

SB

84

SENATE COMMITTEE REPORT

DATE: 2/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 84

SB 84 CHILD PROTECTION CONFIDENTIALITY

"An Act relating to the confidentiality of investigations, court hearings, and public agency records and information in child-in-need-of-aid matters and certain child protection matters; relating to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters; amending Rules 3 and 22, 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

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#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR <i>[Signature]</i>	✓			

24-GS1082\Y
Mischel
3/2/05

CS FOR SENATE BILL NO. 84()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the confidentiality of investigations, court hearings, and public**
2 **agency records and information in child-in-need-of-aid matters and certain child**
3 **protection matters; relating to immunity regarding child-in-need-of-aid matters and**
4 **child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of**
5 **Procedure; and providing for an effective date."**

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

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **FINDINGS AND INTENT.** (a) The legislature finds that

10 (1) public knowledge of, access to, and oversight of the child protection
11 system in this state are important to the success of and public confidence in that system;

12 (2) records of the child protection system in this state historically have been
13 held strictly confidential and not accessible by the public;

1 (3) federal law, which provides substantial financing for the child protective
2 system in this state, has codified this historical preference for confidentiality of those records;

3 (4) greater access to records and other information about the child protection
4 system will allow the public to make more informed judgments about the performance of state
5 government agencies responsible for the protection of children in this state;

6 (5) a limited relaxation of the state confidentiality laws will provide important
7 information to the public while ensuring that the privacy rights of the children involved and
8 the families of those children are not infringed; and

9 (6) several states have opened court hearings regarding child protection to the
10 public without federal financial sanctions being imposed.

11 (b) It is the intent of the legislature that this Act be construed to allow wider access to
12 the public to hearings of and information about the child protection system

13 (1) without jeopardizing the receipt of federal money important to the
14 successful operation of that system; and

15 (2) consistent with respect for the important privacy rights of the children
16 involved and the families of those children, recognized in art. I, sec. 22, Constitution of the
17 State of Alaska.

18 * Sec. 2. AS 47.10.070(a) is amended to read:

19 (a) The court may conduct the hearing on the petition in an informal manner.
20 The court shall give notice of the hearing to the department, and it may send a
21 representative to the hearing. The court shall also transmit a copy of the petition to the
22 department. The department shall send notice of the hearing to the persons for whom
23 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
24 to notice under AS 47.10.030(d). The department and the persons to whom the
25 department must send notice of the hearing are entitled to be heard at the hearing.
26 **Except as provided in (c) of this section, and unless prohibited by federal or state**
27 **statute or regulation, court order, or court rule, a hearing is open to the public**
28 [HOWEVER, THE COURT MAY LIMIT THE PRESENCE OF THE FOSTER
29 PARENT OR OTHER OUT-OF-HOME CARE PROVIDER AND OF ANY
30 GRANDPARENT OF THE CHILD TO THE TIME DURING WHICH THE
31 PERSON'S TESTIMONY IS BEING GIVEN IF IT IS (1) IN THE BEST INTEREST

1 OF THE CHILD; OR (2) NECESSARY TO PROTECT THE PRIVACY
2 INTERESTS OF THE PARTIES AND WILL NOT BE DETRIMENTAL TO THE
3 CHILD. THE PUBLIC SHALL BE EXCLUDED FROM THE HEARING, BUT THE
4 COURT, IN ITS DISCRETION, MAY PERMIT INDIVIDUALS TO ATTEND A
5 HEARING IF THEIR ATTENDANCE IS COMPATIBLE WITH THE BEST
6 INTERESTS OF THE CHILD].

7 * Sec. 3. AS 47.10.070 is amended by adding new subsections to read:

8 (c) Except as provided in (e) of this section, the following hearings in child-in-
9 need-of-aid cases are closed to the public:

10 (1) the initial court hearing after the filing of a petition to commence
11 the child-in-need-of-aid case;

12 (2) a hearing following the initial hearing in which a parent, child, or
13 other party to the case is present but has not had an opportunity to obtain legal
14 representation;

15 (3) a hearing, or a part of a hearing, for which the court issues a written
16 order finding that allowing the hearing, or part of the hearing, to be open to the public
17 would reasonably be expected to

18 (A) stigmatize or be emotionally damaging to a child;

19 (B) inhibit a child's testimony in that hearing;

20 (C) disclose matters otherwise required to be kept confidential
21 by state or federal statute or regulation, court order, or court rule; or

22 (D) interfere with a criminal investigation or proceeding or a
23 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
24 on a request under this subparagraph, the court shall give notice and an
25 opportunity to be heard to the state or a municipal agency that is assigned to
26 the criminal investigation or to the prosecuting attorney.

27 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
28 closed under (c) of this section, the court shall hear in camera any information offered
29 regarding the location, or readily leading to the location, of a parent, child, or other
30 party to the case who is a victim of domestic violence. Access to testimony heard in
31 camera under this subsection is limited to the court and authorized court personnel.

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(e) The grandparents of the child and the foster parents or other out-of-home care provider may attend hearings that are otherwise closed to the public under (c) of this section. However, the court shall limit the presence of these persons in a hearing closed to the public to the time during which the person's testimony is being given if the court determines that the limitation is necessary under (c)(3) of this section. In this subsection, "out-of-home care provider" means an agency or person, other than the child's legal parents, with whom a child who is in the custody of the state under AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency or person" includes a foster parent, a relative other than a parent, a person who has petitioned for adoption of the child, and a residential child care facility.

(f) Notwithstanding any other provision of this chapter, a person attending a hearing open to the public may not disclose a name, picture, or other information that would readily lead to the identification of a child who is the subject of the child-in-need-of-aid case. At the beginning of the hearing, the court shall issue an order specifying the restrictions necessary to comply with this subsection. If a person violates the order, the court may impose any appropriate sanction, including contempt and closure of any further hearings in the case to the person.

* Sec. 4. AS 47.10.080 is amended by adding a new subsection to read:

(t) A hearing conducted under this section is open to the public unless an exception provided in AS 47.10.070(c) applies to make the hearing closed to the public or unless prohibited by federal or state statute or regulation.

* Sec. 5. AS 47.10.088 is amended by adding a new subsection to read:

(l) A trial or hearing conducted under this section is open to the public unless an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed to the public.

* Sec. 6. AS 47.10.090(c) is amended to read:

(c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S] 18th birthday, within 30 days after [OF] the date on which the court releases jurisdiction over the child [MINOR], the court shall order all the court's official records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A

1 person may not use these sealed records unless authorized by order of [FOR ANY
2 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
3 USE FOR] good cause [SHOWN].

4 * Sec. 7. AS 47.10.090(d) is amended to read:

5 (d) Except as provided in AS 47.10.070 and 47.10.080(t), the [THE] name
6 or picture of a child [MINOR] under the jurisdiction of the court may not be made
7 public in connection with the child's [MINOR'S] status as a child in need of aid unless
8 authorized by order of the court or unless to implement the permanency plan for a
9 child after all parental rights of custody have been terminated. This subsection
10 does not prohibit the release of aggregate information for statistical or other
11 informational purposes if the identity of any particular person is not revealed by
12 the release.

