

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10886 HOUSE JUDICIARY

# Alaska State Legislature

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## Senator Bettye Davis

### Sectional Analysis Senate Bill 8

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Section 1. Amends the crime of tampering with public records in the first degree<sup>1</sup> by adding a new form of that crime that is committed when someone engages in certain activities prohibited by AS 11.56.820(a)(1) or (2) and the public record relates to a child in the care or custody of the state.

## Committee Substitute for Senate Bill 8 (JUD)

- Amends the crime of tampering with public records in the first degree by elevating to a Class C Felony a new form of crime for persons that tamper with records in the following areas in Title 47. *Welfare, Social Services and Institutions*:
  - Chapter 10. Children in Need of Aid
  - Chapter 12. Delinquent Minors
  - Chapter 17. Child Protection
  - Chapter 20. Services For Developmentally Delayed or Disabled Children
  - Chapter 24. Protection of Vulnerable Adults

Specifically if the person who tampers with these records does so with the intent to conceal a fact material to an investigation or the provision of services covered under each of the areas named above.

Senate Bill 8 is designed to as a disincentive to those who would falsify these records.

## SB 8 Changes Underlined

### AS 11.56.815. Tampering With Public Records in the First Degree.

(a) A person commits the crime of tampering with public records in the first degree if the person violates

(1) AS 11.56.820(a)(3) with intent to obtain a benefit for that person or any person or to injure or deprive another person of a benefit; or

(2) AS 11.56.820(a)(1) or (2) with the intent to conceal a fact material to an investigation or the provision of services under AS 47.10, AS 47.12, AS 47.17, AS 47.20, or AS 47.24.

(b) Tampering with public records in the first degree is a class C felony.

### AS 11.56.820. Tampering With Public Records in the Second Degree.

(a) A person commits the crime of tampering with public records in the second degree if the person

(1) knowingly makes a false entry in or falsely alters a public record;

(2) knowingly destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that the person lacks the authority to do so; or

(3) certifies a public record setting out a claim against a government agency, or the property of a government agency, with reckless disregard of whether the claim is lawful, or that payment of the claim is not authorized in the budget of the government agency.

(b) In this section

(1) "certifies" means attesting to the existence, truth, or accuracy of facts, or that one holds an opinion, stated in a public record; the term includes the responsibilities for state officials set out in AS 37.10.030;

(2) "falsely alters" has the meaning ascribed to it in AS 11.46.580 ; and

(3) "makes a false entry" means to change or create a public record, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that the record so changed or created states or implies a fact that the maker knows is not true, or states or implies an opinion that the maker does not hold.

(c) Tampering with public records in the second degree is a class A misdemeanor.

## Provisions in Title 47 that are affected by CS for Senate Bill 8

### Title 47. Welfare, Social Services and Institutions

- Chapter 5. Administration of Welfare, Social Services and Institutions
- Chapter 7. Medical Assistance For Needy Persons
- Chapter 8. Assistance For Catastrophic Illness and Chronic or Acute Medical Conditions
- ▶ Chapter 10. Children in Need of Aid
- ▶ Chapter 12. Delinquent Minors
- Chapter 14. Juvenile Programs and Institutions
- Chapter 15. Uniform Interstate Compact On Juveniles
- ▶ Chapter 17. Child Protection
- Chapter 18. Programs and Services Related to Adolescents
- ▶ Chapter 20. Services For Developmentally Delayed or Disabled Children
- Chapter 21. Adventure-Based Education
- Chapter 23. Child Support Enforcement Agency
- ▶ Chapter 24. Protection of Vulnerable Adults
- Chapter 25. Public Assistance
- Chapter 27. Alaska Temporary Assistance Program
- Chapter 30. Mental Health
- Chapter 31. Mental Health Treatment Assistance Program
- Chapter 33. Assisted Living Homes
- Chapter 35. Child Care Facilities, Child Placement Agencies, Child Treatment Facilities, Foster Homes, and Maternity Homes
- Chapter 37. Uniform Alcoholism and Intoxication Treatment Act
- Chapter 40. Purchase of Services
- Chapter 45. Alaska Longevity Bonus
- Chapter 50. Office of Child Advocacy
- Chapter 55. Pioneers' Home
- Chapter 60. Multi-Purpose Senior Centers
- Chapter 62. Office of the Long Term Care Ombudsman
- Chapter 65. Service Programs For Older Alaskans and Other Adults
- Chapter 70. Interstate Compact On the Placement of Children
- Chapter 75. Social Services Planning
- Chapter 80. Persons With Disabilities
- Chapter 90. Displaced Homemakers

AS 12.55.125. Sentences of Imprisonment For Felonies.

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

- (1) if the offense is a second felony conviction, two years;
- (2) if the offense is a third felony conviction, three years.

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## Senator Bettye Davis

### Senate Bill 8

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## Background Materials



## A Critical Look At the Child Welfare System Falsification of Records



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Caseworkers often are caught in a Catch-22 situation, where they would have to doctor paperwork or have to acknowledge that they are not doing their job.

Benjamin Wolf -- American Civil Liberties Union  
September, 1996

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### FALSIFICATION OF RECORDS

In southwest Florida, a supervisor of child-abuse investigators instructed several caseworkers to falsify reports to improve his unit's performance numbers, according to a 1991 Health and Rehabilitative Services Inspector General report.

In Broward County, state records show some child-abuse investigators were also lying about their cases. The investigators, many in an evening unit that tended to get the most dire cases, sometimes failed to visit reported child victims for up to a year. They never interviewed key witnesses, and decided without enough information whether or not children suffered abuse.

Worse, some supervisors were aware of these problems and failed to take corrective action.[1]

Investigators in Dade and Broward Counties, along with southwest Florida "have been caught faking and mishandling investigative reports." [2]

Notes the *Miami Herald* in part of an ongoing series: "This indicates an endemic problem. And, in fact, similar reports have implicated HRS offices elsewhere." [3]

What are the effects of all of this on the children the caseworkers are supposed to be protecting? According to the May 24 edition of the *Miami Herald*, the results are devastating:

- Even though HRS is supposed to be monitoring his welfare. 14-month-old

Courtney Sirns is beaten for three months in a relative's home in Lauderdale. Two people warn that the child is in trouble, but the counselor supervising his care reports he is "doing fine." In October, he dies after being slammed into a metal door.

- Twice in 1991, HRS is told a Miami man is beating his children. Twice, police sav, HRS investigators take too long to show up, then dismiss the complaints. In December, the man's infant son, Akeem Oats, dies of a beating.
- A child-abuse investigator in Broward gets a report in June that a man is sexually assaulting his 11-year-old niece. The investigator does nothing. By the time HRS finally sends another investigator out in November, the girl has been raped.

In 1994, a teen who spent most of her life in foster care or shelter homes filed suit against the Florida agency, charging that years of neglect left her mentally and physically scarred.

The girl's story of beating, torture and starvation at a foster home, rejection, intimidation, and allegations of sexual abuse at others, was chronicled in a 1993 *Tampa Tribune* series called "Nobody's Child," in which she is identified only as Jane.

In 1979, Jane was beaten, burned, tied to a bed and nearly starved to death at one foster home. A Health and Rehabilitative Services investigator would conclude that her caseworker either condoned the abuse or falsified visitation records.

"It's a horror story, not unlike many I've heard," said HRS Secretary Jim Towe.<sup>[4]</sup>

Do these narratives represent isolated cases? Sadly, falsification of visitation records, case histories, and even evidence would appear to be more the rule than the exception among many child protective services caseworkers. And the problem is not limited to Florida.

In South Carolina, the supervisor of the Aiken County Child Protective Services unit, along with the supervisor of the County Treatment Unit were arrested and charged with falsifying the records surrounding the removal of Krystal Scurry and her brother from their home.

A total of six Social Services workers, including the County Director of Foster Care, would eventually be charged in connection with the case. The multiple charges would include ethics violations, falsification of records, neglect of duty and embezzlement.

None of this would have come to light had two-year-old Krystal Scurry not been raped and murdered at the hands of the foster mother's son--after having endured a year of physical abuse at the hands of her foster mother.

Krystal Scurry was one of five foster children killed in South Carolina foster homes between February 1991 and January 1992. [5]

## CULTURE OF LIES

In Louisiana, a 1992 case involved child protective caseworker Paula Bennett and her

supervisor Sheryl George. They were charged with misrepresenting facts concerning interviews with the plaintiff's children and the existence of crucial evidence, and of lying to a judge and the District Attorney.

The caseworkers claimed immunity from prosecution, but the Court of Appeals held that: "Any reasonable state actor employed in a capacity which embraces law enforcement would surely realize that misrepresenting or concealing facts to judges or prosecutors is a violation of the accused's guaranteed rights under the United States Constitution."[6]

Sometimes, child protective workers don't even bother to falsify their records. They simply don't maintain any.

In February of 1994, the state of Massachusetts terminated its contract La Alianza Hispana, a private agency that was supposed to be monitoring a Roxbury mother who allegedly scalded her 4-year-old son by plunging his hands into boiling liquid.

In at least nine of 17 cases reviewed by officials, families that should have been visited at least once a month by Alianza social workers had not been visited for a year, according to Massachusetts Department of Social Services Commissioner Linda Carlisle.

According to a source familiar with the investigation, Alianza was unable to produce any records for four families it was supposed to be monitoring. Carlisle also said Alianza case workers falsified reports, claiming to have visited some families when they had not.

A team of Department of Social Services officials reviewing the private agencies work reportedly wrote "outrageous" and "This is scary!" on some of their reports.[7]

In 1996, DSS commissioner Carlisle overhauled a Boston Department of Social Services office that lost track of two young boys under its watch who ended up dead, taking the unusual steps of firing a social worker and her supervisor and demoting two managers.

An internal review found that the social worker assigned to the case had filed no reports or records about the family, and had failed to enter any notations for any other family under her supervision for several months. Her supervisor did not review her casework, and had completed only six of the 360 quarterly reviews for which he was responsible.

At one point, about 40 employees came to the commissioner's office urging leniency. After Carlisle proceeded with the firings, union officials protested.[8]

So, too, did union officials protest the terminations of child protective caseworkers in a similar case in Illinois, where two caseworkers with the Department of Children and Family Services were charged with falsifying records in child-abuse cases and failing to make home visits that might have saved the lives of two children who later were murdered.

Hattie Roland was indicted by a Cook County grand jury on 63 counts of official misconduct and charged with failing to file reports, falsifying reports, failing to provide protective services and failing to make monthly family visits.

Diane Henton was indicted on eight counts of official misconduct on charges of closing a case improperly, failing to report abuse and failing to provide protective services.

Before being fired, both of the caseworkers had been promoted to supervisory positions.

A leader of the union that represents the Illinois department workers said that if the employees are being indicted for failing to adequately protect abused children, then "every single DCFS worker is guilty."

Said outspoken Cook County Public Guardian Patrick Murphy: "They lie, and they do it all the time. They can do this because there is nobody to scrutinize them. They are above the law."<sup>[9]</sup>

In a remarkably similar case, the Illinois Supreme Court upheld the firing of a caseworker who had falsified case records claiming that three girls she was supposed to monitoring were: "doing fine and have adjusted well to placement with the maternal grandmother."

In reality, the siblings had died months earlier in a fire that gutted their apartment, leaving their grandmother severely burned.<sup>[10]</sup>

A spokesman for the American Federation of State, County and Municipal Employees, which had successfully defended caseworker Vera DuBose in earlier proceedings, called the ruling a bad precedent for other cases involving agencies that drag their feet in disciplining workers.

Children's rights experts said that the case reflected larger problems at DCFS that were especially prevalent in the early 1990s, and agency critics said the case shed light on a "culture of lying" at DCFS.

Said Benjamin Wolf, the ACLU attorney who had successfully sued the agency to implement reforms in 1988: "Caseworkers often are caught in a Catch-22 situation, where they would have to doctor paperwork or have to acknowledge that they are not doing their job."

Like her companion workers in Cook County, DuBose had been promoted to a \$34,000 investigators position shortly after filing the false progress report on the girls.<sup>[11]</sup>

Her promotion proved to be her undoing when the caseworker assigned to replace her visited the girl's residence, only to discover a burned-out shell. Neighbors told him the girls had died in the fire.

