

SB

288

ALASKA STATE LEGISLATURE



Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN SENATE DISTRICT G

SPONSOR STATEMENT FOR SENATE BILL 288

“An Act relating to certain determinations concerning placement of a child in emergency custody and temporary placement hearings in child in need of aid proceedings; and providing for an effective date.”

Current state law provides for the Court to determine, within 48 hours of removal from the home, whether probable cause exists for believing a child is in need of aid and to authorize a child's temporary placement out of the home. However, the language used by the courts in making determination varies and is often not in compliance with federal requirements. Senate Bill 288 mandates the Court to specifically use the language that continued placement in the home is “contrary to the welfare” of the child when exercising its authority to remove a child in need of aid. This legislation ensures that state law complies with federal requirements.

By requiring Contrary to the Welfare language in the first Court order following removal, the Office of Children's Services has the opportunity to increase federal reimbursement through the Title IV-E program for the care of the child and associated expenditures incurred by OCS for managing the foster care program. The Office of Children's Services estimates that passage of this legislation will result in an increase in federal Title IV-E receipts of \$500,000 in fiscal year 2005.

SB 288 INFORMATION SHEET

IV-E Funding

- Title IV-E funding consists of federal reimbursement for a percentage of the foster care payments and adoption subsidies that the Office of Children's Services (OCS) provides for Title IV-E eligible children.
- Title IV-E funding also pays for some of the administrative costs associated with case management services for children in state custody.

Eligibility Requirements

A Title IV-E Foster Care eligibility determination is made for each child who is taken into state custody.

- The child must have been removed from the home of a relative within the fifth degree of kinship, and lived in the home of such a relative within six month of the removal; and
- **At the first court hearing that addresses the removal, a judicial determination must be made that remaining in the home would be contrary to the child's welfare; and within 60 days of the removal, a judicial determination must be made that reasonable efforts were made to prevent or eliminate the need for removing the child from the child's home; or**
- A voluntary placement agreement must have been signed and within 180 days of the beginning of the placement a judicial determination must be made that it is in the best interest of the child to be placed out-of-home; and
- The child must meet AFDC relatedness criteria, deprivation and need, as defined in the AFDC policy which was in effect 7/16/96; and
- The child must be in state custody and a U.S citizen or qualified alien; and
- Within 12 months of the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care, a judicial determination must be made that the OCS has made reasonable efforts to finalize the permanency plan.

Critical Nature of Court Findings

- If the court does not make the contrary to the welfare finding at the **first** court hearing, the child is not Title IV-E eligible for that entire out-of-home placement episode.
- **The federal definition of the first hearing is the first day that the court addresses a child's custody and/or placement.**
- **If the first hearing is continued to another day and a contrary to the welfare finding is not made on the first day, then the requirement is not met.**
- Contrary to the welfare findings also affect a child's eligibility for Title IV-E adoption subsidies, since most children's eligibility for a Title IV-E adoption subsidy is based on their eligibility for Title IV-E Foster Care.

Fiscal Impact

- In FY2003 there was a 3.2% increase in children who received benefits from the foster care base rate program.
- The OCS anticipates that the foster care caseload will increase another 3% in FY2004 and FY2005.
- With passage of SB 288, the OCS projects an increase of approximately 5% in its Federal Title IVE penetration rate, which may equate to an estimated \$500,000 in federal revenue for costs necessary to care for the child.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB288-DHSS-OCS-03-03-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Health & Social Services

Title: DETERMINATIONS OF COURT IN CINA
PROCEEDINGS

RDU: Children's Services

Component: Foster Care Base Rate

Sponsor: GREEN

Requester: SENATE (HES)

Component No.: 2236

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	500.0	500.0	500.0	500.0	500.0	500.0
Miscellaneous						
TOTAL OPERATING	500.0	500.0	500.0	500.0	500.0	500.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)	500.0	500.0	500.0	500.0	500.0	500.0
-------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	500.0	500.0	500.0	500.0	500.0	500.0
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	500.0	500.0	500.0	500.0	500.0	500.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would clarify language regarding the findings that a court is required to make at an initial hearing for a child that is removed emergently from his/her home by the Department of Health and Social Services. Currently, the court hears these cases and determines whether or not the Department has acted prudently in removing the child from his/her home. The court issues findings as to whether or not it is contrary to the welfare of the child to remain in his own home; however, the language in the court order may not reflect the exact wording that includes "contrary to the welfare" language. In order for the Department to receive federal reimbursement for the costs associated with the care of the child, the court must issue findings that specifically state that it is

Prepared by: Sherry Hill, Special Assistant
 Division: Office of the Commissioner
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-1618
 Date/Time: 02/03/2004
 Date: 02/03/2004

FISCAL NOTE

FN #

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB288-DHSS-OCS-02-03-04

ANALYSIS CONTINUATION

"contrary to the welfare" of the child to remain in his/her current home. These findings must be made at the first court hearing. Including this language in the court's initial findings will enable the Department to increase federal reimbursement for a significant number of children who enter state custody, emergently. The OCS projects it may see an increase of approximately 5% in its federal Title IV-E penetration rate, which may equate to an estimated \$500,000 in federal revenue for costs necessary to care for the child.