13 * Sec. 8. AS 47.10.093(a) is amended to read:

14 (a) Except as specified in AS 47.10.092, in (b) - (g) and (k) - (n) [AND (b) -
15 (g)] of this section, and as provided to all parties in a child-in-need-of-aid
16 proceeding under court rules, all information and social records pertaining to a child
17 [MINOR] who is subject to this chapter or AS 47.17 prepared by or in the possession
18 of a federal, state, or municipal agency or employee in the discharge of the agency's or
19 employee's official duty are privileged and may not be disclosed directly or indirectly
20 to anyone without a court order.

21 * Sec. 9. AS 47.10.093(b) is amended to read:

22 (b) A state or municipal agency or employee shall disclose appropriate
23 confidential information regarding a case to

24 (1) [A GUARDIAN AD LITEM APPOINTED BY THE COURT;

25 (2)] a person or an agency requested by the department or the child's
26 legal custodian to provide consultation or services for a child who is subject to the
27 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
28 the consultation or services;

29 (2) a [(3)] foster parent [PARENTS] or relative [RELATIVES] with
30 whom the child is placed by the department as [MAY BE] necessary to enable the
31 foster parent [PARENTS] or relative [RELATIVES] to provide appropriate care to

1 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
2 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and
3 property of family members and visitors of the foster parent [PARENTS] or relative
4 [RELATIVES];

5 (3) a [(4)] school official [OFFICIALS] as [MAY BE] necessary to
6 enable the school to provide appropriate counseling and support services to a [THE]
7 child who is the subject of the case, to protect the safety of the child [WHO IS THE
8 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

9 (4) [(5)] a governmental agency as [MAY BE] necessary to obtain that
10 agency's assistance for the department in its investigation or to obtain physical custody
11 of a child;

12 (5) [(6)] a law enforcement agency of this state or another jurisdiction
13 as [MAY BE] necessary for the protection of any child or for actions by that agency to
14 protect the public safety;

15 (6) a member [(7) MEMBERS] of a multidisciplinary child protection
16 team created under AS 47.14.300 as [MAY BE] necessary for the performance of the
17 member's [THEIR] duties;

18 (7) [(8)] the state medical examiner under AS 12.65 as [MAY BE]
19 necessary for the performance of the duties of the state medical examiner;

20 (8) [(9)] a person who has made a report of harm as required by
21 AS 47.17.020 to inform the person that the investigation was completed and of action
22 taken to protect the child who was the subject of the report; [AND]

23 (9) [(10)] the child support services agency established in
24 AS 25.27.010 as [MAY BE] necessary to establish and collect child support for a child
25 who is a child in need of aid under this chapter;

26 (10) a caregiver of a child or an entity responsible for ensuring the
27 safety of children as necessary to protect the safety of a child; and

28 (11) a review panel established by the department, the governor,
29 or the legislature for the purpose of reviewing the actions taken by the
30 department in a specific case.

31 * Sec. 10. AS 17.10.093(-) is repealed and reenacted to read:

1 (c) A state or municipal law enforcement agency shall disclose information
2 regarding a case that is needed by the person or agency charged with making a
3 preliminary investigation for the information of the court under AS 47.10.020.

4 * Sec. 11. AS 47.10.093(f) is amended to read:

5 (f) The department may release to a person with a legitimate interest
6 confidential information relating to minors not subject to the jurisdiction of the court
7 under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT REGULATIONS
8 GOVERNING THE RELEASE OF INFORMATION AND IDENTIFYING A
9 SUFFICIENT LEGITIMATE INTEREST.]

10 * Sec. 12. AS 47.10.093(g) is amended to read:

11 (g) The department and affected law enforcement agencies shall work with
12 school districts and private schools to develop procedures for the disclosure of
13 confidential information to a school official [OFFICIALS] under (b)(3) [(b)(4)] of
14 this section. The procedures must provide a method for informing the principal or the
15 principal's designee of the school that the student attends as soon as it is reasonably
16 practicable.

17 * Sec. 13. AS 47.10.093 is amended by adding new subsections to read:

18 (k) The commissioner or the commissioner's designee may disclose to the
19 public, upon request, confidential information, as set out in (l) of this section, when

20 (1) the parent or guardian of a child who is the subject of a report of
21 harm under AS 47.17 has made a public disclosure concerning the department's
22 involvement with the family;

23 (2) the alleged perpetrator named in a report of harm under AS 47.17
24 has been charged with a crime concerning the alleged abuse or neglect; or

25 (3) a report of harm under AS 47.17 has resulted in the fatality or near
26 fatality of that child.

27 (l) The type of information that may be publicly disclosed under (k) of this
28 section is information related to the determination, if any, made by the department
29 regarding the validity of a report of harm under AS 47.17 and the department's
30 activities arising from the commissioner or commissioner's designee investigation of
31 the report. The department

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

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

(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.

(n) The department shall adopt regulations to implement and interpret its duties under this section, including regulations governing the release of confidential information and identifying a sufficient legitimate interest under (f) of this section.

* Sec. 14. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.094. Immunity from liability. (a) A person may not bring an action for damages against the state, a municipality, or state or municipal agencies or employees based upon improper disclosure of, or failure to disclose, information under this chapter.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 15. AS 47.10.990 is amended by adding a new paragraph to read:

(28) "near fatality" means physical injury or other harm, as certified by a physician, caused by an act or omission that created a substantial risk of death.

* Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 3(c), Alaska Child in Need of Aid Rules of Procedure, is amended to read:

(c) Presence of Grandparent or Foster Parent. A grandparent of a child and the foster parent or other out-of-home care provider are [IS] entitled to be heard

1 at any hearing at which the person is present. However, the court may limit the
2 presence of these persons in a hearing that has been closed to the public under
3 (f)(2) of this rule [THE FOSTER PARENT OR CARE PROVIDER] to the time
4 during which the person's testimony is being given if the court determines that the
5 limitation is necessary under the circumstances listed in (f)(2)(C) of this rule [IT
6 IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO
7 PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE
8 DETRIMENTAL TO THE CHILD].

9 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
12 Aid Rules of Procedure, is repealed and reenacted to read:

13 (f) **General Public Access to Hearings.**

14 (1) Except as provided in (2) of this paragraph, and unless prohibited
15 by federal or state statute or regulation, court order, or other court rule, hearings are
16 open to the public.

17 (2) The following hearings are closed to the public:

18 (A) the initial court hearing after the filing of a petition that
19 begins the child-in-need-of-aid case;

20 (B) a hearing following the initial hearing in which a parent,
21 child, or other party to the case is present but has not had an opportunity to
22 obtain legal representation;

23 (C) a hearing, or a part of a hearing, for which the court issues
24 a written order finding that allowing the hearing, or part of the hearing, to be
25 open to the public would reasonably be expected to stigmatize or be
26 emotionally damaging to a child; inhibit a child's testimony in the hearing;
27 disclose matters otherwise required to be kept confidential by state or federal
28 statute or regulation, court order, or court rule; or interfere with a criminal
29 investigation or proceeding or a criminal defendant's right to a fair trial in a
30 criminal proceeding.

