

SB

224

FISCAL NOTE

 No.
**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

 Bill Version: SB 224

 (S) Publish Date: 1-24-00

Revision Date _____	Dept. Affected <u>Public Safety</u>
Title <u>An Act relating to confidentiality of investigations,</u>	BRU <u>AST - Detachments; Admin. Services</u>
<u>court hearings ... agency information in child in need of aid matters</u>	Component <u>AST - Detachments; Admin. Services</u>
Sponsor <u>Rules Committee</u>	
Requester <u>Governor</u>	Component No. <u>2325; 525</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

 Estimate of any current year (FY2000) cost: 0.0
POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation should not adversely impact the budget.

Prepared by: <u>Royce Weller, Special Assistant</u>	Phone <u>465-4322</u>
Division <u>Office of the Commissioner</u>	Date/Time <u>Dec. 27, 1999</u>
Approved by Commissioner <u>[Signature]</u>	Date <u>Dec. 27, 1999</u>
Agency <u>Ronald L. Otte, Department of Public Safety</u>	

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 5
Bill Version: SB 224
(S) Publish Date: 1-26-00

Revision Date: _____
Title: "An Act relating to the confidentiality of child in need of aid matters....."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 00) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary).

This bill would not have a great impact on our operations. Attorneys will have to file motions in cases where hearings should be closed or records sealed. But this work is not expected to be unduly burdensome.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: 1/4/00

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Phone: 465-2200
Date: 1/5/00

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FISCAL NOTE

No. 4
 Bill Version: SB 224
 (S) Publish Date: 1-26-00

STATE OF ALASKA
 2000 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to the confidentiality of child in need of aid matters...."
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 00) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary).

This bill does not have a fiscal impact on the Office of Public Advocacy.

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: (907) 269-3500
 Date: 1/5/00

Approved by Commissioner: Robert Poe Jr.
 Agency: Department of Administration

Phone: 465-2200
 Date: 1/5/00

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

No. 3

Bill Version: SB 224

(S) Publish Date: 1-21-00

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... relating to the confidentiality of child in need of BRU Civil Division
aid court hearings, court records, and ... agency records ..." Component Human Services
 Sponsor Rules Committee
 Requester Governor Component No. 2208

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services		37.7	28.7	21.0	16.8	13.5
Travel		0.2	0.1	0.1	0.1	0.1
Contractual		6.1	4.6	3.4	2.7	2.2
Supplies		0.6	0.5	0.3	0.3	0.2
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	44.6	33.9	24.9	19.9	15.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		44.6	33.9	24.9	19.9	15.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	44.6	33.9	24.9	19.9	15.9

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would implement the recommendations of the Governor's Task Force on the Confidentiality of Children's Matters, effective July 1, 2001. Alaska's confidentiality laws relating to child in need of aid cases would be amended to impact three areas: court hearings, court records, and agency records.

The Department of Law workload would be impacted by the bill in two areas: increased court time, and increased advice to social workers. The Department believes the impact would be felt most heavily in the first year following enactment.

The legislation requires court hearings be open to the public except in certain specific circumstances listed in proposed amendments to AS 47.10.070. During the first year, we would expect resistance to

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 1/24/00, 10:41 AM
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/24/00
 Agency Department of Law

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ANALYSIS CONTINUATION

this change. For example, requests to close the hearings would be likely from parent's attorneys, wishing to shield their clients from the public airing of negative information. As case law is established to further define just when a hearing may be closed, the number of requests to close a hearing should decline.

It is also possible that assistant attorneys general may be in court defending the state's desire to close a hearing for one of the reasons listed in the proposed amendments to AS 47.10.070, and be facing vigorous opposition from the media, or other interested parties. The department anticipates this will be relatively rare.

We anticipate that only a few, high profile cases will require time consuming written motion practice, whichever party is making the request. Most of the requests for a closed hearing will most likely be dealt with in the courtroom by oral argument. The frequency of the requests will be driven by a number of variables including judicial district, size of the community, and how judges generally rule in those areas. For example, we would expect a higher percentage of the requests to close hearings to come in smaller communities.

The department's current CINA caseload statewide is approximately 1,000 cases (counted by family). A relatively conservative estimate of the number of challenges to open hearings is ten percent, or 100 cases. As noted above, we expect most of the challenges to be dealt with in the courtroom, each requiring anywhere from fifteen minutes to a half an hour of department attorney time to respond to. The few cases requiring written motion practice, perhaps as many as ten, may take an average of two to three hours each.

90 cases x .4 hours x \$93.42	= \$3,363.12
10 cases x 2.5 hours x \$93.42	= \$2,335.50
Total Estimated Cost	= \$5,698.62

As discussed above, the new workload generated would be expected to decline as case law is developed. For the purposes of this fiscal note, we assume the new workload will decline by half in the second year, and be minimal in FY04.

This estimate is based on our best guess of what other parties might do. A change in the number of cases, or time needed to deal with the proposed new law, would impact the estimate mathematically using the formulas above.

Of greater fiscal impact to the Department of Law is the expected increase in the amount of time required to advise social workers on the change in law once enacted. Even with the current law having been in place for some time, assistant attorneys general spend a lot of time on the telephone advising social workers on confidentiality issues. We estimate calls in Fairbanks would increase by about four calls per week, in Anchorage by about 10 calls per week, and in Juneau, where DFYS' central office is located, by about 6 calls per week. Assuming each call takes average of 4/10th of an hour to complete, this would add \$38,862.72 to our costs (20 calls x .4 hours x 52 weeks x \$93.42).

