

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

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Under ASFA, while reasonable efforts to preserve and reunify families are still required, the child's health and safety is the paramount concern in determining reasonable efforts to be made.⁴ ASFA mandates that reasonable efforts to preserve the family are not required under the following circumstances:

- The parent has subjected the child to aggravated circumstances (as defined by State law, which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse).⁵
- The parent has committed murder of another child of the parent.
- The parent has committed voluntary manslaughter of another child of the parent.
- The parent has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter.
- The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent.
- The parental rights of the parent to a sibling have been terminated involuntarily.⁶

Child's Best Interests

Most States consider a child's best interest in termination proceedings. In some States, these statutes use general language mandating that the child's health and safety be paramount in all proceedings, while other States' legislation lists specific factors that must be considered, such as the child's age; the physical, mental, emotional, and moral well-being; cultural and attachment issues; as well as the child's reasonable preferences.

Standard

The U.S. Supreme Court in *Santosky v. Kramer*⁷ set the standard of proof at clear and convincing evidence in termination of parental rights proceedings.

- ¹ ASFA establishes guidelines that States must comply with as a condition for receiving Federal funds.
- ² State statutory information concerning a court determination that the parent has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter is not included in this chart.
- ³ 42 U.S.C.A. § 675(5)(E)(West 1997) Under ASFA, there are three exceptions to the requirement to terminate parental rights: At the option of the State, the child is being cared for by a relative; a State agency has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interest; and the State has not provided to the family, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home.
- ⁴ 42 U.S.C.A. § 671(a)(15)(A) (West 1997).
- ⁵ These "aggravated circumstances" include cases in which a parent has been convicted of murdering another child in the household, severe and aggravated sexual abuse, or single instances of abuse when the abuse is severe enough to be charged as aggravated assault or when there is serious injury to the child.
- ⁶ 42 U.S.C.A. § 671(a)(15)(D) (West 1997).
- ⁷ 455 U.S. 745 (1982).

Grounds for Termination of Parental Rights

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 or 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
ALABAMA § 26-18-7	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓					✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances.
ALASKA §§ 25.23.180(a), (c), 47.10.011 47.10.080(c)(3), (b), 47.10.088(a)-(h)	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Parent without custody unreasonably withholding consent. ▪ Homicide of other parent. ▪ Child induced to commit crime.
ARIZONA §§ 8-533 8-846(B)	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Parental identity unknown. ▪ Child returned home and removed again. ▪ Voluntary relinquishment.
ARKANSAS § 9-27-341(a)-(o)	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Presumptive legal father not the biological father. ▪ Voluntary relinquishment. ▪ Aggravated circumstances.
CALIFORNIA Welf. & Inst. Code §§ 361 361.5(b), (h), (i) 366.26©(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Child suffering from extreme emotional damage. ▪ Location of parent(s) unknown. ▪ Voluntary relinquishment. ▪ Parent has abducted the child. ▪ Conception result of sexual abuse.
COLORADO § 19-3-604	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Identity of parent(s) unknown. ▪ History of violent behavior.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/ Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
CONNECTICUT §§ 17a-111a 17a-111b(a) 17a-112(i)-(k)	✓	✓				✓	✓	✓	✓				✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to achieve personal rehabilitation. ▪ Aggravated circumstances. ▪ Conception result of sexual abuse. ▪ Voluntary relinquishment. ▪ Emotional ties of child to parent.
DELAWARE Tit. 13 § 1103	✓	✓	✓		✓	✓		✓	✓	✓	✓		✓	✓	✓		<ul style="list-style-type: none"> ▪ Voluntary relinquishment.
DISTRICT OF COLUMBIA §§ 4-1301.09a(d) 16-2353 16-2354(b)	✓	✓	✓	✓			✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Need for continuity and care. ▪ Quality of relationship. ▪ Location of parent(s) unknown.
FLORIDA § 39.806	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Egregious conduct. ▪ Voluntary relinquishment. ▪ Identity or location of parent(s) unknown.
GEORGIA §§ 15-11-58 15-11-94	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to comply with child support decree. ▪ Aggravated circumstances. ▪ Voluntary relinquishment. ▪ Egregious conduct.
HAWAII §§ 571-61 587-2	✓	✓	✓					✓	✓	✓	✓				✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Aggravated circumstances. ▪ Presumed father not the natural or adopted father.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment or Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 of 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
IDAHO §§ 16-2005 16-1608(e)	✓	✓	✓		✓	✓	✓	✓	✓				✓		✓	✓	<ul style="list-style-type: none"> ▪ Father not the natural parent. ▪ Murder of child's parent. ▪ Conception result of rape. ▪ Voluntary relinquishment. ▪ Aggravated circumstances.
ILLINOIS 750 ICS 60/1 705 ICS 405/1-2 705 ICS 405/2-13	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Adultery or fornication. ▪ Depravity. ▪ Murder of child's parent. ▪ Aggravated circumstances.
INDIANA §§ 31-35-2-4.5 31-35-3-4 31-35-3-8	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment.
IOWA §§ 232.111 232.116	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Imminent danger to the child. ▪ Aggravated circumstances.
KANSAS §§ 13-1563(h) 38-1583 38-1585	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Murder of child's other parent. ▪ Aggravated circumstances. ▪ Identity and location of parent(s) unknown.
KENTUCKY §§ 600.020(2) 610.127 625.090	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

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LOUISIANA Ch. Code Ann. art. 1015	✓	✓			✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	<ul style="list-style-type: none"> ▪ Murder of child's other parent. ▪ Location of parent(s) unknown. ▪ Felony rape by natural parent results in conception of a child.
MAINE III: 22 § 4002 4055 4022(1-B) 4041(A-2)	✓	✓		✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Custody removed from the parent. ▪ Voluntary relinquishment. ▪ Aggravated circumstances. ▪ Heinous or abhorrent behavior.
MARYLAND §§ 5-313 5-525.1(b)(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Child continuously out of parental custody. ▪ Identity of parent(s) unknown. ▪ Convicted of crime of violence against other parent.
MASSACHUSETTS Ch. 119 § 26(4) Ch. 210 § 30	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Child has formed strong, positive bond with substitute caretaker.
MICHIGAN § 712A.19b(1), (3), (6)	✓	✓			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Failure to comply with guardianship plan or court-ordered plan. ▪ Risk of harm if returned home. ▪ Voluntary relinquishment. ▪ Identity of parent(s) unknown.
MINNESOTA §§ 260.012 260C.301	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Egregious harm. ▪ Voluntary relinquishment.

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MISSISSIPPI §§ 43-21-603© 93-15-103	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Deep-seated antipathy by child. ▪ Voluntary relinquishment. ▪ Aggravated circumstances.
MISSOURI §§ 211.183(6)-(7) 211.447(2)-(7)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Substantial risk of harm to the child. ▪ Conception result of rape.
MONTANA §§ 41-3-609 41-3-423(2)-(3)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Conception result of rape. ▪ Aggravated circumstances. ▪ A history of violent behavior by the parent.
NEBRASKA §§ 43-283.01(4) 43-292 43-292.02	✓	✓	✓	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Aggravated circumstances. ▪ Lewd and lascivious behavior.
NEVADA §§ 128.105 128.106 128.107 128.109 432B.393(3)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Taken efforts by parent(s). ▪ Failure of parental adjustment. ▪ Risk of harm if returned home.
NEW HAMPSHIRE §§ 170-C:5 169-C:24-a	✓	✓	✓		✓	✓	✓		✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Risk of harm if returned home.

Grounds for Termination of Parental Rights

(Current through June 1, 2002)

STATE/STATUTE	Abandonment of Extreme Parental Disinterest	Abuse/Neglect	Mental Illness or Deficiency	Alcohol- or Drug-induced Incapacity	Felony Conviction/Incarceration	Failure of Reasonable Efforts	Sexual Abuse	Abuse/Neglect or Loss of Rights of Another Child	Failure to Maintain Contact	Failure to Provide Support	Failure to Establish Paternity	Child Judged in Need of Services/Dependent	Child's Best Interest	Child in Care 15 or 22 Months (or Less)	Felony Assault of Child or Sibling	Murder/Manslaughter of Sibling Child	OTHER
NEW JERSEY §§ 30:4C-15 30:4C-15.1(a),(b) 9:2-19 30:4C-11.2	✓	✓	✓		✓	✓		✓	✓			✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Identity or location of parents unknown. Aggravated circumstances. Parent dead. Failure to discharge responsibilities.
NEW MEXICO §§ 32A-4-28(B)-(E) 32A-4-29 (D) 32A-4-29(K)	✓	✓				✓	✓	✓					✓	✓	✓	✓	<ul style="list-style-type: none"> Child in r...ent for extended period. Aggr...umstances. Chi'...oped relationship wif...family. Pa...used death or injury to c...r parent. Pre'...child.
NEW YORK Soc. Serv. Law §§ 384-b 358-a(3)(b)	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Both ...ents dead and guardian not appointed. Aggravated circumstances.
NORTH CAROLINA §§ 7B-101(2) 7B-1111	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Child willfully left in foster care. Aggravated circumstances.
NORTH DAKOTA §§ 27-20-02(3) 27-20-20.1(2)-(4) 27-20-44(1)	✓	✓			✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Aggravated circumstances. Voluntary relinquishment.
OHIO § 2151.414	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Any other factor the court considers relevant.

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OKLAHOMA lit.10 § 7006-1.1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Voluntary relinquishment. Location of parent(s) unknown. Conception result of rape.
OREGON §§ 419B.500 419B.502 419B.504 419B.506 419B.508	✓	✓	✓	✓		✓	✓	✓	✓	✓			✓		✓	✓	<ul style="list-style-type: none"> Single or recurrent incident of extreme conduct toward the child. Criminal conduct of parent. Identity or location of parent(s) unknown. Exposure of the child to methamphetamines.
PENNSYLVANIA 25 Pa. §§ 2501(a) 2511(a),(b) 42 Pa. § 6302		✓				✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	<ul style="list-style-type: none"> Conception result of rape. Voluntary relinquishment. Identity or location of parent unknown. Presumptive father not the natural father. Aggravated circumstances.
RHODE ISLAND §§ 15-7-7(a)-(c) 4C:11-12.2(e)	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓	✓	<ul style="list-style-type: none"> Aggravated circumstances.
SOUTH CAROLINA §§ 20-7-1572 20-7-763©,(F)	✓	✓	✓	✓	✓	✓		✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> Presumptive father not the biological father. Aggravated circumstances. Conviction for domestic violence.
SOUTH DAKOTA §§ 26-8A-21.1 26-8A-26 26-8A-26.1 26-8A-27	✓	✓		✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Inability to protect the child from harm or substantial risk of harm.

Grounds for Termination of Parental Rights

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TENNESSEE §§ 36-1-113(g)-(h) 37-1-166(g)(4)	✓	✓	✓		✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Risk of substantial harm. ▪ Aggravated circumstances.
TEXAS §§ 161.001 161.003(a)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓	✓	<ul style="list-style-type: none"> ▪ Refusal to submit to court order. ▪ Failure to provide education. ▪ Voluntary relinquishment. ▪ Drug or alcohol addicted newborn.
UTAH §§ 78-3a-311(2)-(4) 78-3a-402(2) 78-3a-403(2) 78-3a-407 78-3a-408	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ A history of violent behavior. ▪ Location of parent(s) unknown.
VERMONT Tit. 15A § 3-504(a), (b), (d)					✓				✓	✓	✓		✓				<ul style="list-style-type: none"> ▪ Relationship with another that affects the parent-child relationship. ▪ Risk of substantial harm. ▪ Identity or location of parent unknown. ▪ Failure to assume parental responsibilities.
VIRGINIA § 16.1-283(A), (B)-(E), (G)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> ▪ Voluntary relinquishment. ▪ Identity or location of parent unknown. ▪ Aggravated circumstances.

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WASHINGTON §§ 13.34.180 13.34.190 13.34.132	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓		✓	✓	<ul style="list-style-type: none"> Identity or location of parent unknown. Parent is a sexually violent predator. Aggravated circumstances.
WEST VIRGINIA §§ 49-6-5(a)(1), (b) 49-6-5b	✓	✓	✓	✓		✓	✓	✓					✓	✓	✓	✓	<ul style="list-style-type: none"> Refusal to cooperate in a reasonable family case plan.
WISCONSIN §§ 48.415 48.355(2d)	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Homicide of child's other parent. Aggravated circumstances. Denials of physical placement. Failure to assume parental responsibility. Incestuous parenthood. Conception result of sexual assault.
WYOMING § 14-2-309	✓	✓			✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	<ul style="list-style-type: none"> Identity or location of parent unknown. Aggravated circumstances.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

- (i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child;
- (ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;
- (iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;
- (iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;
- (v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and
- (vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

- (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;
- (ii) To provide for the care and support of the child as required by law or judicial decree; and
- (iii) To comply with a court ordered plan designed to reunite the child with the parent or parents.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is a deprived child.