31 (3) Before ruling on a request under (2)(C) of this paragraph

1 concerning potential interference with a criminal investigation or proceeding, the court
2 shall give notice and an opportunity to be heard to the state or a municipal agency that
3 is assigned to the criminal investigation or to the prosecuting attorney.

4 (4) If the court closes a hearing to the public under (2)(C) of this
5 paragraph, the court shall close only the portions of the hearing necessary to prevent
6 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,
7 is open to the public, the court shall hear in camera any information offered regarding
8 the location, or readily leading to the location, of a parent, child, or other party to the
9 case who is a victim of domestic violence. Access to testimony heard in camera under
10 this subparagraph is limited to the court and authorized court personnel.

11 (5) Notwithstanding any other provision of this rule, the court shall
12 issue an order to prohibit all persons in a hearing open to the public from disclosing to
13 any person a name, picture, or other information that would readily lead to the
14 identification of a child who is the subject of the proceeding. If a person violates the
15 order, the court may impose any appropriate sanction, including contempt and closure
16 of any further hearings in the proceeding to the person.

17 (6) A party to the proceeding may move the court to close to the public
18 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
19 paragraph. A member of the public may request in writing to be served with a motion
20 filed under this subparagraph. If such a request has been filed in advance of the filing
21 of the motion, the party filing the motion must also serve the member of the public
22 who requested notice under this subparagraph. The court may waive the service
23 required under this subparagraph to a member of the public if a motion to close the
24 hearing, or part of the hearing, is made under this subparagraph immediately before or
25 during the hearing and the court finds that

26 (A) the need for closure was not reasonably foreseeable
27 sufficiently in advance of the hearing to allow for notice;

28 (B) there is good cause not to delay the hearing in order to
29 achieve notice, taking into consideration the age of the child and the potential
30 adverse effect that a delay could have on the child; and

31 (C) whatever notice is practicable under the circumstances has

1 occurred.

2 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
5 of Aid Rules of Procedure, is amended to read:

6 (c) **Child's Name or Picture.** The name or picture of a child who is the
7 subject of a CINA proceeding may not be made available to the public unless
8 authorized by court order accompanied by a written statement reciting the
9 circumstances which support such authorization, or unless to implement the
10 permanency plan for the child after all parental rights of custody have been
11 terminated.

12 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. (a) This Act applies to all proceedings and hearings conducted on
15 or after the effective date of secs. 1 - 18 of this Act.

16 (b) This Act applies to all information, records, and files created on or after the
17 effective date of secs. 1 -18 of this Act; however, if a file contains information and records
18 that were created before the effective date of secs. 1 - 18 of this Act, that information and
19 those records retain the confidentiality status that they had under the law on the day before the
20 effective date of secs. 1 - 18 of this Act.

21 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITION: REGULATIONS. The Department of Health and Social Services
24 may immediately proceed to adopt regulations necessary to implement the changes made by
25 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
26 before the effective date of the statutory changes.

27 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 REPORT. By December 1, 2006, the governor shall issue a report, including any
30 recommendations for statutory changes, to the public and the legislature on the
31 implementation of this Act.

1 * Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 CONDITIONAL EFFECT. Sections 2 - 7 of this Act take effect only if secs. 16 - 18
4 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,
5 Constitution of the State of Alaska.

6 * Sec. 23. Section 20 of this Act takes effect immediately under AS 01.10.070(c).

7 * Sec. 24. Except as provided in sec. 23 of this Act, this Act takes effect July 1, 2005.

24-GS1082\F
Muschel
2/28/05

CS FOR SENATE BILL NO. 84()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of investigations, court hearings, and public
2 agency records and information in child-in-need-of-aid matters and certain child
3 protection matters; relating to immunity regarding child-in-need-of-aid matters and
4 child protection matters; amending Rules 3 and 22, Alaska Child in Need of Aid Rules of
5 Procedure; and providing for an effective date."

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **FINDINGS AND INTENT.** (a) The legislature finds that

10 (1) public knowledge of, access to, and oversight of the child protection
11 system in this state are important to the success of and public confidence in that system;

12 (2) records of the child protection system in this state historically have been
13 held strictly confidential and not accessible by the public;

1 (3) federal law, which provides substantial financing for the child protective
2 system in this state, has codified this historical preference for confidentiality of those records;

3 (4) greater access to records and other information about the child protection
4 system will allow the public to make more informed judgments about the performance of state
5 government agencies responsible for the protection of children in this state;

6 (5) a limited relaxation of the state confidentiality laws will provide important
7 information to the public while ensuring that the privacy rights of the children involved and
8 the families of those children are not infringed; and

9 (6) several states have opened court hearings regarding child protection to the
10 public without federal financial sanctions being imposed.

11 (b) It is the intent of the legislature that this Act be construed to allow wider access to
12 the public to hearings of and information about the child protection system

13 (1) without jeopardizing the receipt of federal money important to the
14 successful operation of that system; and

15 (2) consistent with respect for the important privacy rights of the children
16 involved and the families of those children, recognized in art. I, sec. 22, Constitution of the
17 State of Alaska.

18 * Sec. 2. AS 47.10.070(a) is amended to read:

19 (a) The court may conduct the hearing on the petition in an informal manner.
20 The court shall give notice of the hearing to the department, and it may send a
21 representative to the hearing. The court shall also transmit a copy of the petition to the
22 department. The department shall send notice of the hearing to the persons for whom
23 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
24 to notice under AS 47.10.030(d). The department and the persons to whom the
25 department must send notice of the hearing are entitled to be heard at the hearing.
26 Except as provided in (c) of this section, and unless prohibited by federal or state
27 statute or regulation, court order, or court rule, a hearing is open to the public
28 [HOWEVER, THE COURT MAY LIMIT THE PRESENCE OF THE FOSTER
29 PARENT OR OTHER OUT-OF-HOME CARE PROVIDER AND OF ANY
30 GRANDPARENT OF THE CHILD TO THE TIME DURING WHICH THE
31 PERSON'S TESTIMONY IS BEING GIVEN IF IT IS (1) IN THE BEST INTEREST

1 OF THE CHILD; OR (2) NECESSARY TO PROTECT THE PRIVACY
2 INTERESTS OF THE PARTIES AND WILL NOT BE DETRIMENTAL TO THE
3 CHILD. THE PUBLIC SHALL BE EXCLUDED FROM THE HEARING, BUT THE
4 COURT, IN ITS DISCRETION, MAY PERMIT INDIVIDUALS TO ATTEND A
5 HEARING IF THEIR ATTENDANCE IS COMPATIBLE WITH THE BEST
6 INTERESTS OF THE CHILD].

