

HB

53

#1
accepted

AMENDMENT

OFFERED IN THE SENATE HESS

BY SENATOR

TO: HB 53 Version W

1 Page 18, line 19:

2 Delete: "may"

3 Insert: "shall"

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Adopting regulations to carry out disclosure statutes is mandatory, not permissive.

#2

adopted

AMENDMENT

OFFERED IN THE SENATE HESS

BY SENATOR

TO: HB 53 Version W

1 Page 19, line 20-21, following "uncle,"

2 *(lines 24-25)*

3 Delete "legal guardian"

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Deleted by request of Department of Law since persons in this definition should be "family".

AMENDMENT

#3
adopted

OFFERED IN THE SENATE HESS

BY SENATOR

TO: HB 53 Version W

1 Page 27, line 15, following "violence,":

2 Insert: "or whose safety or welfare may be endangered by public release of
3 information"

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Brings the language for the court rule change for in camera proceedings in alignment with the language in Section 10 that addresses in camera proceedings.

FAMILY RIGHTS ACT

My belief that children belong to their parents and that families should be preserved was why I ran for office the first time in 1998.

To protect vulnerable children, the government requires parents to raise their children by certain standards, and I believe government should be held to those high standards when they take children into their custody.

*****CONSOLIDATION OF BILLS*****

HB 53 is a consolidation of legislation introduced or proposed by Governor Murkowski, Representative Rokeberg, Representative McGuire, and myself. I wanted to consolidate the bills so we didn't come up with four or five bills that wanted to accomplish the same things in different ways and ended up creating chaos in the system.

This bill is an excellent example of why the committee process is so important to debate the policy issues of our state. Four committees in the House have in whole or in part scrutinized this bill. Probably half of this body has contributed language to this bill.

*****ELIMINATES NO DUTY LANGUAGE*****

It eliminates from the law language that implies there is no duty and standard of care for social workers making decisions for children in state custody. I believe the Alaska Supreme Court's ruling in *Karen L. v Alaska DFYS*, 953 P.2d 871 (Alaska 1998) does create a duty to children in state custody and believe there is a civil liability for wrongdoing. (Sec. 29) Coghill

*****STRENGTHENS FAMILIES*****

This legislation also strengthens the rights of adult family members (including grandparents), especially those who have already been instrumental in raising the child. Many times when parents run awry of OCS, grandparents or other adult relatives get placement of the child. If parental rights are terminated, those raising the child should have preference for adoption. (Sec. 3) Coghill

Other relatives or family friends should also be considered for placement before a child is placed with complete strangers. Other adult family members and grandparents also gain accessibility to information and hearings in CINA cases through this legislation. (Sec. 10) Governor

It provides for the least restrictive placement in close proximity of the parents for reunification purposes. The preference for placement is: (Sec. 33) Coghill

1. an adult family member
2. a family friend
3. a licensed foster home
4. an institution

It requires OCS to do everything possible to provide parental and family visitation for children and if OCS denies visitation they must provide a reason. The family members will be informed of their right to a hearing if denied. (Sec. 13) Rokeberg

It establishes that poverty is not a reason to deny placement with relatives. (Sec. 37) Department of Law Amendment

It established that parental rights cannot be terminated solely on the basis that the parent did not get treatment is the treatment was not available and OCS did not provide treatment. (Sec. 14) Coghill

We encourage OCS to provide the training for foster parents to become mentors to encourage family reunification without placing foster homes at risk.

(Sec. 14) Coghill

HB 53 amends the definition of "major medical treatment to include medication used to treat a diagnosed mental health disorder. (Sec. 15) Governor HB 113 7 114

*****MAKE THE PROCESS TRANSPARENT*****

The bill creates a transparent process by making currently unavailable confidential information currently available to certain people and making court proceedings open to the public. (Sec. 9) Governor

There are sideboards for such proceedings: (Sec. 10) Governor

1. If a child could be stigmatized or emotionally damaged
2. If it would interfere with a criminal investigation
3. If disclosure would violate state or federal law

When a person attends a CINA hearing the court issues an order for confidentiality outlining what information can be revealed to the public and what the sidebars are. The Finance Committee strengthened sanctions if a person violates the court order. Now those persons are subject to sanctions that include being barred from any future CINA proceedings regardless of who the parties are. (Sec. 10) Governor

A grievance process is established in law and the department is required to provide to each parent a copy of the grievance procedures. (Sec. 28) Coghill

An additional safeguard to transparency and due process is the establishment of a state review panel that will adopt policies and procedures by regulation, compile reports, report to the governor annually, and conduct hearings on complaints filed against OCS. The panel will be subject to the Open Meetings Act and will have the ability to meet in executive session.
(Sec. 38 - 44) Coghill

It enacts provisions that would allow OCS to disclose confidential information to the public under certain circumstances: (Sec. 27) Governor

1. When the parents have disclosed confidential information about OCS's involvement in a case to the public.
2. When the perpetrator has been charged with a fine
3. When a report of harm has resulted in a death or near fatality

*****VIDEOTAPING & CAC'S*****

The bill encourages the use of ~~Child Advocacy Centers (CAC)~~ in areas they are available and requires audio recordings for all other interviews of children believed to have been sexually abused. This creates accountability in interviewing and protects the child from multiple interrogations. It requires mandatory videotaping of suspected victims of sexual abuse.
(Sec. 49) Coghill

The bill defines Child Advocacy Centers in state statute. The definition is language agreed upon by the Department of Law, OCS, and the Child Advocacy Centers. (Sec. 49) Coghill

Established criteria for schools to follow when a child is to be interviewed and directs OCS to work with law enforcement and schools in establishing procedures for interviewing. (Sec. 26) Governor

*****RESPONSIVE TO THE PUBLIC*****

It requires OCS to within 20 days respond to a voluntary reporter whether or not OCS has opened a case. (Sec. 47) Rokeberg

Requires CCS to work with legislative offices and the Ombudsman's Office when dealing with constituent cases. (Sec. 20) Rokeberg

Provides that legislative offices can remain a non-party participant of a case even when the parental rights have been terminated. (Sec. 21) Coghill

*****CONCLUSION*****

This legislation goes a long way in protecting and preserving families in Alaska and making government accountable for its actions when children are in State custody.

Dealing with the Office of Children's Services should have good due process and should be transparent so that everyone involved knows what the rules are and what is required of them.

CSSSHB 53(FIN)

Family Rights Act



Representative John Coghill
Bill Sponsor

Sectional for CSSHB 53(FIN)

Section 1. Amends Title 13, Article 2 "Guardians of Minors" to add as a qualification for the court to appoint a guardian if an adult family member applies for guardianship, unless the court finds that appointment would not be in the best interest of the child.

Sec. 2. This section adds language to Title 13.26 (Guardians of Minors) bridging guardianship placement with voluntary relinquishment language in adoption (Sec. 5) and CINA (Sec. 20) sections of Version C.

Sec. 3. Gives preference to an adult family member who has cared for a child for twelve consecutive months or more to adopt the child(ren) unless the court finds there is good cause not to grant the adoption.

Sec. 4. Adds a new section to CINA law that allows for voluntary relinquishment of parental rights while retaining privileges for future contact, communication, and visitation with a child. The relinquishment must be in writing and signed by the parent. A copy of the relinquishment is given to the parent and the parent has 10 days to withdraw from the relinquishment.

A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

A voluntary relinquishment can be withdrawn under Rule 60(b) of Alaska Rules of Civil Procedure Relief from Judgment or Order-"Mistakes-Inadvertance-Excusable Neglect-Newly Discovered Evidence-Fraud"

It also provides that after termination and before entry of adoption a person who voluntarily relinquishes parental rights may request an hearing and show good cause to enforce or modify a privilege retained in the termination order or to vacate the termination order and reinstate parental rights. Such a parent would be entitled to a public attorney.

HB 17 Rokeberg Placement with Relatives

HB 114 Governor Voluntary Relinquishment
Indirect Rule Change
Rules 14 and 15, Rules of Probate Procedure

HB 53 Coghill Relative Preference for Adoption

HB 114 Governor Voluntary Relinquishment

Direct Rule Change:
Rule 9(a) Alaska Adoption Rules Sec. 54
Rule 13(a) Alaska Adoption Rules Sec. 56

Indirect Rule Change:
Rules 9 and 14, Alaska Adoption Rules

Finally it provides that a prospective adoptive parent may, after a termination order is entered, before the entry of an adoption or legal guardianship decree, and after notification of the biological parent if required, request that the court decline incorporation of a retained privilege in the adoption decree.

Sec. 5. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 6. Intent language for the Family Rights Act.

Sec. 7. This section allows the court to, on its own motion, appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

Sec. 8. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.

Sec. 9. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 10. Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

If an open hearing could stigmatize or emotionally damage the child, inhibit a child's testimony, interfere with a criminal investigation, or disclose information protected as confidential by state or federal law, the hearing can be closed.

HB 114 Governor Protection of Child's Dividend

HB 53 Coghill Parent's Participation in the Upbringing of the Child

HB 114 Governor Improving the Process

HB 114 Governor Improving the Process

HB 113 Governor Open the Process

Direct Rule Change
Rule 3 Alaska CINA Rules of Procedure Sec. 50

HB 113 Governor Open the Process

Direct Rule Change
Rule 3(f) Alaska CINA Rules of Procedure
Sec. 50

Grandparents, foster parents, or other out-of-home care providers may attend hearings otherwise closed to the public but may be limited in their participation in the hearing.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing. An amendment in House Finance would permit the court to bar a violator or the court restrictions from all future hearings regardless of who the parties are.

Finally, this section clarifies that the right of an adult family member to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of an adult family member under Title 47.

Sec. 11. Legal has added some cleanup language to this section, including replacing the word "relative" with "adult family member".

Sec. 12. Provides that the court shall make one additional finding in the permanency plan, that being that the department has made reasonable efforts to finalize the permanent plan. It is needed to satisfy federal requirements for foster care reimbursement.

Sec. 13. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial. New language by Department of Law clarifies that a non-party adult family member would not qualify for publicly appointed legal counsel.

Sec. 14. Amends AS 47.10.80 (Judgments and Orders) to add three provisions:

(1) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

(ii) Requires foster parents to provide regular

Indirect Rule Change

Rule 3 Alaska CINA Rules of Procedure Sec. 50

LAA Legal Language Cleanup

Request of Department of Law to comply with federal law.

Direct Rule Change

Rule 3(c) Alaska CINA Rule of Procedure Sec. 49

Rule 17.2(f) Alaska CINA Rules Sec. 51

HB 17 Rokeberg Family Visitation

HB 53 Coghill Family Preservation

HB 53 Coghill Family Preservation

with family and to encourage foster parents to serve as mentors for facilitating family reunification.