◀ PREVIOUS

NEXT ▶

The Statutes posted are current through the 2001 Regular Session of the General Assembly. However, the Statutes posted from the 2001 Regular Session may not yet be in effect. Users of this service should note that the effective date of the Statutes are not listed on this service and are advised to verify the effective date of any Statutes posted on this Web Site. Any person or entity who relies on information obtained solely from this Site does so at his or her own risk.

◀ PREVIOUS

NEXT ▶

15-11-94 G
*** CODE SECTION *** 12/03/01

15-11-94.

(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.

(b) Except as provided in subsections (e) through (h) of Code Section 15-11-96, the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) A decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent, guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The parent has abandoned the child or the child was left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child; or

(4) (A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7660-7670

7660. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father under Section 7611, the father shall be given notice of the adoption proceeding and have the **rights** provided under Part 2 (commencing with Section 8600) of Division 13, unless the father's relationship to the child has been previously terminated or determined by a court not to exist or the father has voluntarily relinquished for or consented to the adoption of the child.

7661. If a father relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child, the mother shall be given notice of the adoption proceeding and have the **rights** provided under Part 2 (commencing with Section 8600) of Division 13, unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily relinquished for or consented to the adoption of the child.

7662. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have a presumed father under Section 7611, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the **parental rights** of the father, unless either of the following occurs:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(b) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

7663. (a) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by any of the following:

(1) The State Department of Social Services.

(2) A licensed county adoption agency.

(3) The licensed adoption agency to which the child is to be relinquished.

(4) In the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department.

(b) The inquiry shall include all of the following:

(1) Whether the mother was married at the time of conception of the child or at any time thereafter.

(2) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(3) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(4) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) The department or the licensed adoption agency shall report the findings to the court.

7664. (a) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Section 7666, unless he has been served with a written notice alleging that he is or could be the natural father of the child to be adopted or placed or relinquished for adoption and has failed to bring an action pursuant to subdivision (c) of Section 7630 to declare the existence of the father and child relationship within 30 days after service of the notice or the birth of the child, whichever is later. If any of them fails to appear or, if appearing, fails to claim **parental rights**, his **parental rights** with reference to the child shall be terminated.

(b) If the natural father or a man representing himself to be the natural father claims **parental rights**, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his **parental rights**, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his **parental rights**, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming **parental rights** is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that that person's consent is not required for an adoption. This finding terminates all **parental rights** and responsibilities with respect to the child. Section 3041 does not apply to a proceeding under this chapter.

(c) Nothing in this part changes the **rights** of a presumed father under Section 7611.

7665. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial **rights**, the court shall enter an order terminating the unknown natural father's **parental rights** with reference to the child.

7666. (a) Except as provided in subdivision (b), notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the Code of Civil Procedure for the service of process in a civil action in this state at least 10 days before the date stated in the notice of the proceeding, except that publication or posting of the notice of the proceeding is not required. Proof of giving the notice shall be filed with the court before the petition is heard.

(b) If a person identified as the natural father or possible

natural father cannot be located or his whereabouts are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

7667. (a) Notwithstanding any other provision of law, an action to terminate the **parental rights** of a father of a child as specified in this part shall be set for hearing not more than 45 days after filing of the petition therefor and completion of service thereon or the entry of an order dispensing with notice of the proceedings. The petition shall either specify the date of the hearing or state that a hearing will be held on a date as determined pursuant to this section, which shall be separately noticed.

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to terminate **parental rights** pursuant to Part 4 (commencing with Section 7800).

7668. (a) The court may continue the proceedings for not more than 30 days as necessary to appoint counsel and to enable counsel to prepare for the case adequately or for other good cause.

(b) In order to obtain an order for a continuance of the hearing, written notice shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

(c) Continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

(d) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

7669. An order requiring or dispensing with a father's consent for the adoption of a child is conclusive and binding upon the father. Nothing in this section limits the right to appeal from the order and judgment.

7670. There shall be no filing fee charged for a petition filed pursuant to Section 7662.

CALIFORNIA CODES
FAMILY CODE
SECTION 8700-8720

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72

hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

8701. At or before the time a relinquishment is signed, the department or licensed adoption agency shall advise the birth parent signing the relinquishment, verbally and in writing, that the birth parent may, at any time in the future, request from the department or agency all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following:

(a) Whether the child has been placed for adoption.

(b) The approximate date that an adoption was completed.

(c) If the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

8702. (a) The department shall adopt a statement to be presented to the birth parents at the time a relinquishment is signed and to prospective adoptive parents at the time of the home study. The statement shall, in a clear and concise manner and in words calculated to ensure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parents of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the child's best interest that the birth parent keep the department or licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep an address current with the department or licensed adoption agency to whom the child was relinquished for adoption in order to permit a

response to inquiries concerning medical or social history.

(3) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to request the department or the licensed adoption agency to disclose the name and address of the adoptee's birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether to allow this disclosure by checking the appropriate box provided on the form.

(4) The birth parent may change the decision whether to permit disclosure of the birth parent's name and address, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the adoption petition.

(5) The relinquishment will be filed in the office of the clerk of the court in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceeding, their attorneys, and the department, except upon order of a judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed, which shall provide as follows:

"Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:
 YES NO UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE."

8703. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, or pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if the birth parent's address is known, that contains the following statement:

(a) "You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights.

(b) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency, that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

() YES

() NO

() UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE"

8704. (a) The department or licensed adoption agency to which a

child has been freed for adoption by either relinquishment or **termination of parental rights** is responsible for the care of the child, and is entitled to the exclusive custody and control of the child until an order of adoption is granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated in its discretion at any time before the granting of an order of adoption. In the event of **termination** of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the department or licensed adoption agency.

(b) No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both birth parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the adoption petition has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the court may nevertheless order the adoption if it finds that the refusal to consent is not in the child's best interest.

8705. (a) Where a child is in the custody of a public agency or licensed adoption agency, if it is established that the persons whose consent to the adoption is required by law are deceased, an action may be brought by the department or a licensed adoption agency requesting the court to make an order establishing that the requesting agency has the right to custody and control of the child and the authority to place the child for adoption. The department or agency bringing the action shall give notice in the form prescribed by the court to all known relatives of the child up to and including the third degree of lineal or collateral consanguinity.

(b) This section does not apply where a guardian of the person of the child has been appointed pursuant to nomination by a will.

8706. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) (1) The biological parents may provide a blood sample at a clinic or hospital approved by the State Department of Health Services. The biological parents' failure to provide a blood sample shall not affect the adoption of the child.

(2) The blood sample shall be stored at a laboratory under contract with the State Department of Health Services for a period of 30 years following the adoption of the child.

(3) The purpose of the stored sample of blood is to provide a blood sample from which DNA testing can be done at a later date after entry of the order of adoption at the request of the adoptive

parents or the adopted child. The cost of drawing and storing the blood samples shall be paid for by a separate fee in addition to the fee required under Section 8716. The amount of this additional fee shall be based on the cost of drawing and storing the blood samples but at no time shall the additional fee be more than one hundred dollars (\$100).

(d) (1) The blood sample shall be stored and released in such a manner as to not identify any party to the adoption.

(2) Any results of the DNA testing shall be stored and released in such a manner as to not identify any party to the adoption.

8707. (a) The department shall establish a statewide photo-listing service to serve all licensed adoption agencies in the state as a means of recruiting adoptive families. The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.

(b) The photo-listing service shall maintain child specific information that, except as provided in this section, contains a photograph and description of each child who has been legally freed for adoption and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child's photo-listing status shall be reflected in the photo-listing service within 30 working days of receipt of the registration or notification.

(c) The photo-listing service shall be provided to all licensed adoption agencies, adoption support groups, and state, regional, and national photo-listings and exchanges requesting copies of the photo-listing service.

(d) All children legally freed for adoption whose case plan goal is adoption shall be photo-listed, unless deferred as provided in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working days of the time a child is legally freed for adoption. When adoption has become the case plan goal for a particular child, the licensed adoption agency may photo-list that child before the child becomes legally freed for adoption.

(e) A child shall be deferred from the photo-listing service when the child's foster parents or other identified individuals who have applied to adopt the child are meeting the licensed adoption agency's requests for required documentation and are cooperating in the completion of a home study being conducted by the agency.

(f) A child who is 12 years old or older may be deferred from the photo-listing service if the child does not consent to being adopted.

(g) Within 15 working days following a one-year period in which a child is listed in the photo-listing service, the licensed adoption agency shall submit a revised description and photograph of the child.

(h) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant changes in a child's photo-listing status within two working days of the change.

(i) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.

8708. Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or **termination of parental rights** may do any of the following:

(a) Categorically deny to any person the opportunity to become an adoptive parent, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(b) Delay or deny the placement of a child for adoption, or otherwise discriminate in making an adoptive placement decision, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(c) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this subdivision, an approved adoptive family means a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially meet the standards and criteria established in California adoption regulations.

8709. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or **termination of parental rights** may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective adoptive parent to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child. The child's religious background may also be considered in determining an appropriate placement.

As used in this section, "placement decision" means the decision to place, or to delay or deny the placement of a child, in an adoptive home, and includes the decision to seek **termination of parental rights** or otherwise make a child legally available for adoptive placement.

8710. Where a child is being considered for adoption, the department or licensed adoption agency shall first consider adoptive placement in the home of a relative. However, if a relative is not available, if placement with an available relative is not in the child's best interest, or if placement would permanently separate the child from other siblings who are being considered for adoption or who are in foster care and an alternative placement would not require the permanent separation, the foster parent or parents of the child shall be considered with respect to the child along with all other prospective adoptive parents where all of the following conditions are present:

(a) The child has been in foster care with the foster parent or parents for a period of more than four months.

(b) The child has substantial emotional ties to the foster parent or parents.

(c) The child's removal from the foster home would be seriously detrimental to the child's well-being.

(d) The foster parent or parents have made a written request to be considered to adopt the child.

This section does not apply to a child who has been adjudged a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

8710.1. If there is not an adoptive placement plan for a child with an approved adoptive family, as defined in subdivision (c) of

Section 8708, within the department's or the licensed adoption agency's jurisdiction, then the department or licensed adoption agency shall register the child with the exchange system described in Section 8710.2.

8710.2. In order to preclude the delays or denials described in subdivision (c) of Section 8708, the department shall establish a statewide exchange system that interjurisdictionally matches waiting children and approved adoptive families. The department may create a new statewide exchange system, modify an existing statewide exchange system, such as the photo-listing service described in Section 8707, or designate an existing exchange system, such as the Adoption Exchange Enhancement Program, as the statewide exchange system for purposes of this section.

8710.3. If the department or licensed adoption agency has approved a family for adoption pursuant to subdivision (c) of Section 8708 and that family may be appropriate for placement of a child who has been adjudged a dependent child of the juvenile court, the department or agency shall register the family with the statewide exchange system established pursuant to Section 8710.2, except in either of the following circumstances:

- (a) The family refuses to consent to the registration.
- (b) A specific child or children have already been identified for adoptive placement with the family.

8710.4. (a) The department shall ensure that information regarding families and children registered with the statewide exchange system described in Section 8710.2 is accessible by licensed adoption agency personnel throughout the state. Provision shall be made for secure Internet, telephone, and facsimile access by authorized licensed adoption agency personnel.

(b) Information regarding children maintained by the statewide exchange system described in Section 8710.2 shall be confidential and shall not be disclosed to any parties other than authorized adoption agency personnel, except when consent to disclosure has been received in writing from the birth parents or the court that has jurisdiction.

8711. Sections 8708 to 8710.4, inclusive, apply only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the birth parents.

8711.5. The department shall adopt regulations to administer the provisions of Sections 8708 to 8711, inclusive.

8712. (a) The department or licensed adoption agency shall require each person filing an application for adoption to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or licensed adoption agency may also secure the person's full criminal record, if any.

- (b) The criminal record, if any, shall be taken into consideration

when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court.

(c) Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department or licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

8713. (a) In no event may a child who has been freed for adoption be removed from the county in which the child was placed, by any person who has not petitioned to adopt the child, without first obtaining the written consent of the department or licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding:

(1) The child proposed to be adopted may not be concealed within the county in which the adoption proceeding is pending.

(2) The child may not be removed from the county in which the adoption proceeding is pending unless the petitioners or other interested persons first obtain permission for the removal from the court, after giving advance written notice of intent to obtain the court's permission to the department or licensed adoption agency responsible for the child. Upon proof of giving notice, permission may be granted by the court if, within a period of 15 days after the date of giving notice, no objections are filed with the court by the department or licensed adoption agency responsible for the child. If the department or licensed adoption agency files objections within the 15-day period, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to any limitations that appear to be in the child's best interest.

(c) This section does not apply in any of the following situations:

(1) Where the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) Where the child has been returned to and remains in the custody and control of the child's birth parent or parents.

(3) Where written consent for the removal of the child is obtained from the department or licensed adoption agency responsible for the child.

(d) A violation of this section is a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code may be construed to render lawful any act that is unlawful under any other applicable law.