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9 need-of-aid cases are closed to the public:

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11 the child-in-need-of-aid case;

12 (2) a hearing following the initial hearing in which a parent, child, or
13 other party to the case is present but has not had an opportunity to obtain legal
14 representation;

15 (3) a hearing, or a part of a hearing, for which the court issues a written
16 order finding that allowing the hearing, or part of the hearing, to be open to the public
17 would reasonably be expected to

18 (A) stigmatize or be emotionally damaging to a child;

19 (B) inhibit a child's testimony in that hearing;

20 (C) disclose matters otherwise required to be kept confidential
21 by state or federal statute or regulation, court order, or court rule; or

22 (D) interfere with a criminal investigation or proceeding or a
23 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
24 on a request under this subparagraph, the court shall give notice and an
25 opportunity to be heard to the state or a municipal agency that is assigned to
26 the criminal investigation or to the prosecuting attorney.

27 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
28 closed under (c) of this section, the court shall hear in camera any information offered
29 regarding the location, or readily leading to the location, of a parent, child, or other
30 party to the case who is a victim of domestic violence. Access to testimony heard in
31 camera under this subsection is limited to the court and authorized court personnel.

1 (e) The grandparents of the child and the foster parents or other out-of-home
2 care provider may attend hearings that are otherwise closed to the public under (c) of
3 this section. However, the court shall limit the presence of these persons in a hearing
4 closed to the public to the time during which the person's testimony is being given if
5 the court determines that the limitation is necessary under (c)(3) of this section. In this
6 subsection, "out-of-home care provider" means an agency or person, other than the
7 child's legal parents, with whom a child who is in the custody of the state under
8 AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency
9 or person" includes a foster parent, a relative other than a parent, a person who has
10 petitioned for adoption of the child, and a residential child care facility.

11 (f) Notwithstanding any other provision of this chapter, a person attending a
12 hearing open to the public may not disclose a name, picture, or other information that
13 would readily lead to the identification of a child who is the subject of the child-in-
14 need-of-aid case. At the beginning of the hearing, the court shall issue an order
15 specifying the restrictions necessary to comply with this subsection. If a person
16 violates the order, the court may impose any appropriate sanction, including contempt
17 and closure of any further hearings in the case to the person.

18 * Sec. 4. AS 47.10.080 is amended by adding a new subsection to read:

19 (t) A hearing conducted under this section is open to the public unless an
20 exception provided in AS 47.10.070(c) applies to make the hearing closed to the
21 public or unless prohibited by federal or state statute or regulation.

22 * Sec. 5. AS 47.10.088 is amended by adding a new subsection to read:

23 (l) A trial or hearing conducted under this section is open to the public unless
24 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
25 to the public.

26 * Sec. 6. AS 47.10.090(c) is amended to read:

27 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
28 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
29 18th birthday, within 30 days after [OF] the date on which the court releases
30 jurisdiction over the child [MINOR], the court shall order all the court's official
31 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A

1 person may not use these sealed records unless authorized by order of [FOR ANY
2 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
3 USE FOR] good cause [SHOWN].

4 * Sec. 7. AS 47.10.090(d) is amended to read:

5 (d) Except as provided in AS 47.10.070 and 47.10.080(t), the [THE] name
6 or picture of a child [MINOR] under the jurisdiction of the court may not be made
7 public in connection with the child's [MINOR'S] status as a child in need of aid unless
8 authorized by order of the court or unless to implement the permanency plan for a
9 child after all parental rights of custody have been terminated. This subsection
10 does not prohibit the release of aggregate information for statistical or other
11 informational purposes if the identity of any particular person is not revealed by
12 the release.

13 * Sec. 8. AS 47.10.093(a) is amended to read:

14 (a) Except as specified in AS 47.10.092, in (b) - (g) and (k) - (n) [AND (b) -
15 (g)] of this section, and as provided to all parties in a child-in-need-of-aid
16 proceeding under court rules, all information and social records pertaining to a child
17 [MINOR] who is subject to this chapter or AS 47.17 prepared by or in the possession
18 of a federal, state, or municipal agency or employee in the discharge of the agency's or
19 employee's official duty are privileged and may not be disclosed directly or indirectly
20 to anyone without a court order.

21 * Sec. 9. AS 47.10.093(b) is amended to read:

22 (b) A state or municipal agency or employee shall disclose appropriate
23 confidential information regarding a case to

24 (1) [A GUARDIAN AD LITEM APPOINTED BY THE COURT;

25 (2)] a person or an agency requested by the department or the child's
26 legal custodian to provide consultation or services for a child who is subject to the
27 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
28 the consultation or services;

29 (2) a [(3)] foster parent [PARENTS] or relative [RELATIVES] with
30 whom the child is placed by the department as [MAY BE] necessary to enable the
31 foster parent [PARENTS] or relative [RELATIVES] to provide appropriate care to

1 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
2 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and
3 property of family members and visitors of the foster parent [PARENTS] or relative
4 [RELATIVES];

5 (3) a [(4)] school official [OFFICIALS] as [MAY BE] necessary to
6 enable the school to provide appropriate counseling and support services to a [THE]
7 child who is the subject of the case, to protect the safety of the child [WHO IS THE
8 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

9 (4) [(5)] a governmental agency as [MAY BE] necessary to obtain that
10 agency's assistance for the department in its investigation or to obtain physical custody
11 of a child;

12 (5) [(6)] a law enforcement agency of this state or another jurisdiction
13 as [MAY BE] necessary for the protection of any child or for actions by that agency to
14 protect the public safety;

15 (6) a member [(7) MEMBERS] of a multidisciplinary child protection
16 team created under AS 47.14.300 as [MAY BE] necessary for the performance of the
17 member's [THEIR] duties;

18 (7) [(8)] the state medical examiner under AS 12.65 as [MAY BE]
19 necessary for the performance of the duties of the state medical examiner;

20 (8) [(9)] a person who has made a report of harm as required by
21 AS 47.17.020 to inform the person that the investigation was completed and of action
22 taken to protect the child who was the subject of the report; [AND]

23 (9) [(10)] the child support services agency established in
24 AS 25.27.010 as [MAY BE] necessary to establish and collect child support for a child
25 who is a child in need of aid under this chapter;

26 (10) a caregiver of a child or an entity responsible for ensuring the
27 safety of children as necessary to protect the safety of a child; and

28 (11) a review panel established by the department, the governor,
29 or the legislature for the purpose of reviewing the actions taken by the
30 department in a specific case.

31 * Sec. 10. AS 47.10.093(c) is repealed and reenacted to read:

Com on 6/1

1 (c) A state or municipal law enforcement agency shall disclose information
2 regarding a case that is needed by the person or agency charged with making a
3 preliminary investigation for the information of the court under AS 47.10.020.

4 * Sec. 11. AS 47.10.093(f) is amended to read:

5 (f) The department may release to a person with a legitimate interest
6 confidential information relating to minors not subject to the jurisdiction of the court
7 under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT REGULATIONS
8 GOVERNING THE RELEASE OF INFORMATION AND IDENTIFYING A
9 SUFFICIENT LEGITIMATE INTEREST.]