A year later, she was still on the job. It took DCFS that long to make its decision to fire her.<sup>[12]</sup>

Around this time, another DCFS caseworker was convicted of lying to a judge in a case in which an infant had died.

Ahmad Muhammad told a Cook County Juvenile Court judge that a cocaine-addicted mother had completed her court-ordered drug treatment and parenting classes. On the basis of his testimony, the judge halted state monitoring of the woman. Six months later, she was charged with fatally beating her infant son while under the influence of cocaine.

Testimony at Muhammad's contempt trial revealed that he had never called the woman's drug-abuse counselor to check on her progress.

Just like his co-worker, a year later Muhammad was still on the job as a DCFS caseworker, notwithstanding that by this time it had come to light that he had a criminal conviction involving armed robbery, larceny and forgery in another state.

Ed McManus, a DCFS spokesman, said the agency had no prohibition against hiring someone with a criminal record, unless the crime involved child abuse, and that living on a job application is reviewed on a case-by-case basis.

"We take it seriously, but we need good people, and we're not going to throw away a good person without a careful review," he said.[13]

#### FROM WHITE-OUT TO WHITEWASH

In Utah, after months of speculation about an alleged "whitewash" of wrongdoing in the Moab office of the Division of Child and Family Services, officials released drafts of an internal investigation that was "less heavily edited" than one which had been previously released to the public.

The investigation by the Bureau of Service Review began in September 1995, when Assistant Attorney General Kenton Goodwill provided Human Services officials with 58 items that he considered as problems in the Moab office.

Goodwill suggested in his list of complaints that staffers were deliberately not closing cases once the court discharged them in order to inflate caseloads. While the audit did verify that some cases were not closed, it did not conclusively determine why.

The investigative report verified that some treatment plans were falsified by having been backdated, interviews with children were not timely or were inadequate, and children in state custody were sometimes not visited for several months.

The report concluded: "This problem also is not isolated to the Moab office. Previously, the bureau has identified this issue as a statewide problem." [14]

The extent to which some individuals with a vested interest in maintaining the status quo is perhaps best illustrated by the outcome of this case.

In 1997, Sherianne Cotterell, a member of a three-member monitoring panel overseeing the State's compliance with a recent lawsuit, resigned citing job stress as a key factor.

Cotterell's role in writing reports critical of agency compliance and in pursuing information about the audit being kept secret in Moab led to death threats against her.[15]

By 1998, a member of the monitoring panel said the number of children who have been compromised while the settlement languished was "mind-boggling."

Pam Rasmussen said the division has reshuffled people but not terminated incompetent

employees, and that some workers continue to fabricate paperwork.

Apparently, they weren't very clever at how they did it either. "I mean, if you're documenting something from 1997, don't use a '98 form. That goes to show they're not even thinking that through. They're fudging the documents," said Rasmussen.[16]

In Texas, a Grand Jury was convened in Tom Green County in November of 1987. The Jury was charged with the task of investigating the regional Child Protective Services division of its Department of Human Services. Among the Jury's findings:

- That false entries into records at DHS have been made in violation of the law
- That the system that exists appears to encourage inaccurate or false recordkeeping with no system of verification

The Grand Jury also found that management in one regional office has failed to correct inadequacies "although they have been aware that problems have existed for two to three years." Among the recommendations put forth by the Grand Jury:

That the Commissioner of DHS determine whether inaccurate or false recordkeeping, though in violation of law and policy, is nevertheless being practiced statewide, at worker and management levels . . . [17]

In 1992, an attorney with the Texas Department of Protective and Regulatory Services alleged that she was instructed by her supervisor to proceed on a parental rights termination case, even though she felt there were no grounds to pursue the case.

She first wrote letters to general counsel of the Department, claiming that there were ethical problems and possible due process violations in the case.

Some time later, she was told by a Department employee that the caseworker assigned to the case had been instructed to alter the case record.

Her efforts to expose the possible misrepresentations and due process violations included discussions with her supervisor, the State Bar of Texas, the trial court and opposing counsel in the case, as well as the Office of the Inspector General.

Thereafter, she filed a Whistleblower lawsuit alleging that she had been retaliated against by her supervisor for her efforts in exposing the possible misrepresentations, also filing a claim that a former supervisor in the Texas Department of Human Services had falsified time records.[18]

The suit would never go to trial, as it was dismissed on procedural grounds, but the problems suggested by this case would appear to be widespread.

In May of 1990, the Regional Director of Protective Services in the Arlington region of Texas distributed an internal memorandum to CPS Program Directors and Supervisors. The subject of the memorandum: "Alternations, Backdating and Reconstruction of Case Records."

The memorandum detailed some of the methods employed by child protective caseworkers to falsify case records and service plans: "There should be absolutely no changes made to the service plans by use of white-out, correction tape, adding information or backdating.

"If part of a case record has been lost or a particular service plan was not done, do not reconstruct the plans and back date the plans with the date that the plan was actually due."

The memorandum concludes: "It is important to remember that whether or not there was a deliberate attempt to falsify, backdate or alter a case, it does indicate alteration of a case record which is considered to be a public record and may result in legal or personnel consequence, up to one including dismissal." [19]

The problem of backdating forms to render the appearance of being in compliance is not limited to Texas. In New York City, a 1989 audit conducted by the Office of the Comptroller determined that in more than one in five cases studied, caseworkers had falsified records "by altering dates and backdating forms" in order to appear to be in compliance with deadlines that had actually been missed--sometimes by years.[20]

In California, seven Los Angeles County social service employees were fired or disciplined in 1995 when children under their jurisdiction were fatally abused by parents or caretakers, according to a confidential report requested by county supervisors.

The report examines the homicides of a dozen children whose families had at some point been under investigation for child abuse or neglect. Eight of the children were under the supervision of the county Department of Children and Family Services when they died.

In one case, the department investigation found that when the child's social worker went on leave, a supervisor failed to reassign the case and falsified records. As a result, the child was "not seen or assessed for six months prior to his death." [21]

Some years earlier in California, the 1988-89 San Diego County Grand Jury examined several cases, one of which involved a six-year-old girl had been removed from her home on allegations of excessive punishment on the part of her parents.

During her first ten months in placement, the girl had experienced eight changes in placement. The child was then sent out of the State with incomplete paperwork. When that placement failed, she was returned to San Diego without a definite plan for foster care. After three weeks in San Diego, her parents had still not been notified of her return. By this time, the girl had been in foster care for two and a half years.

The Grand Jury observed "inaccurate statements in the social worker's report that were not corrected," noting that the social worker further delayed resolution of the case by failing to communicate with personnel regarding court orders.

In another case the Grand Jury examined, discrepancies were found between police and medical reports, and the caseworker's continuing written account, in which she indicated suspicions against a grandmother that were contrary to all available evidence.

Yet another case involved "conflicting statements between the school personnel and the social worker's report regarding the dates the abuse occurred and was reported." [22]

Three years later, another Grand Jury conducted a comprehensive investigation of the San Diego County child welfare system, interviewing hundreds of system professionals, examining thousands of pages of documents, observing nearly one hundred juvenile dependency cases and listening to one month of sworn testimony.

According to a letter addressed to the Chairman of the Public Safety Committee, the San Diego Grand Jury had:

seen repeated episodes of social worker perjury in court reports, and indeed, even in court testimony;

heard testimony of social workers lying to adoptive parents about the past history of children available for adoption;

read numerous Social Study reports written by social workers and filled with innuendo, half truths and lies;

seen documented evidence of social workers conspiring to place children for adoption with their own family members even while reunification with natural family members was in process.

The Grand Jury offered 92 recommendations, including that the Board of Supervisors seek legislative changes in the immunity provisions which insulated social workers against accountability.[23]

### FRAUD, COERCION, PERJURY, COVER-UPS AND LIES

In 1996, Florida State Senator John Ostalkiewicz called for a full-scale investigation of the Florida Department of Health and Rehabilitative Services after hearing testimony from parents and experts, all of whom told horror stories of child abuse investigations mismanaged by the state agency.

"We need a full-scale investigation of this department, with subpoena power," he told a cheering audience at the Orange County Administration Center.

"What we're hearing about here is fraud, coercion, perjury, cover-ups and lies," he said. "It's time for this stuff to come to an end."

The most compelling testimony came from Glades County Chief Deputy Circuit Court Clerk Richard Blackwell, chairman of the HRS District 8 Human Rights Advocacy Committee, a volunteer advocacy group that investigates client complaints against HRS.

Blackwell told of his firsthand knowledge of the agency's misdeeds. His examples dated from 1991 to August 1995 and included the killing of a baby girl. Although neighbors told the media the baby's family had been reported for abuse several times, HRS workers denied it, Blackwell said.

When an HRS employee found records of those previous reports, agency workers secretly

destroyed them. he said.

"Documents were being altered, shredded," testified Charlotte Kay, a former HRS employee who watched the destruction of the documents. "It went on and on and on . . . It was nothing but a cover-up." [24]

The Massachusetts Department of Social Services finally admitted something many of its critics have long suspected -- that the department validates cases without even a cursory examination.

State social workers are filing abuse complaints against parents without interviewing them or their children, and then claiming in letters to the parents that family interviews were part of the investigation supporting the abuse charge.

The admission followed a decision to reverse an abuse claim against a doctor who was accused of neglect when she left her two young children unattended for less than two minutes in a locked car.

She was sent a letter 10 days after the incident informing her the charge of neglect against her was supported "after visiting with you and your children and talking to other people who know your family." The social worker had not talked to any of the people she cited and the doctor had been vacationing with her family in Colorado at the time. [25]

Falsifications such as these represent only the more overt practice of the art of deception, and cases such as these indicate fundamental problems in the child welfare system.

When caseworkers inflate their caseloads to increase or maintain government funding, or to justify inadequate response to crisis situations; when investigators falsify visitation records; when caseworkers falsify records to justify wrongful removals; and when supervisors ignore or encourage their deception, it is real children who suffer.

These children endure continued, and sometimes fatal abuse at the hand of heartless parents, foster parents and caretakers. Hundreds of thousands of children endure separation from loving families as they continue to "languish in inappropriate placements, with scarce hope of returning to their families or being adopted," all hope of a brighter future having been stripped away from them. [26]

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Last Updated June 6, 1998

## A Critical Look at the Child Welfare System Falsification of Records

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## Senator Bettye Davis

### Senate Bill 8

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## Newspaper Articles



Rilya Wilson, seen in this undated handout photo from Miami-Dade Police, was reported missing on April 25 — more than a year after she disappeared. (Miami-Dade Police/AP Photo)

## More Rilyas?

Too Many Cases, Too Few Resources Make Child Welfare Tough Job

By Geraldine Sealey

abcNEWS.com

June 5

— The case of 5-year-old Rilya Wilson, who was missing from a Florida foster home for more than a year before anyone noticed, has drawn the ire of a shocked public. But perhaps it is more surprising that there aren't more Rilyas out there.

Florida's child-welfare agency failed to see 1,237 children in its custody last month, officials announced this week. In Rilya's case, the state did not notice she was missing for 15 months. Her caseworker stands accused of falsifying monthly visit reports.

"Our job is humanly impossible," Christina Castel, a central Florida child protective investigator told state legislators on Tuesday. "I can't help but think we are being set up to fail." Castel took on 60 cases when she was hired two years ago — the professional standard of the Child Welfare League of America is 17 per caseworker.

Florida foster-care employees also lack cell phones, laptop computers, and access to critical information for their cases, they say.

The Rilya Wilson case has brought the overburdened, beleaguered child-welfare system into national attention. The Rev. Al Sharpton, a civil-rights activist, called this week for a criminal probe into the girl's disappearance, and Florida politicians holding hearings are looking for scapegoats.

Lawyers, government officials, caseworkers and advocates who devote their lives to child welfare say blame for the system's ills should be spread far and wide, and that even if Florida is a bad case study, its experience is not rare.

"Florida is like much of the rest of the country only more so," said Richard Wexler, executive director of the National Coalition for Child Protection Reform. "What happened in Florida could have happened in almost any system, but if someone described the [Rilya Wilson] story and asked what system it happened in, I would say Florida."

Problems From Washington State to D.C.

For sure, Florida's foster care misery knows company.

