminal behavior. The right to be present allowed to victims is in keeping with the victims' rights movement across the country.

Attachment C is a copy of Linda Szymanski's recent NCJJ publication, "Confidentiality of Juvenile Court Delinquency Proceedings (1994 Update)." As of 1994, 20 states admit the general public to juvenile hearings, at least under some circumstances. According to the summary provided, **hearings in nine states--California, Delaware, Kansas, Louisiana, Maine, Minnesota, Montana, Oklahoma, and Utah--are open if the crimes are serious.**
The general rule has always been that juvenile hearings, like juvenile records, should be kept confidential because children can change their behavior, have their records sealed, and go on to lead productive lives. Public sentiment, however, is changing in this regard.

The possibility of open juvenile court hearings raises questions about eligibility for Title IV-E funding similar to those raised by access to or publication of juvenile court records. I will include this issue in my request to the Children's Bureau.

I hope this information is helpful. If you have questions or need further information, please let me know.

Attachments

9-LS0499\G
Chenoweth
2/21/95

CS FOR HOUSE BILL NO. 125( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Toohey, Bunde

A BILL

FOR AN ACT ENTITLED

"An Act relating to disclosures to school officials of information about certain minors."

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conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The court may not, under this subsection, seal records of a criminal proceeding

(1) that are subject to disclosure under AS 47.10.090(f);

(2) initiated against a person if the court finds that the person has not complied with a court order made under AS 47.10.080(b); or

(3) [(2)] commenced under AS 47.10.010(e) unless the minor has been acquitted of all offenses with which the minor was charged or unless the most serious offense of which the minor was convicted was not an offense specified in AS 47.10.010(e)(1) or (2).

* **Sec. 2.** AS 47.10.090(c) is amended to read:

(c) Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor, the court shall order all the court's official records pertaining to that minor, except the records that are subject to disclosure under (f) of this section, sealed. The court order directing that the records be sealed must include the [, AS WELL AS] records of all driver's license proceedings under AS 28.15.185, of all criminal proceedings against the minor except the records of criminal proceedings that are subject to disclosure under (f) of this section, and of all punishments assessed against the minor, except records of punishments that are subject to disclosure under (f) of this section. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. The provisions of this subsection relating to the sealing of records do not apply to records of traffic offenses.

* **Sec. 3.** AS 47.10.090(d) is amended to read:

(d) Except as provided by (f) of this section, the [THE] name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court.

* **Sec. 4.** AS 47.10.090(e) is amended to read:

(e) The court's official records **that**, under this chapter, **are required to be confidential or that have been sealed** may be inspected only with the court's permission and only by persons having a legitimate interest in them. A person with a legitimate interest in the inspection of an official record maintained by the court includes a victim who suffered physical injury or whose real or personal property was damaged as a result of an offense that was the basis of an adjudication or modification of disposition. If the victim knows the identity of the minor, identifies the minor or the offense to the court, and certifies that the information is being sought to consider or support a civil action against the minor or against the minor's parents or guardians under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the following records and information in connection with the civil action:

(1) a petition filed under AS 47.10.010(a)(1) seeking to have the court declare the minor a delinquent;

(2) a petition filed under AS 47.10.080 seeking to have the court modify or revoke the minor's probation;

(3) a petition filed under AS 47.10.060 requesting the court to find that a minor is not amenable to treatment under this chapter and that results in closure of a case under AS 47.10.060(a); and

(4) a court judgment or order entered under AS 47.10.010 - 47.10.142 that disposes of a petition identified in (1) - (3) of this subsection.

* **Sec. 5.** AS 47.10.090 is amended by adding a new subsection to read:

(f) If a minor who has been adjudicated delinquent is enrolled in school, the clerk of the court in which the adjudication order is entered

(1) shall transmit a copy of the court's adjudication order to the principal of the minor's school if

(A) the minor has been adjudicated delinquent for committing an offense on the school's property; or

(B) the minor has been adjudicated delinquent for committing one or more of the following acts that, if committed by an adult, would be a violation of

(i) AS 11.41 and the violation is punishable as a felony;

(ii) AS 11.46.100 - 11.46.490 and the violation is punishable as a felony;

(iii) AS 11.71 and the violation is punishable as a felony; or

(iv) a statute defining a criminal offense if the offense involved the possession or use of a deadly weapon, as that term is defined by AS 11.81.900(b);

(2) shall provide with the copy of the adjudication order a notice to the principal that the copy of the order may not be disclosed except as provided in AS 47.10.093(h); and

(3) shall maintain a record of the adjudication order released to the principal under this subsection and the basis for its release.