) It opens adjudication hearings to the public unless an exception in Section 12 applies.

Sec. 15. The section amends the residual rights section of Title 47. 10 to include language that defines "major medical treatment" to include "medication used to treat a diagnosed mental health disorder".

Sec. 16. Provides that before OCS can approve placement of a child for adoption, the department must attempt to locate all living adult family members. The department must provide written notice to all located family members of their right to adopt and those reason by which the department can deny adoption. Adult family members who have had parental rights terminated or are ineligible for foster care licensing do not have to be notified.

Sec. 17. Section 20 adds a new section to CINA statutes to provide for relinquishment of parental rights. The relinquishment must be in writing and signed by the parent. A copy of the relinquishment is given to the parent and the parent has 10 days to withdraw from the relinquishment.

It provides that parents can retain some privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

A voluntary relinquishment can be withdrawn under Rule 60(b) of Alaska Rules of Civil Procedure Relief from Judgment or Order-"Mistakes-Inadvertance-Excusable Neglect-Newly Discovered Evidence-Fraud"

It also provides that after termination and before entry of adoption a person who voluntarily relinquishes parental rights may request an hearing and show good cause to enforce or modify a privilege retained in the termination order or to vacate the termination order and reinstate parental rights. Such a parent would be entitled to a public attorney.

HB 113 Governor Open the Process

HB 53 Governor Family Preservation

HB 17 Rokeberg Placement with Relatives

HB 114 Governor Voluntary Relinquishment

Direct Rule Change:

Rule 9(g) Alaska Adoption Rules Sec. 55

Rule 13(a) Alaska Adoption Rules Sec. 56

Rule 18(d)(1) Alaska CINA Rules Sec. 52

Indirect Rule Change:

Rules 9 and 14, Alaska Adoption Rules

Rule 18 Alaska CINA Rules

Sec. 18. Language clean up to statute providing for files of a child in custody being sealed when the child turns 18.

Sec. 19. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 20. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. TO obtain additional privileged information from Department of Health & Social Services or OPA or the public defender, a Disclosure of Information Release Form must be completed by a parent. Also attorney-client privileged would be protected.

Sec. 21. This section now provides that as long as the child is in state custody, disclosure to certain officials will stay in effect, unless a parent or legal guardian says it is not longer needed.

Additionally, in this section, the department will now be required to notify a state official or employee of the opportunity to file a grievance.

Sec. 22. Provides that unless information and records are available through the changes in law in HB 53, information and records of government agencies are confidential and cannot be disclosed without a court order.

Sec. 23. Language clean up to replace "foster parents" with "a foster parent" and "relatives" to "out-of-home care provider". Also disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel. The department is added language to subsection (12) to extend the authority to establish a review panel to the governor and the legislature. The House Finance added guardians ad litem back into this category and clarified that caregivers include parents or guardians.

HB 113 Governor Improving the Process

HB 113 Governor Improving the Process
Direct Rule Change

**Rule 22(c) Alaska CINA Rules of Procedure
Sec. 53**

Indirect Rule Change

Rule 22 Alaska CINA Rules of Procedure

HB 114 Rokeberg Family Preservation

HB 53 Coghill Improving the Process

HB 113 Governor

HB 113 Governor Improving the Process
Indirect Rule Change
Rule 22 Alaska CINA Rules of Procedure

Sec. 24. Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

Sec. 25. Clarifies that information made available to party with interest is confidential information. The regulatory language is deleted because it has been added to Section 30.

Sec. 26. The section directs OCS to work with law enforcement agencies in assisting schools, both public and private, in developing procedures for disclosure of confidential information to schools in an expedited timeline as possible.

Sec. 27. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials, but additionally, when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child. The agencies allowed to disclose confidential information have been expanded to include not only Health and Social Services, but also the Department of Administration.

The department may withhold disclosure of child's name, picture or other information that would readily identify the child if it determines it is in the best interest of the child or other children in the household. The department can also withhold information if it would interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial.

This section acknowledges that the person receiving confidential information has a fiduciary responsibility to keep the information confidential.

Gives Department of Health & Social Services and the Department of Administration authority to promulgate regulations.

LAA Legal

Indirect Rule Change

Rule 22 Alaska CINA Rules of Procedure

HB 113 Governor Language cleanup

Indirect Rule Change

Rule 22 Alaska CINA Rules of Procedure

HB 113 Governor Improving the Process

Indirect Rule Change

Rule 22 Alaska CINA Rules of Procedure

HB 113 Governor Improving the Process

Indirect Rule Change

Rule 22 Alaska CINA Rules of Procedure

Sec. 28. New language to this section establishes in statute a grievance process but leaves the ability to set policies and procedures to the regulatory process.

Sec. 29. Provides that there is no civil liability for timeline failures but there is a civil liability for gross negligence or reckless or intentional misconduct. In addition, in the Alaska Supreme Court decision, *Karen L. Alaska DFYS*, 953 P.2d 871 (Alaska 1998), there was a recognition by the court that the state does have a duty to a child in state custody.

Sec. 30. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 31. Defines "adult family members", "family members", and "near fatality" in CINA statutes. House Finance amended the definition of "adult family member" to include a sibling's parent or legal guardian.

Sec. 32. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 33. Provides priorities for placement of a child when removed from the parent's home. Placement must be the least restrictive and in close proximity to parents to allow for reunification planning. Preferences for placement would be an adult family member, a family friend, a licensed foster home, or lastly, an institution with a program suitable for the child.

Sec. 34. Provides that when a child is placed in a home other than a home of a relative, the department must fully disclose to the relative the nature of the placement.

Sec. 35. Established that poverty is not a reason to deny placement and if a person is denied placement they are to be informed of the reason and told that they have a right to a hearing but not to legal counsel.

HB 53 Coghill Improving the Process

HB 53 Coghill Accountability

HB 114 Governor Improving the Process

HB 114 & LAA Legal

HB 114 Governor Improving the Process

HB 53 Coghill Family Preservation

HB 17 Rokeberg Improving the Process

HB 17 Rokeberg Improving the Process

Sec. 36. Provides that criminal background checks are required for both temporary placements and adoptive placements including finger print background check on anyone residing at the home who is 16 or older.

Sec. 37. Prima facie evidence (a fact presumed to be true unless disproved by evidence to the contrary) of good cause not to place a child in temporary or adoptive placement can include grounds for mandatory denial of initial license or discretionary denial of initial license. It also states that poverty or inadequate or crowded housing is not prima facie evidence.

Sec. 38. Creates a State Citizens Review Panel consisting of volunteers who are broadly representative of the state.

Sec. 39. Duties of the panel are to examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

Sec. 40. Directs Department of Health & Social Services to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel. The department shall serve as staff to the panel.

Sec. 41. Instructs the members of the panel, panel staff, and attendees of panel meetings not disclose to ANYONE records or other information containing personally identifying or other information made confidential under state or federal law about a child or witnesses involved in a case under review by the panel. It also clarifies that the panel would be covered by the Open Meetings Act and would have the ability to call executive sessions.

Sec. 42. Directs the panel to conduct public outreach and gather information on the department's current procedures and practices.

Department of Law amendment

Department of Law amendment

HB 53 Coghill Due Process

HB 53 Coghill Due Process

HB 53 Coghill Due Process

HB 53 Coghill Due Process

HB 53 Coghill Due Process

Sec. 43. Directs the department to prepare an annual report and provide it to the governor. It also requires the department to submit a written response to the report to the governor within six months of the date the report is submitted to the governor.

Sec. 44 Imposes a civil penalty for violating the confidentiality clauses for up to \$2,500 per violation.

Sec. 45. Creates immunity for state panel members and persons provided support to the panel.

Sec. 46. Defines "adult family member", "state panel" as the Citizen Review Panel and "near fatality" in Title 47.14, Juvenile Programs and Institutions by reference to AS 47.10.990.

Sec. 47. Requires OCS to notify a person who has made a ROH with a status report within 20 days.

Sec. 48. Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.

Sec. 49. Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary. The House Finance Committee discussed "may" versus "shall" for videotaping. They agreed to be permissive for many Reports of Harm, but if the report of harm is that involved a report of sexual abuse, the interview "shall" be videotaped, unless the interview is not feasible or will result in trauma to the child.

Since HB 53 encourages OCS to utilize child advocacy centers, the House Finance Committee added a subsection to this section that created a definition for child advocacy centers.

Sec. 50. Amends Title 47.18, "Foster Care Transition Program" to provide for a transition plan for children who have reached the age of sixteen but have not reached the age of 23. Formerly the age limit was 21.

HB 53 Coghill Improving the Process

HB 53 Coghill Due Process

HB 53 Coghill Improving the process

HB 53 Coghill Improving the process

HB 17 Rokeberg Improving the process

HB 53 Coghill Due Process

HB 53 Coghill Due Process

Department of Law

Sec. 51. Amends CINA Court Rule 3(c), Presence of Foster Parent, to include grandparents as being entitled to be heard at any hearings.

Sec. 52. Repeals CINA Rule 3(f), General Public Excluded, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.

Sec. 53. Direct court rule amendment for permanency plan efforts in Section 12.

Sec. 54. Direct rule change for voluntary relinquishment in CINA statutes.

Sec. 55. Rule change for use of a child's name and picture for implementing a permanency plan after termination of parental rights.

Sec. 56. Rule change for voluntary relinquishment with other parental privileges.

Sec. 57. Rule change for withdrawal of consent or relinquishment of a non-Indian child.

Sec. 58. Rule change for retaining other parental rights in voluntary relinquishment in adoption and CINA statutes.

Sec. 59. Various indirect rule change provisions.

Sec. 60. Indirect rule changes for disclosure of confidential information.

Sec. 61. Applicability.

Sec. 62. Transition language to implement changes through regulation.

Sec. 63. Revisor's instructions.

Sec. 64. Conditional Effect.

Sec. 65-66. Effective dates.

Court Rules Changes Due to Legislation

FISCAL NOTE TOTALS

CSSSHB 53(FIN)

OCS	Front Line Workers	\$	106,200.00	x
OCS	Children's Services Management	\$	142,700.00	x
Courts	Trial Courts	\$	94,900.00	x
DOA	OPA	\$	161,300.00	x
Law	Civil Human Services	\$	586,400.00	x
DOA	Public Defender	\$	<u>82,700.00</u>	x
		\$	1,174,200.00	

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSS HB53 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child in need of RDU Legal and Advocacy Services
aid proceedings:... Component Public Defender Agency
 Sponsor Reps. Coghill, Ramras,...
 Requester House Finance Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	54.3	54.3	54.3	54.3	54.3	54.3
Travel	2.4	2.4	2.4	2.4	2.4	2.4
Contractual	18.0	18.0	18.0	18.0	18.0	18.0
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	82.7	76.7	76.7	76.7	76.7	76.7

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	82.7	76.7	76.7	76.7	76.7	76.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	82.7	76.7	76.7	76.7	76.7	76.7

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal.

