

HB

408

SENATE COMMITTEE REPORT

DATE: 3/22/06

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 408(FIN) am

HB 408 DEFINITION OF CHILD ABUSE AND NEGLECT

"An Act relating to the standard of proof required to terminate parental rights in child- in-need-of-aid proceedings; relating to a healing arts practitioner's duty to report a child adversely affected by or withdrawing from exposure to a controlled substance or alcohol; relating to disclosure of confidential or privileged information about certain children by the Departments of Health and Social Services and Administration; relating to permanent fund dividends paid to foster children and adopted children; amending Rule 18, Alaska Child in Need of Aid Rules of Procedure; 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

CS Senate Bill:	
<input 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#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Gene Herrault</i>	X			
<i>Suber Schwan</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
CHAIR <i>Ralph DeMa</i>	✓			

AMENDMENT

#1

OFFERED IN THE SENATE

BY SEEKINS

TO: SCS CSHB 408(FIN)am

1 Page 6, line 10:
2 After the word "healing arts"
3 Insert:
4 , as defined in AS 47.17.290(13),

adopted

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This amendment would put a fence around who is responsible to report, so professionals clearly understand who is required to report.

AMENDMENT # 2

OFFERED IN THE SENATE

TO: SCS CSHB 408(), Draft Version "L"

Adapted

1 Page 5, lines 3 - 18:

2 Delete all material and insert:

3 **** Sec. 6.** AS 47.10.093(j) is repealed and reenacted to read:

4 (j) The department may publicly disclose information pertaining to a child or
5 an alleged perpetrator named in a report of harm described under (i) of this section, or
6 pertaining to a household member of the child or the alleged perpetrator, if the
7 information relates to a determination, if any, made by the department regarding the
8 nature and validity of a report of harm under AS 47.17 or to the department's activities
9 arising from the department's investigation of the report. The commissioner or the
10 commissioner's designee

11 (1) shall withhold disclosure of the child's name, picture, or other
12 information that would readily lead to the identification of the child if the department
13 determines that the disclosure would be contrary to the best interests of the child, the
14 child's siblings, or other children in the child's household; or

15 (2) after consultation with a prosecuting attorney, shall withhold
16 disclosure of information that would reasonably be expected to interfere with a
17 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
18 criminal proceeding."

ALASKA STATE HOUSE OF REPRESENTATIVES

Representative John Coghill
State Capitol Room 204
Juneau, AK 99801-1182
(907)-465-3719



Representative Mike Chenault
State Capitol, Room 505
Juneau, AK 99801-1182
(907) 465-3779

FAMILY RIGHTS ACT of 2006 SCS CSHB 408(JUD)

In an effort to assist OCS in making public policy transparent and accountable in 2005, Representatives Coghill, Chenault, Rokeberg, and McGuire joined in with Department of Law and OCS to combine legislation into one bill. This also avoided duplication and canceling each other out. The process worked very well.

Because of the success of the Family Rights Act of 2005, Representatives Coghill and Chenault have again joined with OCS and Department of Law to fine tune some OCS issues.

The Department of Law has sections of the bill that raises the standard for termination of parental rights or denying a parent reasonable effort to clear and convincing evidence. Representative Kerttula amended the legislation to clarify the department's intent to require health care providers to report to OCS when they believe a child has been adversely affected by or is withdrawing from exposure to a controlled substance or alcohol.

Representative Chenault contributed language to clarify that when an official identified as a public official or employee under AS 47.10.092 requests information from the department about a CINA case, the department will have five working days to provide access to the information.

Representative Coghill's language clarifies the intent of HB 53 that once a report of harm has resulted in a parent making public disclosure, the alleged perpetrator being charged with a crime, or has resulted in fatality or near fatality of a child, OCS is able to disclose the nature and validity of any report of harm about any child in the family of the parent in a report of harm.

Representative Coghill also has language that preserves the permanent fund dividends of children in state custody until they turn 18 or if they are reunited with their parent(s). OCS applies for the PFD's and places them in a trust.

A new Section 9 incorporates language from Rep. Neuman's HB 346 which requires training of OCS social workers to include learning the constitutional and statutory rights of the children and their parents, require them to work with law enforcement to prevent compromising evidence, and requiring them to disclose to the accused the specific complaint or allegation without disclosing the reporter.