As with the increased workload associated with motions to close court hearings, this new workload would decline as well, but at a much slower rate because requests for agency records will need to be reviewed on a case-by-case basis to ensure appropriate safeguards on confidential information are maintained. We are projecting it to decrease by 20 percent per year.

ANALYSIS (cont.):

Regular publication of this information will require the assistance of a Public Information Officer (Range 20) and an Administrative Clerk (Range 10) since gathering and compiling this information (over 17,000 reports of harm annually) is extremely time consuming. The proposed effective date of the bill is 7/1/01. The Department would establish the two positions in the fourth quarter of FY 01 to begin implementation of procedures and to provide for a training period.

The one-time cost for equipment for the two new positions include a computer, telephone and a desk and chair. Ongoing contractual services costs include: telephone charges for basic service and long distance calls and office supplies. Additional funding will also be required to develop and promulgate implementing regulations, train staff, and develop internal policies, procedures and forms regarding the release of confidential information.

Expenditure Analysis (Family & Youth Services Mgmt. Comp. #2306):

	Annual Cost FY01	Annual Cost FY02-06
Personal Services:		
Information Officer III (established the position in the 4th quarter of FY2001)	16.8	67.1
Admin Clerk III - (established the position in the 4th quarter of FY2001)	9.4	37.4
Subtotal	26.1	104.5
Contractual Services:		
Telephone (monthly basic & long distance)	0.8	3.1
Printing Cost of quarterly publication of reports of harm	13.4	53.6
Technical assistance to draft regulations	50.0	0.0
Subtotal	64.2	56.7
Supplies:		
Office supplies:	0.5	2.0
Equipment: (for 2 new positions)		
Computers	6.0	0.0
Telephones/communication equipment:	1.0	0.0
Desk & office chairs	4.0	0.0
Subtotal	11.0	0.0
Total	101.8	163.2

*****Changes in Revenues:**

In opening child protection proceedings as proposed, the Department does incur some risk relating to compliance with federal confidentiality requirements under Titles IV-B and IV-E of the Social Security Act. The federal government's willingness to enforce these confidentiality provisions is in doubt, however, since several states have similarly opened child abuse and neglect proceedings and to date have not been subject to financial sanctions.

The bill largely resolves this problem by recognizing the preeminence of federal law if a conflict between a provision of the bill and federal law adversely affects receipt of federal funds. In the event this situation arises, the Department would act quickly to minimize the loss of federal receipts.

The Department receives approximately \$15 million in federal Title IV-B and IV-E annually. These funds are spread throughout the Division of Family and Youth Services' budget.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 001
Bill Version: SB 224
(S) Publish Date: 1-26-00

Revision Date/Time (Note if correction): _____

Dept. Affected: Health and Social Services

Title: Confidentiality of children's proceedings

BRU: Family and Youth Services

Sponsor: Rules Committee

Component: FYS Staff Training

Requestor: Governor

COMPONENT SERIAL NO. 2307

See also (SN#): 2306

Expenditures/Revenues:

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL	15.0	13.0	10.0	10.0	7.0	7.0
CONTRACTUAL	30.0	25.0	20.0	20.0	15.0	15.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	45.0	38.0	30.0	30.0	22.0	22.0

CAPITAL EXPENDITURES						
CHANGES IN REVENUES 1002		***	***	***	***	***

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	45.0	38.0	30.0	30.0	22.0	22.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	45.0	38.0	30.0	30.0	22.0	22.0

Estimate of any current year (FY2000) cost: 50.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Division will have to conduct training sessions to ensure the successful implementation of the provisions of this bill. Primary training will be conducted in FY 01 with follow-up training done in subsequent fiscal years as necessary.

*****Changes in Revenues:**

In opening child protection proceedings as proposed, the Department does incur some risk relating to compliance with federal confidentiality requirements under Titles IV-B and IV-E of the Social Security Act. The federal government's willingness to enforce these confidentiality provisions is in doubt, however, since several states have similarly opened child abuse and neglect proceedings and to date have not been subject to financial sanctions.

Prepared by: Elmer A. Lindstrom
Division: Office of the Commissioner

Phone: 465-1613
Date/Time: 1/14/00 9:16 AM

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 1/18/00

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ANALYSIS (cont.):

The bill largely resolves this problem by recognizing the preeminence of federal law if a conflict between a provision of the bill and federal law adversely affects receipt of federal funds. In the event this situation arises, the Department would act quickly to minimize the loss of federal receipts.

The Department receives approximately \$15 million in federal Title IV-B and IV-E annually. These funds are spread throughout the Division of Family and Youth Services' budget.

TONY KNOWLES
GOVERNOR

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Juneau, Alaska 99811
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB224

January 25, 2000



The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

As part of my administration's continuing effort to improve Alaska's child protection system, I am transmitting a bill that will open to the public information that has generally been closed – court hearings, court records and state agency records in child in need of aid (CINA) matters.

The issues surrounding public disclosure in children's matters can quickly become complicated, but the goal of this bill is simple: Shed more light on the child protection system and the system will improve. I believe public support for the approach taken in this bill will grow when the tragic circumstances affecting so many young lives are more fully understood, along with the daily challenges faced by those who work so hard to protect children.