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSS HB53(JUD) is an omnibus bill significantly changing the child protective statutes (CINA) and in some instances the adoption and guardianship statutes. The portions of the bill having a fiscal impact on the operations of the Public Defender Agency will be discussed on the following page

Prepared by: Linda K. Wilson, Deputy Director
 Division: Public Defender Agency
 Approved by: Michael Tibbles, Deputy Commissioner
 Agency: Department of Administration

Phone (907)-334-4416
 Date/Time 4/27/05 7:25 AM
 Date 4/27/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSS HB 53 (JUD)

ANALYSIS CONTINUATION

Fiscal Note Analysis for SS HB 53: (continued)

Various Sections of this bill change statutes and court rules concerning confidentiality in child protective proceedings (CINA). CINA hearings will be presumptively open to the public, unless the court orders otherwise, based upon a motion to close it under certain circumstances enumerated in the bill. The Agency opens over 900 new child protective proceedings a year. It is anticipated that in a significant number of the Agency's cases the attorney will be repeatedly moving to close hearings. This additional motion practice will also require service on a member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to a half-time attorney position, factoring in support staff. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled.

Other provisions of the bill will have a fiscal impact on the Agency as well, but the extent of the impact cannot be predicted with any accuracy. In various sections of the bill it provides for family members or friends to request and obtain a review hearing of denied visitation, denied temporary placement, or a denied adoption placement request. While these identified people are not considered parties who would be entitled to the appointment of counsel, if indigent, Agency attorneys representing parents in these cases will likely be involved or need to attend these requested review hearings. In addition, the bill provides for additional review hearings in guardianship, termination, and adoption proceedings when a parent voluntarily relinquishes their parental rights but retains privileges, like visitation or contact, and seeks enforcement or modification of the retained privilege, or in some termination instances vacation of the termination order. These additional hearings will result in a fiscal impact to the Agency, but again, the extent cannot be predicted with any accuracy.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS SS HB 53 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An act relating to Child in Need of RDU: Legal and Advocacy Services
Aid proceedings, ... Component: Office of Public Advocacy
Sponsor: Rep. Coghill
Requester: House Judiciary Component No: 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	119.3	119.3	119.3	119.3	119.3	119.3
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual	35.0	35.0	35.0	35.0	35.0	35.0
Supplies	1.0	0.4	0.4	0.4	0.4	0.4
Equipment	5.0	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	161.3	156.2	156.2	156.2	156.2	156.2

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	161.3	156.2	156.2	156.2	156.2	156.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	161.3	156.2	156.2	156.2	156.2	156.2

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This omnibus Child-in-Need-of-Aid (CINA) legislation incorporates a number of changes to the CINA statutes and court rules. Two (2) changes would impact the Office of Public Advocacy, as delineated below.

Sections 8 and 9, as well as portions of numerous other sections, change statutes and court rules governing confidentiality in child protective proceedings (CINA) and some agency documents. CINA hearings will be presumptively open to the public, unless the court orders otherwise, based upon a motion to close it under certain circumstances enumerated in the bill. Approximately 1000 CINA cases are opened annually. OPA provides guardian ad litem representation in all CINA cases for the children (continued on page 2)

Prepared by: Joshua P. Fink, Director Phone: (907) 269-3500
Division: Office of Public Advocacy Date/Time: 4/27/05 7:21 AM
Approved by: Michael Tibbles, Deputy Commissioner Date: 4/27/2005
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CS SS HB 53 (JUD)

ANALYSIS CONTINUATION

(continued from page 1)

and also provides parental representation for the parents where the Public Defender Agency has a conflict. In essence, every CINA case is the equivalent of two cases to OPA if not more (in cases where there are more than two parents). This representation for both children and parents is provided by staff attorneys and GALs, as well as contractors in areas of the state where OPA has no staff or where OPA staff have a conflict. It is anticipated that in a significant portion of OPA's cases the attorney representing either the child or parent will move to close the hearing. Prior to doing this, an investigation must be conducted up front to determine if an open hearing would be detrimental to the child's best interests. In addition, any motion practice regarding hearing closure must be served on any member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to one full time attorney (a half-time attorney for child advocacy and a half-time attorney for parental advocacy), factoring in a third of a support staff member. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled. Finally, contractors will bill additional hours for investigation, motion practice, and motion service regarding hearing closures. Additional contract funds have also been included. The costs for these confidentiality sections would be 161.3 the first year and 156.2 thereafter.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB053CS(FIN)-DHSS-OCS2-04-26-05
() Publish Date: _____

Revision Date/Time (Note if correction): _____
Title RELATING TO CHILD-IN-NEED-OF AID MATTERS

Dept. Affected: Health & Social Services

Sponsor COGHILL
Requester HOUSE (FIN)

RDU Children's Services

Component Children's Services Management

Component No. 2666

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	71.9	71.9	71.9	71.9	71.9	71.9
Travel						
Contractual	70.8	10.8	10.8	10.8	10.8	10.8
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	142.7	82.7	82.7	82.7	82.7	82.7

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	142.7	82.7	82.7	82.7	82.7	82.7
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	142.7	82.7	82.7	82.7	82.7	82.7

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department's Office of Children's Services (OCS) budget are summarized below.

Confidentiality

Various amendments and additions in this bill are similar to those included in SB 84 that allow public access to CINA proceedings and confidential information.

con't on page 2

Prepared by: Tammy Sandoval, Acting Deputy Commissioner
Division Office of Children's Services
Approved by: Joel S. Gilbertson, Commissioner
Agency Department of Health and Social Services

Phone 465-3191
Date/Time 04/20/2005
Date 04/26/2005

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB053CS(FIN)-DHSS-OCS2-04-26-05

ANALYSIS CONTINUATION

Confidentiality - Analysis Con't

Should either bill become law, the Department anticipates that increase in public concern and requests for information will necessitate an additional position within the OCS to assist in the effort to respond in a timely manner. This position would be an Associate Coordinator, Range 18, under the current Program Coordinator for Community Relations at a cost of \$71.9 per fiscal year for salary and benefits with 15% service costs for a total of \$82.7 in general funds.

Sec. 46. Notification of Status of Investigations

Section 46 requires that when a person makes a report of harm and requests notification of the status of the investigation, OCS provide the status without disclosing confidential information. Because the OCS case management system (ORCA) does not now capture all addresses and does not report on the required data, system changes at a one-time cost of approximately \$60.0 would be required. These reports are not federally mandated and therefore not eligible for federal match.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSSHB53(Fin)-DHSS-OCS-05-27-05
() Publish Date: _____

Revision Date/Time (Note if correction): Rev 4/27/05 12:15p Dept. Affected: Health & Social Services
Title: RELATING TO CHILD-IN-NEED-OF AID MATTERS RDU: Children's Services
Component: Front Line Social Workers

Sponsor: COGHILL
Requester: HOUSE (FIN) Component No: 2305

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	33.7	33.7	33.7	33.7	33.7	33.7
Travel	28.0	28.0	28.0	28.0	28.0	28.0
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	0.6	0.6	0.6	0.6	0.6	0.6
Equipment	41.9					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	106.2	64.3	64.3	64.3	64.3	64.3

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	106.2	64.3	64.3	64.3	64.3	64.3
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	106.2	64.3	64.3	64.3	64.3	64.3

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CS HB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Office of Children's Services (OCS) budget are summarized below:

Section 13 provides that if a parent or family member of a child in state custody is denied visitation, the department will inform the parent or family member as to the reason for the denial and their right

Con't on page 2

Prepared by: Tammy Sandoval, Acting Deputy Commissioner Phone 465-3191
Division: Office of Children's Services Date/Time 04/26/2005
Approved by: Joel S. Gilbertson, Commissioner Date 04/27/2005
Agency: Department of Health and Social Services

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSH53(Fin)-DHSS-OCS-05-27-05

ANALYSIS CONTINUATION

to request a review hearing. The OCS believes there would be an increase in staff time required for hearing preparation and court time, but no data upon which to estimate the fiscal impact is available. Visitation denials are not tracked.

Section 38 provides that the department shall serve as staff to the Citizen Review Panel. The estimated cost to provide this support is:

.5 FTE staff support for CRP (Range 16)	\$33.7
Travel for 10 CRP members for 4 meetings	
Fairbanks	\$ 8.0
Anchorage x2	\$10.0
Juneau	\$10.0
Teleconferences (4)	\$ 2.0
Supplies (brochures, flyers, paper)	\$.6

Total	\$64.3

Section 49 provides that an interview of a child conducted as a result of a report of harm may be audiotaped or videotaped. When an interview concerns a report of sexual abuse by a parent or caretaker, the interview shall be videotaped unless it is not feasible to do so or unless the interview further harms the child. OCS estimates a need for video taping and viewing equipment in each of its 30 offices as follows:

	# needed	Pkg	Cost per	Ext
Camcorders w/ case, tripod, batteries & charger	30		815	24.6
Audio recorders w/ additional memory	30		269	8.1
Discs	3,500	150	75	.2
DVD players and monitors	30		300	9.0
Total				41.9

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB53(FIN)-LAW-HS-4
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to child-in-need-of-aid
proceedings..." RDU: CIVIL
 Component: Human Services
 Sponsor: Representative Coghill
 Requester: House Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	484.0	484.0	484.0	484.0	484.0	484.0
Travel	1.2	1.2	1.2	1.2	1.2	1.2
Contractual	57.0	57.0	57.0	57.0	57.0	57.0
Supplies	7.5	7.5	7.5	7.5	7.5	7.5
Equipment	36.7	36.7	36.7	36.7	36.7	36.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	586.4	586.4	586.4	586.4	586.4	586.4

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	586.4	586.4	586.4	586.4	586.4	586.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	586.4	586.4	586.4	586.4	586.4	586.4

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 47.10 (Children in Need of Aid). Passage of this legislation will impact the Department of Law in two ways.