24-LS1800A

Mischel

3/25/06

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 408, relating to the standard of proof required to**
3 **terminate parental rights in child-in-need-of-aid proceedings; relating to the definition**
4 **of "child abuse or neglect"; relating to disclosure of confidential or privileged**
5 **information about certain children by the Departments of Health and Social Services**
6 **and Administration; relating to permanent fund dividends paid to foster children and**
7 **adopted children; and amending Rule 18, Alaska Child in Need of Aid Rules of**
8 **Procedure.**

9 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
11 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
12 changes to the title of a bill, are suspended in consideration of House Bill No. 408, relating to
13 the standard of proof required to terminate parental rights in child-in-need-of-aid proceedings;
14 relating to the definition of "child abuse or neglect"; relating to disclosure of confidential or

1 privileged information about certain children by the Departments of Health and Social
2 Services and Administration; relating to permanent fund dividends paid to foster children and
3 adopted children; and amending Rule 18, Alaska Child in Need of Aid Rules of Procedure.

24-GH2021VL
Mischel
3/24/06

SENATE CS FOR CS FOR HOUSE B'LL NO. 408()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the standard of proof required to terminate parental rights in child-
2 in-need-of-aid proceedings; relating to a healing arts practitioner's duty to report a child
3 adversely affected by or withdrawing from exposure to a controlled substance or
4 alcohol; relating to disclosure of confidential or privileged information about certain
5 children by the Departments of Health and Social Services and Administration; relating
6 to permanent fund dividends paid to foster children and adopted children; relating to
7 child abuse or neglect investigations and training; amending Rule 18, Alaska Child in
8 Need of Aid Rules of Procedure; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 47.10.086(c) is amended to read:

11 (c) The court may determine that reasonable efforts of the type described in
12 (a) of this section are not required if the court has found by clear and convincing [A

1 PREPONDERANCE OF THE] evidence that

2 (1) the parent or guardian has subjected the child to circumstances that
3 pose a substantial risk to the child's health or safety; these circumstances include
4 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

5 (2) the parent or guardian has

6 (A) committed homicide under AS 11.41.100 - 11.41.130 of a
7 parent of the child or of a child;

8 (B) aided or abetted, attempted, conspired, or solicited under
9 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
10 paragraph;

11 (C) committed an assault that is a felony under AS 11.41.200 -
12 11.41.220 and results in serious physical injury to a child; or

13 (D) committed the conduct described in (A) - (C) of this
14 paragraph that violated a law or ordinance of another jurisdiction having
15 elements similar to an offense described in (A) - (C) of this paragraph;

16 (3) the parent or guardian has, during the 12 months preceding the
17 permanency hearing, failed to comply with a court order to participate in family
18 support services;

19 (4) the department has conducted a reasonably diligent search over a
20 time period of at least three months for an unidentified or absent parent and has failed
21 to identify and locate the parent;

22 (5) the parent or guardian is the sole caregiver of the child and the
23 parent or guardian has a mental illness or mental deficiency of such nature and
24 duration that, according to the statement of a psychologist or physician, the parent or
25 guardian will be incapable of caring for the child without placing the child at
26 substantial risk of physical or mental injury even if the department were to provide
27 family support services to the parent or guardian for 12 months;

28 (6) the parent or guardian has previously been convicted of a crime
29 involving a child in this state or in another jurisdiction and, after the conviction, the
30 child was returned to the custody of the parent or guardian and later removed because
31 of an additional substantiated report of physical or sexual abuse by the parent or

1 guardian;

2 (7) a child has suffered substantial physical harm as the result of
3 abusive or neglectful conduct by the parent or guardian or by a person known by the
4 parent or guardian and the parent or guardian knew or reasonably should have known
5 that the person was abusing the child;

6 (8) the parental rights of the parent have been terminated with respect
7 to another child because of child abuse or neglect, the parent has not remedied the
8 conditions or conduct that led to the termination of parental rights, and the parent has
9 demonstrated an inability to protect the child from substantial harm or the risk of
10 substantial harm;

11 (9) the child has been removed from the child's home on at least two
12 previous occasions, family support services were offered or provided to the parent or
13 guardian at those times, and the parent or guardian has demonstrated an inability to
14 protect the child from substantial harm or the risk of substantial harm; or

15 (10) the parent or guardian is incarcerated and is unavailable to care
16 for the child during a significant period of the child's minority, considering the child's
17 age and need for care by an adult.

18 * Sec. 2. AS 47.10.088(a) is amended to read:

19 (a) Except as provided in AS 47.10.080(o), the rights and responsibilities of
20 the parent regarding the child may be terminated for purposes of freeing a child for
21 adoption or other permanent placement if the court finds

22 [(1)] by clear and convincing evidence that

23 (1) [(A)] the child has been subjected to conduct or conditions
24 described in AS 47.10.011;

25 (2) [AND (B)] the parent

26 (A) [(i)] has not remedied the conduct or conditions in the
27 home that place the child at substantial risk of harm; or

28 (B) [(ii)] has failed, within a reasonable time, to remedy the
29 conduct or conditions in the home that place the child in substantial risk so that
30 returning the child to the parent would place the child at substantial risk of
31 physical or mental injury; and

1 (3) [(2) BY PREPONDERANCE OF THE EVIDENCE THAT] the
2 department has complied with the provisions of AS 47.10.086 concerning reasonable
3 efforts.