Almost 600,000 children are in government care across the country, and even the \$15 billion spent annually to protect children from neglect and abuse is not enough to help agencies meet their own legal and professional requirements.

All too often, experts say, caseworkers carry heavy loads that make it possible to lose track of children — or even impossible to keep track of them. The average caseworker's load is 40 to 60 children.

And historic, crippling state budget shortfalls further threaten the child-welfare systems across the country.

- In Iowa, nearly \$23 million has been slashed from state child-welfare programs even though child-abuse cases have skyrocketed to an all-time high, the *Des Moines Register* recently reported. At the same time, about 340 state human-services jobs have been cut or left vacant.

- In Mississippi, federal officials are keeping tabs on whether money and staffing shortages at the state welfare agency are endangering children and families. Almost half of the state's social worker positions are vacant, leaving less than 200

caseworkers handling 3,000 children.

- In Seattle, a newspaper disclosed dozens of instances in which children under the care of child-welfare workers died from abuse or neglect.
- The *Washington Post* won a Pulitzer Prize this year for exposing records of the deaths of 180 of 229 children under the city's care.

#### Age-Old Debate: Money vs. Resources

Florida's experience not only highlights the worst problems in foster care, but illustrates the difficulties of improving the system.

The state has convened nearly a dozen special panels to study child welfare in the last 15 years, and is still unable to prevent tragedies like Rilya Wilson's. Even a new \$230 million computer system designed to keep track of children under state care got a failing grade from half of the caseworkers who used an early version of it.

Is there a solution? As with many public policy issues, the age-old debate focuses on whether to throw more money at the problem or devise better strategies.

While many child-welfare advocates say money would surely help, they agree that it is not enough.

"It's not an either-or; you need increased resources and better ways of doing business," said Mary Lee Allen, director of the child welfare division of the Children's Defense Fund. "If you don't have a vision, pumping dollars into the system won't help children. The question is, How will we better protect children?"

Still, experts say budget cuts can ultimately hurt child safety. All too often, policymakers train their fiscal axes first on programs aimed at prevention, they say. Cutting such programs could be counterproductive since they help keep children out of the foster-care system in the first place, Allen said.

"We believe strongly that when you look at the tragedy in Florida, it is the tragedy about to happen in too many states," Allen said. "If we're going to make a change we'll have to put more resources into the front, prevention end."

#### Accountability Fights Corruption

Michigan provides a good example of how boosting prevention programs can help keep kids safe, she said. Caseworkers help families to identify what they need to stay safe and together, then the child-welfare agency approves and monitors the plan to keep the family together.

Other positive examples can be found in Illinois, where parents serve as "recovery coaches" to other at-risk parents, and in Arizona and Maryland, where child-protective agencies and alcohol and drug agencies work together. In Massachusetts, domestic violence and child-protective offices make joint efforts.

Alabama and Pittsburgh are also considered national leaders in child welfare for programs that seek to keep families together and cut the use of foster homes.

Increased accountability for caseworkers and their supervisors is one critical reform that does not have to be expensive, said Sarah Hechtman, a lawyer with Children's Rights, an advocacy group involved with litigation over Florida's foster-care system.

Caseworkers are often young and inexperienced, carry high caseloads, and have supervisors with equally high workloads who cannot do an adequate job, she said. Worse, Florida state workers have been accused of hiding files and mishandling cases to cover up for shoddy work. Dishonesty in the system is not rare, Hechtman said — her group is filing lawsuits over corruption issues in New Jersey and Wisconsin.

"It runs rampant throughout the system," Hechtman said. "Unfortunately, doctored records and lying to the court is all too familiar to those of us who work with these systems." ■

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The Miami Herald  
**Herald.com**

Posted on Sat, Jun. 08, 2002

## Boy who died was left in bad home

DCF took siblings, left the youngest  
BY CAROL MARBIN MILLER  
cmarbin@herald.com

Police dug James "Jami" Cotter from a shallow grave behind a Fort Myers trailer on May 23. It would have been his fifth birthday.

The Department of Children & Families already had taken Jami's siblings away from their parents, who had been reported at least 16 times for allegedly abusing the children.

But inexplicably, the DCF left Jami behind -- then never checked on him again.

In turn, Jami's mother, Lillian Maxine Priest, left the boy with Steven Landry, a neighbor who had been accused of abusing, neglecting and molesting children.

And as the nation watched Florida child welfare officials explain how Rilya Wilson, a 5-year-old foster child, could simply disappear from state care, Gov. Jeb Bush quietly called for an investigation to find out whether the DCF had failed another child -- Jami. One child welfare official called his death "the worst case I've ever seen of total departmental indifference toward a young human being."

Police say Landry killed the boy in early May. They have charged him with manslaughter because the boy's body was too badly decomposed to leave any clues as to how he died, other than a broken collarbone, said Capt. Richard Chard of the Lee County Sheriff's Office.

James Cotter's brief life and his death raise troubling questions about the ability of child welfare administrators to protect children they know are at risk.

Jami's story also casts serious doubts on the agency's consistent claims that the scandal now enveloping Rilya Wilson stands as an "isolated case." Rilya went unnoticed by department counselors for more than 15 months and has disappeared from Florida's foster care system.

The DCF's records on Jami's family show numerous red flags, but the records show no sign that an effort was made to ensure he was safe after his older brother -- and, later, his older sister -- were taken into foster care.

### NO SUPERVISION

Alia Faraj, a DCF spokeswoman, said Jami wasn't given DCF services or supervision after his older brother, the victim of a severe beating, was taken into foster care. Faraj declined to discuss the case further, citing the confidentiality of DCF records.

Jami was the youngest child in the home of Priest and James Cotter Jr., who were married in Labelle, Fla., in 1998 and divorced in April. Cotter has worked as a prison guard and is licensed to work in private security.

The family's history with the state dates to December 1995 when the DCF's predecessor, the Department of Health and Rehabilitative Services, received its first report saying an 11-year-old daughter had been sexually abused by another youth. The report, the first of seven to name the girl as a victim of abuse or neglect, was closed, with officials finding some evidence of abuse but not enough to verify the allegations.

#### REPORTS ON BROTHER

In the summer of 1997, the department received three separate reports on Jami's older brother, then 4, who was developmentally disabled and suffered severe emotional disturbances. The boy's parents had committed him to a psychiatric hospital, where he remained much of that summer.

One report accused Priest of refusing to give the child needed medication and handling him roughly to control his outbursts. Another report said Priest "physically abused [him] while visiting" him in the hospital, leaving bruises on both his thighs. The last report also mentioned bruises, a cut to the boy's forehead and an injury to his palm in which "the top layer of skin [was] removed."

While investigators were convinced the boy was abused, they could not determine who left the bruises, so no action was taken.

Reports about the boy were made to the state's abuse hot line eight times between 1997 and 1999, when administrators finally removed him from his parents' home and placed him in protective custody.

Among the most alarming reports are two calls in April 1999. In the first call, on April 12, a caller said 1-year-old Jami "has been having suspicious injuries. Last week, he had bite marks all over his body. He now has a huge bruise on his thigh, a faded bruise around his eye and a scrape on his nose."

Department investigators were set to close the case and attribute the injuries to horseplay between Jami and his older brother when a far more serious report was made on the brother.

On April 27, the 6-year-old brother arrived at school "very disoriented," a report states.

"He had a cut under one eye and his left ear is completely black and blue. He has what appears to be a [bloody] adult fingernail mark behind his ear. . . . He has several small bruises on his arms, some faded and some still black and blue [and] several bruises on his legs."

A detailed exam by the county's child protection team noted even more bruises and a blood clot in his right eye. DCF officials placed the boy in a protective shelter immediately.

By the following October, a judge terminated the parental rights of his mother and father.

The records offer no explanation as to why 1-year-old Jami was allowed to remain with Priest, or whether the DCF tried in any way to ensure his safety.

#### SISTER TAKEN AWAY

Two years later, in 2001, Jami's older sister was taken into state custody.

She was 16, and DCF caseworkers already had investigated seven abuse or neglect reports on the girl. She had run away from her mother, DCF reports say, because Priest did nothing when the girl was raped by a 34-year-old man and later molested by the mother's boyfriend.

Her father, the report said, kicked her in the stomach when he found out she was pregnant with a biracial child. Her father denied the allegation to DCF investigators.

A May 2, 2001, report said the girl had been "abandoned" by her parents and was living with friends with her newborn child.

A short time after his older sister was taken into state care, Jami was living with the Landrys.

Sometime around February 2001, Priest left 3-year-old Jami with neighbors Steve and Linda Landry. Priest gave the couple a notarized, handwritten piece of paper granting them the authority to make decisions on her behalf, said Chard of the Lee County Sheriff's Office.

A year later, in January 2002, Priest tried to see her son, as she had done now and again, Chard said. Every time she called, the Landrys offered an unlikely excuse for why the boy was unavailable. She called police.

A few days later, on Jan. 8, a report to the state's abuse hot line alleged Jami was seen with "bruises" of an unknown origin.

"[The Landrys] said that the mother had the child over the weekend and the child got the bruises when he was in the mother's care," the report states. "There is concern that [the Landrys] should not be caring for this child because they have had five to six children removed from their care in the past in Massachusetts."

Steven Landry, whose occupation is listed by the Florida Department of Law Enforcement as "bouncer," was arrested in 1991 for alleged child sex abuse. He appears not to have been prosecuted on the charge.

Between January 1996 and July 1998, three callers to the abuse hot line reported that Landry was molesting, neglecting and abusing his daughter. The home was filthy, callers said, and the child received little food because her father spent all his money on crack cocaine. He later was accused of allowing a friend to molest the girl.

Twice, allegations were forwarded to the state attorney's office, which declined to prosecute, said Detective Lisa Barnes of the Cape Coral police.

Steve Emerson, an agent with the Florida Department of Law Enforcement, said he does not know yet, either, whether Jami was under any type of supervision. "We are trying to get those questions answered," he said.

One Tallahassee child advocate, Karen Gievers, was appalled by the DCF's treatment of Jami.

"Oh, God, what a nightmare," said Gievers. "There's no excuse for them doing their jobs in this manner.

"Once again, the child has to pay the price."

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# DCF worker charged with falsifying records in case of slain toddler

By RACHEL LA CORTE  
Associated Press

July 12, 2002, 3:55 PM EDT

LAKELAND -- A worker with the state Department of Children & Families was charged Friday with falsifying records in the case of a toddler found dead on the side of a road in central Florida.

DCF Secretary Kathleen Kearney said Erica Jones reported in her files that she visited 2-year-old Alfredo Montez and his 4-year-old sister Rheyne on July 1, the day police say the child was slain.

Jones faces a third-degree felony and turned herself in, officials said.

Montez's body, wrapped in a children's bedspread with figures of Disney's "101 Dalmatians" on it, was spotted late Thursday by a passing motorist 30 feet off the edge of Interstate 275 in west-central Florida.

Authorities prepared Friday to bring a couple charged in the child's beating death back to Florida.

Richard Chouquer, 23, is accused of beating Montez to death after the boy soiled his pants, police said. He is charged with first-degree murder and aggravated child abuse.

Amandy Lawrence, 22, is charged as an accessory after the fact to first-degree murder, under an arrest warrant issued by a Polk County judge, according to Polk County Sheriff's Officer Kim Garrett.

Chouquer and Lawrence were being held Friday in Hurricane, Utah, where they were arrested Wednesday.

They were awaiting transfer to Florida to face charges in Polk County, which could take up to 10 days.

The DCF has been under fire for its handling of children since it became public the agency lost track of 5 year old Dilus Wilson of Miami. Her disappearance went unnoticed for at least 15 months

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Gov. Jeb Bush said Friday that Alfredo was not under state care. He said the DCF employee was assigned to visit the child to check out a neglect complaint.

"The supervisor will be fired and the caseworker will be prosecuted for her actions," Bush said following his speech to the Florida PTA Leadership Conference in Tarpon Springs. "It's heart breaking. It's incredible."

Under a new state law prompted by Rilya's case, falsifying documents related to children, the elderly or disabled in state care could be punishable by up to five years in prison. If the person is seriously hurt or dies because of the records fraud, it could be a second-degree felony punishable by up to 15 years in prison.

"The law that we passed will now kick in and there will be a prosecution," Bush said Friday.