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the birth parent or birth parents resided when the relinquishment of parental rights for the purpose of adoption was signed. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the clerk of the court shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, "relative" means an adult who is related to the child or the child's half-sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

8714.7. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.

(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to

come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested **termination** or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The **termination** or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the **termination** or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed **termination** or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate **parental rights** or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

8715. (a) The department or licensed adoption agency, whichever is a party to, or joins in, the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half siblings.

(c) If a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into voluntarily, and whether it is in the best interests of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

(e) If a petitioner is a resident of a state other than California, an updated and current homestudy report, conducted and approved by a licensed adoption agency or other authorized resource in the state in which the petitioner resides, shall be reviewed and endorsed by the department or licensed adoption agency, if the standards and criteria established for a homestudy report in the other state are substantially commensurate with the homestudy standards and criteria established in California adoption regulations.

8716. Where a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the department, the agency or department may, at the time of filing a favorable report with the court, require the petitioners to pay to the agency, as agent of the state, or to the department, a fee of five hundred dollars (\$500). The agency or department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, if the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

8717. When any report or findings are submitted to the court by the department or licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the petitioner's attorney in the proceeding, if the petitioner has an attorney of record, or to the petitioner.

8718. The prospective adoptive parents and the child proposed to be adopted shall appear before the court pursuant to Sections 8612 and 8613.

8719. If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action.

8720. (a) If the department or licensed adoption agency finds that the home of the petitioners is not suitable for the child or that the required agency consents are not available and the department or agency recommends that the petition be denied, or if the petitioners desire to withdraw the petition and the department or agency recommends that the petition be denied, the clerk upon receipt of the report of the department or agency shall immediately refer it to the court for review.

(b) Upon receipt of the report, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or licensed adoption agency, the petitioners, and, if necessary, the birth parents, by certified mail, return receipt requested, to the address of each as shown in the proceeding.

(c) The department or licensed adoption agency shall appear to represent the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7800-7810

7800. The purpose of this part is to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life.

7801. This part shall be liberally construed to serve and protect the interests and welfare of the child.

7802. A proceeding may be brought under this part for the purpose of having a minor child declared free from the custody and control of either or both parents.

7803. A declaration of freedom from parental custody and control pursuant to this part terminates all parental rights and responsibilities with regard to the child.

7804. In a proceeding under this part, the court may appoint a suitable party to act in behalf of the child and may order such further notice of the proceedings to be given as the court deems proper.

7805. (a) A petition filed in a proceeding under this part, or a report of the probation officer or county department designated by the board of supervisors to administer the public social services program filed in a proceeding under this part, may be inspected only by the following persons:

- (1) Court personnel.
- (2) The child who is the subject of the proceeding.
- (3) The parents or guardian of the child.
- (4) The attorneys for the parties.
- (5) Any other person designated by the judge.

(b) In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a proceeding under this part, the court record and briefs filed by the parties may be inspected only by the following persons:

- (1) Court personnel.
- (2) A party to the proceeding.
- (3) The attorneys for the parties.
- (4) Any other person designated by the presiding judge of the court before which the matter is pending.

(c) Notwithstanding any other provision of law, if it is believed that the welfare of the child will be promoted thereby, the court and the probation officer may furnish information, pertaining to a petition under this part, to any of the following:

- (1) The State Department of Social Services.
- (2) A county welfare department.
- (3) A public welfare agency.
- (4) A private welfare agency licensed by the State Department of Social Services.

7806. There shall be no filing fee charged for a proceeding brought under this part.

7807. (a) Sections 3020, 3022, 3040 to 3043, inclusive, and 3409 do not apply in a proceeding under this part.

(b) All proceedings affecting a child under Divisions 8 (commencing with Section 3000) to 11 (commencing with Section 6500), inclusive, and Parts 1 (commencing with Section 7500) to 3 (commencing with Section 7600), inclusive, of this division shall be stayed pending final determination of proceedings to declare the minor free from parental custody and control under this part.

(c) Nothing in this section may limit the jurisdiction of the court pursuant to Part 3 (commencing with Section 6240) and Part 4 (commencing with Section 6300) of Division 10 with respect to domestic violence orders.

7808. This part does not apply to a minor adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, the exclusive means for the termination of parental rights are provided in the following statutes:

(a) Section 366.26 of the Welfare and Institutions Code.

(b) Sections 8604 to 8606, inclusive, and 8700 of this code.

(c) Chapter 5 (commencing with Section 7660) of Part 3 of this division of this code.

7810. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

CALIFORNIA CODES
FAMILY CODE
SECTION 8500-8548

8500. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

8502. (a) "Adoption service provider" means any of the following:

- (1) A licensed private adoption agency.
- (2) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years of experience providing professional social work services while employed by a licensed California adoption agency or the department.
- (3) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.
- (4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage and family therapist who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. "Reasonably available" means that an adoption service provider is all of the following:

- (1) Available within five days for an advisement of **rights** pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.
- (2) Within 100 miles of the birth mother.
- (3) Available for a cost not exceeding five hundred dollars (\$500) to make an advisement of **rights** and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of **rights** and to witness the signing of the placement agreement shall not exceed five hundred dollars (\$500).

8503. "Adoptive parent" means a person who has obtained an order of adoption of a minor child or, in the case of an adult adoption, an adult.

8506. "Agency adoption" means the adoption of a minor, other than an intercountry adoption, in which the department or a licensed adoption agency is a party to, or joins in, the adoption petition.

8509. "Applicant" means a person who has submitted a written application to adopt a child from the department or a licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

8512. "Birth parent" means the biological parent or, in the case of a person previously adopted, the adoptive parent.

8514. "Days" means calendar days, unless otherwise specified.

8515. "Delegated county adoption agency" means a licensed county adoption agency that has agreed to provide the services described in Chapter 3 (commencing with Section 8800) of Part 2.

8518. "Department" means the State Department of Social Services.

8521. (a) "Full-service adoption agency" means a licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

8524. "Independent adoption" means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the adoption petition.

8527. "Intercountry adoption" means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child's native country or completion of the adoption in this state.

8530. "Licensed adoption agency" means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

8533. (a) "Noncustodial adoption agency" means any licensed entity

engaged in the business of providing adoption services, which does all of the following:

- (1) Assesses the prospective adoptive parents.
 - (2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive parents.
 - (3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.
- (b) Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

8539. "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parent or parents placing the child with prospective adoptive parents.

This section shall become operative on January 1, 1995.

8542. "Prospective adoptive parent" means a person who has filed or intends to file a petition under Part 2 (commencing with Section 8600) to adopt a child who has been or who is to be placed in the person's physical care or a petition under Part 3 (commencing with Section 9300) to adopt an adult.

8543. "Qualified court investigator" means a superior court investigator with the same minimum qualifications as a probation officer or county welfare worker designated to conduct stepparent adoption investigations in stepparent adoption proceedings and proceedings to declare a minor free from parental custody and control.

8545. "Special-needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group that should remain intact, mental, physical, medical, or emotional handicaps, or age of three years or more.

8548. "Stepparent adoption" means an adoption of a child by a stepparent where one birth parent retains custody and control of the child.

CALIFORNIA CODES
FAMILY CODE
SECTION 7850-7852

7850. Upon the filing of a petition under Section 7841, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 7820).

7851. (a) The juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, or the county department shall render to the court a written report of the investigation with a recommendation of the proper disposition to be made in the proceeding in the best interest of the child.

(b) The report shall include all of the following:

(1) A statement that the person making the report explained to the child the nature of the proceeding to end parental custody and control.

(2) A statement of the child's feelings and thoughts concerning the pending proceeding.

(3) A statement of the child's attitude towards the child's parent or parents and particularly whether or not the child would prefer living with his or her parent or parents.

(4) A statement that the child was informed of the child's right to attend the hearing on the petition and the child's feelings concerning attending the hearing.

(c) If the age, or the physical, emotional, or other condition of the child precludes the child's meaningful response to the explanations, inquiries, and information required by subdivision (b), a description of the condition shall satisfy the requirement of that subdivision.

(d) The court shall receive the report in evidence and shall read and consider its contents in rendering the court's judgment.

7851.5. The petitioner shall be liable for all reasonable costs incurred in connection with the **termination of parental rights**, including, but not limited to, costs incurred for the investigation required by this article. However, public agencies and nonprofit organizations are exempt from payment of the costs of the investigation. The liability of a petitioner for costs under this section shall not exceed nine hundred dollars (\$900). The court may defer, waive, or reduce the costs when the payment would cause an economic hardship which would be detrimental to the welfare of the child.

7852. "Qualified court investigator," as used in this article, has the meaning provided by Section 8543.

HB

233



Alaska State Legislature

*Representative Peggy Wilson
Putting Alaska's Families First*

SPONSOR STATEMENT

Sponsor: Representative Peggy Wilson

CSHB 233(EDU) "An Act relating to the base student allocation used in the formula for state funding of public education; and providing for an effective date."

Public education is charged with assuming greater responsibility while at the same time they face a reduction in the purchasing power of the student dollar. Alaska cannot continue to ask its 53 school districts to meet all these additional responsibilities with insufficient dollars; therefore additional funding is a necessity.

Previous cuts to school funding are slowly eroding Alaska's capacity to provide high quality education. School districts all over the state are budget trimming to cope with inflationary factors including but not limited to greatly increased insurance and fuel costs. In some districts decreasing enrollment makes the situation worse. The legislature supports the concept of the "No Child Left Act" and it is imperative that increased funds be allocated in order to implement this act and assure that no child is left behind.

The increase of \$158.00 per student, as provided in House Bill 233, would assist our local schools districts as they seek to provide our students with the best education possible in these difficult financial times. I ask your support of House Bill 233.

HB 233 sponsor 4- 28 - 03

School District	Increase to Basic Need	Change to Floor	Net Increase
Alaska Gateway	194,070	(77,628)	116,442
Aleutian Region	39,893	(15,957)	23,936
Aleutians East Borough	143,684	-	143,684
Anchorage	10,738,693	-	10,738,693
Annette Island	83,707	-	83,707
Bering Strait	845,932	-	845,932
Bristol Bay Borough	93,731	-	93,731
Chatham	87,286	-	87,286
Chugach	59,573	(23,669)	35,904
Copper River	211,934	-	211,934
Cordova	133,535	(4,228)	129,307
Craig	178,350	-	178,350
Delta/Greely	293,046	-	293,046
Denali Borough	130,879	-	130,879
Dillingham	166,734	(66,694)	100,040
Fairbanks N. Star Borough	3,490,329	-	3,490,329
Galena	561,453	(224,581)	336,872
Haines Borough	90,151	-	90,151
Hoonah	63,756	(25,502)	38,254
Hydaburg	29,459	-	29,459
Iditarod Area	171,200	(68,480)	102,720
Juneau Borough	1,187,319	-	1,187,319
Kake	50,225	(20,090)	30,135
Kashunamiut	134,311	-	134,311
Kenai Peninsula Borough	2,271,136	-	2,271,136
Ketchikan Gateway Boroug	550,500	-	550,500
Klawock	52,084	(8,313)	43,771
Kodiak Island Borough	712,836	-	712,836
Kuspuk	222,376	(32,127)	190,249
Lake & Peninsula Borough	233,979	(20,248)	213,731
Lower Kuskokwim	1,621,292	(648,517)	972,775
Lower Yukon	865,393	-	865,393
Mat-Su Borough	3,216,215	-	3,216,215
Nenana	140,737	-	140,737
Nome	234,339	-	234,339
North Slope Borough	757,227	-	757,227
Northwest Arctic Borough	912,374	-	912,374
Pelican	10,475	(4,190)	6,285
Petersburg	161,223	-	161,223
Pribilof	63,128	(24,321)	38,807
Sitka Borough	355,017	-	355,017
Skagway	38,392	-	38,392
Southeast Island	95,992	(25,167)	70,825
Southwest Region	327,685	-	327,685
St. Mary's	74,830	-	74,830
Tanana	35,143	(14,057)	21,086
Unalaska	133,206	(53,283)	79,923
Valdez	236,612	(94,645)	141,967
Wrangell	107,042	-	107,042
Yakutat	42,923	-	42,823
Yukon Flats	174,692	9,708	184,400
Yukon/Kovukuk	310,605	(2,663)	307,942
Yupitit	184,591	(17,328)	167,263
Mt. Edgecumbe High Schoo	76,542	-	76,542
TOTALS:	33,397,736	(1,461,980)	31,935,756

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HB

239

STATE OF ALASKA

REPRESENTATIVE
MIKE CHENAULT

Interim:
145 Main St. Loop, Second Floor
Kenai, Alaska 99611
(907) 283-7223
Fax: (907) 283-3075



HOUSE OF REPRESENTATIVES

Official Business

Session:
Capitol Building, Room 432
Juneau, Alaska 99801-1182
(907) 465-3779
Toll Free: (800) 469-3779
Fax: (907) 465-2833

House Bill 239
By Representative Mike Chenault
Tracking of Controlled Substances

Substance abuse has been a problem on the Kenai Peninsula and throughout Alaska for many years. This bill will track all controlled substances through a secure internet tracking system.

