

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

MEMO

DATE: 2/10/2004

To: Senate Judiciary
Senator Ralph Seekins
Attn: Brian Hove

From: Senator Lyda Green
Jacqueline Tupou

RE: Request for a hearing for SB288
"Emergency Child Custody Placement"

I am requesting a hearing for Senate Bill 288 in Senate Judiciary. I have attached a copy of the bill, sponsor statement and fiscal note. Thank you in advance for your time and attention in this matter.

JT
Questions....please feel free to call x3712

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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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB288-DHSS-OCS-02-03-04

Revision Date/Time (Note if correction): _____
 Title DETERMINATIONS OF COURT IN CINA
PROCEEDINGS

() Publish Date: _____
 Dept. Affected: Health & Social Services

Sponsor GREEN
 Requester SENATE (HES)

RDU Children's Services
 Component Foster Care Base Rate

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	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010

CHANGE IN REVENUES (0)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
	500.0	500.0	500.0	500.0	500.0	500.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 Phone 465-1618
 Division: Office of the Commissioner Date/Time 02/03/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 02/03/2004
 Agency: Department of Health and Social Services

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 IVE penetration rate, which may equate to an estimated \$500,000 in federal revenue for costs necessary to care for the child.

The Office of Childrens 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-LS1567Q
Mischel
2/18/04

CS FOR SENATE BILL NO. 288(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SFCOND SESSION**

BY THE SENATE JUDICIARY COMMITTEE

**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 temporary [EMERGENCY] custody of the department. At the first

1 hearing under this subsection, regardless of whether a continuance is granted,
2 the court shall determine whether continued placement in the home of the child's
3 parents or 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).

LEGAL SERVICES

Division of Legal and Research Services
Legislative Affairs Agency
State Capitol, Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

465-2450 or
3867

FAX: (907) 465-2029
Mail Stop 3101

ROUTING SLIP

TO: Sen. Seehins, atten: Brian

REMARKS:

We sent 23-LS15671Q to you without this related memo. We apologize for any inconvenience.

FROM: J. Muschel

DATE: 2-19-04

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 19, 2004

SUBJECT: Placement of a Child in Emergency Custody Cases
(Work Order No. 23-LS1567\Q)

TO: Senator Ralph Seekins
Attn: Brian

FROM: Jean M. Mischel
Legislative Counsel



We have made the requested change to SB 288 in one section referencing "emergency custody" of the state and have substituted it with the phrase "temporary custody." The term "emergency custody" appears in other statutory sections pertaining to, for example, public defender representation (AS 18.85.100(e)), and to temporary custody hearings in general in the same statutory section affected by this bill (AS 47.10.142(a) - (c)). We have not made conforming changes since your request was limited and since it appears that the inconsistency may have no substantive effect on those sections. However, inconsistent use of language in statutes can confuse the public or lead the court to believe that the different terms mean different things. Do you want a draft that amends the other sections too?

If I may be of further assistance, please advise.

JMM:med
04-205.med

Enclosure

23-LS1567U
Mischel
2/21/04

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 temporary custody hearings, and to certain determinations**
2 **concerning placement of a child in child-in-need-of-aid proceedings; and providing for**
3 **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 temporary legal [EMERGENCY] custody of the department, except

1 as otherwise provided in this subsection. At the first hearing under this
2 subsection, regardless of whether a continuance is granted, the court shall make a
3 preliminary determination of whether continued placement in the home of the
4 child's parent or guardian would be contrary to the welfare of the child. If a
5 court determines that continued placement in the home of the child's parent or
6 guardian would not be contrary to the welfare of the child, the court shall return
7 the authority to place the child to the child's parent or guardian pending a
8 temporary custody hearing under (e) of this section [. WHEN THE
9 TEMPORARY CUSTODY HEARING IS HELD, THE COURT SHALL
10 DETERMINE WHETHER PROBABLE CAUSE EXISTS FOR BELIEVING THE
11 CHILD TO BE A CHILD IN NEED OF AID, AS DEFINED IN AS 47.10.990. THE
12 COURT SHALL INFORM THE CHILD, AND THE CHILD'S PARENTS OR
13 GUARDIAN IF THEY CAN BE FOUND, OF THE REASONS GIVEN AS
14 CONSTITUTING PROBABLE CAUSE AND THE REASONS GIVEN AS
15 AUTHORIZING THE CHILD'S TEMPORARY PLACEMENT].

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

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