Deputies said Alfredo was killed July 1. The boy's mother, Jeanna Lynn Swallows, had left him and his sister in the couple's care at their central Florida mobile home in Auburndale on June 28.

On July 4, Lawrence left Rheyne with Lawrence's cousin, Carmen Valdez. The boy was not with her at the time, police said. Rheyne is now in the custody of her paternal grandmother, Carol Smith of Lake Wales.

Valdez told police she asked where Alfredo was and was told the child was with a couple from Orlando.

Authorities learned that Alfredo was missing when Valdez called them Monday.

Chouquer told investigators in Utah he was disciplining Alfredo after the boy soiled his pants, said Polk County Capt. W.J. Martin.

"He physically struck him with excessive force at least five times in the face," Martin said.

After Alfredo lost consciousness and died, the couple put his body in the trunk of their car and drove until they found a place to drop him, police said.

Alfredo's sister, Rheyne, and the couple's two children, a 2-year-old boy and a 7-month-old boy, were in the car when the body was dropped on the side of the road, Martin said.

After the body was dumped, the couple drove to Albany, Ga., where Chouquer stayed with their two children.

Lawrence, who is pregnant, drove back to Auburndale to drop Rheyne off with Valdez on July 4, Martin said.

Lawrence went back to Georgia, and the couple and their children then went to Amarillo, Texas. They were wired money in Amarillo from a relative before continuing on to Utah, where one of them has family, police said.

Lawrence and Chouquer had been on the run since 2000, when Lawrence's other children, ages 5 and 6, were taken away after allegations of child abuse in Nevada, police said. Martin said Chouquer had been charged and served time in the Nevada case but he had no other information.

Martin said the couple had spent some time in Georgia before coming to Florida. Police believe they lived in Auburndale since November 2001.

Swallows was arrested Tuesday on a violation of probation warrant for writing worthless checks, Garrett said.

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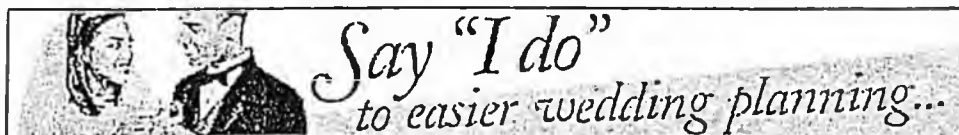
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### Faking records not new at DCF

Neither is the agency's failure to check on children in its care. These issues take on new meaning in light of Rilya Wilson's case.

By CURTIS KRUEGER, Times Staff Writer

© St. Petersburg Times, published May 20, 2002

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Neither is the agency's failure to check on children in its care. These issues take on new meaning in light of Rilya Wilson's case.

In the baffling disappearance of Rilya Wilson, a caseworker has been accused of falsifying records, and the Department of Children and Families is struggling to explain why it failed to check on her properly for more than a year.

This tragic scenario, Gov. Jeb Bush and DCF Secretary Kathleen Kearney have said, amounts to an isolated incident.

But caseworkers who falsify records and fail to check on children are not new concerns for the Department of Children and Families. They are well-known problems the agency has battled for years.

Documents from DCF and other sources show:

DCF child welfare workers have been cited at least 14 times since 1999 for falsifying records in their work on behalf of children considered abused or neglected, according to DCF Inspector General's Office records reviewed by the St. Petersburg Times. One worker phoned in a false abuse report about a child she wanted to adopt.

DCF fired a family safety worker in Pinellas County in January 2000 for falsifying his application, but only after the agency's inspector general criticized his supervisors' inaction. The report said DCF managers "failed to investigate" and prepared paperwork that "implied that the staff were not concerned about the alleged falsifications."

An October 2000 review of 18 child welfare cases in Pinellas County stated that "in well over half the cases, reviewers noted that children and parents were not being seen in the home on a monthly basis. In some cases, months had passed without any documented contact with the family." These cases were handled by Family Continuity Inc., which works under contract for DCF in Pinellas and Pasco counties.

Several current and former employees of the child welfare system have testified in a lawsuit that counselors routinely falsified reports of visits to foster children, attorneys said in Palm Beach County last week.

DCF recently agreed to a \$5-million settlement in the case of six children who were physically and sexually abused in a Broward County foster home. Their attorney says DCF made no documented visits to the foster home for 20 months.

These issues are taking on new meaning as police and caseworkers search for Rilya, the 5-year-old Miami girl who disappeared while in the state's care.

Gov. Bush said during a visit to Brandon this week: "Falsification of documents, I hope, is isolated. But now, if it isn't, it is a felony in our state." He was referring to a law he signed this week that makes it a crime for workers to falsify child welfare records.

As to caseworkers visiting children at least monthly, Bush said, "We've made progress on that but last month, for example, in April, 8 percent of the kids weren't seen for a variety of reasons, and we need to improve on that."

Rilya disappeared after state workers removed her from her mother and sent her to live with GERALYN Graham and her sister Pamela. GERALYN Graham, who says she is Rilya's grandmother, said someone claiming to be from DCF removed the girl from their Miami home last year.

DCF says no records indicate this and they don't know where Rilya went.

But this much is clear: DCF was supposed to send a caseworker to visit Rilya at least monthly and make periodic reports to a juvenile judge. In reality, Kearney has said, "The casework, there is no doubt, was abysmal." The caseworker reported to a judge that Rilya was doing well, even though she had been gone for months.

Miami-Dade Circuit Judge Cindy Lederman blasted the department's handling of the case, and Kearney acknowledged she "had every right to be exceptionally angry."

Now, the hastily assembled Governor's Blue Ribbon Commission on Child Protection is looking into the handling of Rilya, and Chairman David Lawrence Jr. has specifically said he wants to determine if hers was an isolated case.

The St. Petersburg Times reviewed summaries of 14 cases in which DCF workers were cited for falsifying records since 1999. The documents show a variety of false information has crept into DCF paperwork that can help decide whether children continue to live with their parents. In some of the cases, the worker clearly was accused of deliberately providing false information; in others, it's not clear whether the misinformation was intentional.

In the southwest Florida DCF district, a worker was accused of having "misused the abuse hotline by calling in a false abuse report involving a child she was trying to adopt."

In another case, a family safety counselor in the Tampa Bay area was accused of falsely stating that an individual had been arrested and charged with child abuse. In another, an employee falsely stated the circumstances of an individual's previous drug arrest. In a Central Florida county, a counselor resigned after having "falsified records regarding visits with clients."

Each of the 14 cases involved falsifications in child welfare work.

Fourteen falsifications among tens of thousands of cases since 1999 are not enough to indict an entire department. But they show that falsifying records is a recurring issue. New child welfare workers are given ethics training that urges them to honestly and accurately document all their visits, said John Mullins, director of the Professional Development Center in Tampa, which trains workers hired by DCF and other agencies.

Child experts say it's important to visit foster kids monthly, but it isn't always done. University of Pennsylvania professor Richard Gelles said large states such as Florida often see only 50 percent of the children under their supervision.

Local DCF officials say the figure is much higher. "We've been running in the neighborhood of 90-plus percent," said Ron Zychowski, deputy regional director of a six-county DCF district that includes Hillsborough, Pinellas and Pasco counties.

Family Continuity says it has improved its visitation rate since the audit. "It's something we stress very highly. Children have to be seen," said spokeswoman Elaine Fulton-Jones.

In Brandon this week, Bush visited the offices of Hillsborough Kids Inc., which is taking over DCF's foster care work in the county in phases. In a meeting with Bush and other officials, Eva Horner of the Children's Home Society, a partner in the effort, said no one should think a monthly visit is the standard to shoot for. Children should be seen more often, she said.

"At least twice a month," she said. "That's kind of the standard that we're trying to set here."

-- Information from the Associated Press was included in this report. Times staff writer Curtis Krueger can be reached at [krueger@sptimes.com](mailto:krueger@sptimes.com) or by calling (727) 893-8232.

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## Senator Bettye Davis

### Senate Bill 8

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## MILWAUKEE CHILD WELFARE AGENCY DESTROYED AND FALSIFIED STATE RECORDS ABOUT TREATMENT OF CHILDREN IN FOSTER CARE

Children's lawyers ask judge for an order to halt further destruction of evidence in lawsuit seeking reform of Milwaukee's failing child welfare system.

(March 1, 2001 - Milwaukee) Lawyers representing children in the Milwaukee foster care system filed papers today in U.S. District Court charging that Bureau of Milwaukee Child Welfare (BMCW) children's case records detailing their treatment in foster care have been intentionally destroyed, altered and falsified on an ongoing basis. The plaintiff children's lawyers have asked the court for a hearing to receive evidence, issue an injunction against further destruction of this evidence, and to appoint a special investigator.

The court papers assert that children's records were destroyed, altered and falsified in order to claim that the agency is in compliance with state and federal requirements. Those requirements must be met if the agency is to continue receiving public funds and are expressly designed to ensure that children receive the protection and care they need while in state foster care custody.

Recent deposition testimony by Bureau staff includes the following facts:

- Denise Revels-Robinson, the BMCW director, repeatedly directed casework staff, during the second half of the year 2000, to modify case records relating to "high profile" cases after special case reviews of those cases had identified deficiencies.
- A State review of the out-of-home care program found that approximately 10 out of the fifty cases reviewed appeared to have foster home licenses that were backdated.
- A State review of the safety services program found indications that some of the documents that are completed weekly were either postdated or predated.

The court papers have been filed in the class-action lawsuit, *Jeanine B. v. Scott McCallum* which claims that children in the Milwaukee foster care system are being harmed by widespread mismanagement and violations of federal law.

"Falsifying children's case treatment records is not only illegal, it harms the very children this system is supposed to help," said Eric Thompson, lead attorney on the *Jeannine B.* case for Children's Rights, a national advocacy organization for children. "Such practices undermine the court's ability to protect children and jeopardize federal funding for the

Bureau of Milwaukee Child Welfare's foster care services."

A federal audit of state child welfare systems, due to start next month, will be conducted by the Department of Health and Human Services, now headed by the former governor of Wisconsin, Tommy Thompson.

"The state is to blame for such flagrant misconduct," stated Micabil Diaz-Martinez, Legal Director at the ACLU of Wisconsin Foundation. "The child welfare system provides so little oversight, support and resources to its contract agencies that they are systematically failing to meet the needs of the children in their care. We are asking for a court appointed investigator to investigate the alleged fraud and report back to the court within three weeks."

#### **BACKGROUND ON THE JEANINE B. LAWSUIT**

May 1993: *Jeanine B. v. Tommy G. Thompson* lawsuit filed on behalf of all children in Milwaukee foster care.

January 1998: The state took over the child welfare system in response to the lawsuit and is now directly responsible for providing these children with appropriate placement, care, permanency and other necessary services, and protecting them from harm while in state custody.

June 1999: A supplemental complaint was filed charging that despite years of planning and a year and a half of implementation by the Wisconsin Department of Health and Family Services (DHFS), children in the Milwaukee foster care system were worse off than before the state takeover. The June complaint described a system overwhelmed and understaffed and rife with systemic violations of children's rights:

- The number of Milwaukee children in foster care had risen 20% in the last year - from 5,678 to 6,850 - and caseloads jumped to as many as 70 children per caseworker, more than three times the national standard.
- Overwhelmed and untrained social workers failed to visit and monitor children in foster homes, with often more than a year between visits.
- Foster parents had to fight to get even basic services or support from the system and many were quitting in frustration.
- With too few licensed foster homes, children were put into unlicensed homes or, when no homes were available, into emergency children's shelters.

Children's Rights works throughout the United States in partnership with national and local experts, advocates and government officials to document the needs of children in the care of child welfare systems. Children's Rights helps develop realistic solutions and, where necessary, uses the power of litigation to ensure that reform takes place.

The ACLU of Wisconsin Foundation, Inc. is the litigation and public education arm of the ACLU's Wisconsin affiliate.

Additional pro-bono co-counsel for the *Jeanine B.* lawsuit are the Minneapolis law firms of Dorsey & Whitney LLP and Gray, Plant, Mooty, Mooty & Bennett, P.A.