4 * Sec. 3. AS 47.10.088(b) is amended to read:

5 (b) In making a determination under (a)(2) [(a)(1)(B)] of this section, the court
6 may consider any fact relating to the best interests of the child, including

7 (1) the likelihood of returning the child to the parent within a
8 reasonable time based on the child's age or needs;

9 (2) the amount of effort by the parent to remedy the conduct or the
10 conditions in the home;

11 (3) the harm caused to the child;

12 (4) the likelihood that the harmful conduct will continue; and

13 (5) the history of conduct by or conditions created by the parent.

14 * Sec. 4. AS 47.10.092 is amended by adding a new subsection to read:

15 (f) Each department shall respond to a request made by an official identified
16 under (a) of this section within five working days after receiving the request, or by a
17 later date specified in the request, by providing access to all or part of the information
18 requested or by providing the specific citation to a federal or state law that prohibits
19 disclosure of all or part of the information requested.

20 * Sec. 5. AS 47.10.093(i) is amended to read:

21 (i) The commissioner of health and social services or the commissioner's
22 designee or the commissioner of administration or the commissioner's designee, as
23 appropriate, may disclose to the public, upon request, confidential information, as set
24 out in (j) of this section, when

25 (1) the parent or guardian of a child who is the subject of one or more
26 reports [A REPORT] of harm under AS 47.17 has made a public disclosure
27 concerning the department's involvement with the family;

28 (2) the alleged perpetrator named in one or more reports [A
29 REPORT] of harm under AS 47.17 has been charged with a crime concerning the
30 alleged abuse or neglect; or

31 (3) abuse or neglect [A REPORT OF HARM UNDER AS 47.17] has

1 resulted in the fatality or near fatality of a [THAT] child who is the subject of one or
2 more reports of harm under AS 47.17.

3 * **Sec. 6.** AS 47.10.093(j) is amended to read:

4 (j) The type of information that may be publicly disclosed under (i) of this
5 section is information related to the determination, if any, made by the department
6 regarding the nature and validity of any [A] report of harm under AS 47.17
7 pertaining to a child in the care of a person who is the alleged perpetrator
8 described in a report of harm and the department's activities arising from the
9 department's investigation of such a [THE] report. The commissioner or the
10 commissioner's designee

11 (1) shall withhold disclosure of the child's name, picture, or other
12 information that would readily lead to the identification of the child if the department
13 determines that the disclosure would be contrary to the best interests of the child, the
14 child's siblings, or other children in the child's household; or

15 (2) after consultation with a prosecuting attorney, shall withhold
16 disclosure of information that would reasonably be expected to interfere with a
17 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
18 criminal proceeding.

19 * **Sec. 7.** AS 47.10 is amended by adding a new section to read:

20 **Sec. 47.10.115. Permanent fund dividend.** (a) The department shall annually
21 apply for a permanent fund dividend and retain in trust under AS 43.23.015(e) for the
22 benefit of the child the dividend and accrued interest on the dividend if the child is in
23 the custody of the department when the application is due.

24 (b) The department may not distribute the proceeds of a trust under this
25 section unless

26 (1) the child has reached 18 years of age and is no longer in the
27 custody of the department;

28 (2) the child has been adopted and one year has elapsed since the
29 adoption;

30 (3) the child is no longer in the custody of the department and the child
31 has been reunited with the child's parents; or

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(4) ordered to do so by the court in the best interest of the child.

(c) Notwithstanding (b)(1) - (3) of this section, the department may not distribute the proceeds of a trust under this section if the payment would be made to a guardian of a child who had been in the custody of the department immediately before the establishment of the guardianship, unless the guardianship was established under AS 13.26.090 - 13.26.155.

* Sec. 8. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.024. Duties of practitioners of the healing arts. (a) A practitioner of the healing arts involved in the delivery or care of a child who the practitioner determines has been adversely affected by, or is withdrawing from exposure to, a controlled substance or alcohol shall immediately notify the nearest office of the department of the child's condition.

(b) In this section, "controlled substance" has the meaning given in AS 11.71.900, but does not include a substance lawfully taken under a prescription from a health care provider who is authorized to prescribe the substance.

* Sec. 9. AS 47.17.033 is amended by adding new subsections to read:

(j) The training required under (c) of this section must address the constitutional and statutory rights of children and families that apply throughout the investigation and department intervention. The training must inform department representatives of the applicable legal duties to protect the rights and safety of a child and the child's family.

(k) During a joint investigation by the department and a law enforcement agency, the department shall coordinate an investigation of child abuse or neglect with the law enforcement agency to ensure that the possibility of a criminal charge is not compromised.

