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1: Am J Ind Med. 1993 Jun;23(6):921-40.

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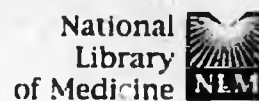
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## Mortality of urban firefighters in Alberta, 1927-1987.

Guidotti TL.

Occupational Health Program, University of Alberta Faculty of Medicine, Edmonton, Canada.

The mortality experience of firefighters has been an active topic of investigation. Collateral toxicological evidence suggests that certain causes of death are likely to be associated with firefighting: lung cancer, heart disease, and obstructive pulmonary disease. To date there has not been a clear and consistent demonstration of excess risk due to occupational exposure for these outcomes, but certain other cancers, including genitourinary, colon and rectum, and leukemias, lymphomas, and myeloma, appear to be consistently elevated. A major unproven hypothesis is that risk increased following the introduction, in the 1950s of combustible plastic furnishing and building materials known to generate toxic combustion products. Mortality by cause of death was examined for two cohorts totalling 3,328 firefighters active from 1927 to 1987 in Edmonton and Calgary, the two major urban centers in the province of Alberta, Canada, examining associations with cohort (before and after the 1950s) and years of service weighted by exposure opportunity. The study attained 96% follow-up of vital status and over 64,983 person-years of observation, yielding 370 deaths. Mortality from all causes was close to the expected standardized mortality ratio (96; 95% confidence limits (CL) 87, 107) as was that for heart disease (110; 95% CL 92, 131), and neither was statistically significant at the  $p < 0.05$  level (N.S.). Excesses were observed for all malignant neoplasms (127; 95% CL 102, 155,  $p < 0.05$ ) and for cancer of lung (142; 95% CL 91, 211, N.S.), bladder (315; 95% CL 86, 808, N.S.), kidney and ureter (414; 95% CL 166, 853,  $p < 0.05$ ), colon and rectum (161; 95% CL 88, 271, N.S.), pancreas (155; 95% CL 50, 362, N.S.) and leukemia, lymphoma, and myeloma (127; 95% CL 61, 233, N.S.); obstructive pulmonary diseases (157; 95% CL 79, 281, N.S.). Fire-related causes showed a marked excess (486; 95% CL 233, 895,  $p < 0.01$ ), but external causes overall showed a significant deficit (66; 95% CL 49, 87,  $p < 0.05$ ). The lung cancer excess was confined to Edmonton; there was no consistent association with duration of employment, exposure opportunity, or cohort of entry (before or after the 1950s) except that the highest risk was observed among Edmonton firefighters with over 35 weighted years. The excess of cancers of the urinary tract was observed mostly among firefighters entering service after 1950, appeared to increase with length of service and exposure opportunity, and was observed in both cities. An occupational association with heart disease and chronic pulmonary disease is not supported in this study on this population. (ABSTRACT TRUNCATED AT 400 WORDS)



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1: Cancer Causes Control. 1994 Mar;5(2):129-35.

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## Cancer incidence among firefighters in Seattle and Tacoma, Washington (United States).

Demers PA, Checkoway H, Vaughan TL, Weiss NS, Heyer NJ, Rosenstock L.

School of Public Health and Community Medicine, University of Washington, Seattle.

In order to determine if exposure to carcinogens in fire smoke increases the risk of cancer, we examined the incidence of cancer in a cohort of 2,447 male firefighters in Seattle and Tacoma, (Washington, USA). The study population was followed for 16 years (1974-89) and the incidence of cancer, ascertained using a population-based tumor registry, was compared with local rates and with the incidence among 1,878 policemen from the same cities. The risk of cancer among firefighters was found to be similar to both the police and the general male population for most common sites. An elevated risk of prostate cancer was observed relative to the general population (standardized incidence ratio [SIR] = 1.4, 95 percent confidence interval [CI] = 1.1-1.7) but was less elevated compared with rates in policemen (incidence density ratio [IDR] = 1.1, CI = 0.7-1.8) and was not related to duration of exposure. The risk of colon cancer, although only slightly elevated relative to the general population (SIR = 1.1, CI = 0.7-1.6) and the police (IDR = 1.3, CI = 0.6-3.0), appeared to increase with duration of employment. Although the relationship between firefighting and colon cancer is consistent with some previous studies, it is based on small numbers and may be due to chance. While this study did not find strong evidence for an excess risk of cancer, the presence of carcinogens in the firefighting environment warrants periodic re-evaluation of cancer incidence in this population and the continued use of protective equipment.