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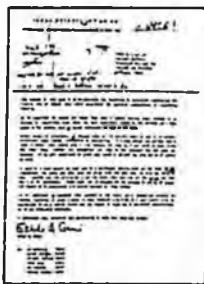
## Senator Bettye Davis

### Senate Bill 8

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## Memo from Texas Dept. of Human Services

## DPRS Memorandum to CPS Program Directors and Supervisors, May 31, 1990



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### TEXAS DEPARTMENT OF HUMAN SERVICES

#### Alternations, Backdating and Reconstruction of Case Records

TO: CPS Program Directors  
and  
Supervisors

FROM: Ethel B. Crear  
Regional Director  
Protective Services for  
Families and Children  
Arlington 012-5

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May 31, 1990

The purpose of this memo is to re-emphasize the importance of accurately maintaining CPS records and to ensure that staff understand the possible consequences of falsifying records.

It is important to remind all staff that once a family service plan, whether in an In-Home or Substitute Care case, has been completed, signed by the parents and a copy given to the parents that NO change whatsoever be made on the plan.

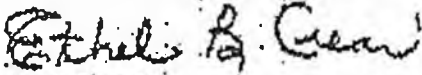
There should be absolutely NO changes made to the service plans by use of white-out, correction tape, adding information or backdating. If a case worker has written down a date in error, they should draw a line through the date so it can still be read, write the other date, initial the correction and note on the document why the date was changed. It is not acceptable to write over dates or scratch the date out so it cannot be read.

If part of a case record has been lost or a particular service plan was not done, DO NOT reconstruct the plans and back date the plans with the date that the plan was actually due. Anytime your are developing a service plan, make sure you put the actual day that the plan is developed. Dates must not be changed for the purpose of making it appear the record is in compliance with policy related to time frames.

It is important to remember that whether or not there was a deliberate attempt to falsify, backdate or alter a case, it does indicate alteration of a case record which is considered to be

a public record and may result in legal or personnel consequence, up to one including dismissal.

I appreciate your attention and cooperation on this very important matter.



Ethel B. Greer

cc: Jim Lawrence : 012-5  
Daria Burdick : 012-5  
Barbara Johnson : 012-5  
Daria Long : 012-5  
Don MacCock : 012-5  
Cecilia Arnold : 012-5

SB

30





# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB030HCSCS(HES)-DHSS-DPH-02-02  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title INFORMED CONSENT FOR ABORTION

Dept. Affected: Health & Social Services  
 RDU Public Health  
 Component Bureau of Vital Statistics

Sponsor DYSON  
 Requester HOUSE (JUD)

Component No. 961

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	30.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>30.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would add a requirement to the report of Induced Termination of Pregnancy (ITOP) program that the Bureau of Vital Statistics (BVS) collect and record data on whether or not each reported patient requested and received a written copy of information on reproductive options required to be maintained on the Internet.

CONTRACTUAL: \$30.0 in GF for contractual service costs would be required in Year 1 (one-time costs) to provide for 1) a contract to revise the BVS ITOP computer program (\$20,000);

(continued on next page)

Prepared by: Doug Bruce, Director  
 Division Public Health  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency Department of Health and Social Services

Phone 465-3090  
 Date/Time 01/29/2004  
 Date 02/02/2004

FISCAL NOTE  
FN #

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB030HCSCS(HES)-DHSS-DPH-02-02-04

ANALYSIS CONTINUATION

2) to produce, print and distribute revised ITOP reporting forms to providers throughout Alaska (\$2,000); and 3) to contract for the drafting of regulations to implement AS 18.50.245(e) (\$8,000).

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB030HCSCS(HES)-DHSS-HCS-02-07  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU: Health Care Services  
 Component: Women's and Adolescents Services

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: INFORMED CONSENT FOR ABORTION

Sponsor: DYSON  
 Requester: HOUSE (JUD)

Component No. 2668

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	20.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (0)</b>						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill requires that information be prepared and made available via the Internet, to every woman seeking an abortion, on the medical risks of abortion, pregnancy, and where services can be sought, by geographical region. The DHSS already produces, procures and disseminates a range of materials regarding how to have a healthy baby and ways to keep the baby safe and healthy after birth. In addition, the Department maintains a 24-hour referral line for services. Ensuring the intent of this bill is addressed will require resources for the production of the additional informational materials on abortion. (continued on next page)

Prepared by: Dwayne Peoples Phone 465-5830  
 Division: Health Care Services Date/Time 01/29/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 02/02/2004  
 Agency: Department of Health and Social Services

**FISCAL NOTE**  
**FN #**

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

**BILL NO. SB030HCSCS(HES)-DHSS-HCS-02-02-04**

**ANALYSIS CONTINUATION**

**CONTRACTUAL: \$20.0 for a professional services contract in Year 1 for the production and posting of the web-based materials required under this bill.**

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

*Frank H. Murkowski, Governor*

*P.O. BOX 110300  
123 4<sup>TH</sup> ST., DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600*

March 30, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol - Room 118  
Juneau, AK 99801-1182

Re: Legal Analysis of HCS CSSB 30(JUD)  
23/LS0193\O  
Our File No.: 663-04-0088

Dear Representative McGuire:

At your request, we have reviewed HCS CSSB 30(JUD) 23/LS0193\O, which has made further changes to this legislation in response to our letter dated March 18, 2004. Our understanding was that you directed a committee substitute (CS) to be drafted that incorporated all of the substantive changes we suggested in our previous letter. Our review of the CS indicates that with respect to the suggestions that were made, only one issue remains that should be brought to the attention of the committee.

That issue is that, aside from the inclusion of a definition for abortion, there have been no other changes to the definitions in section 2 of the bill. In our previous letters to the committee we have opined that it is important that the definitions in this bill be medically accurate. In addition, there has been testimony in the hearing that the definitions are not medically accurate. The more medically accurate the definitions are, the more defensible the bill becomes. That being said, it may be that the committee is assured of the medical accuracy of the definitions and there is no need for further changes. If this is the case, we would suggest that there be legislative record on this issue to help defend this legislation should a challenge be brought.

Hon. Lesil McGuire, Chair  
Our file: 663-04-0088

March 30, 2004  
Page 2

Otherwise, it appears you have incorporated all of the changes that we suggested in our most recent letter. In doing so, we believe you have created an even more defensible bill.

We appreciate the opportunity to work with the committee on this bill and continue to be available to assist the committee in any way that we can on this important legislation.

Sincerely,



Gregg D. Renkes  
Attorney General

GDR:SK:ef:mkb

cc: Stacie Kraly, Assistant Attorney General  
Ethan Falatko, Assistant Attorney General  
Mike Tibbles, Legislative Liason, Office of the Governor  
David Marquez, Chief Assistant Attorney General  
Deborah Behr, Assistant Attorney General



GREGG D. RENKES  
ATTORNEY GENERAL OF ALASKA

February 11, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
Alaska Legislature  
State Capitol - Room 118  
Juneau, AK 99801-1182

The Honorable Tom Anderson  
Vice-Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol - Room 432  
Juneau, AK 99801-1182

Re: Legal Analysis of CS HB 292(HES)

Dear Representatives McGuire and Anderson:

CS HB 292(HES) proposes to establish particular information, to be prepared by the Department of Health and Social Services (DHSS), to be provided to a patient that is seeking an abortion. The bill further proposes that a physician who fails to obtain the "informed consent" of a patient prior to providing abortion services is liable for both compensatory and punitive damages. Finally, the bill seeks to establish a 24-hour waiting period from the time the patient is provided the information to the time that a patient may receive the abortion.

This is well intentioned and necessary legislation that attempts to address the State's compelling interest in ensuring that no abortion is performed in our state without informed consent. However, as proposed, this bill will likely not survive a constitutional challenge under the privacy provision of the Alaska Constitution, Art. I, Sec. 22 and the equal protection provision of the Alaska Constitution, Art. I, Sec. 1.

We provide the following background and suggested changes in an effort to assist your committee in preparing a bill that will survive constitutional challenge. Alaska's courts have consistently found our constitution provides greater protections than the

federal constitution or those of many other states. See e.g., *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997), *State v. Planned Parenthood*, 28 P.3d 904 (Alaska 2001), *State v. Planned Parenthood*, 35 P.3d 30 (Alaska 2001). This is critical to understanding how our courts would address legislation that would purport to restrict abortion rights. In *Valley Hospital Association v. Mat-Su Coalition*, *infra*, the Alaska Supreme Court explicitly rejected the lessening of protections of the right to an abortion that were articulated in the plurality opinion in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Instead, the Alaska Supreme Court established a test similar to that expressed in *Roe v. Wade*, 410 U.S. 113 (1973), affirming the right to an abortion as a fundamental right that can be legally constrained only when the constraints are justified by a compelling state interest and no less restrictive means could advance this interest. The challenge faced by the proposed legislation is that the application of this test to specified information requirements, a 24-hour waiting period, and the physician liability provision could result in a determination that one or more of these provisions are unconstitutional if they employ excessive means to accomplish the ends of assuring that a patient is informed and has given her consent before receiving an abortion. Any evaluation of whether the least restrictive means are being employed is necessarily subjective. What we provide is our best guess at how the court might read the provisions included in the proposed bill. In our view, the bill as presently written raises the following potential legal problems:

**Section 1 (Legislative Findings):** The Senate sponsors of the bill drafted legislative findings to help establish the status of "compelling interest" in legislating in this area. The House substitute of the bill refined those findings. Although, the findings do not have any legal effect, they do outline the purpose of the legislation. The one problem with this section is found on page 2, lines 9 and 10. The findings mention the availability of immunity for physicians who use the information on the Internet site outlined in Section 2 of the bill. However, there is no corresponding immunity language in the bill. If there is a desire to provide for immunity, then that should be clearly set forth in the body of the bill.

**Section 2 (The contents of the pamphlet):** Section 2 of the bill provides the substances of what should be included in the pamphlet developed by DHSS. The following are legal issues that we believe would be raised in a challenge to the bill.

Page 2, line 31 and page 3, lines 1-4 (eligibility for public benefits): Under *Karlin v. Faust*, 975 F. Supp. 1177 (W.D.Wisc. 1997) (aff'd 188 F.3d 446 (7<sup>th</sup> Cir. 1999)), rehearing and rehearing en banc denied, 198 F.3d 620 (7<sup>th</sup> Cir. 1999), the court held that it was not constitutional to require this type of information to be provided to women who were pregnant as a result of rape or incest, since such information would likely cause

psychological harm and serve no medical purpose. Therefore at a minimum, changes should be made for those circumstances where the pregnancy is the result of rape or incest, where a woman is carrying a child with a lethal anomaly, or where the information would serve no legitimate purpose.

Page 3, lines 7-9 (child support): Although the policy of the State of Alaska may be that fathers are liable for child support, there are legal issues with respect to the establishment of paternity and support orders in civil actions. This statement may lead a woman to believe that she will indeed get child support and it is not always that easy. Thus, we recommend that the reference to child support by fathers be changed to more fully describe the processes available for establishing paternity and liability for child support.

Page 3, lines 11-21 (photos of unborn children in two-week gestational increments): Although tailored to be unbiased and accurate, the graphic nature of such photos may be found burdensome or used to create an undue interference in a woman's right to make a reproductive choice. As articulated in the pamphlet, there would be at least 18 photos of "unborn children" in two-week gestational increments, along with other information, such as viability. The photos would comprise a large portion, if not most of the pamphlet itself. Any legal challenge brought would argue that the pictures were not intended to provide information but to shock and burden a woman's reproductive choice. This argument would most likely state that these pictures were not in proportion to the remainder of the pamphlet. Based upon the recent decisions by the Alaska Supreme Court, this argument would be difficult to overcome and therefore we recommend that some attention be given to the make up of the pamphlet as a whole and the proportion of the pamphlet that includes pictures.

Page 3, lines 22-31 and page 4, lines 1-9 (information regarding risks and benefits of abortion, carrying to term and contraceptives): Despite requiring the submission of information in an objective, unbiased way, these three provisions might be found to be unconstitutionally vague. Specifically, by using both the pamphlet for the purpose of providing information that would be considered informed consent, there is also an express provision in the bill that is entitled informed consent. However, the two provisions do not require the same information. Therefore, a legal challenge would be that a physician who was trying to comply with the legal requirement could not be sure whether they were in compliance or were violating the law. A similar problem arises with respect to the liability provision. Since there is different information being imparted, a physician would not know when they would be liable under the bill.

