

HB

375

HB 375 – Protecting kids with tougher, clearer laws

Protecting children from abuse and neglect helps assure them the happy, healthy childhood they deserve. But it does more than that. Child protection is quickly being recognized as perhaps the most effective crime prevention tool available to society. As one expert put it, children terrorized by violence in their own homes too often “exchange the slats in their cribs for prison bars.”

The statutory changes proposed under the administration’s House Bill 375 (and companion measure SB 272) would:

- ❑ Set in statute a *Child Fatality Review Team* to assure that child deaths are fully investigated and prosecuted as homicides. The team has already uncovered deaths of children that were actually homicides, although initially attributed to “natural causes.” The bill helps assure that people who kill children will be prosecuted and that siblings of the victims will be protected.
- ❑ Establish a multi-agency approach to investigating reports of child abuse and neglect. DFYS would be required to team up with experts from outside of the agency. The use of outside expertise will decrease the chance of “overreaching” and allow the agency to focus resources toward families that are dangerous to children.
- ❑ Assure that foster parents and relatives who care for abused and neglected children are notified about all hearings and have an opportunity to be heard at all hearings. The participation of full-time caretakers helps ensure that court decisions about a child’s welfare are based on accurate, timely and comprehensive information.
- ❑ Requires DFYS to provide foster parents with complete background information on a child coming into the foster home. Foster parents will be better prepared for the particular needs of the child in their care, and will be able to provide longer, stable, care for a child.
- ❑ Require DFYS to provide family visitation opportunities for children who have been removed from their home. This will help assure children maintain their bonds with family members.

Children reported as abused or neglected are 67 times more likely to be arrested as pre-teens, according to a recent nationwide study.

‘Alaska (child protection) statutes are more narrowly drawn in certain respects than those of almost any other state.’

-- Kempe Children's Center

Every day last year in America, 8,523 children were reported abused or neglected – and every day three kids died as a result.

‘The ghosts of children lost to rage and despair ... do retaliate. These children – like all children – ‘do unto others’.’

--Ghosts from the Nursery

- Clarify definitions to provide guidelines to courts and workers. The open case files at DFYS reveal two major problems in Alaska that contribute to child abuse and neglect: substance abuse and domestic violence. The bill provides clear guidelines and definitions for social workers who are required on a daily basis to get parents into substance abuse programs and anger management counseling.
- Make the health and safety of the child the paramount concern of the court. Family preservation is no longer the goal in every case where a child is removed from home. Children will not be returned to parents who have killed, seriously assaulted, tortured, sexually abused, abandoned, or chronically abused and neglected children.
- Require DFYS to provide timely rehabilitation services to parents so that children do not have to be removed from their homes, or if removed, can return to a permanent safe home. Children will no longer have to wait years for their parents to enter rehabilitation.
- Require DFYS to complete criminal background checks on those who care for children. Children will not be placed in homes with caretakers who have harmed children.

HOW HAS THE BILL CHANGED SINCE IT WAS INTRODUCED?

The bill has been narrowly focused to address problems with protecting Alaska's children. The bill no longer contains:

- provisions relating to CSED payments;
- sex offender registration provisions;
- provisions relating to custody in marriage and divorce cases.

MYTHS ABOUT THE BILL:

- The bill expands the power of DFYS to remove more children from their homes. **FALSE.** The bill requires DFYS to offer services to families early, before a problem escalates to the point that a child dies or is seriously injured. The earlier the treatment, the better the chance of success. Legal custody does not always mean removal. Legal custody means that a family needs to participate in a service plan to solve a problem.
- The bill allows DFYS to take children who are not happy. **FALSE.** DFYS must look into cases where parental conduct places children at high risk of serious mental injury. Such parental conduct would include domestic violence that is witnessed by children. An expert must testify that the parental conduct will cause a serious mental injury to the child.
- The bill diminishes parental rights. **FALSE.** All parental rights remain in place and remain protected. Every parent has appointed counsel, notice of hearings, the right to challenge

DFYS decisions. Parents get copies of DFYS files on their children and may challenge a DFYS-decision within 48 hours.

- Parents must be losing something. The only thing parent lose is time.
- The bill gives DFYS immunity. FALSE. DFYS has the same level of immunity as any government body: police, firefighters, paramedics. DFYS has no more or no less immunity. HB 375 does not increase protection for the agency. The bill increases the duties that DFYS has in a child protection matter.
- We need to study this problem more. There have been numerous reviews and audits of Alaska's child protection system and they all have reached similar conclusions. One common conclusion: Alaska needs better child protection laws.
 - The Alaska Supreme Court has stated clearly that the existing law needs to be changed.
 - A 1997 audit of case files by The Kempe found that Alaska's law is one of the most restrictive statutes in the U.S. because it requires "imminent and substantial harm" before action by DFYS can be taken.
 - A bipartisan Child Protection Review Team issued a December 1997 report that made 24 recommendations for improving DFYS. Those recommendations have been addressed in HB 375 or in policy and management decisions.
 - A recent legislative audit strongly recommended that HB 375 be passed so that social workers can adequately assess harm to children.
 - Federal changes in the bill passed Congress with bipartisan support in November 1997. The Congressional bill was sponsored by Rep. Clay Shaw (R).

What parts of the bill are required by federal law?