Revised 02/10/04

23-LS0897AS
Mischel
4/27/04

CS FOR HOUSE BILL NO. 239()

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

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CHENAULT

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring the Board of Pharmacy to establish a tracking system for controlled**
2 **substances."**

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

4 *** Section 1.** AS 08.80 is amended by adding a new section to read:

5 **Sec. 08.80.075. Controlled substance data base.** (a) The board shall adopt
6 regulations establishing a controlled substance secure networked server-based data
7 base and procedures under which each pharmacist in the state will be required to
8 determine, by consulting the secure data base, whether a prescription for a controlled
9 substance that is being dispensed by the pharmacist to cover a certain time period for a
10 human patient duplicates a prescription already dispensed for the same patient that
11 was intended to cover a substantial portion of the same time period. The board shall
12 design the secure networked server-based data base in a manner that

13 (1) maintains the confidentiality of the information in the secure
14 networked server-based data base;

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(2) provides access to each practitioner of the healing arts who is authorized to prescribed controlled substances; and

(3) provides real-time information pertaining to schedule IA controlled substances as described under AS 11.71.140.

(b) The regulations adopted under (a) of this section must include a provision for secure and verifiable delivery to each person designated as the patient on the prescription for controlled substances, including in-person and certified mail delivery.

(c) In this section, "practitioner of the healing arts" has the meaning given in AS 47.17.290.

23-LS0897\H
Mischel
4/1/04

CS FOR HOUSE BILL NO. 239()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE CHENAULT

A BILL

FOR AN ACT ENTITLED

1 **"An Act directing the Board of Pharmacy to establish an Internet-based identification**
2 **and tracking system relating to controlled substances that are prescribed for human**
3 **use; and relating to the manner in which prescriptions for controlled substances may be**
4 **filled by a pharmacist."**

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

6 *** Section 1.** AS 08.80.158(b) is amended to read:

7 (b) A pharmacy registering with the board under (a) of this section shall
8 furnish to the board annually

9 (1) the location, names, and titles of all principal corporate officers and
10 of all pharmacists who are dispensing prescription drugs to residents of the state;

11 (2) a copy of a current valid license, permit, or registration to conduct
12 operations in the jurisdiction in which it is located, and a copy of the most recent
13 report resulting from an inspection of the pharmacy by the regulatory or licensing
14 agency of the jurisdiction in which the pharmacy is located;

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(3) a sworn statement indicating that the pharmacy complies with all lawful directions and requests for information from the regulatory or licensing authority of the jurisdiction in which the pharmacy is licensed; [AND]

(4) proof satisfactory to the board that the pharmacy maintains its records of prescription drugs dispensed to persons in the state so that the records are readily retrievable from the records of other prescription drugs dispensed by the pharmacy; and

(5) proof satisfactory to the board that the pharmacy meets the requirements under AS 08.80.305 by consulting the secure Internet data base developed under that section and by requiring a copy of picture identification and a verified signature of the person designated on the prescription, before dispensing a controlled substance to a person who is located in the state.

* Sec. 2. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.305. Controlled substance data base. (a) The Board of Pharmacy, in consultation with the State Medical Board, shall develop a controlled substance secure Internet data base that will allow each pharmacist in the state to determine, by consulting the secure Internet data base, whether a prescription for a controlled substance that is being dispensed by the pharmacist to cover a certain time period for a human patient duplicates a prescription already dispensed for the same patient that was intended to cover a substantial portion of the same time period. The board shall design the secure Internet data base in a manner that maintains the confidentiality of the information in the secure Internet data base so that the secure Internet data base can only be used by pharmacists for the purposes identified in this section. The secure Internet data base shall use a unique identifying number for each patient for whom a controlled substance is prescribed and for each person designated by a patient as a person entitled to obtain a prescribed controlled substance on behalf of the patient. The board, in consultation with the State Medical Board, shall determine how and by whom the identifying numbers and prescription information will be entered into the secure Internet data base.

(b) Before dispensing a controlled substance for human use, a pharmacist shall require picture identification from the person designated on the prescription or a

1 person entitled to obtain a prescription on behalf of the person designated on the
2 prescription, if the entitled person is attempting to obtain the controlled substance, and
3 shall consult the secure Internet data base developed under (a) of this section. The
4 pharmacist may not dispense a controlled substance if

5 (1) the secure Internet data base indicates that a prescription for the
6 same controlled substance has been filled for the same patient in an amount intended
7 to cover a substantial portion of the same time period as the prescription drug order
8 presented to the pharmacist; or

9 (2) the person's identification does not reasonably substantiate that the
10 person is either the patient for whom the controlled substance is intended or the person
11 designated in the secure Internet data base as a person entitled to obtain a controlled
12 substance on behalf of the patient.

~~FAX TRANSMITTAL~~

STATE OF ALASKA
DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT



DIVISION OF OCCUPATIONAL
LICENSING
P.O. BOX 110806
JUNEAU, AK 99811-0806
TELEPHONE: (907) 465-2534
FAX: (907) 465-2974

TO: LINDA MILLER DATE: 4/16/04

COMPANY: REP. PEGGY WILSON

FAX NO. DELIVER - ROOM 106 CAPITOL

FROM: Barbara Roche
Licensing Examiner
Telephone: (907) 465-2589
E-mail: barbara_roche@dced.state.ak.us

HB 239
CORRESPONDENCE
FROM BOARD OF
PHARMACY

NUMBER OF PAGES INCLUDING COVER: _____

HARD COPY TO FOLLOW? YES NO

RE: FEB 15, 2004 LETTER TO REP. WOLF RE: HB 239, HB 408, HR 33
NOV. 17, 2003 LETTER TO REP. CHENAULT - RE HB 239
DEC. 10, 2003 LETTER TO MR JOEL GILBERTSON : RE HB 239
JUNE 4, 2003 LETTER TO REP. CHENAULT W/ NATIONAL ASSOC. OF STATE
CONTROLLED SUBSTANCES AUTHORITIES - FINDINGS & RECOMMENDATIO
OF PRESCRIPTION MONITORING STANDARDS.
OCT 2-3, 2003 - BOARD OF PHARMACY MINUTES p. 13-14
SEPT. 28, 2003 NOTES ON HB 239
APRIL 24-25, 2003 - BOARD OF PHARMACY MINUTES - P. 13

If FAX does not transmit properly, please call
(907) 465-2589 immediately.

4/1/04 "WORK DRAFT" & LETTER OPPOSING FROM MEDCO HEALTH

This FAX is intended to be reviewed by the individual named above. If you received this FAX in error, please immediately notify the sender by telephone, and return the FAX to the sender at the above address. Thank you.

Alaska Department of Community
and Economic Development

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: License@dced.state.ak.us • Website: www.dced.state.ak.us/occ/

February 15, 2004

Representative Kelly Wolf
State Capitol, Room 418
Juneau, AK 99801-1182

Cc: Mr. Rick Urion, Director
Department of Community and Economic Development
Division of Occupational Licensing
PO Box 110806
Juneau, AK 99811-0806

Dear Representative Wolf:

Re: HB 408 and HJR 33

At the February 5 and 6, 2004 meeting of the Alaska Board of Pharmacy, we discussed House Bill 408 and House Joint Resolution 33, which you introduced in the legislature this session. Both of these reflect your concerns with the misuse/abuse of the controlled substance oxycodone and its controlled release formulation, OxyContin. The Board of Pharmacy has had an on-going committee on prescription drug abuse issues in Alaska. At our October meeting, we discussed HB 239, introduced by Representative Chenault, and heard a report from a representative for the Anchorage office of the Federal Drug Enforcement Administration (DEA). Alaska has a real problem with the abuse of prescription drugs and the abuse/misuse costs the state millions of dollars every year. HB 239 would establish a tracking system for certain controlled substances.

The Board of Pharmacy is in support of the spirit of both HB 408 and HB 239 but we have some concerns. Most successful state prescription monitoring systems are under the auspices of a unit of state government that deals with health care rather than law enforcement. Prescribers, as well as pharmacists, are an important part of these programs. Although these programs cost a significant amount of money to set up and maintain, the costs may be offset by the decrease in funds needed to treat the harmful effects of prescription drug abuse. I am enclosing a copy of a model that includes the key points in developing a state prescription-monitoring program for controlled substances.

The points you make in HJR 33 about the misuse and abuse of oxycodone, and, more specifically OxyContin, are true, but the Alaska Board of Pharmacy feels that removing oxycodone from the market would not be in the best interests of patients with severe pain. Most hospitals routinely use oxycodone for post-operative pain relief since it can be given by mouth. When used appropriately, OxyContin, has allowed patients with chronic pain more consistent pain management. The problems arise because both of these drugs are over-prescribed, inappropriately prescribed, diverted, abused, or used in inappropriate ways. Instead of seeking a withdrawal of these drugs, the Board again feels that a controlled substances prescription monitoring system would allow for the continued use of these drugs in managing patients with pain but might also assist in detecting over-prescribing, prescription fraud, and doctor shopping.

If you would like more information about the Board of Pharmacy's on-going interest in prescription drug abuse issues, you can contact the two pharmacist members of the board who serve on our committee tasked with following this area of concern, Bill Altland of Craig, Alaska, or me.

Thank you,
Margaret Soden
Chair, Alaska Board of Pharmacy

Barbara A. Roche,
LICENSING EXAMINER
ALASKA BOARD OF PHARMACY
FOR: MARGARET SODEN

Margaret Soden, RPh
(907) 479-6793, cardinal@ptialaska.net

Bill Altland, RPh
(907) 826-5750, bsaltland@hotmail.com

Enclosures:

Model State Prescription Monitoring System outline
Board of Pharmacy Roster

Model State Prescription Monitoring Programs

Purpose: The purpose of this document is to outline a model state PMP that contains the attributes that will maximize the benefit to the public health, provide useful information for clinical management to authorized healthcare professionals¹, assist in the detection of prescription fraud and doctor shopping, allow for case management interventions based on pharmaceutical usage and, while fulfilling these objectives, will protect patient privacy and create little or no intrusion into or additional burden on the practices of prescribers and dispensers. It is imperative that any PMP not interfere with access to appropriate pharmaceutical therapies for patients with legitimate medical need.

1. Pharmacy transactions involving every federally controlled substance in schedule II, III, and IV and any other drug of concern shall be entered into the database².
2. Individual authorized practitioners may query the database on specific individuals who are their patients or are contemplating initiating a practitioner – patient relationship³.
3. Data must be entered in a timely and efficient manner⁴, with appropriate checks for accurate and complete data⁵ from every eligible prescription⁶.
4. A unit of state government primarily dealing with healthcare issues should control access to the database⁷.
5. Appropriate security measures must exist to protect the integrity⁸ of and access⁹ to the data.
6. Means of sharing information from the database about specific individuals in a state PMP database with out of state authorized healthcare professionals and out of state authorized law enforcement officials must be provided¹⁰.
7. Law enforcement officials may query the database with regard to a specific individual when possessing appropriate legal authority to do so¹¹.
8. Data must be collected and entered into an electronic database that is searchable by any field or combination of fields¹².
9. Requisite data from each dispensing episode must include, at a minimum, identification of the patient, prescriber, dispenser, the drug, quantity, strength, signature, refills, and date of dispensing¹³.
10. Dispensing of controlled substances directly by non-pharmacy healthcare professionals must be entered into the database¹⁴.
11. The PMP must operate an ongoing continuous quality improvement program that ensures, at a minimum, provisions to monitor the compliance of dispensers, accuracy and completeness of the data, appropriate controls over access, and protection and integrity of the data¹⁵.