Since some of the specific information requirements will likely be found unconstitutional in their application to certain circumstances, the clear application of the law is going to be compromised. Even with the severability provision included in this bill, a physician will face potential civil liability for guessing incorrectly about which information is required or whether some information can be omitted because it serves no medical purpose. Generally, physicians are required, both by sound medical practice and by their malpractice insurance providers, to assure that informed consent is obtained from their patients. They are also required to obtain informed consent under AS 09.55.556. To the extent that there is reasonable confusion about the specific information requirements, the civil liability provision is likely to have a chilling effect on the availability of abortions.

**Sections 3 and 4** (Require informed consent from abortion and provide for civil liability for the failure to obtain informed consent): It should be noted that the court in *Valley Hospital Association v. Mat-Su Coalition* explicitly found AS 18.16.010(b) to be unconstitutional to the extent it applies to quasi-public institutions. In addition, the parental consent provision and judicial bypass provision were found to be unconstitutional by the superior court in Anchorage. See *Planned Parenthood of Alaska v. State*, 3AN-97-6014 CI (decision on remand from 35 P.3d 30 (Alaska 2001)). To the extent that the above issues are corrected, and the changes to Section 2 of the bill are addressed, the amendment proposed in Section 3 is not problematic.

Section 4 has two problems. First, this is the section that purports to provide immunity from civil liability; however, in the committee substitute there is no mention of immunity. Second, this section appears to impose a 24-hour waiting period. This requirement could be challenged on equal protection grounds. Specifically, the argument would be that the equal protection rights of women are violated because only abortion requires a specific level of informed consent not any other procedure. Although there is a general informed consent provision under Title 9, there is no other informed consent provision in state law that deals with other specific types of medical procedures. In addition, since abortion is a medical procedure only sought by women, the argument would be that in so legislating, we would be violating women's equal protection rights. In addition, under this section there would be a required 24-hour waiting period. Therefore, abortion would be the only medical procedure that had a 24-hour waiting requirement. To survive an equal protection challenge the state would have to show that the 24-hour waiting period was justified by a compelling state interest and no less restrictive means could advance that interest.

In addition, there could be problems with this waiting period because of the rural nature of Alaska. Many women who would seek an abortion will have to travel

from rural communities at great expense. Depending upon how it is implemented a 24-hour waiting requirement could result in time and expense to these women and may result in delays. Under these circumstances a 24-hour delay may not meet the requirement of being the least restrictive means to accomplish the purpose of assuring a woman is informed and has consented to an abortion.

**Section 5 (Informed consent requirements):** There are four problems with this section. The first relates to the requirement from which informed consent is required. As noted previously, parental consent and judicial bypass provisions have been found unconstitutional by the superior court as recently as August of 2003, although we are arguing for appeal to overturn this ruling. There are also express prohibitions under Title 13 stating that a guardian does not have the authority to consent to an abortion for a ward. Therefore, these sections are either unconstitutional or do not accurately state the law.

The second problem is the 24-hour waiting period, which was discussed above. The same concerns and legal issues arise with the existence of the 24-hour waiting period in this section as do in Section 4. However, there is one change to this section that was not stated in the previous section. Specifically, this section allows for the distribution of the information required under this section or on the Internet to be done by mail, telephone or by facsimile. The availability of these options would provide a defense to the legal arguments that would be raised with respect to the 24-hour waiting period. However, it is not clear whether these options would satisfy the court with respect to the equal protection challenges raised. In addition, these options should be clearly stated so as to apply to any 24-hour waiting requirement in the bill.

The third problem with this section is the provision that authorizes that these protections are not required in a medical emergency. The definition of medical emergency will be challenged as being vague. For example, it does not address the ability to dispense with the formalities in order to avoid a medical emergency. In fact, if the definition is not met, one must wait for a medical emergency to manifest before obtaining an abortion, thereby putting the mother's life in jeopardy. This will be challenged, and it is difficult to predict the success of such a challenge; however, it should be noted that almost identical language was found unconstitutional by the superior court in the parental consent and judicial bypass bill litigation currently being appealed by the state.

The final problem is the same as stated with respect to Section 2 of the bill and the vagueness on what actually constitutes informed consent so that a physician would clearly know what information was required to be dispensed to meet the requirements of the bill. Since this section purports to require different information than that outlined in

Hon. Lesil McGuire, Chair  
Hon. Tom Anderson, Vice-Chair  
House Judiciary Committee

February 11, 2004  
Page 6

the pamphlet, there are vagueness arguments that could be raised and which need to be addressed.

In summary, it is most likely that if this bill passes, a legal challenge will be brought. In light of the foregoing analysis, you see there remain a number of legal problems with the bill that need to be addressed in order to defend any lawsuit that would be filed. We stand ready to assist you in drafting an informed consent bill that will accomplish the critically important objectives pursued by the sponsors of this legislation while at the same time having the best possible chance of surviving judicial scrutiny.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg D. Renkes", written in a cursive style.

Gregg D. Renkes  
Attorney General

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Jean Mischel, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** March 30, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0193\O, HCS CSSB 30 (JUD), incorporating the attached four amendments. Regarding conceptual amendment #6, there are two different versions of the amendment attached. The committee passed the amendment conceptually to combine and include all the language from both versions, thus creating a new (10). Also, please conform the language of this subsection to the other similar subsections (including any necessary changes made to address issues raised in the legal opinion from the Attorney General dated March 18, 2004) and renumber the bill accordingly. The bill was passed out of committee today!!!

If you have any questions, please call me at 4990. Thank you so much for all your hard work and help on this bill!!!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HCS CS813 30 (JUD)  
version "0"

Conceptual Amendment #1 - PASSED  
by Rep. Ogg

P.4, Line 3  
After "alcohol"  
Insert ", tobacco"

AMENDMENT NO. 4 - PASSED

OFFERED TO HCS CSSB 30(JUD)

BY REPRESENTATIVE GRUENBERG

Page 4, line19: Delete "or surgeon."

AMENDMENT NO. 5 - PASSED

OFFERED TO HCS CSSB 30(JUD)

BY REPRESENTATIVE GRUENBERG

Page 2, lines 17-20: Amend paragraph (1) as follows

(1) contains geographically indexed material designed to inform a person of public and private agencies, [AND] services, clinics and facilities that are available to assist a woman with the woman's reproductive choices; the department shall include information about at least the following types of agencies, [AND] services, clinics and facilities:

Page 2, line 29: Amend paragraph (2) as follows:

(2) includes a comprehensive regional directory of the agencies, services [AND] clinics, and facilities identified by the department under (1) of this subsection, a description of the services they offer, and the manner in which the agencies, services [AND] clinics, and facilities may be contacted, including telephone numbers;

Conceptual  
AMENDMENT NO. 6 - PASSED

OFFERED TO HCS CSSB 30(JUD)

BY REPRESENTATIVE GRUENBERG

Page 4, line 5: Insert new paragraph (10) and renumber existing paragraph (10) as paragraph (11):

(10) contains objective, unbiased, and comprehensive information that is reviewed and approved for medical accuracy and appropriateness by recognized obstetrics and gynecological specialists designated by the State Medical Board on different types of available contraceptive choices and the medical risk and possible complications commonly associated with each method as well as the possible psychological effects that have been associated with using contraceptives;

conceptual A#6

Amendment to House CS for CS for SB30(JUD) Work Draft version 23-LS0193V

Page 4 after line 5

Insert the following:

(10) contains objective, unbiased information that is reviewed and approved for medical accuracy by recognized obstetrical and gynecological specialists designated by the state medical board that describes the methods of contraception, including abstinence and natural family planning, describes which methods of contraception are intended to prevent fertilization and which methods are intended to prevent implantation of a fertilized egg, and describes the reliability, risks and possible complications commonly associated with each method.

HSCSSB 30 (JUD) version "0"  
AMENDMENT #2 - FAILED  
by Rep. GARA

Page 4, lines 30-31:

Delete all material

HCS CSSB30 (JUD) version "0"  
AMENDMENT: 3 - WITHDRAWN  
by Rep. Gara

Page Two, Lines 11-12:

Delete all material

AMENDMENT NO. 7 - WITHDRAWN

OFFERED TO HCS CSSB 30(JUD)

BY REPRESENTATIVE GRUENBERG

Page 5, lines 10-18: Amend subsection (i) as follows:

(i) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent of a person under (h) of this section that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure; or

(2) the person who is the subject of the alleged failure to obtain the informed consent stated to the physician or other health care provider that the patient would or would not undergo the abortion procedure regardless of the risk involved or that the person did not want to be informed of the matters to which the patient would be entitled to be informed; or

~~(3) under the circumstances, consent by or on behalf of the patient was not possible; or~~

(4) the physician or health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because the health care provider reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

1 (2) evidenced reckless indifference to the interest of another person.

2 \* **Sec. 3.** AS 09.55.556 is amended to read:

3 **Sec. 09.55.556. Informed consent.** (a) A health care provider is liable for  
4 failure to obtain the informed consent of a patient if the claimant establishes by a  
5 preponderance of the evidence that the provider has failed to inform the patient of the  
6 common risks and reasonable alternatives to the proposed treatment, [OR] procedure,  
7 or course of action, and that, but for that failure, the claimant would not have  
8 consented to the proposed treatment, [OR] procedure, or course of action.

9 (b) It is a defense to any action for medical malpractice based upon an alleged  
10 failure to obtain informed consent that

11 (1) the risk not disclosed is too commonly known or is too remote to  
12 require disclosure;

13 (2) the patient stated to the health care provider that the patient would  
14 or would not undergo the treatment, [OR] procedure, or course of action regardless  
15 of the risk involved or that the patient did not want to be informed of the matters to  
16 which the patient would be entitled to be informed;

17 (3) under the circumstances, consent by or on behalf of the patient was  
18 not possible; or

19 (4) the health care provider, after considering all of the attendant facts  
20 and circumstances, used reasonable discretion as to the manner and extent that the  
21 alternatives or risks were disclosed to the patient because the health care provider  
22 reasonably believed that a full disclosure would have a substantially adverse effect on  
23 the patient's condition.

24 \* **Sec. 4.** AS 09.55.556 is amended by adding new subsections to read:

25 (c) A health care provider, when informing a patient of the common risks and  
26 reasonable alternatives to a proposed treatment, procedure, or course of action, shall  
27 disclose a known risk of death or serious bodily harm and explain the common  
28 complications that may occur. A health care provider is required only to disclose that  
29 information that a skilled health care provider of the same or reasonably similar  
30 specialty would disclose under similar circumstances.

31 (d) A health care provider is not liable for advice given to a patient by

AMENDMENT NO. 8 - FAILED

OFFERED TO HCS CSSB 30(JUD)

BY REPRESENTATIVE <sup>GARA</sup>GRUENBERG

~~Page 1, lines 1-2: Delete "and other persons"~~

Page 3, section 6 and Page 4, sections 3 and 4: Delete "unborn child" wherever it appears and replace with "fetus"

23-LS0193\O  
Mischel  
3/22/04

**HOUSE CS FOR CS FOR SENATE BILL NO. 30(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS DYSON, Green, Taylor, Ogan, Cowdery, Seekins, Wagoner**  
**REPRESENTATIVE Lynn**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to information and services available to pregnant women and other**  
2 **persons; ensuring informed consent before an abortion may be performed; and**  
3 **providing exceptions to informed consent in certain cases."**

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

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

7 **LEGISLATIVE FINDINGS.** The legislature finds that

8 (1) duties of the state include regulating medical practice and fostering the  
9 development of standards of professional conduct in a critical area of medical practice;

10 (2) the state is interested in protecting the life and health of pregnant women;

11 (3) women have a right to know the medical risks associated with their  
12 reproductive options;

13 (4) the creation of an unbiased, scientific information site on the Internet that  
14 is reviewed and approved for medical accuracy and appropriateness by recognized obstetrical

1 and gynecological specialists designated by the State Medical Board and that sufficiently  
2 describes reproductive options and their potential consequences will protect, inform, and  
3 promote a woman's free and private choices between permanent and life-affecting  
4 alternatives;

5 (5) the creation of an unbiased, scientific information site on the Internet that  
6 is reviewed and approved for medical accuracy and appropriateness by recognized obstetrical  
7 and gynecological specialists designated by the State Medical Board and that sufficiently  
8 describes reproductive options and their potential consequences will reduce costly and undue  
9 litigation, will promote judicial economy and resources, and will provide physicians with a  
10 clear understanding of what constitutes informed consent for abortion;

11 (6) considerable testimony has been received indicating that women have, on  
12 occasion, received abortions in the state without considering sufficient information.