*** Sec. 6.** AS 47.10.093(a) is amended to read:

(a) Except as specified in AS 47.10.092 and (b) - (f), **and (h)** of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty, including driver's license actions under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without a court order.

*** Sec. 7.** AS 47.10.093(c) is amended to read:

(c) A state or municipal law enforcement agency

(1) shall disclose information regarding a case that is needed by the person or agency charged with making a preliminary investigation for the information of the court under AS 47.10.020;

(2) may disclose to the public information regarding a criminal offense in which a minor is a suspect, victim, or witness if the minor is not identified by the disclosure;

(3) **shall notify the principal of the school attended by a minor who is subject to AS 47.10.010 - 47.10.142 and** [MAY] disclose to **that** school **official information**

(A) about an incident occurring within the agency's jurisdiction if the law enforcement agency has probable cause to believe that the minor has committed an offense that would be a crime if committed as an adult and

(i) that the victim of the offense is a student or staff member of the school and that notice to the school is reasonably necessary for the protection of the victim; or

(ii) is an offense described in AS 47.10.090(f)(1)(B); or

(B) [OFFICIALS INFORMATION] regarding a case not required to be disclosed under (A) of this paragraph [AS MAY BE NECESSARY] to protect the safety of school students and staff;

(4) may disclose to the public information regarding a case as may be necessary to protect the safety of the public; and

(5) may disclose to a victim information, including copies of reports, as necessary for civil litigation or insurance claims pursued by or against the victim.

* Sec. 8. AS 47.10.093 is amended by adding new subsections to read:

(h) When information or a record is disclosed to a school principal under (c)(3) of this section or under AS 47.10.090(f), the school principal may disclose the information only to persons employed by that school district or to the chief administrative officer of a school district to which the minor transfers.

(i) Notwithstanding (c)(3) of this section, a state or municipal law enforcement agency is not required to notify the principal of a school under (c) of this section if the agency determines that notice would jeopardize an ongoing investigation.

(j) In this section, "school" means a public or private elementary or secondary school.

Lawrence A. Wiget, Ed.D.
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TO: HOUSE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

SUBJECT: LETTER OF SUPPORT: HOUSE BILL 125

DATE: FEBRUARY 23, 1995

The Anchorage School District supports the passage of House Bill 125, "An Act relating to disclosures to school officials of information about certain minors."

The Juvenile Waiver Bill, CCS SB 54, became effective September 1, 1994, As part of the Bill, AS 47.10 was amended to add a new section which provides in relevant part: a state law enforcement agency " may disclose to school officials information regarding a case as may be necessary to protect the safety of school students and staff" AS 47.10.093 (c)(3).

HB 125 goes a step further and indicates that a state or municipal law enforcement agency **shall notify the principal of the school attended by a minor who is subject to AS 47.10.010 - 47.10.142 .**

The Anchorage School District supports this change. Without this section, a school district may request information which it feels may be necessary to protect the safety of school students and staff, but be denied the information at the discretion of the law enforcement agency.

Alaska State Legislature

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CAPITOL BUILDING
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DISTRICT 10

CHAIR, OIL & GAS COMMITTEE
VICE CHAIR, LABOR & COMMERCE COMMITTEE
JUDICIARY COMMITTEE
RESOURCES COMMITTEE
INTERNATIONAL TRADE & TOURISM COMMITTEE

ECONOMIC TASK FORCE

Representative Joe Green

SPONSOR STATEMENT, HB 125

"An act relating to disclosures
of information about certain minors"

One of the leading problems school administrators face is violence in the schools. Currently, there is no requirement that a school principal be given records regarding an adjudicated delinquent who is attending that school. Some juvenile offenders who have committed serious crimes are in schools and school officials are left out of the information loop. HB 125 helps to address this serious problem. Last year the law was changed to require that serious juvenile offenders over 16 years of age be automatically waived into adult court. However, there is no automatic waiver for juvenile offenders 15 and under, some of whom have committed serious, violent crimes. The crimes covered by this disclosure would include homicide, assault and reckless endangerment, kidnapping, sexual offenses, robbery, extortion, offenses against property, controlled substance offenses, and possession or use of a deadly weapon. It is these records with which HB 125 is concerned. HB 125, if enacted, would require mandatory disclosure of an adjudicated juvenile's court records to school officials:

A. If the victim of the offense is a student or staff member and that notice to the school is necessary to protect the victim, or
B. The disclosure is necessary to protect the safety of school students and staff.