(l) Unless a law enforcement official prohibits or restricts notification under (k) of this section, at the time of initial contact with a person alleged to have committed child abuse or neglect, the department shall notify the person of the specific complaint or allegation made against the person, except that the identity of the complainant may not be revealed.

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* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. Sections 1 - 3 of this Act have the effect of amending Rule 18, Alaska Child in Need of Aid Rules of Procedure, relating to the termination of parental rights proceedings by increasing the standard of proof concerning some elements from proof by a preponderance of the evidence to proof by clear and convincing evidence.

* Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY OF SECS. 1 - 3 OF THIS ACT. Sections 1 - 3 of this Act apply to a child-in-need-of-aid proceeding that is pending before the court, that is on appeal to the court, or for which the time for appeal to the court has not yet passed on or after the effective date of this Act.

* Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Sections 1 - 3 of this Act take effect only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

FAMILY RIGHTS ACT of 2006
CSHB 408(FIN)am

SECTIONAL FOR SENATE JUDICIARY CS

Section 1. This section contains language that would release OCS from providing family support services when they can show the court, by clear and convincing evidence, that the parent or guardian poses substantial risk to a child, has committed a homicide of a child, or parent has taken such actions as described in Section 1. This raises the level of proof from "a preponderance of the evidence". (Requested by Department of Law)

Section 2. This section raises the standard for termination of parental rights from a "preponderance of evidence" to "clear and convincing evidence". (Requested by OCS language; Rep. Coghill legislation-HB 261, 2001)

Section 3. This section is language clean up to accommodate Section 2 amendments. (Department of Law)

Section 4. When a public official or an employee requests information from the department, they will now have five working days to respond. (HB 327 – Rep. Chenault)

Section 5. Clarifies the intent of HB 53 that once a report of harm has resulted in a parent making public disclosure, the alleged perpetrator being charged with a crime, or has resulted in fatality or near fatality of a child, OCS is able to disclose the nature and validity of any report of harm about a child in a report of harm. (Representative Coghill)

Section 6. Broadens the department's ability to discuss a report of harm pertaining to not only children in the family or household, but also children who may be under the care of a perpetrator in a report of harm. (Representative Coghill)

Section 7. Last summer two teenagers were placed in a foster home and the foster parents were appointed as legal guardians. The State released the teens' permanent fund dividends to the legal guardians. The placement did not work and the children were removed from the home without their dividends. Section 6 says the only way a child's past dividend can be released is if the child is adopted and has remained adopted for one year, the child turns eighteen and the PFD's are released by OCS, the child is returned to the parent(s), or the department is ordered to do so by the court. The one-year provision is put in place because there is a high rate of adoptions being disturbed. Subsection (c) clarifies this applies to legal guardians of children who have been in state custody, unless the guardianship was established for an incapacitated person. (Representative Coghill)

Section 8. This section requires practitioners of the healing arts involved in the delivery or care of a child who determines the child is adversely affected by a controlled substance or alcohol to notify OCS. It clarifies that a "controlled substance" does not include prescription medication, but rather "a drug, substance, or immediate precursor included in the schedules set in AS 11.71.140 – 11.71.190".

Section 9. This provision consolidates HB 346 sponsored by Representative Mark Neuman into HB 408. The provision requires social worker training to include constitutional and statutory rights of children and families, requires cooperation by OCS with law enforcement to ensure the possibility of criminal charges is not compromised in the investigation, and that the alleged perpetrator be advised of what the specific complaint or allegation is without disclosing the identity of the accuser.

Section 10. Indirect Court Rule change dealing with changing "preponderance of evidence" in Sections 1, 2, & 3 to "clear and convincing evidence". (Department of Law)

Section 11. Applicability language to clarify that pending cases and non-pending cases still within the statute of limitation will have "clear and convincing evidence" standard applied to them. (Department of Law)

Section 12. Because Sections 1, 2, & 3 will result in an Indirect Court Rule Amendment, those section of the bill will only take place if the vote on Section 9 receives a two-thirds vote of each house of the legislature. (Department of Law)

Section 13. Immediate effective date clause.

AMENDMENT

OFFERED IN THE SENATE

BY

TO: CSHB 408(FIN) am

1 Page 5, line 7:

2 Delete: "for which there has been a report of harm"

3 Insert: who is the alleged perpetrator described in a report of harm

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AMENDMENT

OFFERED IN THE SENATE

BY

TO: CSHB 408(FIN)am

1 Page 6, line 1:

2 Insert:

3 (c) Notwithstanding (b)(1) – (3) of this section, the department may not distribute
4 the proceeds of a trust under this section if the payment would be made to a guardian
5 of a child who had been in the custody of the department immediately before the
6 establishment of the guardianship, unless the guardianship was established under
7 AS 13.26.09C – 13.26.155.