13 \* **Sec. 2.** AS 18.05 is amended by adding a new section to read:

14 **Sec. 18.05.032. Information relating to pregnancy and pregnancy**  
15 **alternatives.** (a) The department shall maintain on the Internet, in printable form,  
16 standard information that

17 (1) contains geographically indexed material designed to inform a  
18 person of public and private agencies and services that are available to assist a woman  
19 with the woman's reproductive choices; the department shall include information  
20 about at least the following types of agencies and services:

21 (A) agencies, services, clinics, and facilities designed to assist a  
22 woman through pregnancy, including adoption agencies and counseling  
23 services;

24 (B) agencies, services, clinics, and facilities that provide  
25 abortion options and counseling and post-abortion counseling and services; and

26 (C) agencies, services, clinics, and facilities designed to assist  
27 with or provide contraceptive options and counseling for appropriate family  
28 planning;

29 (2) includes a comprehensive regional directory of the agencies and  
30 clinics that request to be identified by the department under (1) of this subsection, a  
31 description of the services they offer, and the manner in which the agencies and clinics

1           may be contacted, including telephone numbers;

2                   (3) provides information concerning the eligibility for medical  
3 assistance benefits for prenatal care, childbirth, neonatal care, abortion services,  
4 women's health care, and contraception;

5                   (4) states that informed and voluntary consent is required under  
6 AS 18.16.060 for an abortion;

7                   (5) provides information concerning the process by which a mother of  
8 a child may establish a child support order to assist in the support of a child;

9                   (6) describes the fetal development of a typical unborn child at two-  
10 week gestational increments from fertilization to full-term, including links to  
11 photographs of a typical unborn child at four-week gestational increments, and  
12 relevant information about the possibility of an unborn child's survival at the various  
13 gestational ages; the information must be objective, nonjudgmental information that is  
14 reviewed and approved for medical accuracy and appropriateness by recognized  
15 obstetrical and gynecological specialists designated by the State Medical Board and  
16 designed to convey only accurate scientific information about unborn children at  
17 various gestational ages;

18                   (7) contains objective, unbiased information that is reviewed and  
19 approved for medical accuracy and appropriateness by recognized obstetrical and  
20 gynecological specialists designated by the State Medical Board and that describes the  
21 methods of abortion procedures and treatments commonly employed and the medical  
22 risks and possible complications commonly associated with each procedure and  
23 treatment, as well as the possible physical and psychological effects that have been  
24 associated with having an abortion;

25                   (8) contains objective, unbiased information that is reviewed and  
26 approved for medical accuracy and appropriateness by recognized obstetrical and  
27 gynecological specialists designated by the State Medical Board and describing the  
28 possible medical risks and complications commonly associated with pregnancy and  
29 childbirth, as well as the possible physical and psychological effects that have been  
30 associated with carrying a child to term;

31                   (9) contains objective, unbiased information that is reviewed and

1 approved for medical accuracy and appropriateness by recognized obstetrical and  
2 gynecological specialists designated by the State Medical Board and concerning the  
3 harmful effects on an unborn child when a woman consumes alcohol or illegal drugs  
4 during pregnancy;

5 (10) contains a disclaimer on the website home page concerning the  
6 graphic or sensitive nature of the information contained on the website.

7 (b) The department shall adopt regulations establishing procedures for  
8 establishing and maintaining the information under this section.

9 (c) In this section,

10 (1) "abortion" has the meaning given in AS 18.16.090;

11 (2) "fertilization" means the fusion of a human spermatozoon with a  
12 human ovum;

13 (3) "gestational age" means the age of the unborn child as calculated  
14 from the first day of the last menstrual period of a pregnant woman;

15 (4) "unborn child" means the offspring of a human being in utero at  
16 various stages of biological development.

17 \* Sec. 3. AS 18.16.010(a) is amended to read:

18 (a) An abortion may not be performed in this state unless

19 (1) the abortion is performed by a physician or surgeon licensed by the  
20 State Medical Board under AS 08.64.200;

21 (2) the abortion is performed in a hospital or other facility approved for  
22 the purpose by the Department of Health and Social Services or a hospital operated by  
23 the federal government or an agency of the federal government;

24 (3) before an abortion is knowingly performed or induced on an  
25 unmarried, unemancipated woman under 17 years of age, consent has been given as  
26 required under AS 18.16.020 or a court has authorized the minor to consent to the  
27 abortion under AS 18.16.030 and the minor consents; for purposes of enforcing this  
28 paragraph, there is a rebuttable presumption that a woman who is unmarried and under  
29 17 years of age is unemancipated; [AND]

30 (4) the woman is domiciled or physically present in the state for 30  
31 days before the abortion; and

1                                    (5) the applicable requirements of AS 18.16.060 have been  
2                                    satisfied.

3 \* **Sec. 4.** AS 18.16.010 is amended by adding new subsections to read:

4                    (h) A physician or other health care provider is liable for failure to obtain the  
5 informed consent of a person as required under AS 18.16.060 if the claimant  
6 establishes by a preponderance of the evidence that the provider has failed to inform  
7 the person of the common risks and reasonable alternatives to the proposed abortion  
8 procedure and that, but for that failure, the person would not have consented to the  
9 abortion procedure.

10                    (i) It is a defense to any action for the alleged failure to obtain the informed  
11 consent of a person under (h) of this section that

12                                    (1) the risk not disclosed is too commonly known or is too remote to  
13 require disclosure; or

14                                    (2) the person who is the subject of the alleged failure to obtain the  
15 informed consent stated to the physician or other health care provider that the person  
16 would or would not undergo the abortion procedure regardless of the risk involved or  
17 that the person did not want to be informed of the matters to which the person would  
18 be entitled to be informed.

19                    (j) In an action under this subsection, there is a rebuttable presumption that an  
20 abortion was performed with the pregnant woman's informed consent if the person  
21 who performed the abortion submits into evidence a copy of the woman's written  
22 certification required under AS 18.16.060(b).

23 \* **Sec. 5.** AS 18.16 is amended by adding a new section to read:

24                    **Sec. 18.16.060. Informed consent requirements.** (a) Except as provided in  
25 (d) of this section, a person may not knowingly perform or induce an abortion without  
26 the voluntary and informed consent of

27                                    (1) a woman on whom an abortion is to be performed or induced;

28                                    (2) the parent, guardian, or custodian of a pregnant, unemancipated  
29 minor if required under AS 18.16.020; or

30                                    (3) a pregnant, unemancipated minor if authorized by a court under  
31 AS 18.60.030.

1 (b) Consent to an abortion is informed and voluntary when the woman or  
2 another person whose consent is required certifies in writing that the physician who is  
3 to perform the abortion, a member of the physician's staff who is a licensed health care  
4 provider, or the referring physician has verbally informed the woman or another  
5 person whose consent is required of the name of the physician who will perform the  
6 procedure and the gestational estimation of the pregnancy at the time the abortion is to  
7 be performed and has provided either

8 (1) the Internet information required to be maintained under  
9 AS 18.05.032; the physician or a member of the physician's staff who is a licensed  
10 health care provider shall provide a copy of the Internet information if a person  
11 requests a written copy; if a member of the physician's staff provides the information  
12 required under this paragraph, the member of the physician's staff shall offer the  
13 opportunity to consult with the physician; or

14 (2) information about the nature of, risks of, and alternatives to an  
15 abortion provided in a manner that the physician or health care provider, after  
16 considering all of the attendant facts and circumstances, reasonably determine is  
17 appropriate for that woman or person whose consent is required.

18 (c) The information required in (b) of this section shall be provided before the  
19 procedure in a private setting to protect privacy, maintain the confidentiality of the  
20 decision, ensure that the information focuses on the individual circumstances, and  
21 ensure an adequate opportunity to ask questions. Provision of the information  
22 telephonically or by electronic mail, regular mail, or facsimile transmittal before the  
23 person's appointment satisfies the requirements of this subsection as long as the person  
24 whose consent is required under (a) of this section has an opportunity to ask questions  
25 of the physician after receiving the information.

26 (d) Notwithstanding (a) of this section, informed consent that meets the  
27 requirements of (a) - (c) of this section is not required in the case of a medical  
28 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -  
29 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.440, incest under  
30 AS 11.41.450, or an offense under a law of another jurisdiction with elements similar  
31 to one of these offences. In this subsection, "medical emergency" means a condition

1 that, on the basis of a physician's good faith clinical judgment, so complicates the  
2 medical condition of a pregnant woman that

3 (1) the immediate termination of the woman's pregnancy is necessary  
4 to avert the woman's death; or

5 (2) a delay in providing an abortion will create serious risk of  
6 substantial and irreversible impairment of a major bodily function of the woman.

7 \* Sec. 6. AS 18.50.245(e) is amended to read:

8 (e) The state registrar shall adopt regulations to implement this section. The  
9 regulations that establish the information that will be required in a report of an induced  
10 termination of pregnancy

11 (1) must require information substantially similar to the information  
12 required under the United States Standard Report of Induced Termination of  
13 Pregnancy, as published by the National Center for Health Statistics, Centers for  
14 Disease Control and Prevention, United States Department of Health and Human  
15 Services, in April 1998, as part of DHHS Publication No. (PHS) 98-1117;

16 (2) must require, if known, whether the unidentified patient  
17 requested and received a written copy of the information required to be  
18 maintained on the Internet under AS 18.05.032; and

19 (3) may not include provisions that would violate a woman's  
20 privacy by requiring the woman's name or any identifying information in the  
21 report.

22 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

24 SEVERABILITY. Under AS 01.10.030, the provisions of this Act are severable.

# STATE OF ALASKA

*Frank H. Murkowski, Governor*

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

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123 4<sup>TH</sup> ST., DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
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March 30, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol - Room 118  
Juneau, AK 99801-1182

Re: Legal Analysis of HCS CSSB 30(JUD)  
23/LS0193\O  
Our File No.: 663-04-0088

Dear Representative McGuire:

At your request, we have reviewed HCS CSSB 30(JUD) 23/LS0193\O, which has made further changes to this legislation in response to our letter dated March 18, 2004. Our understanding was that you directed a committee substitute (CS) to be drafted that incorporated all of the substantive changes we suggested in our previous letter. Our review of the CS indicates that with respect to the suggestions that were made, only one issue remains that should be brought to the attention of the committee.

That issue is that, aside from the inclusion of a definition for abortion, there have been no other changes to the definitions in section 2 of the bill. In our previous letters to the committee we have opined that it is important that the definitions in this bill be medically accurate. In addition, there has been testimony in the hearing that the definitions are not medically accurate. The more medically accurate the definitions are, the more defensible the bill becomes. That being said, it may be that the committee is assured of the medical accuracy of the definitions and there is no need for further changes. If this is the case, we would suggest that there be legislative record on this issue to help defend this legislation should a challenge be brought.

Otherwise, it appears you have incorporated all of the changes that we suggested in our most recent letter. In doing so, we believe you have created an even more defensible bill.

We appreciate the opportunity to work with the committee on this bill and continue to be available to assist the committee in any way that we can on this important legislation.

Sincerely,



Gregg D. Renkes  
Attorney General

GDR:SK:ef:mkb

cc: Stacie Kraly, Assistant Attorney General  
Ethan Falatko, Assistant Attorney General  
Mike Tibbles, Legislative Liason, Office of the Governor  
David Marquez, Chief Assistant Attorney General  
Deborah Behr, Assistant Attorney General

complaint and all other papers and records that pertain to an action commenced under this section, including papers and records that pertain to an appeal under this section, shall be kept confidential and are not public records under AS 40.25.110 — 40.25.120.

(l) The supreme court shall prescribe complaint and notice of appeal forms that shall be used by a complainant filing a complaint or appeal under this section. The clerk of each superior court shall furnish blank copies of the forms, without charge, to any person who requests them.

(m) A filing fee may not be required of, and court costs may not be assessed against, a complainant filing a complaint under this section or an appellant filing an appeal under this section.