This bill also requires law enforcement agencies to inform the principal if there is "probable cause" to believe that a minor attending that school has committed a serious felony. Additionally, HB 125 sets limits on the further release of the records. Since schools already adhere to strict confidentiality standards, the disclosure would fall under their existing confidentiality policy.

The information provided by mandatory disclosure would protect the victims of juvenile crime, protect students, protect teachers, and give the principal information that would allow him or her to use the school's resources to provide help for the adjudicated delinquent. If schools are held responsible for the safety of the students and faculty, school officials must have the necessary information about student violence to do the job properly.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 21, 1995

SUBJECT: Draft CSHB 125( ), relating to disclosure of information about minors to school officials: sectional analysis (Work Order No. 9-LS0499\G)

TO: Representative Joe Green
ATTN: Melinda Gruening

FROM: Jack Chenoweth
Legislative Counsel

The bill proposes to allow release of information and records about certain minors to school officials, and sets new limitations on the further release of that information or those records. The information and records that may be disclosed derive from two sources, records of the Alaska Court System and records compiled and maintained by law enforcement agencies.

*

The first five sections of the bill speak to information and records of the Alaska Court System.

The principal operative provision is bill section 5. Under that bill section, if the courts have entered an order adjudicating a minor a delinquent, the clerk of the court in which that order is entered is directed to transmit a copy of the adjudication order to the principal of the minor's school under the following circumstances:

(1) the offense for which the minor was adjudicated a delinquent occurred on school property; or

(2) the offense involved one of the following offenses that, if committed by an adult, would be a criminal offense:

(A) a crime against a person (AS 11.41) punishable as a felony;

(B) a property crime (AS 11.46.100 - 11.46.490) punishable as a felony;

(C) a controlled substance offense (AS 11.71) punishable as a felony; or

(D) an offense, however classified, involving the possession or use of a deadly weapon.

Additionally, the clerk of the court is to give notice to the school principal receiving the copy of the order as to the limitations on the order's further release, and is to maintain a record of the release and the basis for that release.

Disclosure of court system records under AS 47.10.090(f) implicates existing laws relating to confidential treatment of court records concerning minors and the possibility of eventual closure and sealing of records about a minor. The changes proposed by bill sections 1 - 4 recognize the exception for the records disclosable under AS 47.10.090(f) from existing provisions generally applicable to continued confidential treatment and sealing of those records.

*

The last three sections of the bill speak to the manner of handling information and records of agencies.

Bill section 6 makes a collateral change to recognize that AS 47.10.093(h) is a further exception to the general rule that agency records concerning minors are to be confidentially handled.

Bill section 7 amends AS 47.10.093(c) the first change directs a law enforcement agency to release information to a school principal relating to an offense alleged to have been committed by a minor if the law enforcement agency has probable cause to believe that the minor committed an offense described in AS 47.10.090(f)(1)(B)--these are enumerated above--or committed an offense in which the victim was a student or staff member of the school and the giving of the notice is reasonably necessary for the protection of that victim. The second change amends current law to make mandatory the permission disclosure of information about a case in order "to protect the safety of school students and staff." These mandatory disclosures are in addition to the optional or discretionary disclosure currently allowed by law.

Bill section 8 amplifies the law enforcement disclosure provisions:

-- subsection (h) permits the school principal to whom information had been disclosed to re-disclose within the limitations noted;

-- subsection (i) makes an exception to law enforcement agency disclosure if a disclosure would jeopardize on ongoing investigation;

-- subsection (j) sets out a definition for the term "school."

JBC:glc
95-152.glc

DIVISION OF LEGAL SERVICES
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Juneau, Alaska 99801-2105

MEMORANDUM January 25, 1995

SUBJECT: Disclosures of information to school officials
(Work Order No. 9-LS0499\C)

TO: Representative Joe Green
ATTN: Melinda Gruening

FROM: Jack Chenoweth
Legislative Counsel

In an attempt to avoid the contention by the Division of Family and Youth Services that disclosure of information from that division's records would jeopardize receipt of federal program assistance, the bill draft accompanying this memo shifts the source of the disclosure information, and the corresponding obligation to disclose, to the Alaska Court System. In doing so, it seems to me that the requirements of disclosure from court system records implicates the permanent sealing of certain court records related to serious juvenile misbehavior that may be the basis of a delinquency adjudication. The first four bill sections take that concern into account.