1. It changes statutes that apply to confidentiality of child in need of aid matters. Longstanding policies, practices and procedures of every agency and branch of government involved in child welfare protection will be altered. As a result it is anticipated that disputes will arise over the interpretation and implementation of this legislation. The additional operating costs to resolve such disputes are estimated based on 400 additional attorney hours per year at a cost of \$49,696. Half of an attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

Prepared by: Kathryn Daughetee, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 4/27/05 12:16 PM
 Approved by: Kathryn Daughetee for David Marquez, Attorney General Date: 4/27/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB53(FIN)-LAW-HS-4

ANALYSIS CONTINUATION

2. It allows a parent, family member, or guardian who is denied visitation rights the right to request a review hearing thereby increasing the number of hearings attorneys must prepare for and attend. It includes a relative preference for adoption but adds three reasons why adoption may be denied to the relative. These sections will give rise to a number of contests and good cause findings. Taken together, these sections will cause an increase in the caseload that will add another 2 days of work to each CINA attorney's schedule and 1 day of work for each paralegal. This is a conservative estimate based on the assumption that some issues will be worked out early on in the placement process. That will cost \$536,759 which will fund 2.5 additional attorneys, 1 paralegal, and 1 law office assistant.

These costs are based on the Department of Law FY 2006 timekeeping and billing rate of \$107.99 per hour for attorneys and \$81.07 per hour for paraprofessionals. This rate includes overhead costs for leased space, office supplies, and 1 support staff (included in the position count and impact above) and \$6,500 per new position for one time costs for office furnishings and computer equipment.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSSHB 53 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Child in Need of Aid/Review Panels BRU Alaska Court System
Component Trial Courts
Sponsor Representative Coghill
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	83.6	83.6	83.6	83.6	83.6	83.6
Travel	5.3	5.3	5.3	5.3	5.3	5.3
Contractual						
Supplies	6.0	2.8	2.8	2.8	2.8	2.8
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	94.9	91.7	91.7	91.7	91.7	91.7

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	94.9	91.7	91.7	91.7	91.7	91.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	94.9	91.7	91.7	91.7	91.7	91.7

Estimate of any current year (FY2005) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary	4	4	4	4	4	4

ANALYSIS: (Attach a separate page if necessary)
CSSSHB 53 (FIN) makes several changes to the statutes that govern Child in Need of Aid (CINA) proceedings. Most of those changes reflect a policy to presumptively open most CINA proceedings, and agency actions and records. Of particular interest to the court system are those sections that relate to court hearings. Under the bill, most CINA hearings will be open to the public unless a party files, and the court grants, a motion to close all or a portion of a hearing. An interested member of the public may notify the court and the parties that he or she would like to be served with any petitions to close. Additionally, if the court is considering closing a hearing out of concern that an open hearing might interfere with a criminal investigation then the court is to notify the criminal justice agency conducting the investigation and provide it with an opportunity to be heard. (Continued on page 2)

Prepared by: Doug Wooliver, Administrative Attorney Phone 907-463-4750
Division: Alaska Court System Date/Time 4/27/05 9:22 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/27/2005
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSSHB (FIN)

ANALYSIS CONTINUATION

Each year the court system receives roughly 1,200 new CINA cases and 200 petitions to terminate parental rights. Both the Public Defender Agency and the Office of Public Advocacy, who represent the parties in these cases, anticipate filing motions to close in a significant percentage of these cases. This fiscal note reflects additional judicial and clerical time associated with ruling on motions to close, closing and then reopening hearings where only a portion of a hearing needs to be closed, notifying law enforcement agencies in those cases where closure is needed to protect a criminal investigation and clerical work associated with data input and scheduling changes. Specifically, this note asks for four months of a part-time court clerk in Anchorage and two months of part-time clerks in both Bethel and Fairbanks and corresponding pro tem time for judges in those same locations.

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Karen L. v. Alaska Div. of Family and Youth Services (2/6/98), 953 P 2d 871

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878.

THE SUPREME COURT OF THE STATE OF ALASKA

KAREN L.,)	
)	Supreme Court No. S-7528
Appellant,)	
)	Superior Court Nos.
v.)	3AN-94-8317 CI and
)	3AN-94-9620 CI
STATE OF ALASKA, DEPARTMENT)	
OF HEALTH AND SOCIAL SERVICES,)	
DIVISION OF FAMILY AND YOUTH)	O P I N I O N
SERVICES, DEBORAH WING, FAYE)	
MOORE, PATRICIA CHAMBERS)	[No. 4943 - February 6, 1998]
MITCHELL, RITA HUTCHENS, AND)	
RAY JOHNSON OF DIVISION OF)	
FAMILY AND YOUTH SERVICES,)	
THE OFFICE OF PUBLIC ADVOCACY,)	
BARBARA MALCHICK AND SHIRLEY)	
PERRY OF THE OFFICE OF PUBLIC)	
ADVOCACY, LANGDON PSYCHIATRIC)	
CORP., GREG MCCARTHY, M.D.,)	
and MICHAEL ROSE, Ph.D.,)	
)	
Appellees.)	

Appeal from the Superior Court of the State of
Alaska, Third Judicial District, Anchorage,
Peter A. Michalski, Judge.

Appearances: Karen L., pro se, Anchorage.
Raymond M. Funk, Assistant Attorney General, Fairbanks, and Bruce
M. Botelho, Attorney General, Juneau, for Appellees State of
Alaska, Department of Health and Social Services, Division of
Family and Youth Services, Deborah Wing, Faye Moore, Patricia
Chambers Mitchell, Rita Hutchens and Ray Johnson of Division of
Family and Youth Services, the Office of Public Advocacy, Barbara
Malchick and Shirley Perry of the Office of Public Advocacy. R.
Collin Middleton and Gregory A. Johnson, Middleton & Timme,
Anchorage, for Appellee Greg McCarthy, M.D. David D. Floerchinger
and Harland H. McElhany, DeLisio Moran Geraghty & Zobel, Anchorage,
for Appellee Michael Rose, Ph.D.

Before: Matthews, Eastaugh, and Bryner,
Justices. [Compton, Chief Justice, and Fabe, Justice, not
participating.]

EASTAUGH, Justice.

I. INTRODUCTION

Karen L. sued mental health consultants and State agencies and employees, claiming their involvement in Child in Need of Aid (CINA) proceedings involving her son caused her to suffer emotional distress. The superior court granted summary judgment to the defendants, holding that the State defendants owed Karen no duty of care and that quasi-judicial immunity protected the mental health consultants. Because we agree, we affirm.

II. FACTS AND PROCEEDINGS

The Division of Family and Youth Services (DFYS) took emergency custody of C.L., Karen's eleven-year-old son, after he ran away from home in August 1992 and reported his mother for abuse. [Fn. 1] The superior court found that there was probable cause to believe that C.L. was a CINA and committed him to DFYS's temporary custody.

During the temporary custody hearing, C.L. testified that he wished to be placed with his eighteen-year-old sister, K.L. Karen adamantly opposed the placement, alleging that K.L. used drugs and was engaged in an incestuous relationship with C.L. Karen agreed to temporary placement in the Daniels' foster home.

DFYS placed C.L. at the Daniels' foster home, but he promptly ran away and told DFYS he would stay only with K.L. After completing a home study, DFYS gave K.L. a three-month provisional foster care license and placed C.L. with K.L. Karen continued to object to placing her son in K.L.'s home. She asserted, among other things, that there were unsuitable or dangerous persons in K.L.'s home. The CINA court found that it was in C.L.'s best interest to continue living with K.L. C.L. remained in K.L.'s custody.

C.L. was experiencing problems at school in early 1993 and K.L. was having trouble handling him. C.L. returned to his

mother's home in March 1993 with DFYS's permission. DFYS and Karen agreed in May that legal and physical custody of C.L. would be returned to Karen. The CINA court approved the agreement in July 1993 and dismissed the CINA case in October.

Karen filed suit in the superior court in 1994 against the State defendants. [Fn. 2] Although she alleged a variety of claims, [Fn. 3] in essence she claimed that the State defendants acted negligently or wrongfully in the CINA case, and caused psychological and emotional injury to her and C.L. [Fn. 4] Karen filed a separate lawsuit against Dr. Greg McCarthy, Langdon Psychiatric Corporation (Dr. McCarthy's employer), and Dr. Michael Rose, alleging negligence, medical malpractice, and breach of fiduciary duty in their evaluations of Karen, C.L., and K.L. [Fn. 5] The two actions were consolidated.

The superior court, Judge Peter A. Michalski presiding, granted summary judgment to all defendants and dismissed Karen's claims. Karen appeals.

III. DISCUSSION

A. Standard of Review

We review a grant of summary judgment de novo. *Nielson v. Benton*, 903 P.2d 1049, 1052 (Alaska 1995). We "will uphold a summary judgment only if the record presents no genuine issues of material fact and 'the moving party was entitled to judgment on the law applicable to the established facts.'" *Newton v. Magill*, 872 P.2d 1213, 1215 (Alaska 1994) (citation omitted); *Alaska R. Civ. P. 56(c)*. "The proffered evidence is to be viewed in the light most favorable to the party opposing the motion." *Husky Oil N.P.R. Operations, Inc. v. Sea Airmotive, Inc.*, 724 P.2d 531, 533 (Alaska 1986) (citation omitted). The non-moving party is entitled to have all reasonable inferences of fact drawn in its favor. *Newton*, 872 P.2d at 1215 (citation omitted).

B. Did the Superior Court Err in Granting Summary Judgment to the State Defendants?

1. Did the social worker defendants owe Karen a duty of care?

The superior court ruled that the State defendants were immune from suit. After Karen moved for reconsideration, the court also concluded, applying the so-called D.S.W. duty factors, that the State defendants owed Karen no duty of care, and granted complete summary judgment to the State defendants. [Fn. 6] Karen argues that the superior court erred in analyzing those factors.

Karen's claims did not allege that the State defendants caused her to suffer physical injury or abuse. They alleged instead that she had suffered psychological and emotional injury or emotional distress because (1) she and C.L. were subjected to risk of harm from abuse; (2) C.L. was given inadequate treatment; (3) she lost filial consortium with her son; or (4) she suffered a loss of employment. [Fn. 7] She now argues that her emotional distress was inflicted both intentionally and negligently.

Underlying Karen's various negligence claims against the "social worker defendants" (the State, DHSS, DFYS, and their officers and employees, but not OPA and the individual GALs) is the notion that the State and its employees owed her, as mother of C.L., an actionable duty of care to protect her from emotional distress as a result of C.L.'s CINA proceedings. Karen asserts on appeal that DFYS breached duties it owed her personally when it negligently investigated K.L.'s suitability as a foster parent for C.L., negligently placed C.L. with K.L., negligently licensed K.L.

as a temporary foster parent for C.L., and negligently failed to monitor the placement. She claims that the social worker defendants negligently allowed C.L. to be exposed to dangerous and abusive adults living in or visiting K.L.'s homes.