- 1 In the context of this document, the term "authorized health care professional" means an individual licensed by the state who is authorized to either prescribe or dispense controlled substances, as defined in the US Controlled Substances Act of 1970 (CSA), as amended (21 USC 803, et seq). This specifically excludes those licensed health care professionals who may administer a controlled substance upon the order of an authorized health care professional, but who lack prescriptive or dispensing authority under the conditions of licensure.
- 2 To maintain complete information, each eligible transaction shall be entered into the database, regardless of payment source. This obviates a current problem in some states where the Medicaid database, which might otherwise function to some degree as a PMP, only includes data from transactions with recipients when these are billed to Medicaid. Cash transactions are not recorded in the Medicaid database and, in fact, the pharmacist may have no knowledge that a cash customer is also a Medicaid recipient.
- 3 This requirement allows the prescriber or dispenser to inquire about a specific person with whom they have or are contemplating starting a practitioner - patient relationship. This specifically precludes searches of the database by an individual practitioner by drug name, by dispenser, by prescriber, or other fields, to ensure appropriate privacy safeguards.
- 4 This does not require real time data entry capabilities and allows for states that require pharmacies to batch download data at specified intervals. Real time data entry, which would eventually allow real time searching of the database by authorized health care professionals, such as before prescribing or dispensing, is thought to be the preferable system design and long-term goal that will most effectively reduce doctor shopping and prescription fraud.
- 5 Quality control systems should be in place to verify the identity of individuals suspected of appearing in the database as more than one unique person (e. g., A.J. Smith and Albert J. Smith, both having the same birth date and address) and to investigate and correct information that is incomplete, missing or suspected of being invalid.
- 6 The term "eligible prescription" allows for specification of which types of medications would be tracked by the PMP. The ideal system will include every drug scheduled under the CSA. This provision allows for other drugs of concern to be tracked by the system, such as drugs that are scheduled by a state but are not federally scheduled or drugs that are unscheduled both by the state and the federal government but are of concern to health or law enforcement officials (e.g., carisoprodol).
- 7 This is important for adequate protection of the rights of patients, prescribers and dispensers. Although the database itself may reside outside of a health function or out of state, the access to it must be controlled by an appropriate health agency, as the primary goal is to optimize public health.
- 8 Sufficient systems shall exist to ensure the regular backup of data at a frequency that would protect the integrity of the information in the event the primary database or server was irreparably damaged.
- 9 Access to the data shall be secure, using firewalls, encryption, passwords and the like to minimize the possibility of unauthorized access and to protect the privacy of patients, prescribers and dispensers.
- 10 Current limitations of existing programs include data collection, storage and retrieval in ways that do not facilitate transfer of data across systems when legitimate need dictates, and the inability of a practitioner licensed in one state to query the database maintained by another state. This becomes especially important in areas near state boundaries, where persons engaging in diversion will attempt to defeat the system by obtaining and filling prescriptions in different states.
- 11 This requirement allows law enforcement officials access to the data only when there is reasonable suspicion about a specific individual (patient, prescriber or dispenser) to justify a search of the data. This does not confer or remove any existing access to data by law enforcement, but does preclude searching the database for prescribers above a certain threshold as a means of beginning an investigation ("witch hunts").
- 12 This requires that the data from prescriptions be ultimately entered into a searchable electronic database. It does not mandate that every pharmacy must have the capacity to enter data electronically. In Nevada, for example, pharmacies that do not have the requisite hardware and software to enter data electronically and who fill below a certain number of prescriptions for controlled substances per month, may submit the data by mail or facsimile to the Board of Pharmacy, who will then enter the information into the electronic database.
- 13 States should require minimal datasets from each transaction so as to allow the system to function as intended and to facilitate complex database queries. Means of identification of patient, prescriber or dispenser can be alphanumeric coding, such as DEA registration number to identify a prescriber or license number to identify a dispenser, instead of name. Other data could include the date of prescribing, the address of the prescriber, etc. Federal regulation and some state regulations require these elements are required to be on the prescription itself. The decision to include these data in the PMP should be made with consideration to minimizing redundancy and burden on the pharmacist.
- 14 This provision will place a burden on practitioners who dispense controlled substances or other drugs of concern from their places of practice, which has been identified as a source of diversion in some prominent cases.
- 15 PMPs are only as useful as the data they collect and manage. Lack of compliance with provisions of PMPs was pointed out as a problem during a recent meeting of a task force dealing with prescription drug abuse and diversion in Kentucky. Appropriate controls over access to the data are vital to protection of privacy of individuals listed in the database and will be crucial to garnering support for institution of new or changes to existing PMPs from the health care communities and the populace at large.

State of Alaska

Office of Boards and Commissions Roster

PHARMACY BOARD (078)

Member	Date Appointed	Reappointed	Term Expires
William R. (Bill) Altland Pharmacist P.O. Box 709 Craig, AK 99921	4/25/2003		3/1/2007
Cindy Bueler, R.Ph. Pharmacist Providence Hospital 7010 Travis Circle Anchorage, AK 99507-2580	6/5/2000	1/16/2004	3/1/2008
Gary M Givens Pharmacist Alaska Native Medical Center 4315 Diplomacy Drive Anchorage, AK 99508	3/1/2004		3/1/2008
Gerry Knasiak Public 119 Austin Street, Apt. 611 Ketchikan, AK 99901-5945	4/16/1998	6/7/2001	3/1/2005
Laura Lee Nelson Pharmacist 9336 Betty Court Juneau, AK 99801-8827	6/29/1999	6/7/2001	3/1/2005
Michael Pauley Public P.O. Box 770522 Eagle River, AK 99577-0522	3/25/2003	1/16/2004	1/3/2008
Margaret Davis Soden, RPh Pharmacist P.O. Box 61328 Fairbanks, AK 99706-1328	12/11/1998	3/8/2002	3/1/2006

[Return to the fact sheet](#)

Frank H. Murkowski, Governor

Alaska Department of Community
and Economic Development

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: License@dcad.state.ak.us • Website: www.dcad.state.ak.us/occl

November 17, 2003

Representative Mike Chenault
145 Main St Loop, Ste 220
Kenai, AK 99611

Dear Representative Chenault:

RE: House Bill 239

In August I called your office and spoke with your aide, Sue Wright, about your HB 239 introduced in the first session of the Twenty-Third Legislature of the State of Alaska. I was hoping to get some background on the bill since this is being introduced as an amendment to Chapter 08.80 which is the chapter in our statutes governing pharmacists and pharmacies. The Board of Pharmacy is responsible for the control and regulation of the practice of pharmacy under this chapter. I am a pharmacist member of the Alaska Board of Pharmacy and currently serve as its chair. I also serve on our on-going committee on Prescription Drug Abuse Issues with fellow member and pharmacist from Craig, Alaska, Bill Altland.

At our October board meeting we discussed your bill and heard a report from a representative of the Anchorage office of the Drug Enforcement Administration (DEA). Alaska DOES have a problem with the abuse of prescription drugs. Pharmacists and prescribers have discussed various ways to address this issue. Several other states have enacted regulations establishing internet prescription monitoring programs similar to what you have proposed. We feel, however, that for any monitoring program to work, the prescribers must be included along with pharmacists and law enforcement agencies. We also feel that this monitoring program should be under a department that deals with health care rather than law enforcement and made a motion to that effect at our meeting. We are hoping that you will consider changing your bill to follow the guidelines of the Model State Prescription Monitoring Programs and under the auspices of the Department of Health and Social Services rather than the Department of Public Safety. I have enclosed a copy of the "draft" minutes from our October meeting as well as a copy of an

outline of the key points in developing a state prescription monitoring program for controlled substances.

If you would like more information, you can contact Bill or me. Our next board meeting will be in Juneau, February 5 and 6.

Thank you,

Barbara A. Roche

Barbara Roche

Licensing Examiner

Alaska Board of pharmacy

For: Margaret Soden

Chair, Alaska Board of Pharmacy

Margaret Soden, RPh
(907) 479-5793, cardinal@ptialaska.net

Bill Altland, RPh
(907) 826-5750, bsaltland@hotmail.com

Enclosures:

"Draft" minutes of Alaska State Board of Pharmacy meeting, October 2-3, 2003, pages 13-14 and 17.

Model State Prescription Monitoring Programs outline

Portions of Chapter 80. Pharmacists and Pharmacies

Board of Pharmacy Roster

prescribers and dispensers, and that the language follow the criteria included the NABP Prescription Monitoring Program Model Regulation. The Board will contact the DCED Legislative Liaison and Representative Chenault, the bill sponsor, to express these concerns.

Mr. Altland stated that the Substance Abuse Counselors will be meeting in Fairbanks at the end of the month and suggested that a board member attend. Ms. Knasiak suggested that Pam Watts, the Executive Director of the Alcoholism and Substance Abuse Board be contacted. Ms. Soden will contact Ms. Watts.

Discussion of prescription drug abuse issues and presentation by DEA Agent Terry Marquart will continue after lunch.

Agenda Item 5

Regulations (Continued from October 2, 2003 Discussion)

2. 12 AAC 52.480 (GENERIC LABELING) Will be tabled to Agenda Item 19, New Business.
3. 12 AAC 52.130 REVIEW OF APPLICATIONS FOR REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF THE STATE. The regulation, which was included in the May 9, 2003 "Supplemental Notice of Proposed Changes in the Regulations of the Board of Pharmacy", was adopted by the Board at the July 25, 2003 meeting. Original language ("A pharmacy located outside the state that ships, mails, or delivers prescription drugs more than twice annually to individual patients in the state shall register with the board.") was inadvertently deleted from the "Supplemental Notice...." The Board stated that its intention was to keep the original language that defined "regularly" and to add the checksheet regulation as stated in the "Supplemental Notice....", not to repeal the first sentence of 12 AAC 52.130. Mr. Brower of the Dept. of Law stated in an email that a new public notice would not be required.

On a motion duly made by Ms. Bueler, seconded by Ms. Knasiak, and approved unanimously, it was

RESOLVED that in 12 AAC 52.130, the original definition of "regularly" ("A pharmacy located outside the state that ships, mails, or delivers prescription drugs more than twice annually to individual patients in the state shall register with the board.") should be included in the final regulation along with the checksheet regulation (a) and (b).

Alaska State Board of Pharmacy
Minutes of Meeting
October 2-3, 2003
Page 17 of 24

The Board noted that they considered the cost to private persons when adopting these regulations and acted in the interest of public health and safety. The Board requests that the Notice of Changes to regulations above be sent to all pharmacies and pharmacists (license types R, P, and O).

Break Recess for Lunch at 12:05 PM.

Back on record at 1:02 PM.

Agenda Item 14 Discuss Prescription Drug Abuse Issues (Continued)

Terry Marquart, DEA, spoke to the Board on pharmaceutical narcotic drug trends in Alaska and nationwide. The DEA monitors all pharmaceuticals, paying special attention to Schedule II, which tend to be the drugs abused. Mr. Marquart noted that Alaska ranks in the top five in the nation for per capita use of Oxycontin, oxycodone, hydrocodone, morphine and fentanyl and methadone. Methadone use in Alaska is almost four times the national average. Mr. Marquart discussed DEA policy cornerstones: 1) Controlled substances have useful and legitimate medical purposes. 2) Practitioners are not limited in their ability to administer and prescribe medications for patients with intractable pain. 3) Prescriptions must be for legitimate medical purpose, by a practitioner acting in the usual course of professional practice. 4) Corresponding responsibility rests with the filling pharmacist.

Agenda Item 15 Legislative Update

Senator Dyson and Jason Hooley joined the meeting at 1:15PM

SB 156 ("An Act relating to the posting and giving of certain warnings about drinking alcohol during pregnancy when selling or dispensing pregnancy testing kits, birth control devices, or birth control prescriptions") was discussed by the Board. Senator Dyson stated that he is pursuing the interstate commerce issues related to product labeling and is contacting manufacturers and retailers. Ms. Soden suggested a standardized sign could be distributed to retailers. Mr. Altland distributed a letter from a grocery storeowner commenting on SB 156.

HB 51 ("An act requiring pharmacists to include generic drug information on containers in which brand-name drug orders are dispensed"). Mr. Bohrer distributed a memo and outlined the "key points" relating to HB 51.

- Public comment noted that several pharmacies would not be able to comply with the regulation.

Model State Prescription Monitoring Programs

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7. Law enforcement officials may query the database with regard to a specific individual when possessing appropriate legal authority to do so¹¹.
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- 1 In the context of this document, the term "authorized health care professional" means an individual licensed by the state who is authorized to either prescribe or dispense controlled substances, as defined in the US Controlled Substances Act of 1970 (CSA), as amended (21 USC 803, et seq). This specifically excludes those licensed health care professionals who may administer a controlled substance upon the order of an authorized health care professional, but who lack prescriptive or dispensing authority under the conditions of licensure.
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- 12 This requires that the data from prescriptions be ultimately entered into a searchable electronic database. It does not mandate that every pharmacy must have the capacity to enter data electronically. In Nevada, for example, pharmacies that do not have the requisite hardware and software to enter data electronically and who fill below a certain number of prescriptions for controlled substances per month, may submit the data by mail or facsimile to the Board of Pharmacy, who will then enter the information into the electronic database.
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State of Alaska

Office of Boards and Commissions Roster

PHARMACY BOARD (078)

Member	Date Appointed	Reappointed	Term Expires
William R. (Bill) Altland Pharmacist P.O. Box 709 Craig, AK 99921	4/25/2003		3/1/2007
Mark D. Bohrer Pharmacist P.O. Box 971309 Chugiak, AK 99567-1309	11/10/1999	5/24/2000	3/1/2004
Cindy Bueler, R.Ph. Pharmacist 7010 Travis Circle Anchorage, AK 99507-2580	6/5/2000		3/1/2004
Gerry Knasiak Public 119 Austin Street, Apt. 611 Ketchikan, AK 99901-5945	4/16/1998	6/7/2001	3/1/2005
Laura Lee Nelson Pharmacist 9336 Betty Court Juneau, AK 99801-8827	6/29/1999	6/7/2001	3/1/2005
Michael Pauley Public P.O. Box 770522 Eagle River, AK 99577-0522	3/25/2003		3/1/2004
Margaret Davis Soden, RPh Pharmacist P.O. Box 61328 Fairbanks, AK 99706-1328	12/11/1998	3/8/2002	3/1/2006

Return to the fact sheet

Subject: Fw: Letter to Legislative Liason

Date: Sun, 14 Dec 2003 08:27:59 -0900

From: Soden's <cardinal@ptialaska.net>

To: "Younkins, Rick" <richard_younkins@dced.state.ak.us>,
"Roche, Barbara" <barbara_roche@dced.state.ak.us>,
Mike Pauley <mikepauley@alaska.com>, Mark Bohrer <markboh@aol.com>,
Laura Lee Nelson <pharmhog@alaska.net>, Gerry Knasiak <g.knasiak@worldnet.att.net>,
"Bueler, Cindy" <cbueler@alaska.com>, Bill Altland <bsaltland@hotmail.com>

Dear Board members,

Here is a copy of the letter Barbara and I wrote to Mr Gilbertson, Director for HSS and Rick Urion. I also got a call from Nancy Lewis of Purdue Pharma and she and Linda Barefoot have a meeting with Rep Chenault and a Senator from that area this week. She will let me know how it went later.