Under this version, the sources of disclosable information would be court system records or records prepared by law enforcement officials. As I mentioned in yesterday's discussion, by my reading of the federal statute cited by the Division of Family and Youth Services, if the information to be disclosed is available from the division's records and from another source and is disclosed from the other source (and not from the division's records), the continued receipt of federal program assistance ought not to be called into question.

JBC:klb:pl
95-009.klb

Enclosure

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MEMORANDUM January 30, 1995

SUBJECT: Disclosure of records concerning certain minors
(Work Order No. 9-LS0547\A)

TO: Representative Joe Green

FROM: Jack Chenoweth
Legislative Counsel

The Division of Family and Youth Services regularly represents that the legislature's efforts to broaden access to information about minors who commit offenses may call into question the continued receipt of federal financial assistance for the work of that division. It asserts that disclosure of information about minors may jeopardize payment of federal financial assistance to the division for programs that are assisted under two parts of the Social Security Act, Titles IV-B (the program of grants to states for aid to families with dependent children) and IV-E (the program of grants to states for foster care and adoption assistance). As I understand, the statute more often cited by the division is the one applicable to the IV-E program, 42 U.S.C. 671(a)(8), section 471(a)(8) of the Social Security Act:

> In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which --
>
> . . .
>
> (8) provides safeguards which restrict **the use of or disclosure of information concerning individuals assisted** under the State plan to purposes directly connected with
>
> (A) the administration of the plan of the State approved under this part [or under other specified program titles], or the supplementary security income program . . . ,
>
> (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program,

> (C) the administration of any other Federal or federally assisted program which provides assistance, cash or in kind, or services, directly to individuals on the basis of need,
>
> (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and
>
> (E) reporting and providing information pursuant to [42 U.S.C. 671(a)(9)] to appropriate authorities with respect to known or suspected child abuse or neglect . . . .

There is very little case law on this statute. [1] However, a small but significant body of case law more fully considers a substantially similar "information and records safeguard" provision, 42 U.S.C. 602(a)(9), in conjunction with administration of the aid to families with dependent children (AFDC) program. [2]

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[1] With respect to the Adoption Assistance and Child Welfare Act provisions of the Social Security Act, I found only two decisions, Wilder v. Bernstein, 645 F.Supp. 1292, 1339 (S.D.N.Y. 1986), aff'd 848 F.2d 1338 (2d Cir. 1988), and In re F.E.F., 594 A.2d 897, 903 n. 4 (Vt. 1991), in which 42 U.S.C. 671(a)(8) is specifically referenced. In each instance, the reference is hardly more than a mention without discussion.

[2] See, for example, Michigan Welfare Rights Organization v. Dempsey, 462 F.Supp. 227 (E.D. Mich. 1978) (the privacy right of individuals who apply for or receive assistance under the AFDC program requires nondisclosure, except as Congress has specifically authorized disclosure by law), Haskins v. San Diego County Department of Public Welfare, 161 Cal. Reptr. 385 (Cal. App. 4th Dist. 1980) (the federal law imposes a duty on the states, counties, and municipalities administering the AFDC program to protect against use and disclosure of program records except for purposes identified by the federal law), Whisler v. Whisler, 684 P.2d 1025 (Kan. App. 1984) (disclosure of information regarding AFDC applicants and recipients is limited to instances enumerated in 42 U.S.C. 609(a)(9)).

There are several similar "information and records safeguards" provisions in other related federal programs. 42 U.S.C. 302(a)(7) is applicable to grants to states for old age assistance; 42 U.S.C. 1202(a)(9) applies to grants to states for aid to the blind; 42 U.S.C. 1352(a)(9) is applicable to grants to states for aid to those who are permanently and totally disabled; 42 U.S.C. 1382(a)(7) applies to the supplemental security income

(continued...)

In response to the legislature's growing interest that some information about juveniles who commit criminal offenses be disclosed to the public, the division sought and obtained from regional officials of the Department of Health and Human Services a written endorsement of their interpretation and application of the "information and records safeguard." A copy of the November 9, 1994, response letter is enclosed. A key conclusion in that letter is set out at the end of its third paragraph:

> . . . Confidentiality requirements apply to all of the information in the Title IV-B or Title IV-E record, not just the child welfare information. Under this restriction, other information in the file, such as criminal records concerning the child, cannot be shared.

What the letter means to say, I hope, is that the information and records that the federal law protects against disclosure are limited to that information that has been obtained by the agency--in Alaska's case, the Division of Family and Youth Services--in the course of the division's providing program assistance supported by federal appropriations. In other words, the safeguards of the federal law should apply only to information that relates to, or arises out of, or is secured by the state agency in determining eligibility for and providing that program assistance. Consequently, if the information which is part of the file is at the same time a part of another record and that other record is disclosable, then the Social Security Act provision cited should not interpose a limitation on disclosure of the information if disclosure is to be made from that alternate source.