Concerns have been raised during the past few years about the state's confidentiality laws. These laws were created to protect the privacy of children and their families. But they also have the practical effect of limiting public oversight and understanding of the goals and activities of our child protection agencies.

In response to growing concerns, I established the Governor's Task Force on Confidentiality of Children's Matters, consisting of state and media officials. I asked the task force to determine whether Alaska's confidentiality laws could be relaxed with minimal infringement on the privacy of children, and whether we could design a more open system without jeopardizing child protection programs and continued receipt of federal funding. This bill reflects the task force recommendations to allow greater public

The Honorable Drue Pearce
January 25, 2000
Page 2

access to court hearings, court records and records of state agencies concerning child protection activities.

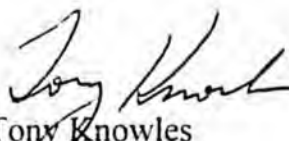
Amending our CINA statutes and court rules requires thoughtful planning. Thus, the bill will not be effective until July 1, 2001 – approximately one full year after it is signed into law. It also requires a report back to the public and legislature by December 2002 to assess these new procedures and make recommendations to address any problems that may arise.

More specifically, the bill affects CINA cases in the following ways:

- Court hearings would be opened to the public with limited exceptions – for example, if the court determines an open hearing would emotionally harm a child, or when other state or federal laws require closed hearings.
- Court records would be opened unless a federal or state law prohibits the release.
- State agency records would be made available to the public in some cases, such as responding to allegations surrounding harm to a child in state custody.

We have launched many initiatives in the past years to make Alaska a healthier, safer place for our children. But we can and must do more. This bill is the next step in our continuing efforts to protect young Alaskans.

Sincerely,


Tony Knowles
Governor

Sectional Analysis of SB 224

Legislative Findings

Section 1

This section sets out various legislative findings and intent, which discuss the need to increase public knowledge about the child protection system while protecting the privacy interests of the child and family and ensuring that federal funding is not jeopardized. It states that a limited relaxation of the state confidentiality laws will allow the public to be make better informed judgments about the performance of government agencies responsible for the protection of children.

Court Hearings

Sections 2, 4 & 5

Court hearings in Child in Need of Aid (CINA) cases are now closed to the public under AS 47.10.070(a). Section 2, 4 & 5 amends AS 47.10.070, .080 and .088 to open all CINA hearings to the public, with limited exceptions, which are set out in section 3. Section 2 also moves a provision about the presence of foster parents to .070(e).

Sections 3, 18 & 19

Section 3 sets out the limited exceptions to when a court may close a hearing to the public.

AS 47.10.070(c)(1) & (c)(2) would allow the court to close the first CINA hearing after a petition is filed, when it is most likely that a parent, child, guardian ad litem, or other party does not have legal representation, or at a later hearing if a party has not had an opportunity to obtain legal representation. Section 6 amends AS 47.10.090(d) to require that the recordings of such hearings be made public three days after the hearing, unless the court finds that a public release would cause the harm listed in AS 47.10.070(c)(3), which is described in the next three paragraphs.

AS 47.10.070(c)(3)(A) & (B) allow the court to close a CINA hearing if a child would otherwise be stigmatized or emotionally damaged or be inhibited from testifying.

AS 47.10.070(c)(3)(C) allows the court to close a CINA hearing when other laws, rules or orders, such as federal laws on alcohol and mental health records, require that information be disclosed only in a closed hearing.

AS 47.10.070(c)(3)(D) allows the court to close a CINA hearing when an open hearing would interfere with a criminal investigation or case.

AS 47.10.070(d) allows the court to hear in camera any information regarding the location of a party who is a victim of domestic violence.

Sections 18 and 19 amend the court rules on CINA hearings to conform with the above statutory amendments and to establish procedures that balance opening hearings to the public with the need to protect the privacy interests of the child and family.

Court Records

Sections 6 & 20

Court records in CINA cases are now closed to the public under AS 47.10.090. Section 6 proposes to repeal and reenact AS 47.10.090 to allow, pursuant to the new subsection (b), public access to CINA court records, unless a law, rule, or court order would prohibit such access. Subsection (b) also allows the court to make confidential an otherwise public record only if a public release would cause the harm described in AS 47.10.070(c) (see discussion under section 3, above).

Subsection (a) requires the court to keep the public and confidential records separate, to prevent inadvertent disclosure of confidential records.

Subsection (c) sets out procedures for giving notice to interested members of the public when there is a request to make a public record confidential, although notice can be waived under exceptional circumstances.

Subsection (d) has already been discussed in section 3, above. Subsection (e) is the same as the existing AS 47.10.090(d), except that it expands the protection of the child's identity being made public. Subsection (f) is

identical to the existing AS 47.10.090(e). Subsection (g) is identical to the existing AS 47.10.090(c).

Section 20 amends CINA court rules on confidentiality of court records to conform with the above statutory amendments.

Section 7

Section 7 adds a new section, AS 47.10.091, which sets out what records belong in the confidential file. Subsection (1) requires an emergency petition to be confidential for the first three days after it is filed, to give the parties an opportunity to show that disclosing some or all parts of the petition would cause the harm described in AS 47.10.070(c) (3) or (d).