The narrow question is whether the State defendants owed Karen a duty of care to protect her from emotional distress with respect to the CINA proceeding. [Fn. 8] This requires us to determine "whether the defendant owed the plaintiff a duty of care under the circumstances." *Hawks v. State, Dep't of Pub. Safety*, 908 P.2d 1013, 1016 (Alaska 1995); *Stephens v. State, Dep't of Revenue*, 746 P.2d 908, 910 (Alaska 1987); see also *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995) (stating that "a plaintiff's right to recover emotional damages caused by mere negligence should be limited to those cases where the defendant owes the plaintiff a preexisting duty").

Because common law is the only potential source of any actionable duty owed by the social worker defendants to Karen, [Fn. 9] we look to the D.S.W. factors to resolve the duty issue.

Foreseeability of the harm. The foreseeability of the harm suffered by the plaintiff is often regarded as the most important D.S.W. factor. *R.E. v. State*, 878 P.2d 1341, 1346 (Alaska 1994); *Division of Corrections v. Neakok*, 721 P.2d 1121, 1125 (Alaska 1986). We must therefore decide whether it was foreseeable that Karen would suffer actionable emotional distress because of the CINA proceeding.

In another context we have required "reasonable foreseeability that the plaintiff-witness would suffer emotional harm." *Beck v. State, Dep't of Transp. & Pub. Facilities*, 837 P.2d 105, 109 (Alaska 1992) (quoting *Tommy's Elbow Room, Inc. v. Kavorkian*, 727 P.2d 1038, 1043 (Alaska 1986)). In *Beck* we considered whether it was error to grant summary judgment dismissing a parent's negligent infliction of emotional distress (NIED) claim after she saw her seriously injured daughter enter the hospital on a gurney following an accident. We noted that the facts were "intermediate" between two prior cases, *Mattingly v. Sheldon Jackson College*, 743 P.2d 356 (Alaska 1987), and *Tommy's Elbow Room, Inc. v. Kavorkian*, 727 P.2d 1038 (Alaska 1986). In distinguishing those two cases in *Beck*, we noted that the father in *Kavorkian* was permitted to assert an NIED claim after rushing to the scene of his daughter's fatal automobile accident and watching rescuers remove her from the wreckage. See *Kavorkian*, 727 P.2d at 1040-43. In comparison, we observed that the *Mattingly* plaintiff was in Ketchikan when he learned of an accident that had occurred in Sitka. We found it significant that the plaintiff was a considerable distance from the accident scene, that the shock of observing the injured victims did not follow closely on the heels of the accident, and that he had time to "steel himself" during the 150-mile flight to Sitka. *Mattingly*, 743 P.2d at 365-66. In *Beck*, the mother experienced shock as the result of a sudden sensory observation of her daughter's traumatic injuries during the "continuous flow of events in the immediate aftermath of the accident." It could not be said she had time to "steel herself." *Beck*, 837 P.2d at 110-11. We consequently held that it was error to dismiss *Beck's* NIED claim. In so ruling, we recognized that

[O]ne who is thrust, either voluntarily or involuntarily, into such dramatic events and who makes a sudden sensory observation of the traumatic injuries of a close relative in the immediate aftermath of the event which produced them is no less entitled to assert a claim for his or her emotional injuries than one who actually witnessed the event. By contrast, one who

learns of the injury or death of a loved one, or who observes the pain and suffering or the injuries only after a considerable period of time has elapsed since the accident, suffers a harm which, while foreseeable, policy and reason dictate the law should not regard as compensable.

Id. at 110-11.

That observation is equally pertinent here. That a parent may foreseeably suffer some distress as a result of concerns about the placement and treatment of her child is not alone sufficient to establish the existence of a duty. The foreseeability we require is not present just because it is foreseeable that most parents will suffer some distress whenever their children's well-being is at risk. We require "that the shock result more or less contemporaneously with the plaintiff's learning of the nature of the victim's injury." Id. at 109 (quoting Mattingly, 743 P.2d at 365-66).

Certainly the extent of trauma suffered by the child bears on the foreseeability of the harm suffered by the plaintiff. We note that C.L. did not suffer serious physical injury or death, as did the plaintiffs' children in Hawks and Beck. At worst, C.L. was allegedly exposed to unsafe or abusive living conditions and did not receive treatment. He was not alleged to have suffered the sort of sudden and grave trauma that would generate acute shock, nor did Karen allege that she suffered a revelatory contemporaneous observation of C.L. in an injured condition. We think that it is not reasonably foreseeable that the conduct of the social workers and the consequences to C.L. would cause Karen to suffer the sort of actionable emotional harm that foreseeably results when a parent observes a gravely injured child soon after an accident.

Moreover, it is to be expected that any litigation, and certainly a CINA proceeding in which the child is taken from its parent following allegations of abuse, will cause the parent some distress. That does not mean that the distress should be actionable. The simple foreseeability that a parent will suffer distress proves too much. It is foreseeable that the parent of a child severely injured in an automobile accident may come upon the scene of the accident and observe the child's traumatic injuries in the immediate aftermath of the accident. It is not nearly so foreseeable that a parent who is a participant in judicial proceedings in which the parent's suitability is at issue will be unable to "steel herself" over concerns for her child and the course of the proceedings. Given that a parent in such a situation has a right to counsel, Alaska Child in Need of Aid Rule 12, it is also foreseeable that the parent will have a fair opportunity to participate in the CINA proceedings and urge return of the child or placement with another custodian, thus avoiding or minimizing the parent's distress. It is not self-evident that the sort of harm which a parent may suffer during a CINA proceeding is one the law regards as compensable. Cf. Beck, 837 P.2d at 109-11.

Other factors. The other D.S.W. factors weigh against imposing a duty here. A recent case involving emotional distress claims against the State is illustrative. In Hawks v. State, Department of Public Safety, 908 P.2d 1013 (Alaska 1995), Hawks alleged that the State negligently delayed identification of the remains of her daughter. Hawks sued for intentional and negligent infliction of emotional distress. Id. at 1015. The superior court granted summary judgment to the State. Id. In affirming, we noted that even though two D.S.W. factors, foreseeability of harm and degree of certainty the plaintiff suffered injury, weighed in favor

of imposing a duty, the remaining factors militated against holding the State liable. Id. at 1016. We noted that Hawks's injury was most closely connected to the depraved conduct of the man who murdered Hawks's daughter, and that there was little moral blame to attach to the investigating authorities' possible failure to correlate every known characteristic of every known missing person with every John Doe or Jane Doe decedent. Id. at 1016-17. We also noted that the consequences of imposing liability would be considerable and would invariably lead to the diversion of resources from other projects and investigations. Id. at 1017. We consequently affirmed dismissal of the NIED claim. [Fn. 10]

These criteria militate against imposing a duty of care on the social worker defendants. It is not obvious that any distress suffered by Karen was caused by the conduct of the social workers, nor is it at all certain what injury Karen actually suffered. An emotional distress claim is necessarily amorphous, in both its origins and its effects. C.L. ran away from Karen's home as a result of her conduct. See supra note 1. It was that conduct that led to the commencement of the CINA proceeding. When C.L. ran from the original foster home placement and expressed a preference for placement with K.L., he was placed in K.L.'s home. The CINA court issued the custody order and later declined to find an abuse of discretion in the placement on review. Attempting to determine the sources of Karen's distress would be difficult; attributing any part to the social workers' conduct would be problematic.

It also appears that no moral blame attaches to the conduct of the social workers in following state policy regarding foster care placement with a relative, notwithstanding Karen's objections. A social worker and the GAL both investigated Karen's placement complaints and found them to be unsubstantiated. The State later obtained a psychological evaluation of the foster mother, as well as the parties, and found no basis to remove C.L.

The D.S.W. factors concerning the policy of prevention of future harm, the extent of the burden on the defendant, and the consequences to the community of imposing liability can easily be considered together. We agree with the superior court's observation that

allowing aggrieved parents to sue the State for actions or inactions during the course of a CINA investigation or proceeding would greatly burden society's already scarce social worker resources. Social workers should be helping children in need of aid. They should not be spending their time in burdensome collateral litigation.

The superior court also concluded that imposing liability "would have a chilling effect on the actions of social workers." The court noted that the best interests of the child should guide social workers, and they "should not have their decision making colored by the specter of collateral litigation." We agree.

It does not appear that the policy of preventing future harm would be advanced by imposing a duty here, because it is not obvious that Karen's distress would have been avoided by anything less than immediate dismissal of the CINA proceeding and return of C.L. Moreover, CINA proceedings already incorporate substantial protections for parents and children. Karen had the assistance of capable and vigorous advocacy, and C.L. had a GAL.

The causal connection between the social worker defendants' conduct and Karen's alleged injury is remote. See D.S.W., 628 P.2d at 555. The removal of C.L. from Karen's custody into State custody was the result of a court order, based on a

finding of probable cause that Karen had abused C.L. Karen never challenged this order. Although DFYS investigated and licensed K.L. as a temporary foster parent, the final placement decision was the product of an adversarial CINA proceeding in which the superior court had an opportunity to hear the views of all interested persons and agencies. Thus, at the September 2, 1992, CINA hearing conducted by Master Lucinda J. McBurney, Karen agreed that C.L. could be placed in a foster home so long as it was not K.L.'s home, and C.L. insisted that he wanted to stay at his sister's. The master found that "at this point the relative [K.L.] placement is not in his best interests" C.L. then ran away from the Daniels' foster home. C.L. was thereafter placed with his sister, K.L. The custody decision was reviewed at an October 5 hearing at which Karen was represented by counsel. DFYS acknowledged the mother's objections to the placement, but stated that "the sister's home was . . . an appropriate place for him." DFYS and the GAL indicated that it was also probably the only place where he would stay and not run away. Magistrate William D. Hitchcock stated an intention to enter an order finding that it was in C.L.'s best interests to continue the custody order and the placement with K.L.

Karen later moved for placement review, as she was entitled to do under CINA Rule 10(d)(2). The main issue then presented by Karen and her counsel in the CINA proceeding was whether C.L. should be placed at Charter North Hospital for a seventy-two-hour evaluation, as Karen requested. Karen also asserted that the continued placement with K.L. was undesirable, and that DFYS had not fulfilled its duty of engaging in permanency planning for reunification. After a two-day hearing, Magistrate Hitchcock denied Karen's request for a court-ordered inpatient mental health evaluation of C.L. and implicitly approved of C.L.'s continuing placement with K.L. The CINA proceeding was the proper forum for addressing complaints about foster care placement and treatment. The CINA court's approval of the temporary placement decision further attenuates any connection between the social worker defendants' conduct and the injury.