10 * Sec. 12. AS 47.10.093(g) is amended to read:

11 (g) The department and affected law enforcement agencies shall work with
12 school districts and private schools to develop procedures for the disclosure of
13 confidential information to a school official [OFFICIALS] under (b)(3) [(b)(4)] of
14 this section. The procedures must provide a method for informing the principal or the
15 principal's designee of the school that the student attends as soon as it is reasonably
16 practicable.

17 * Sec. 13. AS 47.10.093 is amended by adding new subsections to read:

18 (k) The commissioner or the commissioner's designee may disclose to the
19 public, upon request, confidential information, as set out in (l) of this section, when

20 (1) the parent or guardian of a child who is the subject of a report of
21 harm under AS 47.17 has made a public disclosure concerning the department's
22 involvement with the family;

23 (2) the alleged perpetrator named in a report of harm under AS 47.17
24 has been charged with a crime concerning the alleged abuse or neglect; or

25 (3) a report of harm under AS 47.17 has resulted in the fatality or near
26 fatality of that child.

27 (l) The type of information that may be publicly disclosed under (k) of this
28 section is information related to the determination, if any, made by the department
29 regarding the validity of a report of harm under AS 47.17 and the department's
30 activities arising from the commissioner or commissioner's designee investigation of
31 the report. The department

1 (1) shall withhold disclosure of the child's name, picture, or other
2 information that would readily lead to the identification of the child if the
3 commissioner or the commissioner's designee determines that the disclosure would be
4 contrary to the best interests of the child, the child's siblings, or other children in the
5 child's household; or

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

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

13 (n) The department shall adopt regulations to implement and interpret its
14 duties under this section, including regulations governing the release of confidential
15 information and identifying a sufficient legitimate interest under (f) of this section.

16 * Sec. 14. AS 47.10 is amended by adding a new section to read:

17 **Sec. 47.10.094. Immunity from liability.** The state, a municipality, and state
18 or municipal agencies and employees are presumed to be acting in good faith in
19 implementing the provisions of this chapter. A person may not bring an action for
20 damages against the state, a municipality, or state or municipal agencies or employees
21 based upon improper disclosure of, or failure to disclose, information under this
22 chapter unless actual malice demonstrating a complete disregard for the rights of
23 others is shown by clear and convincing evidence.

24 * Sec. 15. AS 47.10.990 is amended by adding a new paragraph to read:

25 (28) "near fatality" means physical injury or other harm, as certified by
26 a physician, caused by an act or omission that created a substantial risk of death.

27 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **DIRECT COURT RULE AMENDMENT.** Rule 3(c), Alaska Child in Need of
30 Aid Rules of Procedure, is amended to read:

31 (c) Presence of Grandparent or Foster Parent. A grandparent of a child

1 and the foster parent or other out-of-home care provider are [IS] entitled to be heard
2 at any hearing at which the person is present. However, the court may limit the
3 presence of these persons in a hearing that has been closed to the public under
4 (f)(2) of this rule [THE FOSTER PARENT OR CARE PROVIDER] to the time
5 during which the person's testimony is being given if the court determines that the
6 limitation is necessary under the circumstances listed in (f)(2)(C) of this rule [IT
7 IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO
8 PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE
9 DETRIMENTAL TO THE CHILD].

10 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
13 Aid Rules of Procedure, is repealed and reenacted to read:

14 (f) **General Public Access to Hearings.**

15 (1) Except as provided in (2) of this paragraph, and unless prohibited
16 by federal or state statute or regulation, court order, or other court rule, hearings are
17 open to the public.

18 (2) The following hearings are closed to the public:

19 (A) the initial court hearing after the filing of a petition that
20 begins the child-in-need-of-aid case;

21 (B) a hearing following the initial hearing in which a parent,
22 child, or other party to the case is present but has not had an opportunity to
23 obtain legal representation;

24 (C) a hearing, or a part of a hearing, for which the court issues
25 a written order finding that allowing the hearing, or part of the hearing, to be
26 open to the public would reasonably be expected to stigmatize or be
27 emotionally damaging to a child; inhibit a child's testimony in the hearing;
28 disclose matters otherwise required to be kept confidential by state or federal
29 statute or regulation, court order, or court rule; or interfere with a criminal
30 investigation or proceeding or a criminal defendant's right to a fair trial in a
31 criminal proceeding.

1 (3) Before ruling on a request under (2)(C) of this paragraph
2 concerning potential interference with a criminal investigation or proceeding, the court
3 shall give notice and an opportunity to be heard to the state or a municipal agency that
4 is assigned to the criminal investigation or to the prosecuting attorney.

5 (4) If the court closes a hearing to the public under (2)(C) of this
6 paragraph, the court shall close only the portions of the hearing necessary to prevent
7 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,
8 is open to the public, the court shall hear in camera any information offered regarding
9 the location, or readily leading to the location, of a parent, child, or other party to the
10 case who is a victim of domestic violence. Access to testimony heard in camera under
11 this subparagraph is limited to the court and authorized court personnel.

12 (5) Notwithstanding any other provision of this rule, the court shall
13 issue an order to prohibit all persons in a hearing open to the public from disclosing to
14 any person a name, picture, or other information that would readily lead to the
15 identification of a child who is the subject of the proceeding. If a person violates the
16 order, the court may impose any appropriate sanction, including contempt and closure
17 of any further hearings in the proceeding to the person.

18 (6) A party to the proceeding may move the court to close to the public
19 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
20 paragraph. A member of the public may request in writing to be served with a motion
21 filed under this subparagraph. If such a request has been filed in advance of the filing
22 of the motion, the party filing the motion must also serve the member of the public
23 who requested notice under this subparagraph. The court may waive the service
24 required under this subparagraph to a member of the public if a motion to close the
25 hearing, or part of the hearing, is made under this subparagraph immediately before or
26 during the hearing and the court finds that

27 (A) the need for closure was not reasonably foreseeable
28 sufficiently in advance of the hearing to allow for notice;

29 (B) there is good cause not to delay the hearing in order to
30 achieve notice, taking into consideration the age of the child and the potential
31 adverse effect that a delay could have on the child; and

1 (C) whatever notice is practicable under the circumstances has
2 occurred.

3 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
6 of Aid Rules of Procedure, is amended to read:

7 (c) **Child's Name or Picture.** The name or picture of a child who is the
8 subject of a CINA proceeding may not be made available to the public unless
9 authorized by court order accompanied by a written statement reciting the
10 circumstances which support such authorization, or unless to implement the
11 permanency plan for the child after all parental rights of custody have been
12 terminated.

13 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 APPLICABILITY. (a) This Act applies to all proceedings and hearings conducted on
16 or after the effective date of secs. 1 - 18 of this Act.

17 (b) This Act applies to all information, records, and files created on or after the
18 effective date of secs. 1 -18 of this Act; however, if a file contains information and records
19 that were created before the effective date of secs. 1 - 18 of this Act, that information and
20 those records retain the confidentiality status that they had under the law on the day before the
21 effective date of secs. 1 - 18 of this Act.

22 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 TRANSITION: REGULATIONS. The Department of Health and Social Services
25 may immediately proceed to adopt regulations necessary to implement the changes made by
26 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
27 before the effective date of the statutory changes.