Subsection (2) keeps recordings of closed hearings confidential.

Subsection (3), (5), (7) and (8) keeps confidential the health, medical or treatment records of the child and family members, as well as records kept by DFYS, for several reasons. First, these types of records are required to be kept confidential under federal law. Second, making such records public would discourage family members from seeking treatment, thereby thwarting reunification goals. For the same reasons, reports by the Department of Health and Social Services, Division of Family and Youth Services (DFYS), the guardian ad litem or other parties, which are filed to aid the court in its determinations, are kept confidential.

Subsections (4), (6) and (10) keeps the identities of certain individuals confidential, including reporters of abuse and neglect, victims of sexual crimes and confidential informants in criminal cases. Subsection (9) keeps confidential the location of a party who is a victim of domestic violence.

Agency Records

Sections 9 & 14

Agency records in CINA cases are now closed to the public under AS 47.10.093. Sections 9 and 14 amend that statute to

either require or authorize DFYS to disclose appropriate information in three areas.

First, section 9 adds a new subsection (b)(11) to AS 47.10.093, which would require DFYS to release information about a child who has died or has had a "near fatality" due to abuse or neglect. (Section 15 amends AS 47.10.990 to define "near fatality.") It would also require DFYS to release information about a child who has died while in state custody or within a year after release from state custody, even if the death was not a result of abuse or neglect. AS 47.10.093(n) in Section 14, however, allows some information to be withheld in such cases: (1) identifying information about the child if contrary to the best interest of the child or other children in the child's household or (2) information that would interfere with a criminal investigation or case.

Second, section 14 adds a new subsection (l) to AS 47.10.093, which allows DFYS to respond to allegations publicly made by a parent or guardian in a case, for example when a parent talks to a newspaper reporter about DFYS mishandling of the case.

Third, section 14 adds a new subsection (m) to AS 47.10.093, which allows DFYS to disclose certain information when a parent or other adult is charged with a crime against a child, including information regarding its actions, if any, in arising out of the event that forms the basis of the criminal charge.

Section 13 also amends AS 47.10.093 by adding subsection (k), which allows the department to adopt regulations governing the release of confidential information, and subsection (o), which prevents redisclosure of information that has not been fully released to the public.

Section 17

Section 17 amends AS 47.17.040 to permit DFYS to release summaries of reports of harm, as long as no identifying information is included.

Miscellaneous Provisions

Section 14

Section 14 adds a new section, AS 47.10.094, which provides immunity to the state or the department, and officers and employees of those entities, in determining what CINA information should be made public.

Section 22

To prevent loss of federal foster care reimbursements, section 22 states that if the provisions in this bill adversely affect federal reimbursement, the federal laws on this subject would prevail.

Section 23

Section 23 provides for prospective application of the changes in court hearings and records in CINA cases.

Section 25

Section 25 requires the governor to issue a report, including any recommendations for statutory changes, to the public and the legislature on the implementation of the bill by December 1, 2002.

Sections 22, 26 & 27

Sections 22, 26 and 27 provide for an effective date of July 1, 2001, except that the department may begin the process of adopting regulations to implement this act, to take effect on July 1, 2001.

Prepared by the Department of Law
February 18, 2000

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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April 28, 1999

The Honorable Tony Knowles
Governor
State of Alaska

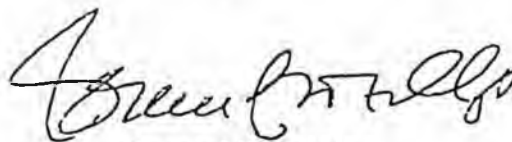
Dear Governor Knowles:

I am pleased to transmit the final report of your Task Force on the Confidentiality of Children's Matters.

The Confidentiality Task Force Overview describes in detail the process the committee took to arrive at this goal. Research into laws of other states, panel discussions with persons knowledgeable in various aspects of this field, and considerable debate resulted in a draft version of this report proposing changes to Alaska's rules on confidentiality of children's matters. The draft report was submitted for public comment, and received responses from more than thirty-five people. After review of the comments, the task force made the final changes incorporated into this proposal.

I am happy to discuss with this report with you at your convenience.

Sincerely,



Bruce M. Botelho
Attorney General

**GOVERNOR'S TASK FORCE ON
CONFIDENTIALITY OF
CHILDREN'S MATTERS**

*Proposed Changes to Alaska's Rules on
Confidentiality of Children's Proceedings*

April 28, 1999

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CONFIDENTIALITY TASK FORCE OVERVIEW

The Confidentiality Debate

As reports of child abuse and neglect have risen steadily nationwide during the past decade, child protection agencies in many states have come under increased public scrutiny. One result of that scrutiny has often been a push to relax the strict confidentiality laws that historically have barred – or limited – public access to the child protection system.

Generally, proponents of easing the confidentiality rules contend that doing so will make the system more accountable to the public and to policy makers. Critics, meanwhile, argue that abuse victims and their families will be further victimized if their cases are made public.

To a large extent, states are bound by federal rules as to what information they can and cannot disclose in child protection matters. Those rules are tied directly to the federal funding that states receive to implement child protection programs.

In recent years, however, the federal government has permitted states to craft their own child protection confidentiality rules within general guidelines. Thus far, no state has been sanctioned by the federal government for going too far in relaxing confidentiality rules.