That the operative language would be limited to non-disclosure of the relevant program assistance records is not altogether clear. In the phrase in question, "the use or disclosure of information concerning individuals assisted," the term "information" is unmodified. The plain language of the statute does not circumscribe the term "information" in a way that limits the reference to "information" only to that which is program-related.

To some degree, courts have supplied the missing modifier, limiting the operation of the "information and records safeguard" provision to the information contained in the original records of the agency responsible for administration of the program. So, for example, with respect to the AFDC-related program confidentiality requirement of 42 U.S.C. 602(a)(9), various courts have assumed that the phrase "information concerning applicants and recipients" applies only to the welfare files and records generated in the course of accepting

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(...continued)

> (SSI) program for aged, blind, and disabled persons; and 42 U.S.C. 1396a(a)(7) applies to the medical assistance program. The statutory statement of safeguards applicable to the AFDC program is the most comprehensive on the matter.

and processing applications. State ex rel. Haugland v. Smythe, 169 P.2d 706, 711 (Wash. 1946), Morris v. Danna, 411 F.Supp. 1300, 1307 (D.Ct. Minn. 1976), aff'd 547 F.2d 436 (8th Cir. 1976), Michigan Welfare Rts. Org. v. Dempsey, 462 F.Supp. 227, 237 (E.D. Mich. 1978), Haskins v. San Diego County Department of Public Welfare, 161 Cal. Reptr. 385, 389 (Cal. App. 4th Dist. 1980).

Surely 42 U.S.C. 671(a)(8), 42 U.S.C. 602(a)(9), and other similar provisions were not intended to have a protective reach beyond safeguarding the records that have been compiled by the state agency to which federal financial assistance is payable. Those federal law provisions do not, to me, appear to support protecting against disclosure information about all acts of minors for whom the state receives assistance under one or another facet of the Social Security Act if the information or record is available from another source. To conclude otherwise--to say that the federal statute safeguards against public disclosure the records of **any state agency** applicable to minors for whose benefit the state is receiving assistance under the Social Security Act--broadens the meaning of the statute beyond logical limits and, arguably, establishes a double standard as to information that is disclosable, [1] that might be found to violate equal protection provisions of the federal and state constitutions. If at all possible, courts will avoid giving a statute a meaning that would make the statute unconstitutional.

In our conversation last week, we briefly touched on the need to call attention to this problem in federal law. On reflection, I question the need for a resolution directed to the attention of the Congress to reconsider this matter. If we are willing to rely upon the reported case decisions in which the courts have limited the reference to "information" to that which is program-related, then I see no need to push for approval of the resolution. Nonetheless, Congress' apparent current willingness to reconsider the manner of supporting social services programs initiated and operated by the states seems to me to provide the opportunity to clarify the manner in which this restriction is to operate.

After you have read this memo, please advise me as to whether or not you still see the need to have a House Joint Resolution drafted for introduction.

JBC:klb:pl
95-025.klb
Enclosure

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[1] It is a double standard in that, for minors for whom federal financial assistance is received under the Social Security Act, information and records may not be disclosed, but for minors for whom no federal financial assistance is received under that Act, information and records relating to the minor would be fully disclosable.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

Region X
M/S___
2201 Sixth Avenue
Seattle, WA 98121

November 9, 1994

Debra Wing, Director
DHSS/DFYS
PO Box 11601
Juneau, AK 99811-0630

Dear Ms. Wing:

This is to respond to your request for our opinion on potential legislation to release information about juvenile offenders to the public, particularly information from Title IV-B and IV-E case files. Federal regulations require that these files are to be kept confidential and the information only used to provide services to the child.

Both Title IV-E and Title IV-B are subject to the requirements of Section 471(a)(8) of the Social Security Act. (Refer to 45 CFR 1355.21). In addition, both Title IV-B and Title IV-E are subject to the confidentiality restrictions prescribed in 45 CFR 205.50. (Refer to 1355.30 (1)). Under 45 CFR 205.50, the release of information concerning applicants and recipients is restricted to specified purposes including, principally, the administration of certain Federal programs. The passage of the proposed Alaska legislation would result in violation of the federal requirements for the operation of both the Title IV-B and Title IV-E programs.