28 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REPORT. By December 1, 2006, the governor shall issue a report, including any
31 recommendations for statutory changes, to the public and the legislature on the

1 implementation of this Act.

2 * Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 CONDITIONAL EFFECT. Sections 2 - 7 of this Act take effect only if secs. 16 - 18
5 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,
6 Constitution of the State of Alaska.

7 * Sec. 23. Section 20 of this Act takes effect immediately under AS 01.10.070(c).

8 * Sec. 24. Except as provided in sec. 23 of this Act, this Act takes effect July 1, 2005.

Nancy Schaufelberger

To: Brian Hove
Subject: Fiscal Note - SB 84

Brian,

We got an email from Darwin re: a corrected fiscal note for SB 84. If I understand it right, the note that HES reported out for the Public Defender's agency had incorrect fund source numbers and the gov's office has created a new note. We can't go back and retroactively replace the note with the new one because it's not what the committee reported out. However, it can be fixed in JUD if the bill moves out with a recommendation for the appropriate previous notes i.e. 1, 2 & 4 (or whatever is now correct) and any new notes (including this corrected one) that JUD wants to add. When the bill moves to the House only the notes that are recommended by the last committee of referral go with it. Any other notes that are no longer relevant are pulled from the committee file at that time by our office.

Since I know JUD heard & held this bill yesterday, and you're gone for weekend, I just wanted to touch bases with you.

Hope you had a good trip. See you next week.

Nancy

The attached FN replaces
the original PDA FN.

AS

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 84
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Governor
 Requester Senate HESS 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

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)

This bill changes 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 at least half 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.

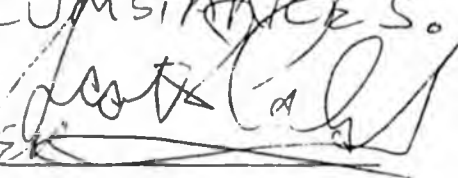
Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 2/25/05 9:01 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/25/2005
 Agency Department of Administration



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) JUDICIARY
 Committee on SS CSS B 84 Committee Name
 Dated 2-24-05
 Bill / Subject

ANY DECISION BY A STATE AGENT TO WITHHOLD INFORMATION FROM A PARENT ABOUT HIS OR HER OWN CHILD SHOULD BE DOCUMENTED IN AN OFFICIAL RECORD AND COPIES GIVEN TO THE PARENT FROM WHOM THE INFORMATION IS WITHHELD. A REFUSAL BY A STATE AGENT TO DISCLOSE INFORMATION TO, OR TO COOPERATE WITH, A PARENT OF A CHILD SHOULD STATE THE AUTHORITY AND REASON FOR THE REFUSAL, AND RELEVANT FACTS OR CIRCUMSTANCES.

SIGNED: SCOTT TRAFFORD CULLEN 
 Testifier
P.O. 75011 / 99707
 Representing
474-0174
 Address / Phone Number



Alaska State Legislature

Please enter into the record my testimony to the SENATE JUDICIARY
committee name

committee on SB84 & SB83, dated FEBRUARY 24, 2005
bill/subject

SEE

JMD

PAGE

Signed:

MARCI SCHMIDT

Testifier

Representing (Optional)

2040 WASENA FISHHOOK

Mailing Address

907 775-0298 / 357-3618

Phone Number

Marci Schmidt
2040 Wasilla Fishhook Road
Wasilla, Alaska 99654
(907) 357-3618 Cell: (907) 775-0298 Email: asjsj@hotmail.com
February 24, 2005

Dear Honorable Senate Judiciary Committee:

For the past several years, many private members of the community have been begging for the law regarding confidentiality at OCS to be rewritten. I am glad that SB84 (and SB 83) has made it for consideration. Many feel OCS has used confidentiality to protect the state employees not children and families. We all know that OCS has helped many children and families but there have been too many times when there is no one to protect children and families from OCS. These children were not allowed to talk about it and I have listened in on a few conversations between older children and social workers. One 15 year old was told the case wasn't about what they wanted and to shut up. It is these incidents that give a bad image to the good that is being done.

I would like to see a provision in writing allowing older children (over the age of six) and families be given immunity if they choose to discuss their case outside the scope of OCS and the courts, without fear of retaliation. Some children have tried to speak up and they were silence. The most horrible being 10 year old Steven Murray, who lost his life trying to tell people he was being abused in his foster home. If you are giving immunity to social workers, please give it to the children and families. Maybe an immunity clause for outside advocates could be granted too.

Sometimes a parent/guardian shows up for their hearings with a friend (someone who is not giving testimony but is there for support) and if this person is not giving testimony then a provision allowing the person giving support to be there for all hearings. I still wish a parent could have legal representation at the initial hearing. You can't believe the number of parents I have talked to that didn't realize they were admitting to probable cause and it was used against them throughout the rest of the case.

I am very happy that a Citizen Review Panel may come out of this. We need to oversight and watchdog any agency that deals with our most precious human beings, just as we are watched. Child abuse is horrible enough when it happens, but it is much worst when the system designed to protect these abuse children turn into the abusers too. The public needs to know that will not happen again. I am sorry I can't be there to tell you this in person but I had to work today. If anyone has any questions you may contact me at anytime with the numbers above (even at work today). Thank you for reading this letter.

Respectfully submitted,


Marci Schmidt



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) JUDICIARY
 Committee on SB 84 Committee Name
Bill / Subject Dated 3-1-05

SB 84 WILL NOT HELP TO CORRECT, PREVENT OR REDUCE, REAL INSTANCES AND CASES OF WASTE, FRAUD OR ABUSE, WHICH SHOULD, AND MUST RESULT IN "IMAGE PROBLEMS" FOR D.H.S.S./O.C.S. (DFYS/DJS, ETC.)

THE BEST INTERESTS OF CHILDREN - ALL CHILDREN - ARE DEFEATED AND HARMED BY THE STATE'S (LEGIS./ADMIN./JUDIC.) EFFORT TO MAINTAIN APPEARANCES OF DUE PROCESS, WHERE LITTLE EXISTS.

SIGNED: *Scott Rafford*
 Testifier SCOTT RAFFORD CAWEN
P.O. 75011 / FBKS / 99707
 Representing (907) 474-0174
 Address / Phon Number



SB8Y

FRANK H. MURKOWSKI
GOVERNOR

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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 Legislature
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 that will provide greater public access to child-in-need-of-aid (CINA) hearings and records and other information that has been historically closed to the public.

The issues surrounding public disclosure in CINA matters can quickly become complicated, but the goal of this bill is simple: shed more light on the child protection system and the system will improve. I believe that public support of the approach taken in the bill will grow when the tragic circumstances affecting so many young lives are more fully understood, along with the daily challenges faced by those who work so hard to protect children.