During the past few years, several states and municipalities have taken steps to open up their child protection systems. These changes have most often been aimed at breaking down confidentiality barriers between the different agencies with a role in child protection. Sometimes the changes have been directed at increasing public access.

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Typically, these changes came in response to severe child abuse cases that drew heavy press coverage and sparked loud public outcries.

Perhaps most notable was the case of Elisa Izqueirido, a 6-year-old New York City girl who was tortured and killed by her own mother. Public outrage grew rapidly after it was reported that child protection officials were warned repeatedly that Elisa was being abused. And the furor was magnified when child protection officials, citing confidentiality laws, refused to discuss the case.

Just three months after Elisa's death, New York lawmakers agreed to loosen the state's confidentiality laws and allow more disclosure of information on child abuse cases.

Similar scenarios have unfolded in other states, including Washington, Oregon and Connecticut. To varying degrees, these and other states have sought to increase public and interagency access to the child protection system by opening court proceedings or by unsealing certain child protection agency records.

The confidentiality debate has reached Alaska as well.

During the past two years, Alaska's child protection system has come under increased press, public, and legislative scrutiny. As was the case elsewhere, this heightened attention came largely as a result of several high-profile child abuse cases.

In the course of covering these tragic events and other child protection issues, some media members in Alaska began raising renewed concerns about the state's confidentiality laws.

In the summer of 1998, news reporters and the public were given a limited insight into Alaska's child protection system under an order issued by Superior

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Court Judge John Reese. That order allowed the state's Office of Public Advocacy and the Division of Family and Youth Services to release information about specific child abuse and neglect cases, as long as no identifying details were disclosed. The order stated its purpose was "to allow informed public discussion of the actions and effectiveness of DFYS."

Last year, Gov. Tony Knowles appointed an eight-member task force of state and media officials to review Alaska's confidentiality statutes. Attorney General Bruce Botelho was chosen to chair the task force.

Privacy vs. Public Right to Know

In a letter announcing the group's initial meeting, the attorney general told members their mission was "to determine whether these laws appropriately balance the privacy interests of children and their families with the interests of the public in making informed judgments about the performance of government agencies responsible for the protection of children."

As officials in other states have found, this is a difficult balance to strike. When a child is hurt or killed by abuse, does the public's right to know how well its child protection system performed outweigh the family's right to privacy?

Those who oppose easing confidentiality laws argue that child abuse victims and their families would suffer increased harm if their stories became public information. They also fear that greater openness could discourage people from reporting abuse and, even worse, discourage troubled families from voluntarily seeking help from child protection agencies.

But others contend that, instead of protecting victims and families, confidentiality laws too often shield bureaucracies from criticism by keeping their mistakes and flaws secret. They argue that problems within the child protection

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system are more likely to be acknowledged and fixed if the public is aware of those problems.

Against this backdrop, the Governor's Task Force on the Confidentiality of Children's Matters began meeting in February of 1998.

At its initial meetings, the task force hosted a series of panel discussions aimed at gathering a wide range of perspectives on confidentiality issues.

Two panels were dedicated entirely to finding out what other states have done to allow more public access to their child protection systems, and what the experience has been since confidentiality rules were relaxed. The task force also heard from a children's court master, an Anchorage newspaper reporter who specializes in covering children's issues, several current and former child protection social workers, several assistant attorneys general and a child psychologist.

The task force gathered numerous reports, studies, and news articles focusing on confidentiality issues in other states. Task force staff also provided members with copies of other states' confidentiality statutes and a side-by-side comparison of several of those laws.

Task Force Proposal

From there, the task force began reviewing Alaska's confidentiality rules, and debating whether and how those rules should be changed to allow more public access to the child protection system. That process resulted in a draft proposal that called for loosening Alaska's confidentiality rules in three general areas: court hearings, court records, and agency records.

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After finalizing its draft proposal last July, the task force sought written public comment during a 30-day comment period. More than 35 people responded with comments – some suggesting specific changes to the proposal, others offering general comments of support or opposition.

The task force reconvened during the fall to review the comments and make final changes to the proposal. The final report will now be sent to Gov. Knowles for his consideration.

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Task Force Members:

Bruce Botelho, Attorney General, State of Alaska
Karen Perdue, Commissioner, Department of Health and Social Services
Ron Otte, Commissioner, Department of Public Safety
Brant McGee, Public Advocate, Office of Public Advocacy
Paul Massey, Publisher, Fairbanks Daily News-Miner
John Tracy, News Director, KTUU-TV, Anchorage
John McKay, Attorney (Clients include Anchorage Daily News and KTUU)
Myra Munson, Attorney, former Commissioner of Health and Social Services

Panelists & Invited Speakers:

February 12

What Other States are Doing

- Kathleen Blatz, Chief Justice, Minnesota Supreme Court
- Howard Davidson, Director of the American Bar Association's Center on Children and the Law
- Don Duquette, Director of the University of Michigan Law School's Child Advocacy Law Clinic
- Linda Guss, Assistant Attorney General, Human Services Section, Oregon
- Allen Roman, Assistant Attorney General, Department of Child and Families, Florida

Court Perspective

- William Hitchcock, Master of Children's Court, Third Judicial District, State of Alaska