1. Foster parents and relatives who provide care for children get notice of hearings, and an opportunity to be heard at hearings.

AS 47.10.030 (b)

AS 47.10.070 (a)

AS 47.10.080 (f)

2. Permanency hearings 12 months after a child is removed from home and annually thereafter.

AS 47.10.080 (f) and (l)

3. Judges must make specific findings at the permanency hearing about whether a child will return home or go into some other permanent safe home.

AS 47.10.080 (l)

4. The health and safety of the child shall be the paramount concern.

AS 47.10.082

5. Reasonable efforts to return the child home if the child is removed, will not be required in all cases. If there has been a homicide of a child in the family, felony assault on a child, abandonment of a child, sexual abuse, torture, chronic abuse or neglect, the state must look for a permanent safe home for the child.

AS 47.10.086 (c)

6. The state must file a petition to terminate parental rights in some cases: abandoned children younger than 6; children who have been in foster care for 15 of the most recent 22 months; siblings of children who were killed by a parent; children who were seriously injured by the parents. The state must have a compelling reason not to proceed to termination in the above-described cases.

AS 47.10.088 (d) and (e)

7. States are required to do concurrent planning for children: have a plan for reunification with the parents and also develop an alternative permanent safe plan for the child.
AS 47.10.086 (f)
AS 47.10.088 (i)
8. States must offer families community-based family support services on a time-limited basis, not to exceed 15 months, whenever the plan is to prevent removal from the home or to return the child to the family home.
AS 47.10.086 (a) and (b)
9. States must have a preference for kinship care with relatives.
AS 47.14.100 (e) and (i)
10. States are required to conduct thorough criminal background investigations on anyone over 16 in any licensed home or facility where children are placed.
AS 47.35.017(b)
AS 47.35.022
AS 47.35.023 (b)
11. States are required to define abuse and neglect at a minimum, to include acts by caretakers that result in: death; serious physical harm; serious emotional harm; sexual abuse or exploitation; imminent risk of harm.
AS 47.10.011 (a) (8)
12. States are required to expedite the permanent placement of abandoned infants.
AS 47.10.088(d) (2)
13. States are allowed to create child fatality review teams and must set up a public disclosure provision for the team to issue public reports.
AS 12.65.005 - 12.65.140.

14. States are allowed to provide respite care to foster parents for temporary stress relief.

AS 47.14.100 (d)

15. States are allowed to create Multidisciplinary Teams to improve the quality of investigations of child abuse and neglect.

AS 47.14.300

What parts of the bill did the courts want changed?

1. Children can only be declared abandoned if they have no parent willing or able to care. Willing is enough even if a parent is not able to care.

AS 47.10.011 (a) (1)

AS 47.10.013

2. The law does not provide the state with the authority to intervene in cases of emotional neglect.

AS 47.10.011 (a) (8)

What parts of the bill are state-initiated changes?

1. Providing a policy, purpose, and legislative findings section in statute that gives courts guidance in making decisions about children.
2. Clarifying in statute that parents have important rights, especially the right to use reasonable corporal discipline.
3. Redefining the situations where the state may get involved and seek services for a family to include domestic violence, substance abuse, and parental conduct that results in serious emotional problems in children.
4. Definitions should allow workers to consider the family's full history and address the problem comprehensively. Workers should no longer look at isolated incidents when making conclusions about children.

5. Creating a separate "Termination of Parental Rights" statute.
6. Allowing the state to intervene earlier before problems are severe or chronic and children are more damaged.
7. Eliminating multiple and repeated moves of children by preparing foster parents and creating procedural hurdles before children may be moved.

**PARENTAL RIGHTS WHEN THE STATE TAKES LEGAL
CUSTODY OF A CHILD. BUT THE CHILD IS NOT REMOVED**

Service of petition to adjudicate the child a Child in Need of Aid (CINA)

Notice of initial probable cause hearing within 48 hours of the filing of the petition

Right to counsel, including right to appointed counsel

Right to a copy of the DFYS file as "discovery" documents

Right to require state to prove allegations in the petition at a probable cause hearing

Right to cross-examine state witnesses

Right to present own witnesses

Right to compulsory process to compel own witnesses to appear

Privilege against self-incrimination

Right to have a guardian ad litem represent the child's best interests

Right to have the social worker provide a "case plan" in writing that specifies what is required to regain legal custody of the child

Right to require state to assist with financial costs of services for family members that are required to re-obtain custody of a child

Right to require state to prove allegations in the petition at an adjudication trial, by a preponderance of the evidence, within 90 days.

Right to appeal adjudication order

IF A CHILD IS REMOVED FROM HOME. ADD:

Require state to prove that reasonable efforts were made to prevent the need for removal of the child

Require state to prove that it is contrary to the child's welfare to remain in the parental home

Right to have a relative care for the child

Right to have notice of any proposed move in the child's placement. Right to object to proposed moves and to have a hearing.

Right to ask for court review of case plan, removal of child, visitation rights, at any time

If the state seeks to terminate parental rights, add to above:

Service of petition to terminate parental rights

Notice of trial date

Right to have state prove by clear and convincing evidence at trial that:

- a. parental conduct made the child a CINA
- b. parental conduct has not been remedied
- c. the state provided services to remedy the problem

Right to appeal termination order