

SB

83

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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January 27, 2004

Honorable Fred Dyson, Chairman
Senate Health, Education and
Social Services Committee
Alaska State Capitol; Rm. 121
Juneau, AK 99801

Dear Senator Dyson,

The Department of Health and Social Services respectfully requests a hearing in the Senate Health, Education, and Social Services Committee on Senate Bill 83 "An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."

This bill contains several distinct provisions relating to the child protection system.

A copy of Governor Murkowski's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill, Special Assistant
Office of the Commissioner

cc: Kevin Jardell, Legislative Director
Office of the Governor

Marcie Kennai, Deputy Commissioner
Division of Health Care Services

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislatur
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, relating to eligibility for Permanent Fund dividends for certain children in the custody of the state, and relating to child in need of aid proceedings under AS 47.10 and juvenile delinquency proceedings under AS 47.12.

The bill would add language to AS 25.23.180 to permit parents to relinquish their parental rights to a child while retaining certain privileges, such as ongoing communication or visitation with the child. This proposed amendment is in response to a recent Alaska Supreme Court decision holding that current law prohibits a parent from retaining any rights or privileges in a relinquishment. In some cases, ongoing contact with the parent is in the child's best interest, particularly in cases involving adoption by relatives or family acquaintances. Before the Supreme Court's decision, retention of privileges in relinquishments was a common practice. The proposed amendment would authorize retained privileges in appropriate cases.

The bill would add language to AS 43.23.005 to allow children who are placed temporarily by the Department of Health and Social Services (DHSS) outside of the state--in out-of-state treatment facilities, for example--to maintain their eligibility for Permanent Fund dividends. Some children require long-term treatment of a nature that is currently unavailable in this state; such children are at risk of losing their Permanent Fund dividend eligibility if they remain placed out of state for more than a year and are unable to return to the state to meet permanent fund dividend eligibility requirements. These Alaskan children should not lose the privilege of dividend eligibility as a result of being placed by the DHSS in a treatment program that is only available out-of-state.

The bill would add language to AS 47.10.020 to clarify that the court may issue any orders necessary to aid the DHSS in its investigation of an allegation of child abuse or neglect. Orders to aid DHSS are not prohibited by existing law;

COMMITTEE COPY

The Honorable Ben Stevens

January 25, 2005

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however, the proposed clarification would resolve any ambiguity regarding the ability of judges to issue such orders.

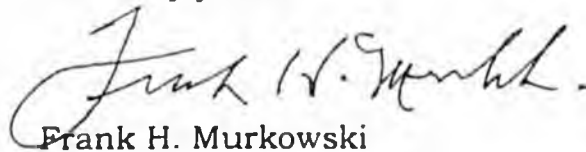
The bill also would add a new provision to permit courts to dispense with unnecessary and costly expert witness appearances in child in need of aid cases involving parents who cannot be located or identified. Under existing federal law, in order for a court to authorize the out-of-home placement of, or termination of parental rights to, an Indian child, the court must consider the testimony of a qualified expert witness. In cases involving a parent whose whereabouts remain unknown despite a diligent search, this federal law would appear to require that an expert witness be called solely to support the self-evident finding that placement of a child with the parent who cannot be found is likely to place the child at risk of harm. The proposed addition to AS 47.10 would permit a court to conclude, as a matter of law, that the testimony of a qualified expert witness would support a finding that placing the child with an absent parent would place a child at substantial risk of serious harm. This provision will satisfy federal legal requirements.

Finally, the bill would amend the definition of the term "mental health professional" for purposes of child in need of aid and juvenile delinquency proceedings. In order to authorize placement of children in secure residential psychiatric treatment facilities, courts must hear the testimony of a "mental health professional." The current definition of that term, contained in AS 47.30.915, excludes professionals who may be licensed to practice in other states, but not in Alaska. The testimony of such professionals is often critical in cases involving Alaska children who are already placed out of state by DHSS. Thus, expansion of the existing definition is necessary to ensure that Alaska children who are placed outside of this state receive the psychiatric treatment they need.