Media Perspective

- Lisa Demer, Reporter, children's issues, Anchorage Daily News

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February 26

Social Worker Perspective

- Cory Bryant, Supervising Social Worker, Division of Family and Youth Services (Anchorage)
- Gwen McAlpin, Supervisor, Licensing Unit, DFYS (Anchorage)
- Ed Sheridan, Investigating Social Worker, DFYS, (Anchorage)
- Debra Schorr, former social worker (Juneau)

Emotional effects of media coverage

- Dr. Susan LeGrande, Psychologist

Alaska Laws: Personnel and Criminal Matters

- Dave Jones, AAG, Governmental Affairs (Anchorage)
- Susan Wibker, AAG, Human Services (Juneau)

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PREAMBLE

While there are strong privacy considerations that must be balanced against public disclosures, the interests of children, their families, and the public are ordinarily best protected by increased public knowledge of, access to, and oversight of the child protection system. In considering any request to close all or any portion of CINA court proceedings or records, the courts shall bear in mind the strong presumption of openness reflected in this preamble. Any closure or redaction must be justified by specific, articulated reasons and shall be no broader than necessary to accomplish the stated purpose.

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Reporter's Notes on Preamble:

Response to Recent Federal Action on Open Court Proceedings

On June 29, 1998, shortly before the Task Force's meeting on July 1, the U.S. Department of Health and Human Services, Administration on Children, Youth and Families, issued a policy interpretation concluding that federal law restricts information that can be discussed in open court. According to this interpretation, while there is nothing in federal law that bars states from having open court hearings in child protection cases, no discussion of child welfare reports or records deemed confidential under federal law may be discussed in open court. Violations of these laws would be a state plan compliance issue. Compliance guidelines will be provided in future regulations and/or policy guidelines.

The policy interpretation leaves open what enforcement mechanism the federal government may use. In addition, one administrator of a state program that has operated under an open system for some years has proposed this policy interpretation be overturned through litigation or legislation.

The task force believes the State of Alaska should pursue a policy of openness as outlined in the Preamble, to the extent consistent with federal law. The state should join in challenges to federal policies purporting to restrict public access permitted by state policies, laws or regulations.

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I. COURT HEARINGS

- A. Except for the initial CINA hearing, there is a presumption that all CINA hearings are open to the public, provided that the parents and child have had an opportunity to obtain legal representation.
- B. A court, however, has the power to close all or a part of a CINA hearing if it makes specific written findings that a public hearing would:
 - 1. be emotionally damaging to a child;
 - 2. inhibit a child's testimony;
 - 3. disclose matters otherwise required to be conducted in closed hearings; or
 - 4. substantially compromise a criminal investigation.
- C. If a court decides to close a hearing to the public, the court shall close the hearing or portions of the hearing only so far as is necessary to prevent the potential harm listed in subsection B.
- D. A party who requests that a hearing, or any part of a hearing, be closed to the public must notify, in advance if possible, the other parties and anyone else who has filed a request in that proceeding to be notified of any restrictions to public access.

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- E. At the beginning of each open hearing, the court shall admonish all participants not to publish any identifying information of a child who is the subject of or otherwise connected to the proceeding. If, after such warning, a participant in the hearing does publish such identifying information, this action may form the basis of a court making a finding under B (1).

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Reporter's Notes on Court Hearings:

Comments on section I.A.

In the July 24, 1998, draft that was distributed for public comment, the task force proposed that all hearings be open, even initial hearings. After reviewing the public comment, the task force modified section A to keep the initial hearing closed to the public. In balancing the privacy interests of the parties against the public's interest in open hearings, the task force decided that opening the initial hearing to the public has the potential for great harm to a party that is not outweighed by the public's right to know.

At the initial hearing the parents or the child may not have had an opportunity to obtain legal representation by a lawyer or, in the case of the child, a guardian ad litem. This is especially true in emergency custody cases, since a hearing must be held within 72 hours of taking emergency custody. The initial hearing, especially in emergency custody cases, is a stressful time for the family. If a party is unrepresented at the initial hearing, inadmissible evidence may be introduced that the unrepresented party may not know how to keep out. Closing the initial hearing to the public would give the unrepresented party an opportunity to obtain representation and thereby give the attorney or guardian ad litem an opportunity to request that subsequent hearings or portions of hearings be closed.

The task force found that closing the initial hearing to the public would result in minimal harm to the public because factual information is rarely presented at that time; parties often request that the taking of evidence be postponed until the next hearing. Furthermore, the audio recording of the initial hearing becomes public record unless the court orders otherwise. See section II.A2.(a), below.

Comments on section B.

The task force required the court's findings supporting closure of a hearing to be specific and in writing. Some task force members expressed concern that the court would automatically close all CINA hearings, making the presumption of openness a hollow proposition. Accordingly, the task force emphasizes that a court's decision to close a

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hearing must be in writing and based on the facts presented in that particular case and only based on the four factors listed in section B.

Comments on sections B.1. & B.2.

The task force received public comment that the factors in determining when a hearing should be closed to protect the best interests of a child was too vague and broad, and would invite litigation in most cases. Accordingly, the task force limited the court's ability to close hearings on behalf of a child to two grounds, emotional damage and inhibition of a child's testimony.

Comments on sections B.1. & B.2.