(n) Blank copies of the forms prescribed under (l) of this section and information on the proper procedures for filing a complaint or appeal shall be made available by the court system at the official location of each superior court, district court, and magistrate in the state. The information required under this subsection must also include notification to the minor that

- (1) there is no filing fee required for either form;
- (2) no court costs will be assessed against the minor for procedures under this section;
- (3) an attorney will be appointed to represent the minor if the minor does not retain an attorney;
- (4) the minor may request that the superior court with appropriate jurisdiction hold a telephonic hearing on the complaint so that the minor need not personally be present. (§ 4 ch 14 SLA 1997)

**Revisor's notes.** — In 2000, "AS 40.25.110 — 40.25.120" was substituted for "AS 09.25.110 — 09.25.120" to reflect the 2000 renumbering of AS 09.25.110 — 09.25.120.

**Cross references.** — For purpose and findings concerning the enactment of this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

#### NOTES TO DECISIONS

**Constitutionality.** — The parental consent/judicial bypass system encompassed in AS 18.16.020 and 18.16.030 satisfies all the criteria established by the United States Supreme Court in *Bellotti v. Baird*, 443 U.S. 622 (1979) (constitutional rights of children can-

not be equated with those of adults in the abortion context), and those sections are not unconstitutional. *State v. Planned Parenthood Alaska, Whitefield, and Klem*, 35 P.3d 30 (Alaska 2001).

**Sec. 18.16.050. Partial-birth abortions.** (a) Notwithstanding compliance with AS 18.16.010, a person may not knowingly perform a partial-birth abortion unless a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice for that purpose. Violation of this subsection is a class C felony.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section or under any other law if the prosecution is based on this section.

(c) In this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery. (§ 1 ch 15 SLA 1997)

**Editor's notes.** — A Superior Court for the Third Judicial District held that AS 18.16.050 is unconstitutional and enjoined its enforcement. *Planned Parenthood v. State*, 3-AN-97-6019 (Super. Ct., Third Jud. Dist. at Anchorage, Alaska; March 13, 1998), appeal

withdrawn, No. S-08610 (June 29, 2000). The State appealed the Superior Court's decision, but withdrew the appeal following the U.S. Supreme Court's decision in *Stenberg v. Carhart*, 530 U.S. 914, 120 S. Ct. 2597, 147 L.Ed.2d 743 (2000).

**Sec. 18.16.090. Definitions.** In this chapter,

(1) "abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant, except that "abortion" does not include the termination of a pregnancy if done with the intent to

- (A) save the life or preserve the health of the unborn child;
  - (B) deliver the unborn child prematurely to preserve the health of both the pregnant woman and the woman's child; or
  - (C) remove a dead unborn child;
- (2) "unemancipated" means that a woman who is unmarried and under 17 years of age has not done any of the following:
- (A) entered the armed services of the United States;
  - (B) become employed and self-subsisting;
  - (C) been emancipated under AS 09.55.590; or
  - (D) otherwise become independent from the care and control of the woman's parent, guardian, or custodian. (§ 4 ch 14 SLA 1997)

**Cross references.** — For purpose and findings concerning the enactment of this section, see § 1, ch. 14, SLA 1997 in the 1997 Temporary and Special Acts.

## Chapter 18. Hospice and Home Care Programs.

### Article

1. Licensing of Hospice Programs (§§ 18.18.005 — 18.18.100)
2. Licensing of Volunteer Hospice Programs (§ 18.18.200)
3. General Provisions (§§ 18.18.300 — 18.18.390)
4. Home Health Agencies (§§ 18.18.410 — 18.18.490)

### Article 1. Licensing of Hospice Programs.

#### Section

- 05. Policy declaration
- 10. License required
- 20. Issuance and renewal of license

#### Section

- 30. Denial, suspension, or revocation of license
- 40. Right of entry and inspection
- 100. Requirements for licensure

**Sec. 18.18.005. Policy declaration.** It is the policy of the state that regulation of hospice programs should ensure an appropriate standard of care for hospice clients without unduly burdening the programs with requirements that consume staff time and financial resources that are essential for the delivery of services to hospice clients. In furtherance of this policy, AS 18.18.005 — 18.18.390 establishes two sets of standards for hospice programs that recognize the more limited staff time and financial resources available to voluntary hospice programs while requiring all programs to comply with basic minimum program standards. (§ 1 ch 104 SLA 1997)

**Revisor's notes.** — In 1999, the current reference "this chapter" in accordance with § 6, ch. 20, SLA of "AS 18.18.005 — 18.18.390" was substituted for 1999.

**Sec. 18.18.010. License required.** A person, including a partnership, association, or corporation, may not represent itself as a hospice program or operate a hospice program unless the person, partnership, association, or corporation has obtained a license from the department. (§ 1 ch 104 SLA 1997)

**Sec. 18.18.020. Issuance and renewal of license.** (a) Upon receiving an application and fee, if any, for a license under 18.18.005 — 18.18.390, the department shall issue a license if the applicant meets the applicable requirements of 18.18.005 — 18.18.390.

(b) If an applicant under (a) of this section does not meet the applicable requirements but makes continued efforts to comply with them and any noncompliance does not directly affect the safety of clients, the department may issue a temporary or provisional license that is valid for a reasonable period of time, as determined by the department.

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**Abortion:** In medicine, an abortion is the premature exit of the products of conception (the fetus, fetal membranes, and placenta) from the uterus. It is the loss of a pregnancy and does not refer to why that pregnancy was lost.

A spontaneous abortion is the same as a miscarriage. The miscarriage of 3 or more consecutive pregnancies is termed habitual abortion.

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Main Entry: **abortion**

Pronunciation: &-'bor-sh&n

Function: *noun*

**1** : the termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or fetus: **a** : spontaneous expulsion of a human fetus during the first 12 weeks of gestation -- compare MISCARRIAGE **b** : induced expulsion of a human fetus **c** : expulsion of a fetus of a domestic animal often due to infection at any time before completion of pregnancy -- see CONTAGIOUS ABORTION, TRICHOMONIASIS **b**, VIBRIONIC ABORTION

**2** : arrest of development of an organ so that it remains imperfect or is absorbed

**3** : the arrest of a disease in its earliest stage <*abortion* of a cold>

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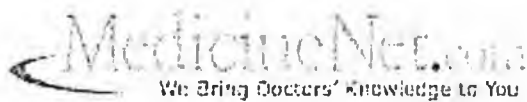
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**Fertilization:** Fertilization is the process of combining the male gamete, or "sperm," with the female gamete, or "ovum." The product of this combination is a cell called a zygote.

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Main Entry: **fer·til·iza·tion**

Variant(s): *or British* **fer·til·isa·tion** /'f&rt-ə-l-&-'zA-sh&n/

Function: *noun*

: an act or process of making fertile: as **a** : an act or process of fecundation, insemination, or impregnation **b** : the process of union of two gametes whereby the somatic chromosome number is restored and the development of a new individual is initiated

- **fer·til·ize** *or British* **fer·til·ise** /'f&rt-ə-l-'z/ *transitive verb* -ized *or British* -ised -iz·ing *or British* -is·ing

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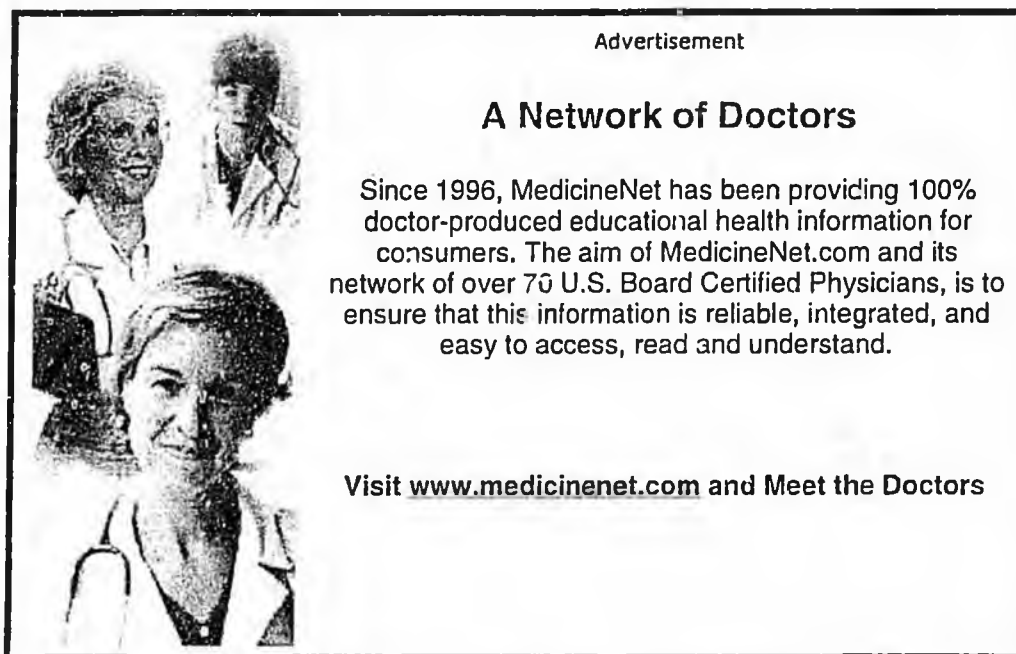
Source: <http://www.medterms.com>  
MedTerms is the Medical Dictionary of MedicineNet.com

**Gestation period:** The period of development of the young from the time of conception until birth. For humans the full gestation period is normally 9 months.

The word "gestation" comes from the Latin "gestare" meaning "to carry or to bear."

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## Medical Dictionary

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Main Entry: **gestation period**  
 Function: *noun*  
 : the length of time during which gestation takes place -- called also *gestation*

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### Diseases & Conditions

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- gestation
  - ectopic pregnancy
  - extrauterine gestation
  - gestation period
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Main Entry: **ges·ta·tion**  
 Pronunciation: je-'stA-sh&n  
 Function: *noun*  
**1** : the carrying of young in the uterus from conception to delivery : **PREGNANCY**  
**2** : **GESTATION PERIOD**  
 - ges·ta·tion·al /-sh&l, -sh&n-&l/ *adjective*

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## Diseases & Conditions



# Medical Dictionary

The latest word on medical terms

Main Entry: **un·born**  
 Pronunciation: -'bo (&) rn  
 Function: *adjective*  
 : not yet born : existing in utero <unborn children>

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## Diseases & Conditions



# Medical Dictionary

*The latest word on medical terms*

Main Entry: **in utero**

Pronunciation: in-'yŭt-&-'rŏ

Function: *adverb or adjective*

: in the uterus : before birth <a disease acquired *in utero*> <an *in utero* diagnosis>

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**Source:** <http://www.medterms.com>  
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**Embryo:** The organism in the early stages of growth and differentiation from fertilization to, in humans, the beginning of the third month of pregnancy. After that point in time, it is termed a fetus.


*Last Editorial Review: 7/5/02*

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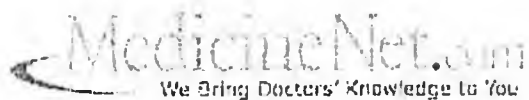
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Statements and information regarding dietary supplements have not been evaluated or approved by the Food and Drug Administration. Please consult your healthcare provider before beginning any course of supplementation or treatment.

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**Fetus:** The unborn offspring from the end of the 8<sup>th</sup> week after conception (when the major structures have formed) until birth. Up until the eighth week, the developing offspring is called an embryo.

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--H.R.1997--

H.R.1997

*One Hundred Eighth Congress**of the**United States of America**AT THE SECOND SESSION*

Begun and held at the City of Washington on Tuesday,

the twentieth day of January, two thousand and four

An Act

To amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Unborn Victims of Violence Act of 2004' or 'Laci and Conner's Law'.

**SEC. 2. PROTECTION OF UNBORN CHILDREN.**

(a) IN GENERAL.- Title 18, United States Code, is amended by inserting after chapter 90 the following:

**'CHAPTER 90A--PROTECTION OF UNBORN CHILDREN**

'Sec.

'1841. Protection of unborn children.

**'Sec. 1841. Protection of unborn children**

'(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

'(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

'(B) An offense under this section does not require proof that--

'(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or