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STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 116001
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

March 20, 2006

Honorable Ralph Seekins, Chairman
Senate Judiciary Committee
Alaska State Capitol; Rm. 125
Juneau, AK 99801

Dear Senator Seekins,

The Department of Health and Social Services respectfully requests that House Bill 408 "An Act relating to the definition of 'child abuse and neglect' for child protection purposes; and providing for an effective date," be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience.

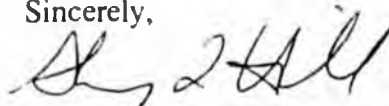
The House Health, Education, and Social Services Committee heard the companion bill, Senate Bill 252, and reported it out without amendment.

Changes and amendments were made to House Bill 408 in the House Finance Committee; amendments were made to the House (FIN) Committee Substitute on the House floor. The department supports the House version of House Bill 408.

I am providing you with a copy of CS HB 408(FIN)am; a sectional analysis, Governor's transmittal letter and a copy of Representative Coghill's sponsor statement.

A copy of the zero fiscal note should be on file with the committee. Your favorable consideration of this request will be most appreciated.

Sincerely,



Sherry Hill, Special Assistant
Office of the Commissioner

cc: Kevin Jardell, Legislative Director
Office of the Governor

Tammy Sandoval, Deputy Commissioner
Office of Children's Services

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 408
 (H) Publish Date: 1/30/06
 Dept. Affected: Health & Social Services

Revision Date/Time (Note: If correction):

Title: SUBSTANCE EXPOSED NEWBORNS AND CHILD ABUSE

RDU: Children's Services
 Component: Front Line Social Workers

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR

Component No.: 2305

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
CHANGE IN REVENUES (0)						

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 (FY2006) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Office of Children's Services (OCS) has determined that many medical professionals in Alaska are already reporting affected infants to our offices. The potential increased reporting that would result from the enactment of this bill should be minimal, and the OCS does not anticipate any fiscal impact.

Prepared by: Tammy Sandoval, Deputy Commissioner
 Division: Office of Children's Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-3791
 Date/Time: 11/04/2005
 Date: 11/08/2005

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 408(FIN)
(H) Publish Date: 3/8/2006

Revision Date/Time (Note if correction): _____ Dept. Affected: DHSS
Title: Relating to Child in Need of Aid RDU: Children's Services
Proceedings Component: Children's Services Management
Sponsor: (RLS) by Request of Governor
Requester: HFC Component No.: 2666

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Finance Committee

Phone: 465-4945/465-3779

Rep. Kevin Meyer, Co-Chair

Date: 3/7/2006

Rep. Mike Chenault, Co-Chair

ALASKA STATE HOUSE OF REPRESENTATIVES

Representative John Coghill
State Capitol Room 204
Juneau, AK 99801-1182
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Representative Mike Chenault
State Capitol, Room 505
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FAMILY RIGHTS ACT of 2006 CSHB 408(FIN)

In an effort to assist OCS in making public policy transparent and accountable in 2005, Representatives Coghill, Chenault, Rokeberg, and McGuire joined in with Department of Law and OCS to combine legislation into one bill. This also avoided duplication and canceling each other out. The process worked very well.

Because of the success of the Family Rights Act of 2005, Representatives Coghill and Chenault have again joined with OCS and Department of Law to fine tune some COS issues.

The Department of Law has sections of the bill that raises the standard for termination of parental rights or denying a parent reasonable effort to clear and convincing evidence. They also have amended the definition of "child abuse or neglect" to include a report from a physician at birth that a child has been adversely affected by or is withdrawing from exposure to a controlled substance or alcohol.

Representative Chenault contributed language to clarify that when an official identified as a public official or employee under AS 47.10.092 requests information from the department about a CINA case, the department will have five working days to provide access to the information.

Representative Coghill's language clarifies the intent of HB 53 that once a report of harm has resulted in a parent making public disclosure, the alleged perpetrator being charged with a crime, or has resulted in fatality or near fatality of a child, OCS is able to disclose the nature and validity of any report of harm about any child in the family of the parent in a report of harm.

Representative Coghill also has language that preserves the permanent fund dividends of children in state custody until they turn 18 or if they are reunited with their parent(s). OCS applies for the PFD's and places them in a trust.