The loss of consortium claim is governed by the D.S.W. factors discussed above.

Karen's alleged loss of employment cannot be the basis for an emotional distress claim (assuming that is what Karen's complaint attempted to plead). Considered independently, the loss of employment claim is also foreclosed by the D.S.W. factors. Such a harm is not foreseeable, and any causal connection is too remote.

The superior court did not err in dismissing Karen's claims against the social worker defendants for want of a duty of care.

2. Did the GALs owe Karen a duty of care?

Karen argues that the court-appointed GALs (OPA and individual GALs Malchick and Perry) owed duties to C.L., such as a duty to zealously represent C.L.'s interests as his legal counsel. See AS 25.24.310(c) (concerning appointment of a GAL and limiting GAL's authority to matters related to representation of child's best interests). She does not, however, establish that the GALs owed any duty to her. Nor does she demonstrate how a breach of any duty the GALs owed C.L. could give her any cause of action against the GALs. CINA Rule 11(a) states that the GAL represents the child's best interests, and CINA Rule 11(c) states that the GAL is a party. By implication, the duties a GAL owes the child do not extend to other parties, especially to parties whose interests may be adverse to those of the child. C.L. implicated Karen in abuse, resulting in commencement of the CINA proceedings, and expressed a

preference for placement with K.L., contrary to Karen's own wishes. As the State notes, a GAL owes no duty of care to a parent who is an adverse party in the CINA litigation.

We conclude that the court did not err in granting summary judgment to OPA and the individual GALs. We consequently need not reach any issue of sovereign and official immunity.

C. Did the Superior Court Err in Granting Summary Judgment to the Doctors?

In its preadjudication order issued after the October custody review hearing, the CINA court adopted DFYS's case plan. The case plan called for mental health evaluations of C.L., Karen, and K.L. The order stated that the case plan was in C.L.'s best interests, and recognized that it would evolve, noting that "full development of such a plan must await outcome of assessments."

Pursuant to the order, DFYS arranged for Drs. Rose and McCarthy to evaluate the family members. The CINA court relied heavily on these evaluations during the December hearing, when it found that an inpatient psychiatric evaluation of C.L. was unnecessary.

The superior court granted the doctors' motion for summary judgment, concluding that they were entitled to absolute quasi-judicial immunity because their evaluations were integral to the judicial process.

Karen argues that the superior court misapplied the doctrine of quasi-judicial immunity to shield the doctors. She contends that the doctrine only applies to services specifically ordered by the court.

The doctors correctly argue that our decision in *Lythgoe v. Guinn*, 884 P.2d 1085 (Alaska 1994), is controlling. We there held that a court-appointed psychologist was entitled to quasi-judicial immunity for claims arising out of her services as an independent custody investigator. *Id.* at 1088-89.

Although the psychologist in *Lythgoe* was court-appointed, it is irrelevant that Drs. McCarthy and Rose were initially selected by DFYS and subsequently approved by the court. We have recognized that it is not "how the psychologist was first chosen but whether his activity is an integral part of the judicial process so that to deny immunity would disserve the broader public interest that non-judicial officers act without fear of liability." *Lythgoe*, 884 P.2d at 1088 (quoting *Lavit v. Superior Court*, 839 P.2d 1141, 1144 (Ariz. App. 1992) (holding that psychologist initially chosen by the parties without court involvement was entitled to judicial immunity)). (Fn. 11)

The superior court did not err in granting summary judgment to the doctors.

D. Did the Superior Court Abuse Its Discretion in Granting the GALs' and the Social Workers' Motions to Stay Discovery and in Denying Karen's Motion to Compel?

Karen argues that the trial court erred in rendering three discovery rulings: (1) granting the GALs' motion to stay discovery pending resolution of their motion for summary judgment; (2) granting the individual social workers' motion to stay discovery pending resolution of their motion for summary judgment; and (3) denying Karen's motion to compel production. She contends that the stay "unjustly crippled [her] ability to oppose summary judgment." (Fn. 12)

The State correctly argues that "[t]he purpose of official immunity is to shield government officials from the

distractions of litigation arising from the performance of their official duties." Official immunity shelters government officials not just from liability, but from suit, including pre-trial discovery. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); see also *Martin v. D.C. Metro. Police Dep't*, 812 F.2d 1425, 1430 (D.C. Cir. 1987) ("Discovery is itself one of the burdens from which defendants are sheltered by the immunity doctrine.") overruled on other grounds, *Crawford-El v. Britton*, 93 F.3d 813 (D.C. Cir. 1996). The superior court did not abuse its discretion in granting the motions to stay discovery as to the individual State defendants.

Karen's motion to compel sought production of (1) job descriptions for individual State employees; (2) personnel files for those employees; (3) the State Department of Law's investigatory files for C.L.'s CINA case; (4) certain Anchorage Police Department records; (5) Department of Law information about prior suits or claims against any of the State defendants; and (6) all DFYS manuals relating to CINA proceedings and foster care licensing. Karen has not demonstrated that, to the extent particular categories of documents might have been properly discoverable, the court abused its discretion in denying relief to Karen on the discovery issues, given the potentially dispositive legal issues looming in the case. Further, Karen has not demonstrated how any error on these issues potentially prejudiced her ability to oppose the defendants' summary judgment motions.

E. Was the State Defendants' Peremptory Challenge Timely?

Karen contends that the State's peremptory challenge of Judge John Reese was untimely, because it was filed more than five days after the State was served with the summons showing that the case was assigned to him.

The summons was served on the State on September 16. On October 5 the State defendants filed their entry of appearance, answer, and peremptory challenge. The court accepted the peremptory challenge and reassigned the case to another judge on October 11. Karen's timeliness objections were denied.

Alaska Civil Rule 42(c)(3) provides in part:

Where a party has been served or enters an action after the case has been assigned to a specific judge, a notice of a change of judge shall also be timely if filed by the party before the commencement of trial and within five days after a party appears or files a pleading in the action.

Because no trial had commenced and the challenge was filed on the same day the State defendants entered an appearance, the presiding judge properly rejected Karen's argument that the State's peremptory challenge was untimely. [Fn. 13]

IV. CONCLUSION

We AFFIRM.

FOOTNOTE

Footnote 1:

C.L. told police that his mother had handcuffed him to a bed for two weeks, forced him to ingest numerous pills, and given him forced enemas six days a week since he was nine. A DFYS investigation tended to corroborate the facts as reported by C.L.

Footnote 2:

Karen sued the State, the Department of Health and Social Services (DHSS), DFYS, DFYS social workers Deborah Wing, Faye Moore, Patricia Chambers Mitchell, Rita Hutchens, and Ray Johnson, the Office of Public Advocacy (OPA), and guardians ad litem Barbara Malchick and Shirley Perry (GALs). We will refer to all these defendants as "the State defendants" except where context requires specificity.

Footnote 3:

Eight of the eighteen claims Karen asserted against the State defendants sought relief for Karen herself. Some of those claims (Second, Eighth, Tenth, Seventeenth) asserted that the State defendants had breached duties imposed by statute, regulation, or agency procedure. Some (Fourth, Thirteenth, Fifteenth) asserted that the foster care placement with K.L. was inappropriate and was not adequately supervised. Some (Second, Seventeenth) asserted that the State defendants failed to investigate the K.L. home adequately and should have realized that it was very unsuitable. Some (Tenth, Seventeenth) asserted that the State defendants breached the DFYS service plan founded on a September 2, 1992, "contractual agreement" under which Karen temporarily relinquished custody of C.L. to DFYS with the alleged expectation that C.L. would be placed in only a "proper" foster home and not K.L.'s home. One (Third) asserted that DFYS failed to give pertinent information to the doctors evaluating C.L. and K.L. Some (Thirteenth, Fifteenth) asserted that the State defendants should have realized the doctors' evaluations were based on incomplete information. One (Eighth) asserted that defendants failed to properly investigate the original complaint that Karen had abused C.L. even after C.L. and K.L. admitted that they had fabricated their original complaint. Some (Tenth, Seventeenth) asserted that statutory and common law duties arose out of contractual or fiduciary relationships.

Footnote 4:

The superior court dismissed the claims Karen asserted on C.L.'s behalf. The superior court concluded that a minor child cannot bring suit through a parent who, as here, is not represented by an attorney. See, e.g., *Osei-Afriyie v. Medical College of Pa.*, 937 F.2d 876, 882-83 (3d Cir. 1991); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990). Although Karen appealed the dismissal of C.L.'s claims, she only mentions the issue in her brief and has not substantively briefed it. We therefore deem the issue waived. *Petersen v. Mutual Life Ins. Co.*, 803 P.2d 406, 411 (Alaska 1990). Although Karen is pro se on appeal, her appellate briefs are well crafted.

Footnote 5:

We refer to Michael Rose, Ph.D., Greg McCarthy, M.D., and the Langdon Psychiatric Corp., collectively as "the mental health consultants" or "the doctors."

Footnote 6:

See D.S.W. v. Fairbanks N. Star Borough Sch. Dist., 628 P.2d 554, 555 (Alaska 1981), where we adopted a multi-factor approach to determine whether, as a matter of public policy, an actionable duty of care existed. These factors include:

"[t]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved."

Id. at 555 (quoting Peter W. v. San Francisco Unified Sch. Dist., 131 Cal. Rptr. 854, 859-60 (Cal App. 1976)). In Estate of Day v. Willis, 897 P.2d 78, 81 (Alaska 1995), we stated that "Whether a legal duty exists, when not governed by statute, is a public policy question involving specified considerations that this court enumerated in D.S.W."

Footnote 7:

Karen also asserted the "Plaintiffs were harmed" by a harmful delay in delivery of "appropriate" medical and psychological care. She did not, however, plead that she was personally entitled to receive any such care. Her complaints do not clearly indicate whether her alleged loss of employment was itself a separate injury, or was part of her claim that she suffered emotional and psychological distress.

Footnote 8:

It is not necessary to consider whether any defendants owed C.L. an actionable duty because he is not a party to this appeal. See also supra note 4.

We need not reach the immunity issue unless we first decide that a defendant owes the plaintiff an actionable duty. We have stated that "[b]efore we determine whether a statutory immunity applies to a given case, we will determine whether the State would be liable to the plaintiff in the absence of the immunity." Stephens v. State, Dep't of Revenue, 746 P.2d 908, 910 (Alaska 1987) (citation omitted).