Concerns have been raised during the past several years about the state's confidentiality laws in CINA matters. These confidentiality laws were created to protect the privacy interests of children and their families in CINA matters, but they also have the practical effect of limiting public oversight and understanding of goals and activities of our child protection agencies. This bill seeks to address these issues by increasing public access in the following ways:

Court hearings in CINA cases that are now closed to the public would be open to the public, with limited exceptions. For example, the court may close a CINA hearing to the public when a parent or child has not had an opportunity to obtain legal representation; when a child would otherwise be emotionally damaged by an open hearing or would be inhibited in

COMMITTEE COPY

The Honorable Ben Stevens
January 25, 2005
Page 2

testifying; or when an open hearing would substantially compromise a criminal investigation.

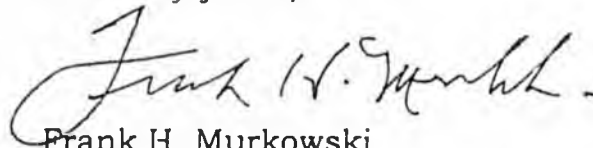
Information from state agency CINA records would be made available to the public in three situations: when a parent or guardian in a CINA case makes a public disclosure concerning the Department of Health and Social Services' involvement with the family; when the alleged perpetrator named in a report of harm under AS 47.17 has been charged with a crime arising from the harm; or when there is a report of harm under AS 47.17 that has resulted in a fatality or near fatality of a child. In such instances, the bill would allow the Department of Health and Social Services to release information about its response to the report of harm.

Other provisions of the bill would allow for the release of information to agencies or individuals when necessary to locate permanent placements for children in CINA cases, protect the safety of children, or enhance agency review of CINA cases. Also included is a provision for immunity for the state and municipalities, and their agencies, officers, and employees, relating to the disclosure or nondisclosure of information in CINA cases and certain child protection matters.

If enacted into law, the substantive changes in the bill would take effect July 1, 2005. The bill also would require a report to the public and the Legislature by December 1, 2006. The report will assess these new procedures in CINA cases and make recommendations to address any additional statutory changes necessary to improve our CINA confidentiality laws.

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 84
 (S) Publish Date: 1/26/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title Confidentiality of CINA Matters RDU CIVIL
 Component Human Services
 Sponsor Possible Governor
 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	37.4	37.4	37.4	37.4	37.4	37.4
Travel	0.1	0.1	0.1	0.1	0.1	0.1
Contractual	4.4	4.4	4.4	4.4	4.4	4.4
Supplies	0.8	0.8	0.8	0.8	0.8	0.8
Equipment	0.5	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	43.2	43.2	43.2	43.2	43.2	43.2

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	43.2	43.2	43.2	43.2	43.2	43.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	43.2	43.2	43.2	43.2	43.2	43.2

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						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes state statutes that apply to the confidentiality of investigations, court hearings, and public agency information in child in need of aid (CINA) matters. Passage of this legislation will alter longstanding policies, practices and procedures of every agency and branch of government involved in child welfare protection. As a result it is anticipated that disputes will arise over the interpretation and implementation of this legislation. The additional operating costs reflected above are based on an initial estimate of 400 attorney hours per year to resolve such disputes.

Prepared by: Robert Meiners, Dep. Director
 Division: Administrative Services
 Approved by: Robert Meiners for Gregg D. Renkes, Attorney General
 Agency: Department of Law

Phone 465-5427
 Date/Time 12/29/04 8:30 AM
 Date 12/29/2004

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 84
 (S) Publish Date: 1/26/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: CONFIDENTIALITY OF CHILD-IN-NEED-OF-AID PROCEEDINGS AND RECORDS RDU Children's Services
 Component: Children's Services Management

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR Component No. 2666

Expenditures/Revenues (Thousands of Dollars)

Notes: 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	84.1	84.1	84.1	84.1	84.1	84.1
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual						
Supplies	7.5					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	92.6	85.1	85.1	85.1	85.1	85.1

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

1002 Federal Receipts	45.3	41.7	41.7	41.7	41.7	41.7
1003 GF Match						
1004 GF	47.3	43.4	43.4	43.4	43.4	43.4
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	92.6	85.1	85.1	85.1	85.1	85.1

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)

This bill will allow public access to Child-In-Need-Of-Aid (CINA) proceedings, allow the Department to publicly respond when parents of children in custody disclose confidential information about their case to media members, and it contains provisions for the sharing of information with the public in cases of child fatalities, or near-fatalities resulting from child abuse or child neglect.

Should this bill become law, the Department anticipates that the increase in public concerns and requests for information will necessitate an additional position within the Office of Children's Services (OCS) to assist the OCS in it's effort to respond to inquiries in a timely manner. This position would be an Associate Coordinator, R 18, under the current Program Coordinator for Community Relations. Estimated Federal revenue is based on the current cost allocation of the Child Welfare & Policy section under OCS Statewide Administration.

Prepared by: Marcia Kennai, Deputy Commissioner

Phone 907-465-3397

Division: Office of Children's Services

Date/Time 01/07/2005

Approved by: Joel S. Gilbertson, Commissioner

Date 01/10/2005

Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 84(HES)
 (S) Publish Date: 2/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Governor
 Requester Senate HESS 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	159.6	159.6	159.6	159.6

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						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes 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 at least half 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.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 2/7/05 11:17 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/7/2005
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSSB 84(HES)
 (S) Publish Date: 2/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Governor
 Requester Senate HESS 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						
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CHANGE IN REVENUES ()						
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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						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes 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, 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 involved). Representation for both children and parents is provided by staff GALs and attorneys from separate OPA sections, as well as contractors in areas of the state where OPA has no staff or where OPA staff have a conflict. (Analysis continued on page two)

Prepared by: Joshua P. Fink, Director Phone (907)269-3501
 Division Office of Public Advocacy Date/Time 2/9/05 12:39 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/9/2005
 Agency Department of Administration

FISCAL NOTE # 4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 84(HES)

ANALYSIS CONTINUATION

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 personal services for 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.

Sectional Analysis of CS SB 84 (HES) (Confidentiality in Child-in-Need-of-Aid Proceedings)

(Prepared by the Department of Law and the Department of Health and Social Services, February 17, 2005)

CS SB 84 (HES) would do four major things: 1) open all child-in-need-of-aid (CINA) hearings to the public except in certain circumstances; they are presently closed to the public; 2) allow the Department of Health and Social Services to release the name and picture of a child in a CINA proceeding for the purposes of achieving permanency after all parental rights have been terminated; 3) expand the circumstances under which the Department of Health and Social Services is required to share confidential information in CINA proceedings; and 4) allow the Department of Health and Social Services to share confidential information in CINA proceedings with the public under three circumstances: if a parent has made a public disclosure, if an alleged perpetrator has been criminally charged with a crime relating to the abuse or neglect, and if a report of harm has resulted in the fatality or near fatality of a child.

I. Findings and Intent (Section 1):

Sec. 1: Section 1 sets out the findings and intent of the bill.

II. Changes to statutes governing CINA hearings to generally open hearings to the public (Sections 2 - 5):

Sec. 2: Section 2 amends the statute regarding hearings on petitions to find a child in need of aid (AS 47.10.070) to open these hearings to the public unless prohibited by state or federal law or court rule or order, and except as provided in sec. 3 of the bill.