FAMILY RIGHTS ACT of 2006
CSHB 408(FIN)am

SECTIONAL

Section 1. This section contains language that would release OCS from providing family support services when they can show the court, by clear and convincing evidence, that the parent or guardian poses substantial risk to a child, has committed a homicide of a child, or parent has taken such actions as described in Section 1. This raises the level of proof from "a preponderance of the evidence". (Requested by Department of Law)

Section 2. This section raises the standard for termination of parental rights from a "preponderance of evidence" to "clear and convincing evidence". (Requested by OCS language; Rep. Coghill legislation-HB 261, 2001)

Section 3. This section is language clean up to accommodate Section 2 amendments. (Department of Law)

Section 4. When a public official or an employee requests information from the department, they will now have five working days to respond. (HB 327 - Rep. Chenault)

Section 5. Clarifies the intent of HB 53 that once a report of harm has resulted in a parent making public disclosure, the alleged perpetrator being charged with a crime, or has resulted in fatality or near fatality of a child, OCS is able to disclose the nature and validity of any report of harm about any child in the family of the parent in a report of harm. (Representative Coghill)

Section 6. Broadens the department's ability to discuss a report of harm pertaining to not only children in the family or household, but also children who may be under the care of a perpetrator in a report of harm. (Representative Coghill)

Section 7. Last summer two teenagers were placed in a foster home and the foster parents were appointed as legal guardians. The State released the teens' permanent fund dividends to the legal guardians. The placement did not work and the children were removed from the home without their dividends. Section 6 says the only way a child's past dividend can be released is if the child is adopted and has remained adopted for one year, the child turns eighteen and applies for past PRD's, the child is returned to the parent(s), or the department is ordered to do so by the court. The one-year provision is put in place because there is a high rate of adoptions being disturbed. (Representative Coghill)

Section 8. This section requires practitioners of the healing arts involved in the delivery or care of a child who determines the child is adversely affected by a controlled substance or alcohol must notify OCS. It clarifies that a "controlled substance" does not include prescription medication, but rather "a drug, substance, or immediate precursor included in the schedules set in AS 11.71.140 – 11.71.190".

Section 9. Indirect Court Rule change dealing with changing "preponderance of evidence" in Sections 1, 2, & 3 to "clear and convincing evidence". (Department of Law)

Section 10. Applicability language to clarify that pending cases and non-pending cases still within the statute of limitation will have "clear and convincing evidence" standard applied to them. (Department of Law)

Section 11. Because Sections 1, 2, & 3 will result in an Indirect Court Rule Amendment, those section of the bill will only take place if the vote on Section 9 receives a two-thirds vote of each house of the legislature. (Department of Law)

Section 12. Immediate effective date clause.



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February 17, 2006

Tammy Sandoval
Deputy Commissioner
Office of Children's Services
P.O. Box 110630
Juneau, AK 99811

Dear Deputy Commissioner Sandoval:

As you know, a number of serious concerns regarding the operations of the Mat-Su OCS have been brought to the attention of the Citizen Review Panel (CRP) over the past one and a half years. You are aware that the CRP is charged with investigating such concerns. In that capacity, group members conducted a site visit and spoke with many staff of collaborating agencies as well as staff at the Mat-Su OCS to follow-up on these concerns. What follows is a report of our activities, our findings, and recommendations for addressing deficiencies and strengthening the existing positive attributes of the system in the Mat-Su.

Purpose of Visit:

Investigate alleged issues violating or not complying with policy and procedures in the Mat-Su OCS. If allegations are deemed to be true, highlight the patterns of problems we found and make recommendations to improve child welfare in the Mat-Su Valley by encouraging collaboration and the most effective use of existing resources.

Methodology

CRP members compiled a list of ten standardized questions to ask every agency interviewed (see attached). All primary child welfare agencies in the Mat-Su were interviewed with the exception of two who did not respond to CRP requests to meet (Alaska Family Resources and the Attorney General's Office). Teams of two or three CRP members (Dana Hallett, Susan Heuer, Carol Olson, and Fred Van Wallinga) visited all remaining agencies and interviewed a number of staff across a variety of positions and levels of responsibility within the agencies. These visits took place on January 31 and February 1, 2006. The agencies visited are listed below.

- Alaska State Troopers, Palmer Post
- Department of Juvenile Justice
- Kids are People
- Mat-Su Borough School District: 11 schools spanning K-12

- Mat-Su Services for Children and Adults
- Southcentral Regional Office/Mat-Su OCS
- The Children's Place
- Valley CASA
- Wasilla Police Department

Findings

These findings may or may not represent the true situation on the ground. However, they do represent the observations and perceptions of the staff interviewed.