Margaret

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


From: "Barbara Roche" <barbara_roche@dced.state.ak.us>

To: "Margaret Soden" <cardinal@ptialaska.net>

Sent: Wednesday, December 10, 2003 1:08 PM

Subject: Letter to Legislative Liason

> Dear Margaret,
>
> Here is the letter to Mr. Gilbertson and Rick Urion, with the addresses,
> etc. If this looks OK to you, I will send the letter and the
> attachments out from here. I will sign "Barbara Roche for Margaret
> Soden" under your name and then send you a copy of the signed letter.
>
> Barbara
>

 Legislative Liason letter on rx drug abuse.doc	<p>Name: Legislative Liason letter on rx drug abuse.doc</p> <p>Type: Microsoft Word Document (application/msword)</p> <p>Encoding: base64</p> <p>Download Status: Not downloaded with message</p>
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Frank H. Murkowski, Governor

Alaska Department of Community
and Economic Development

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: License@dced.state.ak.us • Website: www.dced.state.ak.us/occ/

December 10, 2003

Mr. Joel Gilbertson, Commissioner
Department of Health & Social Services
Office of the Commissioner
PO Box 110601
Juneau, AK 99811-0601

CC: Mr. Rick Urion, Director
Department of Community and Economic Development
Division of Occupational Licensing
PO Box 110806
Juneau, AK 99811-0806

Dear Mr. Gilbertson and Mr. Urion,

The Alaska State Board of Pharmacy has had an on-going committee on prescription drug abuse issues. In the first session of the Twenty-Third Legislature of the State of Alaska, Representative Mike Chenault of Kenai introduced HB 239, which would establish an Internet database for tracking controlled substances. At our board meeting October 2-3, 2003, we discussed HB 239 and Internet monitoring systems in general. We also heard a report from a representative of the Anchorage office of the Federal Drug Enforcement Administration (DEA). Alaska has a real problem with the abuse of prescription drugs and this abuse/misuse costs the State of Alaska millions of dollars every year.

The Board of Pharmacy is in support of the spirit of HB 239 but we have some concerns. Most successful state prescription monitoring systems are under the auspices of a unit of state government that deals with health care rather than law enforcement. Prescribers, as well as pharmacists, are an important part of these same programs. Although these programs cost a significant amount of money to set up and maintain, the costs may be offset by the decrease in funds needed to treat the harmful effects of prescription drug abuse. At our meeting the Board made a motion to recommend changes to HB 239 to have the Department of Health and Social Services establish the monitoring database following the guidelines of the National Association of Boards of Pharmacy model. We have contacted Representative Chenault with our request. I am enclosing a copy of the

letter we wrote to Representative Chenault, the draft minutes of our discussion and motion from our October Board meeting, and an outline of the model for state drug-monitoring programs.

If you would like more information you can contact the members of the Board's committee on prescription drug abuse issues, Bill Altland or Margaret Soden, or our Licensing Examiner, Barbara Roche.

Thank you,
Margaret Soden
Chair, Alaska Board of Pharmacy

Barbara Roche, LICENSING EXAMINER, BOARD OF PHARMACY
FOR
MARGARET SODEN, CHAIR,

Margaret Soden, RPh
(907) 479-6793, cardinal@ptialaska.net

Bill Altland, RPh
(907) 826-5750, bsaltland@hotmail.com

Encl: "Draft" minutes of Alaska State Board of Pharmacy meeting, October 2-3, 2003
Model State Prescription Monitoring Programs outline
Board of Pharmacy Roster

abuse of Schedule II drugs in general, and Oxycontin in particular, seems to be more widespread in Alaska than in other areas of the country.

- Ms. Soden distributed copies of "Model State Prescription Monitoring Programs" and a memo with "Notes on HB 239". HB 239, sponsored by Representative Chenault, is pending legislation that would establish an Internet database for tracking controlled substances. Although the Board supports a tracking system for controlled substances, they felt that there are some areas that HB 239 does not address and recommends that the bill be more in line with the NABP Model Regulations and state prescription monitoring programs adopted or being looked at by many states. Ms. Soden noted that the current HB 239 does not require prescriber participation in the tracking database and that prescriber buy-in is critical for a prescription monitoring program to be effective. Ms. Soden stated that starting up a state online tracking system is costly, noting that for a similar system in Kentucky, the start up costs was \$415,000 with yearly operating costs of \$500,000. On the other hand, the Board noted that there are costs to the public health and safety in not committing resources to the prescription drug abuse problem. Ms. Soden noted that the Model Regulations recommend a combined effort by all members of the health care community to achieve an effective prescription-monitoring program. In addition the Board noted that the responsibility for the online tracking system by Department of Health and Social Services instead of the Department of Public Safety could result in greater participation by the whole health care community. The Board discussed effective ways to make recommendations to Representative Chenault for changes in HB 239. Mr. Pauley suggested that representatives of the Board contact the Department of Community and Economic Development Legislative Liaison and Department of Health and Human Services Commissioner Gilbertson, as well as sending proposed rewording of the bill to Representative Chenault. Mr. Pauley noted that the bill is at the stage where the sponsor may file a "Sponsor Substitute" of a reworded bill. Ms. Soden and Mr. Altland will draft a letter recommending proposed language based on the Prescription Monitoring Program Model Regulations for HB 239 to be sent to Representative Chenault and the DCED Legislative Liaison.

On a motion duly made by Mr. Pauley, seconded by Ms. Bueler, and approved unanimously, it was

RESOLVED that the Board of Pharmacy recommend proposed legislative language relating to HB 239 that would state that the Department of Health and Social Services develop the data base and that the language of the legislation be amended to provide access to the data base by both

prescribers and dispensers, and that the language follow the criteria included the NABP Prescription Monitoring Program Model Regulation. The Board will contact the DCED Legislative Liaison and Representative Chenault, the bill sponsor, to express these concerns.

Mr. Altland stated that the Substance Abuse Counselors will be meeting in Fairbanks at the end of the month and suggested that a board member attend. Ms. Knasiak suggested that Pam Watts, the Executive Director of the Alcoholism and Substance Abuse Board be contacted. Ms. Soden will contact Ms. Watts.

Discussion of prescription drug abuse issues and presentation by DEA Agent Terry Marquart will continue after lunch.

Agenda Item 5

Regulations (Continued from October 2, 2003 Discussion)

2. 12 AAC 52.480 (GENERIC LABELING) Will be tabled to Agenda Item 19, New Business.
3. 12 AAC 52.130 REVIEW OF APPLICATIONS FOR REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF THE STATE. The regulation, which was included in the May 9, 2003 "Supplemental Notice of Proposed Changes in the Regulations of the Board of Pharmacy", was adopted by the Board at the July 25, 2003 meeting. Original language ("A pharmacy located outside the state that ships, mails, or delivers prescription drugs more than twice annually to individual patients in the state shall register with the board.") was inadvertently deleted from the "Supplemental Notice...." The Board stated that its intention was to keep the original language that defined "regularly" and to add the checksheet regulation as stated in the "Supplemental Notice....", not to repeal the first sentence of 12 AAC 52.130. Mr. Brower of the Dept. of Law stated in an email that a new public notice would not be required.

On a motion duly made by Ms. Bueler, seconded by Ms. Knasiak, and approved unanimously, it was

RESOLVED that in 12 AAC 52.130, the original definition of "regularly" ("A pharmacy located outside the state that ships, mails, or delivers prescription drugs more than twice annually to individual patients in the state shall register with the board.") should be included in the final regulation along with the checksheet regulation (a) and (b).

Fw: Draft of letter to Chenault

Subject: Fw: Draft of letter to Chenault

Date: Sun, 14 Dec 2003 08:34:24 -0900

From: Soden's <cardinal@ptialaska.net>

To: "Younkins, Rick" <richard_younkins@dced.state.ak.us>,

"Roche, Barbara" <barbara_roche@dced.state.ak.us>,

Mike Pauley <mikepauley@alaska.com>, **Mark Bohrer <markboh@aol.com>**,

Laura Lee Nelson <pharmhog@alaska.net>, **Gerry Knasiak <g.knasiak@worldnet.att.net>**,

"Bueler, Cindy" <cbueler@alaska.com>, **Bill Altland <bsaltland@hotmail.com>**

Board members,

Another copy of letter-this one to Rep Chenault. Barbara sent it out on official department stationery. She has really done alot of work on this, plus getting stuff together for the lawsuit and working with Gayle on that, getting travel authorizations for Mark and me to attend the MPJE meeting in January, PLUS all the other stuff she does for us all the time.

Margaret

— Original Message —

From: Soden's

To: Roche, Barbara

Sent: Monday, November 24, 2003 8:55 AM


Subject: Draft of letter to Chenault

Barbara,

Here is a pretty clean draft of a letter to Rep Chenault. Would you look it over and make comments please. I am going to mark the copies of the pages of the minutes with big words "draft" since they haven't been approved yet but the wording you used for our discussions was so good that I thought it was easier to send the "draft minutes" rather than rewrite it. I would like to get it out in the next few days.

Thanks,

Margaret

 Letter to Chenault.doc	Name: Letter to Chenault.doc Type: Microsoft Word Document (application/msword) Encoding: base64 Download Status: Not downloaded with message
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Frank H. Murkowski, Governor

Alaska Department of Community
and Economic Development

Division of Occupational Licensing

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: License@dced.state.ak.us • Website: www.dced.state.ak.us/occl

June 4, 2003

Representative Mike Chenault,
District 34
State Capitol, Room 502
Juneau, AK 99801-1182

RE: HB 239

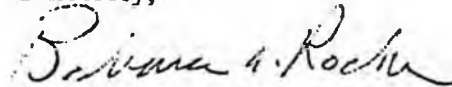
Dear Representative Chenault,

Please find enclosed information from the National Association of State Controlled Substances Authorities on "Prescription Monitoring" and recommendations for "real-time data collection systems.

This information was forwarded to the Alaska Board of Pharmacy and may be helpful for your recently introduced HB 239.

Please contact the Board of Pharmacy for additional information or assistance.

Sincerely,



Barbara Roche
Licensing Examiner
Alaska Board of Pharmacy

Encl: Findings and Recommendations of the
Prescription Monitoring Standards Workgroup

**NATIONAL ASSOCIATION OF STATE
CONTROLLED SUBSTANCES AUTHORITIES**

**Katherine Keough, Executive Director
72 Brook Street, Quincy MA 02170
Tel: 617-472-0520 Fax: 617-472-0521**

**Findings and Recommendations of the
Prescription Monitoring Standards Workgroup**

February 26, 2003

Background:

At the October 2002 Annual Educational Conference of the National Association of State Controlled Substances Authorities (NASCSA) held in Myrtle Beach, SC, the Organization adopted resolution 2002-02 stating its opposition to passage of federal legislation establishing the National All Schedules Prescription Electronic Reporting Act of 2002 (NASPER). The resolution also charged the NASCSA Executive Committee with the task of convening a working group to include the Alliance of States with Prescription Monitoring Programs (Alliance), the U.S. Drug Enforcement Administration, state, federal and industry representatives and others, to make recommendations on prescription monitoring standards and methods to implement such standards. The Resolution also stated that methods should be explored by which data could be shared between states, with the federal government and with prescribing practitioners.

In response to this charge, the NASCSA Executive Committee convened a meeting of the Prescription Monitoring Standards Workgroup in Orlando, Florida on January 23 -25, 2003. The working group was comprised of sixteen individuals representing the constituencies set forth in the resolution. The list of participants is attached to this report (see attachment A).

Recommendations of the Workgroup:

The Workgroup discussed both general concepts and methodology relative to standards for data collection that would facilitate uniformity among states. It also reviewed the specific data elements that comprise the optimal data set identified in the Alliance/NASCSA Prescription Monitoring Program Model Act of 2002, as well as those additional elements that are collected by each of the existing state prescription monitoring programs. Noted below, are the general procedural concepts that the Workgroup recommends as necessary to facilitate optimal data sharing, standards for the data elements recommended in the Model Act and where appropriate a listing of the best sources of that data.