Each of the provisions of this bill constitutes a step toward making Alaska's children safer, healthier, and more secure, without unreasonably expanding governmental powers.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 83
 (S) Publish Date: 1/28/05
 Dept. Affected: Health & Social Services
 RDU: Children's Services
 Component: Front Line Social Workers

Revision Date/Time (Note if correction):

Title: RELATING TO CHILDREN IN NEED OF AID

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR

Component No. 2005

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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill addresses a number of different issues related to children in the custody of the department. The bill modifies various sections of Alaska Law by:

1. Allowing a parent to retain privileges of ongoing contact or communication with a child, when appropriate, after relinquishment of parental rights;
2. Maintaining permanent fund dividend eligibility for Alaskan children temporarily placed outside the state by the Department of Health and Social Services (DHSS)
3. Clarifying the court's authority to issue orders to aid the DHSS in its investigations of child abuse and neglect;

Prepared by: Marcia Kennai, 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 12/27/2004
 Date 12/29/2004

FISCAL NOTE
FN # 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 83

ANALYSIS CONTINUATION

4. Modifying the circumstances under which the DHSS may assume emergency custody of a child in order to better protect abused and neglected children;
5. Establishing a definition of "mental health professional" for purposes of child in need of aid and juvenile delinquency proceedings, and
6. Allowing the court to make findings regarding the testimony of expert witnesses in cases where parents cannot be located.

Passage of this bill will not have a fiscal impact on the department.

Sectional Analysis of SB 83/HB 114 (Child in need of aid omnibus)

(Prepared by the Department of Law, February 11, 2005)

HB 114/SB 83 would allow certain privileges to a parent when relinquishing parental rights; allow a child placed out of state while in custody of the Department of Health and Social Services not to be disqualified from receiving a permanent fund dividend on that basis alone; clarify the court's authority with regard to the investigation of abuse or neglect of a child; allow the court to rely on certain expert testimony in the case of an absentee parent, guardian, or custodian; and broaden the definition of "mental health professional."

I. Change to add parental privileges at relinquishment (AS 25.23.180) (Section 1):

Sec. 1: Section 1 provides that a parent may retain certain privileges with respect to a child when relinquishing parental rights, including the ability to have future contact, communication, and visitation with the child. A relinquishment cannot be invalidated, nor a termination order vacated, if a retained privilege has been withheld from the relinquishing parent or if a relinquishing parent fails to exercise a retained privilege.

II. Changes to statute regarding eligibility for a permanent fund dividend (AS 43.23.005) (Section 2):

Sec. 2: Section 2 allows the commissioner of the Department of Revenue to waive the permanent fund dividend's physical presence requirement for an individual who is in the custody of the Department of Health and Social Services and placed outside of the state for medical or behavioral treatment.

III. Changes regarding Department of Health and Social Services' investigation of abuse or neglect of a child (AS 47.10.020) (Sections 3 and 4):

Sec. 3: Section 3 amends the section regarding the investigation of the abuse or neglect of a child to describe when the court shall appoint a person or agency to make a preliminary inquiry and report for the information of the court, and to permit the court to issue orders necessary to help a person, agency, or the Department of Health and Social Services in its investigation or in making the preliminary inquiry and report to the court.

Sec. 4: Section 4 adds a new subsection that states that nothing in the section requires the Department of Health and Social Services to obtain court approval before investigating a report of harm or filing a petition. This places in statute current practice.

IV. Changes to allow a court to rely upon certain expert testimony (Section 5):

Sec. 5: Section 5 adds a new subsection to the chapter regarding children in need of aid (AS 47.10) to allow a court, in certain circumstances, to conclude that the testimony of a qualified expert witness would support a finding that continued custody of a child by an absent parent, guardian, or custodian is likely to result in serious damage to the child.

V. Changes to broaden the definition of “mental health professional” (Sections 6 and 7):

Sec. 6: Section 6 amends the definition of “mental health professional” in the chapter regarding children in need of aid (AS 47.10) to include a professional who is licensed to practice in a state other than Alaska when the Department of Health and Social Services has placed a child in that state.

Sec. 7: Section 7 amends the definition of “mental health professional” in the chapter regarding delinquent minors (AS 47.12) to include a professional who is licensed to practice in a state other than Alaska when the Department of Health and Social Services has placed a child in that state.

VI. Effective date (Section 8):

Sec. 8: Section 8 provides that the bill would take effect immediately.

False Claims of Sexual Abuse by Children Have Been Found to be Rare

Research has consistently shown that children rarely confabulate about having been abused and that false allegations of child sexual abuse are rare.

Jones and McGraw examined 576 consecutive referrals of child sexual abuse to the Denver Department of Social Services, and categorized the reports as either reliable or fictitious. **In only 1% of the total cases were children judged to have advanced a fictitious allegation.** Jones, D. P. H., and J. M. McGraw: *Reliable and Fictitious Accounts of Sexual Abuse to Children*. Journal of Interpersonal Violence 2: 27-45, 1987.