Positives from agencies

- The agencies want to collaborate with OCS. They understand that OCS is the hub of the system and they are the spokes of the wheel. For the child welfare system to work most effectively to protect vulnerable children, everyone needs to work together.
- Several agencies noted that, in spite of the tremendous responsibility and thanklessness of the job, Mat-Su social workers have very low worker turnover and continue to come back to work day after day to "the hardest job in the world." Many people expressed their admiration for the OCS staff and said they could not do the job themselves.
- It was reported that a few years ago, two social workers did a training on child abuse at Colony High School and did a fantastic job. Also an annual meeting between school nurses and social workers was appreciated by the school staff which improved communication and built relationships between the two agencies.
- Every agency wanted to share some of OCS's burden for caring for Mat-Su's abused and neglected children because they know that the social workers are overwhelmed. They want to share their expertise to streamline services, to maximize the benefit to these children and their families, and make the job easier and more satisfying for the OCS staff.
- Every person interviewed said that they wanted to move on from the present conflicted interagency relationship and start fresh in the best interest of the children. No one wanted to rehash old business; they just want to get to work and do what they do best as a team.

Negatives from agencies

- It appears that OCS policies and procedures are not being followed on a consistent basis. The policies and procedures exist for good reason to protect children by removing some discretion from workers. While sometimes frustrating, the policies and procedures need to be followed every time in every case to ensure child safety and demonstrate objectivity and lack of bias to the public. Additionally, consistent application of the policies and

procedures enables OCS's partner agencies to experience consistent, high quality, professional behavior from OCS staff.

- Communication between the agencies and OCS is poor. One reflection of the poor communication is that OCS does not perceive that communication is poor. Given how closely the agencies and OCS must work together, and the stakes for vulnerable children if they do not, it is imperative that communication between these parties be open and timely.
- In many instances, there are ill feelings between the agencies and OCS. This has fueled an "us vs. them" mentality on both sides. Trust is lacking between the agencies and OCS; neither has faith the other's actions are motivated by a desire to keep children safe. Obviously, this is a major obstacle to improved collaboration and communication, and children are falling through the cracks or not being served because of bureaucratic stonewalling.
- There has been a plethora of reports of OCS burying reports of alleged sexual abuse of children by both agencies and individuals.

Strengths of Mat-Su OCS

- OCS recognizes the need to improve the quality of their partnership with collaborative agencies, especially their relationship with the Child Advocacy Center (CAC).
- OCS advocates a team approach.
- OCS initiated a Multidisciplinary Team (MDT) protocol group and perceives that the majority of cases are now going well.
- OCS acknowledged being in a "hunkering down" mode.

Weaknesses from Mat-Su OCS

- Mat-Su OCS's perception of current relationship with collaborative agencies is much rosier than interviews with those agencies revealed.
- Mat-Su OCS has an inclination to blame pressure of media, litigious inclinations of the Valley and a court system that favors parents, among others for their increased tendency to close ranks without admitting that some of the blame may be within OCS, in spite of the aforementioned situations.

Recommendations

The following recommendations are designed to begin to address some of the problems highlighted above. Given the severity of the problems and the gravity of a failure to act, we request that a timeline for addressing these recommendations be provided to the CRP Coordinator, Sylvan Robb, by March 3rd.

1. Action be taken to ensure that the Differential Response Program is being used at its maximum capacity. Efforts should also be vigorously pursued by the Deputy Commissioner to loosen the program criteria to allow more P3's to be referred, and documentation of those efforts should be sent to the CRP.

7 day response by 3 area grantees

2. OCS staff always be in attendance at MDT meetings. At the non-supervisory MDT meetings, mandatory attendance should be required of assigned social workers for each case who should come with documents (including protective services reports) to share. (For example, eight cases staffed would yield potentially eight social workers during the duration of the meetings.) Sometimes the list of MDT cases to be discussed does not include an OCS caseworker. An OCS staff member will be in attendance for potential child protection issues that may come up at an MDT case review. Discussion should be two-way dialog so each representative comes away fully updated and able to proceed to work on his/her portion of the child protection case. A supervisory representative of Mat-Su OCS will attend all supervisors' MDT meetings.
3. It is recommended that Deputy Commissioner Sandoval write a letter to Dianne Olson, Assistant Attorney General for the Human Resources Department of the Department of Law, and request an explanation in writing as to why disclosure policies regarding sharing of protective services reports with collateral child-protection agencies varies from area to area. If necessary, she should pursue this answer through the Attorney General to have the confidentiality issue resolved and standardized throughout the state. In her request to Ms. Olson, we recommend she emphasize that open communication is essential to effective child protection and encourage Ms. Olson to make that determination legally. We recommend that the Deputy Commissioner ensure that all OCS staff are aware of and operating in accordance with the interpretation.
4. A comprehensive training on confidentiality should be held in the Mat-Su OCS office. This training would be mandatory for all supervisors and social workers. Staff should be trained on state statute 47.10.93 Disclosure of Agency Records and OCS Policy 6.1.2 Confidentiality. It has become apparent that interagency confidentiality issues have been addressed at top administrative levels that would significantly reduce the barriers between collateral agencies and the Mat-Su OCS, but these have not been communicated to Mat-Su OCS. Once training has been given, the policy and procedure regarding confidentiality should be immediately implemented.
5. Every effort needs to be made to put the relationship between OCS and the Troopers back into balance. AS Statute 47 needs to be followed and turf wars left behind. It is unacceptable that the Troopers' perception is that Mat-Su OCS tries to make cases go away. Since OCS is perceived as "doing what they want to do," fences must be mended and this most important collaboration needs to be restored to its previously cooperative relationship. These two groups should be brought together with as many representatives as possible from each side to air differences and then proceed on an improved collaborative track. Deputy Commissioner Sandoval should preside at such a meeting along with Director of the Division of Alaska State Troopers so as to hear issues first hand. The same level of effort should apply to dealings with local law enforcement agencies as well.