Footnote 9:

Other typical theoretical sources of actionable duties are statutes, regulations, certain contracts, express undertakings, or fiduciary relationships. Those possible sources do not apply here. No statute or regulation imposed or implied a duty of care in favor of Karen; no contract between Karen and these defendants imposed a

duty to refrain from conduct that would foreseeably result in emotional harm to Karen, see *infra*, note 13; these defendants entered into no fiduciary relationship with Karen; and these defendants did not expressly undertake to protect Karen from emotional distress. If one of those duty sources applied, it would not be necessary to consider the D.S.W. factors. See *Waskey v. Municipality of Anchorage*, 909 P.2d 342, 343-44 (Alaska 1996) (finding it "unnecessary to resort to the D.S.W. approach" where we had decided other cases "more closely related" to the subject duty dispute).

Footnote 10:

We also affirmed dismissal of the intentional infliction of emotional distress (IIED) claim because *Hawks* had made no threshold showing of the outrageous and extreme conduct essential to an IIED claim. *Hawks v. State, Dep't of Pub. Safety*, 908 P.2d 1013, 1016 (Alaska 1995). Karen did not make the necessary threshold showing on the conduct element for an IIED claim, and the record requires the conclusion that the conduct of the social worker defendants was neither outrageous nor extreme. The superior court properly dismissed Karen's IIED claim.

Footnote 11:

There is no evidence in the record to support Karen's alternative argument that the doctors were not entitled to quasi-judicial immunity because they "treated" C.L. The doctors provided evaluations and recommendations to assist the CINA court in determining the proper placement and counseling needs of C.L.; they themselves did not provide therapy.

Likewise, it is not material that Dr. McCarthy's services, which included an evaluation of K.L., arguably had a bearing on the decision to issue K.L. a foster home license. His services were intrinsic to the CINA proceeding, and he is entitled to quasi-judicial immunity with respect to those services.

Footnote 12:

We review discovery orders under an abuse of discretion standard. *R.E. v. State*, 878 P.2d 1341, 1345 (Alaska 1994).

Footnote 13:

Karen also raises a series of constitutional arguments, and alleges procedural and substantive due process violations. Karen briefly mentioned, in only the most conclusory fashion, constitutional violations at several places in her 157-page superior court opposition to the State defendants' summary judgment motion. Because Karen did not substantively raise these arguments below, they are deemed waived. *Arnett v. Baskous*, 856 P.2d 790, 791 n.1 (Alaska 1993). She has not demonstrated that these issues involve plain error, or that there is any other excuse for her failure to raise them adequately in the superior court. Further, there would appear to be no basis for finding a denial of

procedural due process, given the active involvement of the court in the CINA proceeding. A parent in a CINA proceeding has a right to counsel, CINA Rule 12, and Karen was forcefully represented during the CINA proceeding.

Karen also argues that the State "breached" a written "contract" -- the case plan -- between herself and the State. She provides no support for the contention that the case plan is an enforceable contract. The State counters that "there was never a written plan that was signed by the parties." In addition, the State may unilaterally modify its case plan as necessary. Matter of A.B., 791 P.2d 615, 624 n.14 (Alaska 1990). There is no merit to Karen's contract claim.

Jury Trial in Termination of Parental Rights Cases

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Jury Trial in Termination of Parental Rights Cases



As of the end of 2003, the following 6 states (Nevada, Oklahoma, Texas, Virginia, Wisconsin, and Wyoming) have statutes or case law that permit or require a jury trial in termination of parental rights cases. In Virginia, the jury is called an "advisory jury."

The other 45 jurisdictions have case law or statutes or local court rules or common practice that specifically prohibits a jury trial in termination of parental rights cases.

In 2002, legislation was introduced in Utah to give a parent the right to a jury trial in termination of parental rights cases, but this legislation failed to pass.

Currently the state of Arizona is considering having jury trials in termination of parental rights cases.

Oklahoma is the only state that claims a constitutional right to a jury trial in termination of parental rights cases. In 1987, the Oklahoma Supreme Court held that "parental rights are too precious to be terminated without the full panoply of protections afforded by the Oklahoma Constitution." While the state high court said that it knew that "the best interest and welfare of the child is the primary consideration," it also knew that "this goal is best achieved by full compliance with the law. Insofar as the constitutional right to jury trial exists, it cannot be abrogated arbitrarily by a court."

There are three basic arguments found in case law against such a constitutional right. Two of these arguments make due process claims for a

jury trial in termination of parental rights cases. The third argument is the argument from history.

State courts that have addressed the issue hold that the constitutional right to a jury trial is not implicit in the concept of due process. Rather, the due process requirement in termination of parental rights proceedings is fundamental fairness. These courts have found that implicit in the *McKeiver* holding is the finding that a jury trial is not a fundamental concept of due process.

The second due process argument that the state courts have looked at is that a parent in a termination of parental rights case is entitled to a jury trial because parents have a fundamental constitutional right to raise their children and that right must be safeguarded by allowing a right to a jury trial.

In cases that make this due process argument, the court must balance three sometimes-competing interests. The first right is the fundamental right of the child to have the court and/or the parent acting in the child's best interests. This right of the child often competes with the parent's interests. The second right is the fundamental right of a parent to retain a parental relationship with a child and vice-versa, which is a right that merits strong protection. Finally, the state has a compelling interest as *parens patriae*

in protecting the child's rights.

In a termination of parental rights case, the court must walk a fine line and achieve the proper balance between the best interests of children, while giving full weight to the importance of the parent-child relationship.

State courts that have decided this constitutional issue have found that a jury trial removes a termination of parental rights case from its status as a protective proceeding, while adding little if any efficacy to the fact-finding process.

The final argument that state courts have addressed is the argument from history. The courts' position on this argument is that the constitutional guarantee of a jury trial does not apply to a termination of parental rights case because such proceedings were unknown at common law.

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Jury Trial in Abuse, Neglect, Dependency Cases

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Jury Trial in Abuse, Neglect, Dependency Cases



As of the end of 2003, the following 11 states (Colorado, Maine, Massachusetts, Michigan, Montana, Oklahoma, South Dakota, Texas, Virginia, Wisconsin, and Wyoming) have statutes or case law that permit or require a jury trial in abuse, neglect, dependency cases. In Virginia, the jury is called an "advisory jury."

The other 40 jurisdictions have case law or statutes or local court rules or common practice that specifically prohibits a jury trial in abuse, neglect, dependency cases.

However, state legislatures in these remaining 40 jurisdictions continue to discuss and debate the issue of jury trials in abuse, neglect, dependency cases.

For example, on December 18, 2003, the Governor of Arizona approved legislation granting the right to a jury trial, if requested, by the parent, guardian or custodian whose parental rights were to be terminated. Although the Bill had language granting jury trials in abuse or neglect cases, if requested, this language was not included in the Bill that finally passed.

On April 23, 2003, the Hawaii House of Representatives adopted a Concurrent Resolution requesting the State Auditor to consult with national entities with child welfare expertise, and to conduct program audits of the Child Protective Services Division of the Hawaii Department of Human Services, the Department of

the Attorney General, the Family Courts, and the police department of each county on the issue of child abuse and neglect within the state. One of the listed focus points of the audit is a discussion of the pros and cons of the right to a jury trial for parents accused of child abuse, a right currently not available in Hawaii.

Also, in 2003, the state of Illinois introduced a Bill giving a parent the right to demand a trial by jury in any proceeding seeking a finding that a minor is neglected, abused, or dependent. This Bill failed to pass.

Of the states that do have jury trials in abuse, neglect, dependency hearings, in Colorado, any respondent, or the guardian ad litem may demand a jury trial at the adjudicatory hearing of an abuse, neglect, dependency case. In addition, the court, on its own motion may order such a jury trial. The jury consists of 6 people. In Michigan, the right to a jury trial belongs to any person with standing in the case.

In Oklahoma, a parent, the state or a child has the right to demand a jury trial, but only when the petition to determine if a child is deprived also contains a request for termination of parental rights. The demand for a jury trial must be granted unless the parties waive the right to a jury trial. However, the court, on its own motion may order a jury trial. As in Colorado, Michigan and Wisconsin, the jury consists of 6 people.

Under Wyoming law, a party against whom a petition has been filed or the District Attorney may demand a trial by jury at an adjudicatory hearing. Demand for a jury trial must be made to the court not later than 10 days after the party making the demand is advised of his right to a jury trial. Failure of a party to demand a jury trial is a waiver of this right.

State courts that have addressed the issue of a constitutional right to a jury trial in an abuse, neglect, dependency case use the argument from history to state that there is no such right. The courts' position on this argument is that the constitutional guarantee of a jury trial does not apply to an abuse, neglect, dependency case because such proceedings were unknown at common law.

This Snapshot was supported by grant #2002-JN-FX-0001(S-1) from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Points of view or opinions contained within this document are those of the author and do not necessarily represent any official position, policy, or view of the U.S. Department of Justice.

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By: Bonnie Williams
Introduced: 03/24/05
Adopted: 03/24/05

FAIRBANKS NORTH STAR BOROUGH

RESOLUTION NO. 2005 - 13

A RESOLUTION IN SUPPORT OF STATE ACTIONS AND ACCOUNTABILITY INVOLVING CHILDREN

WHEREAS, the Fairbanks North Star Borough Assembly has four times in the past 10 years passed a resolution urging the State of Alaska to fully implement a statute impacting children under the care of the State by appointing and using a Peer Review body in each community; and

WHEREAS, during these past 10 years the quality of care provided to children under the legal care of the State has been revealed to be seriously less than adequate; and

WHEREAS, such poor care has resulted in repeated injuries, and in some tragic instances, death of children purportedly in state care; and

WHEREAS, a thorough review by a federal task force of the State of Alaska's care of children found numerous instances of failure to adequately care for children removed from their natural families by a court order, and

WHEREAS, such tragedy must not be allowed to continue to occur.

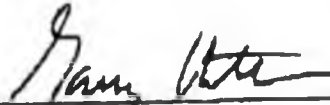
NOW THEREFORE BE IT RESOLVED that the Fairbanks North Star Borough, once more, sadly and tiredly but determinedly, asks the Legislature of the State of Alaska to take such actions as are deemed appropriate, purposeful and useful toward the purpose of improving the State's care of children.

BE IT FURTHER RESOLVED, that the Assembly supports HB 53 "An Act relating to child-in-need-of-aid proceedings...", and urges its passage and implementation.

BE IT FURTHER RESOLVED, that the Assembly encourages the Legislature to reenact AS 47.14.200 Citizen's Foster Care Review Board and that the Governor appoint public members to fulfill the much needed peer review committee.


45 BE IT FURTHER RESOLVED, that copies of this resolution be sent to the
46 Governor of the State of Alaska, and to members of the Interior Delegation of the
47 Alaska State Legislature.