Title IV-E confidentiality requirements apply to all Title IV-E children placed under state child welfare agency responsibility, including those with delinquent behavior. Similarly, Title IV-B confidentiality requirements apply regardless of the reason the child is receiving Child Welfare Services. Once the information is in a Title IV-B or Title IV-E record, it cannot be released except in the circumstances specified in the regulations. This means that the records are kept confidential at all times, including times in which Title IV-E payments are not being made (such as during a placement in a locked detention facility). Confidentiality requirements apply to all of the information in the Title IV-B or Title IV-E record, not just the child welfare information. Under this restriction, other information in the file, such as criminal records concerning the child, cannot be shared.

If you have any questions or need further clarification, please contact Carol Overbeck at (206) 615-2558, ext. 3078.

Sincerely,

Richard D. McConnell
Chief, CCWD&R

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HOMER NEWS

Homer, Alaska, Vol. 20, No. 39 Thursday, September 30, 1993

Boys charged in rape of 5-year-old

by Susan Price
Staff Writer

Homer police have filed sexual assault charges in juvenile court against three Homer boys, ages 11, 12 and 13, who allegedly held down a 5-year-old girl last year and repeatedly raped her.

Police say the girl told investigators that the incident occurred a year ago last month as she played by herself with a "magic" wand with sparkles on it near a tree house in a wooded area between Lakeside Mall and the homes on Ben Walters Lane.

The boys, who were 10, 11 and 12 years old at the time, found the girl playing by herself. They allegedly chased her, pulled her pants off and took turns holding her down while each one raped her at least twice, said Homer Police Sgt. Andy Klamser.

The girl didn't tell anyone what happened.

See BOYS, Page 17

Experts describe rape case as extreme

by Susan Price
Staff Writer

As David Sperbeck, an Anchorage clinical and forensic psychologist who has evaluated criminals for the state Department of Corrections for 11 years, listened to the details of a Homer rape case, his first words were barely audible: "Oh, God."

Homer police believe three boys, then 10, 11 and 12 years old, sexually assaulted a 5-year-old girl, taking turns holding her down while each one raped her at least twice. They used various objects, police say.

Single charges of first-degree sexual assault against each of the boys, alleging sexual penetration without consent, were referred last week to the Juvenile Intake Office in Kenai, Klamser said.

See ABUSE, Page 17

. . . Abuse often prompts abuse, experts say

FROM PAGE ONE

The incident, which allegedly happened a year ago, came to light June 5 when the girl gave the account to a therapist.

Although Sperbeck and Gail Ryan, a Denver-based child abuse specialist, haven't reviewed the case in detail, they did offer some observations about children who tend to commit such crimes and their chances for rehabilitation. Sperbeck said he's worked with adults and children who have committed serious anti-social acts, but he said he's never encountered children so young who have done something so extreme as that described in the Homer case.

"In my opinion and in my experience, children aren't born with this extent of anti-social behavior," Sperbeck said.

Ryan said there's a strong likelihood that at least one if not all the boys has experienced some kind of abuse. Sperbeck said, "Either they're a product of abuse or they have been exposed to extremely inappropriate material through the media — violent, anti-social, predatory material."

"I would find it almost inconceivable if there wasn't some fascination with violent sexuality. This thing doesn't happen without some kind of actual or vicarious participation," Sperbeck said.

Ryan said that such exposure comes from our culture, from the media, from advertising, even from children's role models who come up as abusers in the news. All the while, children are learning about their sexuality and the adults who care for them — parents as well as teachers — aren't prepared to validate or correct them.

As far as the chances of rehabilitation, Sperbeck said he has a dim view when such a "horrendous crime" has been committed.

"I'm very pessimistic. For perpetrators to act so indifferent, to act with a total lack of empathy, a total lack of sensitivity — that kind of indifference is so extreme, in my opinion it makes potential rehabilitation guarded at best," he said.

But that potential would largely depend on whether or not the August 1992 rape is isolated, he said. The boys would have to be evaluated beyond the specific acts, as well, he said.

"If this kind of behavior has been repeated before — this kind of long-standing anti-social predatory behavior," Sperbeck said, "then I'm comfortable in saying there is very little rehabilitation potential for children of this age."

Ryan appeared a little more optimistic. She's a project director at the Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect. She has also edited a book with Sandy Lane, "Juvenile Sexual Offending: Causes, Consequences and Correction."

Ryan said the most important thing now, if the boys are found guilty, is that they are held accountable.

"You can't treat a problem that's not acknowledged," she said. Once offenders are held accountable, then they have to be put in the appropriate treatment program. And that can't be done without the support of the offender's family, she said.