Sec. 3: Section 3 adds new subsections to the statute regarding hearings on petitions to find a child in need of aid (AS 47.10.070). The new subsections do the following things:

- provide for three exceptions to sec. 2's requirement that CINA hearings be open to the public: the initial hearing; a hearing in which a parent, child, or party is present but remains unrepresented by legal counsel; and when the court closes part or all of a hearing for specified reasons;
- in CINA hearings open to the public, provide for in camera (in judge's chambers) presentation of evidence regarding the location of a parent, child, or other party who is a victim of domestic violence;
- guarantee access to closed CINA hearings for the time during which their testimony is being given for grandparents, foster parents, and out-of-home care providers;
- prohibit persons attending CINA hearings from disclosing information that would readily lead to the identification of a child who is the subject of the proceedings.

Sec. 4: Section 4 opens adjudication, permanency, and transfer hearings to the public with the exceptions noted in the first point under sec. 3, above (AS 47.10.080).

Sec. 5: Section 5 opens termination of parental rights trials and hearings to the public with the exceptions noted in the first point under sec. 3, above (AS 47.10.088).

III. Changes to the statute dealing with court records to limit publication of identification of child (AS 47.10.090) (Sections 6 - 7):

Sec. 6: Section 6 makes stylistic changes to a subsec. (c).

Sec. 7: Section 7 amends subsec. (d) by adding two exceptions to the ban on publicizing the name or picture of a child in connection with the child's status as a child in need of aid:

- when authorized by the sections that open certain hearings to the public (secs. 2 - 4, above);
- when it is needed to implement a plan for the permanent placement of a child after parental rights have been terminated.

IV. Changes to the statute governing disclosure of agency records (AS 47.10.093) (Sections 8 - 13):

Sec. 8: Section 8 adds new exceptions to the subsection making information and social records regarding a child subject to child protection privileged and not subject to disclosure; these new exceptions are those set out in sec. 13, and an exception corresponding to the disclosure allowed under the Civil Rules for parties in a CINA proceeding.

Sec. 9: Section 9 amends the subsection regarding an agency's disclosure of information regarding a CINA case to specify that confidential information must be disclosed to certain individuals and agencies. Section 9 also adds the following to the list of individuals or agencies entitled to receive information:

- a caregiver or entity responsible for the safety of a child, as is necessary to protect the safety of that child;
- a review panel established for the purpose of reviewing action taken by the department in a given case.

Sec. 10: Section 10 makes formatting changes to the subsection dealing with the disclosure of information regarding a case by a law enforcement agency.

Sec. 11: Section 11 changes the subsection dealing with the release of information regarding a child not subject to the jurisdiction of the court to specify that confidential information may be disclosed to a person with a legitimate interest, and to remove the requirement that the Department of Health and Social Services adopt regulations governing the release of information and identifying a sufficient legitimate interest.

Sec. 12: Section 12 changes the subsection regarding the disclosure of information between a law enforcement agency and school districts and private schools to specify that confidential information may be disclosed to school officials.

Sec. 13: Section 13 adds new subsections to do the following:

- permit the adoption of regulations under the section;
- provide for departmental disclosure to the public of confidential information when the parent or guardian of the subject child makes a public disclosure regarding the Department of Health and Social Services' involvement, the alleged perpetrator in a report of harm has been charged with a related crime, or a report of harm has resulted in a fatality or near fatality of a child;
- describe the type of information that the Department of Health and Social Services may disclose to the public, including information related to the determination regarding the validity of a report of harm and to the Department of Health and Social Services' activities arising from its investigation of a report of harm; the provision also permits the Department of Health and Social Services to exclude information related to a child's identification if it's in the best interest of the child or other children in the household, and if the information might interfere with a criminal investigation or proceeding or a defendant's right to a fair trial;
- prohibit the redisclosure of confidential information about a child or a child's family to an unauthorized person, with the exception of certain circumstances.

V. Addition of an immunity provision (Section 14):

Sec. 14: Section 14 adds a new section to the chapter dealing with children in need of aid to make the state; a municipality; or state or municipal agencies officers, employees, or agents immune from an action for damages based on the disclosure or nondisclosure of information under the chapter.

VI. Addition of a definition (Section 15):

Sec. 15: Section 15 adds a definition of "near fatality" to the chapter on children in need of aid.

VII. Changes to CINA court rules to generally open hearings to the public and regarding confidentiality (Sections 16 - 18):

Sec. 16: Section 16 amends CINA rule 3(c) to include a grandparent as someone entitled to be heard at a hearing, and to limit the presence of those entitled to be heard in hearing closed to the public if the court determines that the limitation is necessary for specified reasons.

Sec. 17: Section 17 rewrites the subsection dealing with public access to hearings to make it similar to the changes to AS 47.10.070 made in sections 2-3 of the bill. Specifically, section 17

- makes hearings open to the public unless prohibited by state or federal law or court rule or order, and except for the initial hearing after a petition that opens a CINA case; a hearing in which a parent, child, or party is present but remains unrepresented by counsel; or when the court closes part of all of a hearing for specified reasons;
- requires the court to provide due process for a state or municipal agency or the prosecuting attorney assigned to the criminal investigation when there is a request to close part or all of a hearing because of interference with a criminal investigation or proceeding a defendant's right to a fair trial;
- limits the closure of a hearing under the first point to the extent necessary to prevent the harm specified;
- in hearings open to the public, provides for in camera presentation of evidence regarding the location of a parent, child, or other party who is a victim of domestic violence;
- requires the court to issue an order prohibiting persons attending an open hearing from disclosing any identifying information related to a child who is the subject of the proceeding, and allows sanctions for a violation of an order prohibiting disclosure;
- allows a party to a proceeding to ask the court to close part or all of a hearing to the public to avoid specified harms, and provides rules for notice of such a request.

Sec. 18: Section 18 amends the rule regarding confidentiality of a child's name or picture to allow disclosure of the information if needed to implement a permanency plan for a child after termination of the parental rights.

VIII. Applicability (Section 19):

Sec. 19: Section 19 provides that the bill applies to all proceedings, hearings, and information occurring or created after the effective date of the bill; files containing information or records created before the effective date retain whatever confidentiality status they had on the day before the effective date of sections 1 - 18 of the bill.

IX. Adoption of regulations in transition (Section 20):

Sec. 20: Section 20 permits the Department of Health and Social Services to proceed immediately to adopt regulations necessary to implement changes made by the bill.

X. Governor's Report (Section 21):

Sec. 21: Section 21 requires the governor to issue a report to the public and the legislature by December 1, 2006, regarding the implementation of the bill.

XI. Conditional effect and effective dates (Sections 22-24):

Sec. 22: Section 22 provides that sections 2 - 7 of the bill will only take effect if the sections regarding court rule changes (secs. 16 - 18) receive a two-thirds majority vote in each house of the legislature.

Sec. 23: Section 23 sets out that sec. 20 of the bill takes effect immediately.

Sec. 24: Section 24 sets out that all other sections of the bill take effect July 1, 2005.