48 PASSED AND APPROVED THIS 24th DAY OF MARCH 2005.
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Garry Hutchison
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC
Municipal Borough Clerk

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53
54 Ayes: Romans, Bartos, Sattley, Rex, Williams, Hopkins, Aldridge, Frank, Hutchison
55 Noes: None

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

March 24, 2005

Martha M. Anderson
Child and Adult Care Program Manager
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650

Dear Ms. Anderson:

Thank you for your recent letter to Chairman Wilson of the House Health & Social Services Committee regarding CSSSHE 53(HSS), the Family Rights Act.

The language you discussed in your letter was folded into my bill from a bill the governor introduced at the beginning of session. I discussed your concerns with several people at OCS and in the Governor's office. They have assured me that the existing language does avail to you confidential information about care providers that you license.

Attached is an email I asked my staff to send to get clarification in writing that you and other licensing entities would be eligible to obtain confidential information about the facilities you license

If you have further concerns, feel free to contact my office.

Sincerely,

A handwritten signature in cursive script that reads "John Coghill".

Representative John Coghill

Rynniewa Moss

From: Gibbens, Joanne [Joanne_Gibbens@health.state.ak.us]
Sent: Wednesday, March 23, 2005 5:26 PM
To: Rynniewa Moss
Subject: RE:

Hi Rynniewa - the answer to your question is Yes - that provision, which was part of the Governor's confidentiality bill would cover the municipality of anchorage as an entity we would be able to disclose information to - we could not give them the actual report of harm. but we would be allowed to disclose appropriate information to them if we were concerned about the safety of any children in the facilities they licensed - Joanne

-----Original Message-----

From: Rynniewa Moss [mailto:Rynniewa_Moss@legis.state.ak.us]
Sent: Wednesday, March 23, 2005 4:21 PM
To: Barb Malchick OPA; Barbara Brink; Dianne Ciseri, Heather Nobrega; Jan Rutherford; Joanne Gibbens; Joel Gilbertson; Josh Fink; Kathy Hope Erickson; Linda Wilson Public Defender; Michael Lessman; Peter Naoroz; Rep. Berta Gardner; Rep. Bob Lynn; Rep. John Coghill; Rep. Lesil McGuire; Rep. Max Gruenberg; Rep. Mike Kelly; Rep. Nancy Dahlstrom; Rep. Norman Rokberg; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Pete Kott; Rep. Sharon Cissna; Rep. Tom Anderson; Rep. Vic Kohring; Representative Gara; Representative Ramras; Sherry Hill; Stacie Kraly; Sue Stancliff; Tammy Sandovol; Vanessa Tondoni
Subject:

I have submitted the attached memos to Leg Legal. The bill will be heard next Thursday, March 31st, at 3:00 p.m. I will prepare new sectionals and get them to all of you as soon as possible.

We received a letter from the Municipality of Anchorage with concerns that they do not have access to records of ROH's for child care facilities so they don't know when a child facility is posing a danger to children so they can police the licensing of those facilities. Section 23 of Version S provides that a state or municipal agency or employee shall disclose appropriate confidential information regarding a case to

and new subsection (11) reads:

"a caregiver of a child or an entity responsible for ensuring the safety of children as necessary to protect the safety of a child;"

Is that language inclusive of a municipality that licenses child care facilities by referring to "an entity responsible for ensuring the safety of children"?

Thank you everyone for your hard work and cooperation on this bill

Rynniewa

MAR 22 2005



Municipality of Anchorage

P.O. Box 106650 • Anchorage, Alaska 99511-0650 • 485 "T" Street • <http://www.aunial.org>



Mayor Mark Begich

Department of Health and Human Services

March 18, 2005

The Honorable Peggy Wilson
 Chair, State House Health, Education and Social Services Committee
 Alaska State House of Representatives
 State Capitol, Room 108
 Juneau, AK 99811
 VIA fax: 465-3175

Dear Representative Wilson:

I write to comment on behalf of the Municipality of Anchorage on the Family Rights Act, CSSSHB (HESS) ("HB 53"). We thank you for the concern for the children of this state which HB 33 articulates. We want to bring to your attention our view that the bill should more clearly give child care licensing entities in Alaska greater access to the records of the Office of Children's Services (OCS) for purposes of licensing and investigating child care facilities. We believe all children of this state will benefit if OCS and child care licensing entities share information.

I. Introduction

The Municipality of Anchorage, Department of Health and Human Services, Child & Adult Care Program (CAC) now has full responsibility for licensing all child care facilities in Anchorage. Its duties include issuing licenses as well as restricting and removing these licenses. As you are aware, many children in Alaska now spend their most formative years in the care of licensed child care providers. Many of these young children are infants who are unable to talk. Therefore, it is the responsibility of CAC and other licensing entities in Alaska to ensure that these young children are safe and well-cared for in child care entities.

II. Background

Before the CAC issues a license, it conducts an investigation which consists of checking criminal backgrounds and finger printing applicants, in addition to other investigation.¹ It also asks child care providers to sign releases so that it may check the provider's child protection background.²

When CAC receives complaints about child care facilities, it must investigate those complaints and take licensing action if the complaints have merit. Unfortunately, the CAC's ability to license and investigate child care facilities in Anchorage has been compromised in recent years by the inability of its workers to gain access to OCS files of child care providers. For example,

¹ See, AMC16.55.100.

² See, AMC 16.55.100 D. 15. a. ii.

Community, Security, Prosperity

Family Rights Act, CSSSHB (HESS) ("HB 53")
Page 2

in one instance, after receiving several complaints about a child care facility, CAC initiated proceedings to revoke the facility's license. During the course of preparing the case for hearing, CAC learned that the child care provider at issue had an extensive file at OCS, with serious allegations relating to the health and safety of children which spanned a 10-year period. None of these episodes had been reported to CAC, and line workers at OCS had been afraid to tell CAC of these episodes because of the restriction on disclosure of child protection records.³ In other instances, CAC has been concerned that home-based child care providers had children of their own in the home who had serious behavioral problems and who thus posed a threat to the children in their care.

Therefore, in addition to wanting to protect children in care from adults who may pose a threat to their well being, CAC wants to be able to protect children in care from potential abuse or neglect by other children.⁴ If CAC is allowed greater access to OCS records, it could then make a better determination as to whether some applicants should be awarded a license in the first place. In addition, if CAC receives complaints about a child care facility after it has been licensed, it will have a better means of investigating those complaints.

III. Discussion of HB33

As you know, AS 47.10.093 currently states as follows:

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

Section 22 of HB 33, adds a new exception to the prohibition on disclosure, which appears to give OCS the authority to provide records to licensing agencies like CAC. It provides as follows:

Sec. 22. AS 47.10.093 (b) is amended to read:

- (b) A state or municipal agency or employee shall disclose appropriate confidential information regarding a case to
 - ...
 - (11) a caregiver of a child or entity responsible for ensuring the safety of children as necessary to protect the safety of a child

Subsection (11) as drafted appears to relate to agencies like CAC, as CAC is "an entity responsible for ensuring the safety of children." However, to clarify the fact that child care licensing authorities have access to child protection records of providers, we request that you substitute "of children" for "a child" at the end of subsection 11. If this phrase "of children" is

³ Sec. AS 47.10.093.

Family Rights Act, CSSSHB (HESS) ("HB 53")
Page 3

added, the legislation will more clearly indicate the intent that agencies such as CAC have the ability to review child protection records so that it can better protect all children in a child care facility from potentially harmful child care providers and individuals who have contact with children in child care entities.

CAC will agree to keep information it receives from OCS confidential. Indeed, AS 47.10.093 (m) as drafted states that:

- (m) Except for a disclosure made under (k) of this section, a person to whom disclosure is made under this section may not disclose confidential information about the child or the child's family to a person not authorized to receive it.

Moreover, CAC is bound by the confidentiality requirements of its own regulations.⁵

IV. Conclusion

If agencies such as the CAC have greater access to OCS records of providers, they can better serve the young children of this state. CAC's goals are so closely aligned with the goals of OCS that this access should not create a conflict for either agency, as long as both agencies agree to maintain confidentiality. We therefore request that you clarify HB 33 so that child care licensing entities have greater access to State child protection records.

If you have questions or would like to speak with me about this matter further, please call me at (907) 343-4676.

Sincerely,



Martha M. Anderson
Child and Adult Care Program Manager

cc: Senator Fred Dyson
Representative Sharon Cissna
Representative John Coghil Jr., House Majority Leader
Beverly K. Wooley, Director
Mary Pinkel, Assistant Municipal Attorney

⁵ Sec. AMC 16.55.160.

SENATE COMMITTEE REPORT

DATE: 5/1/05

FURTHER: Judiciary
Finance

DATE TURNED
IN TO OFFICE: 5/4/05

Health, Education, & Social Services Committee considered:
CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53(FIN)

HB 53 CHILDREN IN NEED OF AID/REVIEW PANELS

"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid, relating to guardianships, relating to the confidentiality of investigations, court hearings, court records, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to proceedings regarding voluntary relinquishment and termination of a parent and child relationship, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; reestablishing and relating to a state citizens' review panel, amending the obligation of a public agency to disclose agency information pertaining to a child in need of aid; relating to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care, relating to consent for the medication of children in state custody, prescribing the rights of family members related to child-in-need-of-aid cases and establishing a familial priority for adoption, modifying adoption and placement procedures in certain child-in-need-of-aid cases; amending Rules 9 and 13, Alaska Adoption Rules, Rules 3, 17.2, 18, and 22, Alaska Child in Need of Aid Rules of Procedure, and Rules 14 and 15, Alaska Rules of Probate Procedure, and providing for an effective date."

and recommends:

- be replaced with S CS CS 55 HB 53 (HES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input checked="" type="checkbox"/> Same Title	
<input type="checkbox"/> New Title	
SCS House Bill:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	


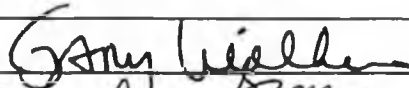
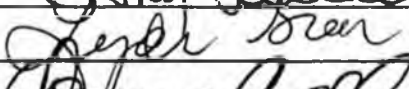
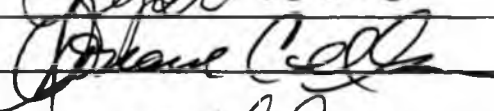

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	4/27	X			12
ADM	4/27	X			13
ACS	4/27	X			14
HSS	4/26	X			15
HSS	4/27	X			16
LAW	4/27	X			17

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			✓	
	✓			
	✓			
	✓			
CHAIR: 	✓			