The Office of Children's Services has identified an upward trend in the foster care base rate caseload. In FY2003 there was a 3.2% increase in children who received benefits from the foster care base rate program. The Office of Children's Services anticipates that the foster care caseload will increase another 3% in FY2004 and FY2005. With the additional federal receipts, the OCS intends to continue to cover the basic ongoing costs of raising a child, as well as ensure continuity of foster care base rate payments and the continued success of the foster care program.

23-LS1567AD
Mischel
2/5/04

CS FOR SENATE BILL NO. 288()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR GREEN

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to certain determinations concerning placement of a child in**
2 **emergency custody and temporary placement hearings in child-in-need-of-aid**
3 **proceedings; and providing for an effective date."**

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

5 *** Section 1.** AS 47.10.142(d) is amended to read:

6 (d) The court shall immediately, and in no event more than 48 hours after
7 being notified unless prevented by lack of transportation, hold a temporary custody
8 hearing at which the child, if the child's health permits, and the child's parents or
9 guardian, if they can be found, shall be permitted to be present. If present at the
10 hearing, a parent or guardian of the child may request a continuance of the hearing for
11 the purpose of preparing a response to the allegation that the child is a child in need of
12 aid. The court may grant the request on a showing of good cause for why the parent or
13 guardian is not prepared to respond to the allegation. During a continuance, the child
14 remains in the emergency custody of the department. At the first hearing under this

1 subsection, regardless of whether a continuance is granted, the court shall
2 determine whether continued placement in the home of the child's parents or
3 guardian would be contrary to the welfare of the child [WHEN THE
4 TEMPORARY CUSTODY HEARING IS HELD, THE COURT SHALL
5 DETERMINE WHETHER PROBABLE CAUSE EXISTS FOR BELIEVING THE
6 CHILD TO BE A CHILD IN NEED OF AID, AS DEFINED IN AS 47.10.990. THE
7 COURT SHALL INFORM THE CHILD, AND THE CHILD'S PARENTS OR
8 GUARDIAN IF THEY CAN BE FOUND, OF THE REASONS GIVEN AS
9 CONSTITUTING PROBABLE CAUSE AND THE REASONS GIVEN AS
10 AUTHORIZING THE CHILD'S TEMPORARY PLACEMENT].

11 * Sec. 2. AS 47.10.142(e) is amended to read:

12 (e) When the temporary custody hearing is held, the court shall
13 determine whether probable cause exists for believing the child to be a child in
14 need of aid, as defined in AS 47.10.990. If the court finds that probable cause exists,
15 it shall order the child [MINOR] committed to the department for temporary
16 placement, or order the child [MINOR] returned to the custody of the child's
17 [MINOR'S] parents or guardian, subject to the department's supervision of the child's
18 [MINOR'S] care and treatment. The court shall inform the child, and the child's
19 parents or guardian if they can be found, of the reasons for finding probable
20 cause, authorizing the child's temporary placement, and, if applicable, finding
21 that continued placement in the home of the child's parents or guardian would be
22 contrary to the welfare of the child. If the court finds no probable cause, it shall
23 order the child [MINOR] returned to the custody of the child's [MINOR'S] parents or
24 guardian.

25 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPLICABILITY. The changes made in secs. 1 and 2 of the Act apply to emergency
28 custody and temporary placement hearings under AS 47.10 conducted on or after the effective
29 date of this Act.

30 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/2/04

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2.10.04

Health, Education and Social Services Committee considered

SENATE BILL NO. 288

SB 288 EMERGENCY CHILD CUSTODY PLACEMENT

"An Act relating to certain determinations concerning placement of a child in emergency custody and temporary placement hearings in child-in-need-of-aid proceedings; and providing for an effective date."

and recommends:

be replaced with _____ CS for SB 288 (HES)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

- Same Title
 New Title

House Bill:

- Same Title
 Technical Title Change
 New Title w/
SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
HSS	2/03	✓			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Lyle Green</i>	✓			
<i>Conny Wilk</i>	✓			
CHAIR: <i>Paul Ryan</i>	✓			