These subsections allow the court to close a hearing if an open hearing would be emotionally harmful to "a child" because the task force recognizes that there may be a child, other than the child who is the subject of the CINA proceeding, who could be harmed by a public hearing. This could include a sibling or other child in the household, or a child who is testifying in the CINA proceeding.

Comments on sections B.3 & B.4.

The task force received public comment recommending that a court have the ability to close a hearing for two reasons other than the child's best interests: (1) when other law (such as federal laws on alcohol and mental health records) requires that information be disclosed only in a closed hearing or (2) when an open hearing would compromise a criminal investigation. The task force adopted these recommendations in subsections 3 and 4.

Comments on section D.

Rather than giving notice to the media or public in all cases where the closure issue is raised, the task force proposal requires notice to only those entities or persons who have stated in writing that they wish to be notified "in that particular proceeding." The initial draft, which did not include the above-quoted language, created the possibility that the media would file a general request to be notified in all CINA cases, which would have been a burden for the courts and parties. Recognizing that the media will not have an interest in the majority of CINA cases, the task force added the phrase "in that proceeding" to require the media to file notice requests only in those cases in which it is interested.

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The task force did not require advance notice for all disclosure requests, recognizing that, in some hearings, the need for closure may not be foreseeable in advance of that hearing. In such situations, a court should have the flexibility to determine that there are sufficient reasons not to continue the matter in order to provide such notice.

Comments on section E.

The task force received public comment expressing concern that the media would publish a child's name or other identifying information, which would cause unnecessary harm to that child. Media representatives have assured the task force that their companies would not publish identifying information on any child involved in a CINA proceeding, but these representatives could not speak for individuals or groups that publish information on an informal basis.

Although the task force is sympathetic to the concern expressed in the public comment, the task force recognizes that, once a hearing is open to the public, the constitutional prohibition against prior restraint prevents restrictions on what the media can publish. Accordingly, the task force created the language of section D., which seeks to minimize the risk that identifying information will be published in a way that is constitutionally permissible.

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II. COURT RECORDS

A: All CINA records of the court should be divided into two categories: a confidential file and a public file.

1. The confidential file would consist of the following:
 - (a) except as stated in subsection 2(a) below, transcripts, log notes, stenographic notes, and recordings of proceedings, including testimony, taken during portions of proceedings that are closed by the court;
 - (b) audio-tapes or videotapes from agency records;
 - (c) victim's statements;
 - (d) any information identifying reporters of neglect or abuse, unless reporters' names and other identifying information are removed;
 - (e) HIV test results;
 - (f) medical records, chemical dependency evaluations, and evaluations by mental health professionals;
 - (g) treatment reports;
 - (h) portions of photographs that identify a child who is a subject of the petition;
 - (i) ex parte emergency protective custody orders, until the hearing where all parties have an opportunity to be heard on the custody issue;

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- (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;
- (k) predisposition reports and guardian ad litem reports;
- (l) audio-taped, videotaped, or written information from the agency, except to the extent that the information is otherwise accessible to the public;
- (m) information gathered for the purpose of determining suitability of placement; and
- (n) records or portions of records which the court has found, in writing, are inaccessible to the public due to a need to protect the best interests of a child.

2. The public file would consist of the following:

- (a) transcripts, log notes, stenographic notes, and recordings of the initial hearing, or any other hearing that is closed because a parent or child has not had the opportunity to obtain legal representation, shall become part of the public file three days after that hearing, unless the court makes specific written findings that making such items public would cause the harm listed in one or more of subsections I.B.1-4;
- (b) notices;
- (c) pleadings; and
- (d) all other documents not included in the confidential file.

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- B. There is a presumption that CINA court records are open to the public, except for those placed in the confidential file.
1. Anyone who requests that any part of the public file be closed to the public must notify, if possible, the other parties and anyone else who has filed a request in that proceeding to be notified of any restrictions to public access.
 2. The court may allow access to the confidential file only to those persons whom the court determines to have a legitimate interest in the records.
 3. The segregation of court records shall apply prospectively, i.e., affect only documents filed after the law goes into effect. The law or rules in effect at the time of filing a document in a CINA case shall control whether the document is considered confidential or public. The general public may continue to request access to the unsegregated documents under AS 47.10.090 (e). The prospective application of these rules shall not be a bar to a person seeking access to documents that would otherwise be public under these rules, provided that the court finds a legitimate interest in disclosure that outweighs the cost of segregating the file or otherwise providing access to the document requested.

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Reporter's Notes on Court Records:

Comments on section A.

The task force used Minnesota's court rule as the template for "public" versus "confidential" files, though individual records were added to or deleted from the list of records in the confidential file.

Comments on section A.2.

The task force anticipates that there may be a change in the way pleadings are drafted so that as little private information as possible will be included in the public file. It may also be appropriate to use initials in documents in the public file to protect the privacy of the parties as much as possible.

Documents in the public file may refer to or incorporate by reference items in the confidential file. The task force emphasizes that references to confidential items does not in and of itself make the confidential items public.

Comments on section B.2.

The standard "legitimate interest" is the term used in the current court records law (AS 47.10.090(e)).

Comments on section B.3.

Because of the tens of thousands of records currently in existence, none of which is segregated into public and confidential records, the proposed opening of court records is intended to be prospective only, as was the case in Michigan and Minnesota.