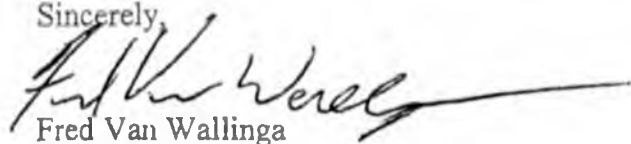
6. To an agency, all requested that there be some sort of feedback regarding protective services reports. Every agency visited did not request details, just a call indicating reports have been followed through on or dropped. This would seem a simple courtesy (and is required by policies and procedures and statute) and not a violation of confidentiality and a relatively easy recommendation to take under advisement.
7. All incoming children be screened by either The Children's Place or a private physician. According to the CAPTA regulations, all children taken into OCS custody must have a medical evaluation and developmental screening (for those under 3) within 30 days. The Children's Place has two child abuse experts on staff and are available to perform these evaluations in conjunction with Mat-Su Services for Children and Adults. The policy should be that all children who do not have a personal primary physician be seen by The Children's Place for these evaluations to maximize the potential for identifying and documenting physical signs of child abuse and neglect. Use of other community resources like the urgent care centers is not an appropriate alternative for this population of children because they lack the appropriate training. Only if the child can be seen by his/her own physician should The Children's Place not be utilized for these exams. It also should be a standard referral by the social workers – not left to the discretion of the foster parents.
8. OCS should provide schools with information on the non-academic needs of children in their care. When OCS places a child in a new school situation, there should be an immediate (same day) consultation with the school nurse, counselor or principal to discuss the child's non-academic needs. This is critical for the school to provide the best services for the child while in school and to protect other children around the OCS client. This consultation would include generalized reasons why the child is in custody, information about the history of the child (at home/foster care, in the system for an extended period of time, residential treatment history, etc.) and current health/emotional concerns that the child has. This consultation would occur every time the child moves to a new school.
9. OCS will notify a child's school within 48 hours if the child has changed placement. This is a safety issue when schools do not have current information about how to locate caretakers. They often are unaware that children have been taken into custody at all and are unable to support the child through the traumatic adjustment into foster care or conversely, return home.

In light of these recommendations, there will be a follow up review in Mat-Su by the CRP within a reasonable period of time.

We hope this report will be read in the spirit in which it was intended—to improve OCS's services and, through achieving that goal, improve the safety of abused and neglected children. Due to the systemic lack of collaboration with affiliated agencies, it has become clear that the best interests of children are not being served in many cases. As was stated by the head of SCRO, the response of that office to public criticism and media highlights has been largely to "hunker down." This strategy has not worked. It is clear to

the CRP that the Mat-Su OCS would be better served if they were to adopt a strategy of openness and accountability to the collateral agencies with whom they share the responsibility to serve children. Our motivation is not to vilify Mat-Su OCS nor demean the efforts of the many caring, dedicated staff. We view OCS as our partner, not our adversary, and look forward to the day when our agenda is empty.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Van Wallinga", with a long horizontal flourish extending to the right.

Fred Van Wallinga
Chair, CRP

Questions for Interviewing Collateral Agencies:

1. Do you get direct reports of child abuse and neglect? If so do you contact OCS-What is their response time a)same day b)24hrs c)48hrs or more.
2. Is the feedback you get from the OCS office done in a timely manner?
3. Do you feel that you are working as a team to solve child abuse problems when working with the OCS office?
4. How is the communication between you and OCS workers and supervisors?
5. How would you characterize your relationship with OCS? Please explain why you feel the way you do.
6. Did you offer a suggestion and not have it taken seriously by the OCS worker and you felt frustrated? Who and when?
7. Do you have any examples where OCS "dropped the "ball " so to speak, where a child was left in a situation that you felt was not safe?
8. What are some examples of what you think is working between you and OCS?
9. What suggestions do you have for working more effectively in partnership with OCS?
10. In general, are you satisfied with the process that is laid out for you? How could the process be improved? What part of the process would you not want to see changed?