"If you're challenging the beliefs of these boys, then it's very likely you're challenging the beliefs that have been present in the family system as well," Ryan said.

Sperbeck said the young sex offenders aren't necessarily from broken or dysfunctional families, but more often than not, that's a big factor. The perpetrators tend to be from families with a seriously disruptive family system, he said.

But that's not always the case. Sperbeck said he recently dealt with a case in New York in which a little boy was murdered by three other boys. Two of the boys came from very good homes, he said.

Ryan said there are usually signs before something as severe as the rape of the 5-year-old girl occurs.

"Kids just don't suddenly arrive at this behavior out of the blue," she said. People have to be trained to look for signs of abusive behavior, she said.

"If you want to get to the bottom line of what makes it possible to be an abuser, that's it — a lack of empathy. Aggressive behavior (in people) is a trait. Empathy has to be learned," Ryan said.

Babies start to learn empathy when they communicate their needs to parents and their parents meet those needs, she said. "Kids who don't get it have to learn it later, along the way," she said.

Ryan said it's up to each community to decide how it wants to prioritize its treatment for juvenile sex offenders.

"If they don't do something with them now, they'll end up doing something with them later," she said. "The cost difference will be in the number of victims between now and then. "It's hard. We don't want to think about 11-year-olds being rapists."

. . . Boys charged in rape of 5-year-old

FROM PAGE ONE

Her mother has since told police her daughter showed signs at the time of emotional trauma. The mother said her daughter had nightmares and suddenly feared being left alone or being separated from her in public, Klamser said.

The mother put the 5-year-old in therapy, hoping it would help. As a result, the rape came to light in a June 5 therapy session, Klamser said. The therapist, as required by law concerning such disclosures, reported the incident to police, prompting a lengthy investigation that culminated in last week's charges. Single charges of first-degree sexual assault against each of the boys were referred last week to the Juvenile Intake Office in Kenai. From there, the case will be handled through the juvenile-court system, which is closed to the general public.

Klamser said the first-degree sexual assault charge in this case is defined as "sexual penetration of another without consent." Klamser said "there were objects used." He wouldn't elaborate.

"I was shocked," said Klamser, who has had specialized training in investigating sex crimes and has been a law-enforcement officer for nearly 15 years. "I've never seen anything like this before. If any three adults did this with any age victim, it would be real shocking.

"What occurred with this little girl — the way they repeatedly raped her was very brutal and something you wouldn't expect from anyone."

Klamser said the girl, who is 6 years old now and still lives in Homer, wasn't physically injured beyond the trauma of the rape. He said it's common for the crimes of sexual assault and sexual abuse where the victims are children not to surface for years.

Klamser investigated the case, along with Officers Jim Bolt and Deena Anderson. Klamser said it took all summer to put the case together, mostly because one of the boys moved out of state in July and many of the 10 or 11 people who were interviewed, including five children, had to be reinterviewed as new information arose.

Klamser said he thinks the boys didn't plan anything ahead of time.

"It was more of a spur-of-the-moment crime," he said.

Asked if he thinks the boys could have had other victims, Klamser said, "Yes, it's possible.

"Statements were made during the investigation that made us suspicious that it might have happened with other victims, but we haven't found any other occasion where there were any other victims," he said.

Even so, Klamser said he thinks the case is strong.

"We feel we have some strong evidence to corroborate the statement of the victim," he said.

If the boys are found guilty and they are sentenced as juveniles, they could be incarcerated in the juvenile correction center until they turn 19 years old, he said. They could theoretically be tried as adults, but Klamser said he's never seen a case where that's happened when the suspects are so young.

ASSOCIATION OF ALASKA SCHOOL BOARDS
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February 16, 1995

The Honorable Joe Green
House of Representatives
Alaska State Legislature
Capitol Building
Juneau, AK 99811

SUPPORT FOR HB 125
INFORMATION DISCLOSURE ABOUT MINORS

Dear Rep. Green

The Association of Alaska School Boards supports HB 125–An Act relating to disclosures to school officials of information about certain minors.

Bill Review: HB 125 directs the court to notify the principal of the minor's school if the offense was committed on school property or the minor has committed offenses that, if committed by an adult, would be considered a serious felony such as murder, assault, kidnapping, etc. The bill also requires law enforcement to notify the principal if there is *probable cause* to believe a minor attending their school has committed a serious felony. The school principal is allowed to disclose this information to other persons in the district, and also to a chief administrator of a school district to which a minor transfers. Law enforcement agencies are not required to notify the school if the agency determines it would jeopardize an ongoing investigation.