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III. AGENCY RECORDS

A. There is a presumption that agency records are closed to the public, in accordance with AS 47.10.093(a), except as provided below:

1. Reports of harm, after first removing all names and information that identifies the child and the reporter of harm and, as practical, parents, siblings, members of the child's household, and the alleged perpetrator.
2. Information related to the agency's activities with respect to a child when there has been a public disclosure by the parent or guardian of the child who is the subject of confidential information.
 - a. The following information may be disclosed: (1) the determination made by the agency regarding the validity of a report of harm, if any, for abuse or neglect; and (2) the identification of services provided or actions taken regarding the child or the child's family in response to reports of abuse or neglect of the child.

Nothing in this section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's other family, except as it applies directly to the cause of the abuse or neglect of the child and any actions taken by the department in response to reports of abuse or neglect of the child.

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3. When a person has been charged with a crime against a child, information related to the agency's activities arising out of the event which forms the basis of that charge.
 - a. The following information may be disclosed: (1) the determination made by the agency regarding the validity of a report of harm, if any, for abuse or neglect; and (2) the identification of services provided or actions taken regarding the child or the child's family in response to reports of abuse or neglect of the child.

Nothing in this section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's other family, except as it applies directly to the cause of the abuse or neglect of the child and any actions taken by the department in response to reports of abuse or neglect of the child.

4. Findings or information related to the agency's activities and responsibilities with respect to the death of a child and (a) the child's death resulted from abuse or neglect or (b) the child was in the custody of the department at, or within 12 months of, the time of death.
 - a. If the agency determines that disclosing the child's identity would be contrary to the best interests of the child's siblings or other children in the home, DFYS may withhold any personally identifying information of the child.

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5. Findings or information related to the agency's activities and responsibilities with respect to the near fatality of a child and the child's near fatality resulted from abuse or neglect.

a. If the agency determines that disclosing the child's identity would be contrary to the best interests of the child's siblings or other children in the home, DFYS may withhold any personally identifying information of the child.

B. Immunity from lawsuit and liability shall be extended to any agency representative for causes of action arising out of disclosure of information that the representative had any reasonable basis for believing he or she was allowed or required to disclose.

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Reporter's Notes on Agency Records:

Comments on section A.

The term "agency" in this section refers to the Division of Family and Youth Services (DFYS), which is required by state policy and federal law to keep extensive records with respect to all of its activities. The task force believes that agency records should be presumed confidential for two reasons:

(1) DFYS receives all types of information regarding alleged child abuse or neglect, much of which cannot be proven. Without confidential safeguards, it would be a drastic and sometimes unfair invasion of privacy to release such information. It may also ultimately harm children because, by making all information public, people may hesitate to report their concerns about children to DFYS.

(2) DFYS receives a large percentage of its funding from federal agencies, which condition such funding on the records being kept confidential.

Comments on section A.1.

The Division of Family and Youth Services has the authority to release redacted reports of harm under existing law. DFYS will release redacted reports unless the cost of doing so is prohibitive.

Comments on section A.2.

The task force believes that this exception to the confidentiality rule is needed in cases where a parent or guardian, who feels aggrieved by DFYS investigation of their parental actions, complains to the press or other members of the public. This exception allows DFYS to respond to such complaints and to present its version of the facts. The task force believes that this exception is fair because, by making public statements, the parent or guardian has in effect waived any rights of privacy. Currently DFYS can release information only to state officials if the parents first disclose information to those officials. AS 47.10.092.

The task force recognizes that one parent may "go public" against the wishes of the other parent. The task force recommends that, before releasing any information in such situations, the agency attempt to notify the other parent, and to protect the privacy interests of that parent and other family members as much as possible.

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Comments on section A.3.

When a parent or other adult is charged with a crime against a child, there is often a public interest in whether DFYS was aware of the problems in the home and if they responded appropriately to such problems. Because a threshold level of proof is required before a criminal complaint is filed, and because the name of the person charged with the indictment and the offense is already public information, there is a lower privacy interest at stake.

Comments on sections A.2 and A.3.

Oregon, Washington and New York law contain exceptions similar to those listed in subsections A.2 and A.3.

When making information public in sections A.2 and A.3, the agency should not release the name or identifying information of the child, even though, in such circumstances, the media already knows this information.

The task force believes that it should be within the discretion of DFYS whether to release information in subsections A.2 and A.3. The agency is not required to disclose information if the agency specifically determines that the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household. In determining whether disclosure will be contrary to the best interests of a child, the agency must consider the effects that disclosure may have on efforts to reunite and provide services to the family. The agency may also temporarily withhold information if the agency specifically determines that the disclosure would compromise a criminal or personnel investigation.

Comments on sections A.4 and A.5.

Oregon, Washington, New York and Florida laws containing an exception similar to A.4.

In cases where a child has died, or nearly died, and the harm occurred due to child abuse or neglect, there is a strong public interest in knowing what actions DFYS took to prevent the harm. This exception is expressly required by federal law in order to receive federal funding. 42 U.S.C. sec. 5106a(b)(vi). Therefore, the agency must release such information, although it can withhold any identifying information of the child if it is in the best interests of the child's siblings or other children in the home.

In addition, the task force recommends releasing findings or information relating to the agency's activities and responsibilities with respect to the death of a child who may not

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have died from abuse or neglect but was in state custody at, or within 12 months of, the time of death.