• **General concepts:**

1. While not discouraging the development of "real-time" data collection systems, it was the consensus of the group that the advantages of such systems are presently outweighed by the substantially higher costs associated with their development and operation. Additionally, directing resources at "real-time" data collection would almost certainly siphon funding and other available resources from regulatory and enforcement programs that must accompany a data collection system to ensure its overall

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effectiveness. The Workgroup recommends that monitoring programs collect data no less than every thirty days. This collection period, considering available technologies and the ability to provide a timely regulatory response, is believed to be appropriate;

2. Legislative language concerning prescription monitoring programs should be technology neutral to allow for commonly accepted electronic methods of transmitting data as well as the implementation of new technologies. Any specific requirements should be set forth in regulations, rather than statute, to allow for greatest flexibility and adaptability to new technologies. Current technologies include, but are not limited to, secure Internet browsers, modems and hard media including diskettes and tape cartridges. The use of hardcopy reporting is discouraged because it is time consuming and prone to increased rates of errors in data entry;

3. There is much to be gained by each of the participating groups, specifically organizations that set standards, regulatory entities and industry, in agreeing on common standards for data collection. Organizations that set standards can more effectively develop accepted standards among their respective groups, while commonality in the data collected by various state regulatory entities can facilitate interstate sharing of data among these groups in an efficiently and effective manner. Additionally, industry benefits in that they have a single set of standards by which to collect data for all states;

4. It is imperative that data collection programs operating in different states collect universally understood and accepted data elements. Failure to achieve this goal represents a primary barrier to the interstate sharing of data. As an example, if a state uses their own "in-state license number" to identify the pharmacy provider, that number has no meaning in another state. It would be preferable to utilize a universally accepted identifier such as the Drug Enforcement Administration (DEA) registration number that is recognizable across state boundaries. If this isn't feasible, states should at least ensure that they have translation tables to enable states to translate state-specific data elements into standard elements.

- **Recommended Data Elements:**

In its review, the Workgroup utilized the data elements contained in Section 5(b) of the Prescription Monitoring Program Model Act of 2002 (see attachment B) that was jointly adopted by the "Alliance" and "NASCSA", as well as a recent survey that was conducted by NASCSA identifying the data that was being collected by state prescription monitoring programs. The Workgroup recommends that the data elements enumerated in the Model Act as well one additional element specifically, "days supply", be collected by prescription monitoring programs. Where appropriate, the Workgroup has listed what it believes to be the best source of such data. Next best data sources are listed as second and third.

To ensure a full understanding of the Workgroups recommendations it is important that we define the terminology used in our discussions:

- **Data element**- a specific data field that is collected as part of a monitoring program such as the "prescription number"

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- **Data source** – where specific data is obtained from, such as the patient's Social Security number or their motor vehicle operator's license number
- **"NCPDP number"**- the provider number established by the National Council for Prescription Drug Programs that is used by pharmacies to file claims for services. (This has also been referred to as the NABP number)

The Workgroup recommends that the following standards be applied to the data elements that the Alliance and NASCSA recommend be collected by state prescription monitoring programs:

Data Element	Data Source
1. Dispenser identification number	1. DEA number 2. NCPDP provider number
2. Date prescription filled	
3. Prescription number	1. Pharmacy or dispenser assigned number
4. Prescription is new or is a refill	
5. NDC code for drug dispensed	
6. Quantity of drug dispensed	1. Metric quantities should be used where appropriate (i.e. liquids, injectables)
7. Number of days supply of the drug	1. Indicated on prescription or calculated by the dispenser
8. Patient identification number	1. Government issued ID such as motor vehicle operator's license number 2. Social Security number (raises confidentiality issues) 3. Universal patient insurance number if it becomes available in future
9. Patient last name	
10. Patient first name	
11. Patient street address	
12. Patient city	
13. Patient state	
14. Patient postal code	1. Allow 9 digit zip codes to be entered
15. Patient date of birth	
16. Prescriber identification number	1. DEA number
17. Date prescription issued by practitioner	
18. Person who receives the prescription from the dispenser, if other than the patient	1. Government issued ID such as motor vehicle operator's license number 2. Social Security number (raises confidentiality issues) 3. Individual's name
19. Source of payment for prescription	1. This element should allow for distinction between "Cash" / "Medicaid" / "3 rd party" / "Medicare" or other federal option as it becomes available
20. State issued serial number	If state chooses to establish a serialized prescription system

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• **Additional recommendations:**

1. The Workgroup recommends that NASCSA and the Alliance jointly adopt a modification to Section 5 (b) of the Prescription Monitoring Program Model Act of 2002, specifically to add the data element "number of days supply".
2. The Workgroup recommends that NASCSA and the Alliance jointly approve and adopt the findings and recommendations of this report as a means of ensuring that members of both organizations are provided with uniform information concerning prescription monitoring data standards.
3. The Workgroup recommends that all standards organizations modify their present standards, where necessary, to establish the "source of payment" as a standard data element to be collected in a manner that provides for a distinction between the following sources of payment "cash" / "Medicaid" / "3rd party" / "Medicare".
4. Since no state currently requires the reporting of "source of payment for prescription", the Workgroup recommends that states that are considering requiring the reporting of this data element, be aware that there may be a temporary delay in achieving full compliance, as dispensers and software vendors work to modify their data management systems to provide for the capture of this data.

Adoption of the report:

This report was approved by vote of the Executive Committee of the National Association of State Controlled Substances Authorities on March 3, 2003.

Attachment A

**NATIONAL ASSOCIATION OF STATE
CONTROLLED SUBSTANCES AUTHORITIES**
Katherine Keough, Executive Director
72 Brook Street, Quincy MA 02170
Tel: 617-472-0520 Fax: 617-472-0521

**Prescription Monitoring Program Standards Work Group
January 24-25, 2003 – Orlando, Florida
List of Participants**

TIM BENEDICT Assistant Executive Director Ohio Board of Pharmacy 77 S. High Street, Room 1702 Columbus, OH 43215-6126 Tel: 614-466-4143 Fax: 614-752-4836 Email: tbenedict@bop.state.oh.us	STACY MARKO U.S. Drug Enforcement Admin. 600 Army Navy Drive ODLP Arlington, VA 22202 Tel: 202-307-8352 Fax: 202-353-1079 E-mail: anamarko@dialup.usdoj.gov
GRANT CARROW, Ph.D. Director, Drug Control Program MA Department of Public Health 305 South Street Jamaica Plain, MA 02130 Tel: 617-983-6700 Fax: 617-524-8062 E-Mail: grant.carrow@state.ma.us	LYNNE GILBERTSON National Council For Prescription Drug Programs 9240 E. Raintree Drive Scottsdale, AZ Tel: 480-477-1000 X120 E-mail: lgilbertson@ncpdp.org
DANNA DROZ Drug Control Branch Manager Kentucky Dept. of Public Health 275 E. Main Street-HS2GW-B Frankfort, Kentucky Tel:(502) 564-7985 Fax:(502) 564-2203 E-mail: danna.droz@mail.state.ky.us	JAMES GIGLIO Director NY Bureau of Controlled Substances 433 River Street Troy, New York 12180 Tel:(518) 402-0707 FAX(518)402-0709 E-mail:jgg01@health.state.ny.us
DAVID DRYDEN Director, Office of Narcotics & Dangerous Drugs Jesse Cooper Building, PO Box 637 Dover, DE 79903 Tel: 302-739-4798 Fax: 302-739-3071 E-mail: ddryden@state.de.us	WILL LOCKWOOD American Society for Automation in Pharmacy 492 Norristown Road, Suite 160 Blue Bell, PA 19422 Tel: 610-825-7783 Fax: 610-825-7641 E-mail: will@computertalk.com

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<p>ALAN MUST Executive Director State Government & legislative Affairs Purdue Pharma L.P. One Stamford Forum 201 Tresser boulevard Stamford, CT 06901-3431 Tel: 203-588-8121 Fax: 203-588-6033 E-mail: alan.must@pharma.com</p>	<p>MARY RYAN Vice President, Regulatory Affairs Medco Health Solutions Inc. 100 Parsons Pond Drive Franklin Lakes, NJ 07417 Tel: 201-269-6900 Fax: 201-269-1258 E-mail: mary_ryan@medcohealth.com</p>
<p>KEVIN NICHOLSON Director, Pharmacy Regulatory Affairs National ASSN of Chain Drug Stores 413 N. Lee Street Alexandria, VA 22314 Tel: 703-837-4183 Fax: 703-549-0771 E-mail: knicholson@nacds.org</p>	<p>VICKI SEEGER U.S. Drug Enforcement Admin. 600 Army Navy Drive ODLP Arlington, VA 22202 Tel: 202-307-7283 Fax: 202-353-1079 E-mail: vseeger@dialup.usdoj.gov</p>
<p>CHARLES RAY NIX Director, Pharmacy Department Department of Public Health P.O. Box 1700 Jackson, MS 39205 Phone: (601) 713-3471 Fax: (601) 364-2670 Email: cnix@msdh.state.ms.us</p>	<p>KAREN TANNERT Drugs & Medical Devices Division Texas Department of Health 1100 West 49th Street Austin, Texas 78756 Tel:(512) 719-0237 E-mail: karen.tannert@tdh.state.tx.us</p>
<p>JOANEE QUIRK Nevada Board of Pharmacy 555 Double Eagle Court #1100 Reno, NV 89511 Tel: 775-850-1440 Fax: 775-850-1444 E-mail: jquirk@govmail.state.nv.us</p>	<p>WILLIAM P. WARD Chief of Enforcement Operations CT Department of Consumer Protection 165 Capitol Avenue Hartford, Connecticut 06106 Tel:(860) 713-6078 Fax:(860) 713-7233 E-mail: william.ward@po.state.ct.us</p>

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Attachment B

**Alliance of States with Prescription Monitoring Programs
and
National Association of State Controlled Substances Authorities**

PRESCRIPTION MONITORING PROGRAM MODEL ACT

October 2002

Section 1. Short Title.

This Act shall be known and may be cited as the "Prescription Monitoring Program Model Act."

Section 2. Legislative Findings

[insert state findings]

Section 3. Purpose

This act is intended to improve the state's ability to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances or other licit drugs of abuse.

Section 4. Definitions

- (a) "Controlled substance" has the meaning given such term in [section of the state controlled substances act].
- (b) [Designated state agency] means the state agency responsible for the functions listed in Section 5.
- (c) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued and/or for whom a drug is dispensed.
- (d) "Dispenser" means a person who delivers a Schedule II-V controlled substance as defined in subsection (e) to the ultimate user, but does not include:
 - (I) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care [or the dispensing of prescriptions for controlled substances at the time of discharge from such a facility];
 - (II) a practitioner, or other authorized person who administers such a substance; or

(III) a wholesale distributor of a Schedule II-V controlled substance.

- (e) "Schedule II, III, IV and/or V controlled substances" mean controlled substances that are listed in Schedules II, III, IV, and V of the Schedules provided under [insert section of the state controlled substances act] or the Federal Controlled Substances Act (21 U.S.C. 812).

Section 5. Requirements for Prescription Monitoring Program.

- (a) The [designated state agency] shall establish and maintain a program for the monitoring of prescribing and dispensing of all Schedule II, III and IV controlled substances [and, if selected by the state, Schedule V controlled substances and/or additional drugs identified by the designated state agency as demonstrating a potential for abuse] by all professionals licensed to prescribe or dispense such substances in this state.
- (b) Each dispenser shall submit to the [designated state agency] by electronic means information regarding each prescription dispensed for a drug included under paragraph (a) of this section. The information submitted for each prescription shall include, but not be limited to:
- (I) Dispenser identification number.
 - (II) Date prescription filled.
 - (III) Prescription number.
 - (IV) Prescription is new or is a refill.
 - (V) NDC code for drug dispensed.
 - (VI) Quantity dispensed.
 - (VII) Patient identification number.
 - (VIII) Patient name.
 - (IX) Patient address.
 - (X) Patient date of birth.
 - (XI) Prescriber identification number.
 - (XII) Date prescription issued by prescriber.
 - (XIII) Person who receives the prescription from the dispenser, if other than the patient.
 - (XIV) Source of payment for prescription.
 - (XV) State issued serial number [if state chooses to establish a serialized prescription system].
- (c) Each dispenser shall submit the information in accordance with transmission methods and frequency established by the [designated state agency]; but shall report at least every thirty days, between the 1st and the 15th of the month following the month the prescription was dispensed.
- (d) The [designated state agency] may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or

other means, provided all information required in paragraph (b) of this section is submitted in this alternative format.

Note: the following paragraphs, (e) - (h), are intended for those states that choose to establish a serialized prescription system as part of the prescription monitoring program.

- (e) A serialized [single copy or multiple copy] prescription form, shall be issued by the [designated state agency] to individual [insert "and institutional" if practitioners in health care institutions issue prescriptions that can be filled in pharmacies outside the institutions] prescribers and shall be used for all prescriptions for drugs in [Schedule II, III, IV and/or V] controlled substances. Each series of prescriptions shall be issued to a specific prescriber [in consecutively numbered blocks of ____] and shall only be used by that prescriber.
- (f) Each prescriber shall only prescribe drugs in [Schedule II, III, IV and/or V] controlled substances on official serialized prescription forms issued by the [designated state agency].
- (g) Each dispenser shall only dispense drugs in [Schedule II, III, IV and/or V] controlled substances on such official serialized prescription forms.
- (h) The [designated state agency] shall charge each prescriber an amount sufficient to cover the costs of processing requests for forms, printing the prescription forms, and operating the prescription monitoring program.