The Association of Alaska School Boards believes this Act will help ensure the safety of students and staff alike. As an association we endeavor to work cooperatively with agencies of government in the transfer of information on behalf of kids. In the past, however, the deterrent to meaningful intra-agency cooperation regarding severe school violence has been the issue of confidentiality. This is a welcome piece of legislation that will further help to maintain a safe school environment.

Sincerely,

Carl Rose, Executive Director

SUPPORT

ACSA EDUCATION BULLETIN

ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
ALASKA ASSOCIATION OF SECONDARY SCHOOLS PRINCIPALS
ALASKA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS
ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

VOLUME [illegible] NUMBER 2

ALASKA COUNCIL OF SCHOOL ADMINISTRATORS JANUARY, 1995

VIOLENCE IN ALASKAN SCHOOLS

by Spike Jorgensen
President, AASA

One of the leading concerns of Alaska principals is violence. Violence in the form of guns, gangs, disease, abuse, and neglect. Every imaginable form of human indignity violence and crime as a part of student behavior. Student to student, adult to student, and student to adult violence takes place in the schools and communities of the state.

A major concerns is that schools are being left out of the information loop. Students who commit serious crimes are in the schools and school officials are not informed by social services, law enforcement, the courts, or other schools about the situation. School can not provide help to the individual who has committed the crime and can not safeguard the balance of the student body and staff from the dangers of seriously affected students.

If schools are held responsible as parents for the students while they are in school, the school must have the necissary information. Schools have more resources to help than any other agency in the state and the schools should not be held without information.

Just last week the number of homicides caused by firearms alone exceeded the number of deaths in automobile accidents. We are living in an ever more violent and permissive society. There is more and more evidence to show that students learn problem solving strategies from TV violence, talk show, and soaps. It may appear real to a child, but any reasonable adult would never choose the tragedy that Arnold Schwartzenegger or Rambo would bring to family problem solving.

Please let your legislators know that schools need information about student violence from other agencies, that young students need to have less exposure to violence and school rules on anti-gang dress codes and behavior need to be supported through legislation. As you have more and better ideas, please contact Steve McPhetres. ☆

ACSA ALASKA COUNCIL OF SCHOOL ADMINISTRATORS
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POSITION STATEMENT

HOUSE BILL NO. 125

"An Act relating to disclosures to school officials of information about certain minors."

The Alaska Council of School Administrators supports House Bill #125.

Incidents of violence seem to be increasing at an alarming rate among or involving Alaska's youth. This includes reports of gang activities, incidents of students bringing illegal weapons into the schools and youth committing acts of violence which could be considered a felony if they were adults.

Parents and the community rightfully expect schools to be a place students can work and learn in a safe environment. Yet, principals are experiencing increasing concern over being able to assure parents and the community that the school setting is secure and safe because of the lack of information from other agencies involved with youth who have been adjudicated delinquent.

To help ensure some safety of students, it is necessary to be aware of those students who have committed acts of violence and crime outside the school as well as inside the school. The laws of confidentiality have prevented the sharing of such information with school personnel in the past, thereby preventing school personnel from being able to take action to protect the rights of other innocent students in the school.

School administrators across Alaska believe this information is necessary to ensure proper supervision. It is also necessary to provide a relevant intervention program and this information will help provide a safer environment for all students.

Again, **The Alaska Council of School Administrators supports HB #125**

Stephen McPhetres
Executive Director

Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION AND SOCIAL SERVICES

DATE: 02/23/95

PLACE: Capitol Room 106

SUBJECT OF MEETING:
Alaska Native Health Board
HB 104
HB 126

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Anne Walker	AK Native Health Bd	1345 Rudakof Circle Ste 206 Anch AK	99508	(907) 337-0028		(Y)	N	ANHB Priorities
Robert J. Clark	ANHB/TBHTC	Box 130 Prisbl Bay Area Health Corp. Dillingham, AK 99576	99576	907 842-5201		(Y)	N	11
CHRIS CHRISTENSEN	COURT SYSTEM	303 K ST ANCH. 99501			264-8228	(Y)	N	HB 104 HB 125
Elmer Lindstrom	DHSS			465-3030	465-3030	(Y)	N	HB 104 HB 125
Margot Knuth	Law				4037	(Y)	N	HB 104 HB 126
Steve McPhetres	AK Council Sch. Adm.					(Y)	N	HB 125
Nora Marshall	NEA	Support				Y	N	HB 125
Cathy Tibbles	DFYS					Y	N	HB 125
						Y	N	
						Y	N	
						Y	N	