In a more recent study, investigators reviewed case notes of all child sexual abuse reports to the Denver Department of Social Services over 12 months. **Of the 551 cases reviewed, there were only 14 (2.5%) instances of erroneous concerns about abuse emanating from children.** These consisted of three cases of allegations made in collusion with a parent, three cases where an innocent event was misinterpreted as sexual abuse and eight cases (1.5%) of false allegations of sexual abuse. Oates, R. K., D.P. Jones, D. Denson, A. Sirotnak, N. Gary, and R.D. Krugman: *Erroneous Concerns about Child Sexual Abuse*. Child Abuse & Neglect 24:149-57, 2000.

Everson and Boat interviewed child protective service workers and found an estimated rate of false allegations that fell between 4.7 to 7.6% of all child and adolescent reports of sexual abuse. Everson, M.D., and B.W. Boat: *False Allegations of Sexual Abuse by Children and Adolescents*. Journal of the American Academy of Child and Adolescent Psychiatry 28: 230-5, 1989.

After reviewing the empirical literature concerning the frequency of false allegations of sexual abuse, Mikkelsen, Gutheil, and Emens concluded: **"False allegations of sexual abuse by children and adolescents are statistically uncommon, occurring at the rate of 2 to 10 percent of all cases."** Mikkelsen, E.J., T.G. Gutheil, and M Emens: *False Sexual-Abuse Allegations by Children and Adolescents: Contextual Factors and Clinical Subtypes*. American Journal of Psychotherapy 46: 556-70, 1992.

When four different states (Florida, Missouri, Vermont, and Virginia) reviewed Child Protective Service (CPS) records to determine the extent of false reporting, they found **intentionally false reports to comprised less than 1% of all unsubstantiated reports of child abuse** U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (1999). *Child Maltreatment 1997: Reports from the States to the National Child Abuse and Neglect Data System*. Washington, D.C.: Government Printing Office.

1997 NCANDS REPORT, Statistics on Intentionally False Reports

STATES	TOTAL REPORTS	UNSUBSTANTIATED	UNSUBSTANTIATED REPORTS THAT WERE JUDGED INTENTIONALLY FALSE
Florida	186,726	92,337	868 (5 per 1,000)

Missouri	80,185	49,490	460 (6 per 1,000 reports)
Vermont	2,309	1,257	18 (8 per 1,000 reports)
Virginia	51,227	37,282	457 (9 per 1,000 reports)
TOTAL	320,447	180,366	1,803 (6 per 1,000 reports)

Section D-9, adapted from Tables 3.1 and 3.2.

Children Tend to Understate Rather than Overstate the Extent of Any Abuse Experienced

Research with children whose sexual abuse has been proven has shown that children tend to minimize and deny abuse, not exaggerate or over-report such incidents.

In one study, researchers examined 28 cases in which children had tested positive for a sexually transmitted disease by forensically accepted procedures. To be included in the study, the children had to have presented for a physical problem with no prior disclosure or suspicion of sexual abuse. In addition, subjects were required to be over the age of three but prepubescent and were required to have adequate expressive language capabilities. Each of the 28 children was interviewed by a social worker trained in abuse disclosure techniques and use of anatomically correct dolls. **Only 12 of the 28 (43%) of the abused children interviewed gave any verbal confirmation of sexual contact.**

Lawson, L., & Chaffin, M. *False negatives in sexual abuse disclosure interviews*. Journal of Interpersonal Violence, 7(4), 532-42, 1992.

The "gold standard" study in this area comes from Sweden. This case involved a lone perpetrator who pled guilty after videotapes of his abuse of ten children were found by authorities. Because of these detailed videotape recordings, researchers knew exactly what happened to these children and were able to compare it to what the children told investigators when they interviewed. **The researchers found here was a significant tendency among the children to deny or minimize their experiences.** Some children simply did not want to disclose their experiences, some had difficulties remembering them, and one child lacked adequate concepts to understand and describe them. **Despite the fact that some of the interviews included leading questions, there were no false allegations.** Sjoberg, R. L., & Lindblad, F. *Limited disclosure of sexual abuse in children whose experiences were documented by videotape*. American Journal of Psychiatry, 159(2), 312-4, 2002.

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/26/05

FURTHER: Judiciary

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

DATE TURNED
IN TO OFFICE: 2.14.05

Health, Education and Social Services Committee considered

SENATE BILL NO. 83

SB 83 CHILD PROTECTION PROVISIONS

"An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."

and recommends:

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

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
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#
HSS	12/29			X	1

APPROPRIATION - no fiscal note

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