Note: States may chose to use alternative method than paragraph (h) to pay the cost of their serialized prescription forms and monitoring system, for example, through controlled substances registration fees. In such instances, paragraph (h) can be deleted.

Section 6. Access to Prescription Information.

- (a) Prescription information submitted to the [designated state agency] shall be confidential and not subject to public or open records laws, except as provided in paragraphs (c), (d), and (e) of this section.

Note: States may choose to also amend their open record statutes to specifically exclude from disclosure prescription information collected by their prescription monitoring program.

- (b) The [designated state agency] shall maintain procedures to ensure that the ~~privacy and confidentiality of patients and patient information collected,~~ recorded, transmitted, and maintained is not disclosed to persons except as in paragraphs (c), (d), and (e) of this section.

- (c) The [designated state agency or entity] shall review the prescription information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the [designated state agency] shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation.
- (d) The [designated state agency] shall be authorized to provide data in the prescription monitoring program to the following persons.
- (I) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients.
 - (II) An individual who requests the individual's own prescription monitoring information in accordance with procedures established under [insert state statute granting individuals access to state held data concerning themselves].
 - (III) [insert name or type of state boards and regulatory agencies that supervise or regulate a profession that is authorized for controlled substances activity].
 - (IV) Local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing licit drugs.
 - (V) [insert state Medicaid agency] regarding Medicaid program recipients.
 - (VI) [insert judicial authorities] under grand jury subpoena or court order [or equivalent judicial process in each state].
 - (VII) Personnel of the [designated state agency] for purposes of administration and enforcement of this Act, or [insert state controlled substances act], [if any other state statute is applicable, insert "or" and reference the other statutes].
- (e) The [designated state agency] may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and/or persons who received prescriptions from dispensers.

Section 7. Authority to Contract

The [designated state agency] is authorized to contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor shall be bound to comply with the provisions regarding confidentiality of prescription information

in Section 6 of this Act and shall be subject to the penalties specified in Section 8 of this Act for unlawful acts.

Section 8. Rules and Regulations.

The [designated state agency] shall promulgate rules and regulations setting forth the procedures and methods for implementing this Act.

Section 9. Unlawful Acts and Penalties.

- (a) A dispenser who knowingly fails to submit prescription monitoring information to the [designated state agency or entity] as required by this Act or knowingly submits incorrect prescription information shall be subject to [insert appropriate administrative, civil or criminal penalty].
- (b) A person authorized to have prescription monitoring information pursuant to this Act who knowingly discloses such information in violation of this Act shall be subject to [insert appropriate administrative, civil or criminal penalty.]
- (c) A person authorized to have prescription monitoring information pursuant to this Act who uses such information in a manner or for a purpose in violation of this Act shall be subject to [insert appropriate administrative, civil or criminal penalty.]

Section 10. Severability.

If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Section 11. Effective Date.

This Act shall be effective on [insert specific date or reference to normal state method of determination of the effective date].

**Adopted by Alliance of States with Prescription Monitoring Programs,
October 22, 2002.**

**Adopted by National Association of State Controlled Substances
Authorities, October 25, 2002**

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Subject: Report from the Drug Abuse Ad Hoc committee

Date: Sun, 28 Sep 2003 08:42:26 -0800

From: "Soden's" <cardinal@ptialaska.net>


To: "Younkins, Rick" <richard_younkins@dced.state.ak.us>,
"Roche, Barbara" <barbara_roche@dced.state.ak.us>,
"Mike Pauley" <mikepauley@alaska.com>, "Mark Bohrer" <markboh@aol.com>,
"Laura Lee Nelson" <pharmhog@alaska.net>,
"Gerry Knasiak" <g.knasiak@worldnet.att.net>, "Bueler, Cindy" <cbueler@alaska.com>,
"Bill Altland" <bsaltland@hotmail.com>

Dear board members,

We have a time slotted for discussing drug abuse issues and I have asked our own board member, Bill Altland, to tell us about his very bad experience with an armed robber while he was working in Wasilla. Since I would prefer that we allow plenty of time to hear from Bill, I am sending you my notes on various discussions I have had regarding HB 239. I asked Barbara to include a copy of HB 239 in your packets. I think it is interesting that we didn't know about this bill during the last session and I just stumbled across it when I was tracking HB 270 and noticed at the bottom of the "track your bill" page that you can link to other bills that contain the words or phrases "drugs", "pharmacist" etc. I am not sure if there were pharmacists in the Kenai area involved in writing this bill, but I do know that at least this board member didn't know about it but it directly effects our board since it is being placed in Chapter 80.

I know our packets looked sort of skinny, but I have a feeling that we will have a very busy meeting. Don't we always?!!

See you soon,
Margaret

 Notes on House Bill 239.doc	Name: Notes on House Bill 239.doc Type: Microsoft Word Document (application/msword) Encoding: base64 Download Status: Not downloaded with message
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Memo to: Board of Pharmacy members

From: Margaret Soden, ad hoc committee of one on issues dealing with drug abuse

September 28, 2003

NOTES ON HB 239:

August: Called Rep Chenault's office in late July-early August and found out that Sue Wright was the person on the staff "who knows all about the bill". Asked that she return my call, didn't hear from her, so I called the office again, left several messages on the answering machine. I finally did talk with Sue personally and asked her the following questions: (answer in italics)

- Why is this bill in Chapter 80, Pharmacy statutes, when the Department in charge is Public Safety? Shouldn't it be in Chapter 30, Controlled Substances, which is enforced by the Department of Public Safety? *We are working on that, this was written in a hurry at the end of the session so it could get introduced and it is not the final bill.*
- Where do the doctors fit in this, why aren't they also supposed to tap into this internet system to see if the patient has been given these drugs recently? *Oh, we can't ask them to do that.*
- How will the pharmacist access the system? *Oh, there will be a dual transmission with an insurance claim and the patient has an ID number assigned to them. The claim is automatically transmitted to Health and Human Services.*
- What is the pharmacist supposed to do if the person has had the drug recently? *Just don't fill the Rx.*
- How is it determined that the pharmacist can't fill a prescription? *There is a "threshold" on the drugs.*
- What drugs will be covered? *Schedule II drugs and Oxy-contin for sure, you know that is really abused.*
- Why not some other drugs that are not Schedule II's, but also a problem like Vicodin? *No answer other than that she herself took Vicodin.*

Then Ms Wright got an urgent phone call that needed her attention, she said she would call me back the next day and as of September 28, I have not heard from her nor have I called her.

Follow-up questions:

- Who will pay for this?
- What about other prescribers like ANP and dentists?
- Who "assigns" these ID numbers to patients?
- How is the "person designated in the secure Internet data base as a person entitled to obtain a controlled substance on behalf of the patient" information obtained?
- Who establishes the "threshold" for the drugs? Will there be some consideration with regard to the prescriber's type of practice, i.e. oncologist, pain management?
- How does this mesh with HIPAA with regard to confidentiality?

- What about pharmacies who do not send claims to insurance companies electronically? We have several in Fairbanks who only do electronic claims for Medicaid. I'm sure there are others in the state.
- What about the person who pays cash?
- Since the prescribers have the "power of the prescription pad" why aren't they a BIG part of this whole thing?
- Is there any feedback to anyone?
- Why is this a system that targets the patients, not the overprescribing practitioners?
- Who will continuously monitor and enforce this?
- Since this is in Chapter 80, Pharmacy, and the Board of Pharmacy is responsible for implementing and enforcing statutes and regulations in this Chapter, are we supposed to now write regulations to carry this out?
- In Chapter 30, Controlled Substances, AS 17.30.100, powers of the Department of Public Safety (b) states that the "commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.155." AS 17.30.155, Confidentiality of certain information states "A practitioner engaged in medical practice or research may not disclose the name or identity of a patient or research subject that the practitioner is required to keep confidential unless ordered by a court to disclose it within the context of a criminal investigation or proceeding". Question: is this in the "context of a criminal investigation" when it is being done **BEFORE** filling a prescription?
- Why is the information transmitted to the Department of Health and Human Services when the statute is in Board of Pharmacy Chapter 80 and under the charge of the Department of Public Safety?

NOTES FROM MEETING WITH PURDUE PHARMA REPRESENTATIVES

On September 18, I had a meeting with two representatives from Purdue Pharma. Linda Barefoot, Regional Director for State Government Affairs and Nancy Lewis, PharmD, Director, Medical Liaisons contacted me and arranged to meet while they were in Alaska. The primary reason for their visit with me was to discuss HB 239 and prescription monitoring programs in other states. They had LOTS of information about both monitoring programs and the RxPatrol Initiative that has been established to "improve pharmacy security and identify pharmacy robbers".

HB 239: Linda has been trying to talk with Rep Chenault and, particularly his aide, Sue Wright, about this bill but she is not having much more luck than I am in getting Sue to return calls. Both Linda and Nancy arranged to go to Kenai for a meeting on the evening of Sept 18 and hoped to show them some of the other state programs for internet tracking of controlled substances as well as give them a sample of model regulations. Of course, Purdue Pharma has a vested interest in seeing that their product, Oxy-contin, does not become so restricted that they are impacted financially, but they do have some very good information about what a state program should include and how it could work. I will give Board members copies their model program outline at the meeting but these are the high points:

- The internet tracking would be for drugs in all DEA schedules and any "other drug of concern", not just Schedule II or Oxy-contin. (As an aside, Hydrocodone is more of a problem in Fairbanks than Oxy-contin).
- Prescribers **MUST** be a part of any program-they should be able to query the database on specific individuals **BEFORE** they write prescriptions.
- Data must be entered in a timely and efficient manner.
- A unit of state government primarily dealing with healthcare issues should control access to the database (as opposed to it being a unit of law enforcement) but law enforcement may also query the database about specific individuals with legal authority to do so.
- Information must be secure.

I showed them my list of questions and many of them are addressed in their model. They emphasized several times that *if prescribers don't buy in to this or are not a part of the program, it will fail.*

RxPatrol is an initiative that was just launched as a collaboration effort between law enforcement and industry "designed to collect, collate, analyze and disseminate pharmacy theft information in an attempt to:

- Help protect pharmacists
- Guard against potential robberies and burglaries, and
- Assist law enforcement to apprehend and successfully prosecute criminals"

It will also attempt to analyze theft information for trends and patterns. There is major funding from Purdue Pharma for this nationwide data clearinghouse. There is a web-site, www.rxpatrol.com set up.

I will give all of you copies of this information as well.

GAO Report: One of the other documents they had in their BIG notebook of stuff was the US General Accounting Office's May 2002 report on "Prescription Drugs: State Monitoring Programs Provide Useful Tool to Reduce Diversion". Highlights include:

- Monitoring programs must include education as well as law enforcement.
- Programs vary from state to state but most experts agree that drugs in all DEA classes should be covered and that each state should determine what their particular program will track.
- Most are electronic-not paper triplicates-to make the information more timely. Several states, which formerly had paper triplicates, have replaced that method with an electronic system.
- Most state programs operate reactively because they analyze data AFTER the fact but they are useful in suggesting trends or unusual prescribing practices or dispensing patterns that may suggest potential drug diversion, abuse or doctor shopping.
- All are costly and often the costs go up as the programs are utilized more. The more quickly the turnaround time for information, the more costly the program can become.
- These programs have helped shorten investigation time in law enforcement investigations in possible drug diversion cases.
- Programs have also helped reduce availability of abused drugs because they tend to reduce unwarranted prescribing and possible diversion. They may also impact the drugs most likely to be diverted just because the monitoring system exists.
- Confidentiality, initial cost and the challenge of maintaining funding are concerns with all states.
- **INTERESTING DEA FACT-ALASKA RANKS IN THE TOP 10 OF STATES BY THE NUMBER OF OXY-CONTIN PRESCRIPTIONS PER 100,000 PEOPLE.**

Linda and Nancy said they would let me know what they found out from Rep Chenault or Sue Wright but as of September 28, I have not heard back from them. I have e-mailed Nancy about our October meeting since she indicated that she might attend. If she isn't there in person, I hope she will send me an update.

Alaska Bureau of Alcohol and Drug Enforcement: I still hope to talk with someone involved in the Department of Public Safety's Alaska Bureau of Alcohol and Drug Enforcement. The person I have been told I need to talk to has an office in Anchorage and just returned from vacation in mid-September. Since my daughter-in-law works in the local Fairbanks office, I will keep trying (nagging??!!). My main questions for them will be are they interested in this and would they find it useful. My personal experience with forged/altered prescriptions has been rather discouraging. The local police and pharmacists work really hard to catch the forgers/scammers only to have the charges either dropped or reduced to nothing by the local District Attorney's office. Perhaps that is an issue that needs addressing.