PMID: 8167259 [PubMed - indexed for MEDLINE]

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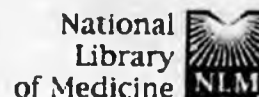
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1: Am J Ind Med. 2001 May;39(5):463-76.

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## Cohort mortality study of Philadelphia firefighters.

Baris D, Garrity TJ, Telles JL, Heineman EF, Olshan A, Zahm SH.

Division of Cancer Epidemiology and Genetics, National Cancer Institute, Rockville, Maryland 20892, USA. barisd@mail.nih.gov

**BACKGROUND:** Fire fighters are exposed to a wide variety of toxic chemicals. Previous studies have reported excess risk of some cancers but have been limited by small numbers or little information on employment characteristics. **METHODS:** We conducted a retrospective cohort mortality study among 7,789 Philadelphia firefighters employed between 1925 and 1986. For each cause of death, the standardized mortality ratios (SMRs) and 95% confidence intervals were estimated. We also compared mortality among groups of firefighters defined by the estimated number of career runs and potential for diesel exposure. **RESULTS:** In comparison with U.S. white men, the firefighters had similar mortality from all causes of death combined (SMR = 0.96) and all cancers (SMR = 1.10). There were statistically significant deficits of deaths from nervous system diseases (SMR = 0.47), cerebrovascular diseases (SMR = 0.83), respiratory diseases (SMR = 0.67), genitourinary diseases (SMR = 0.54), all accidents (SMR = 0.72), and suicide (SMR = 0.66). Statistically significant excess risks were observed for colon cancer (SMR = 1.51) and ischemic heart disease (SMR = 1.09). The risks of mortality from colon cancer (SMR = 1.68), kidney cancer (SMR = 2.20), non-Hodgkin's lymphoma (SMR = 1.72), multiple myeloma (SMR = 2.31), and benign neoplasms (SMR = 2.54) were increased among firefighters with at least 20 years of service. **CONCLUSIONS:** Our study found no significant increase in overall mortality among Philadelphia firefighters. However, we observed increased mortality for cancers of the colon and kidney, non-Hodgkin's lymphoma and multiple myeloma. There was insufficient follow-up since the introduction of diesel equipment to adequately assess risk.

PMID: 11333408 [PubMed - indexed for MEDLINE]

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## **FIREFIGHTERS WANT WCB TO RECOGNIZE WORK-RELATED CANCERS**

VANCOUVER – The British Columbia Workers' Compensation Board has been asked to examine a request that firefighters who develop certain cancers be presumed to have contracted them through work, said Labour Minister Graham Bruce.

In a meeting with the B.C. Professional Firefighters' Association Thursday, Bruce and Burnaby-Edmonds MLA Patty Sahota heard that firefighters are up to three times more likely to develop cancers of the brain, bladder and kidney, as well as leukemia and non-Hodgkin's lymphoma, from breathing in toxic fumes.

"Clearly the firefighters strongly believe their concerns about work-related cancers should be recognized by the WCB," said Bruce, "and I believe they should have an opportunity to meet with the WCB."

Bruce said he has asked the WCB to consider the firefighters' request. The WCB is already looking into this matter, the minister added, and has advised him it will consult with firefighters as part of its process.

The Workers Compensation Act lists a number of occupational diseases where there is a presumption that the disease was caused by work unless proved otherwise. Currently, firefighters who develop cancers must make their case on an individual basis in order to get workers' compensation.

Bruce noted the WCB had been revamped with a new board of directors and a new mandate, "and we have to give the process a chance to work. If the WCB determines that the science supports a causal relationship between firefighting and these cancers, then we will make the appropriate changes."

Sahota said Manitoba, Alberta, Nova Scotia and Saskatchewan have either enacted or are in the process of enacting legislation providing firefighters with the benefit of a presumption for specific types of cancers including brain, bladder, kidney, non-Hodgkin's lymphoma, leukemia and colon.

The effect of such legislation is that a firefighter who develops the particular cancer will be entitled to workers' compensation benefits without having to prove a link between exposures at work and the cancer.

-30-

Visit the province's Web site at <http://www.gov.bc.ca/> for online information and services.

Media        Betty Nicholson  
contact:     Communications Director  
               250 387-2699

# Alaska State Legislature

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Juneau, AK 99801-1182

Phone: (907) 465-4939  
Fax: (907) 465-2418  
Toll Free: (800) 465-4939  
Rep.Tom\_Anderson@legis.state.ak.us

**Representative Tom Anderson**  
District 19 - Anchorage

## States That Have Enacted Presumptive Cancer Laws

<u>State</u>	<u>Statute</u>
Alabama	11-43-144
Arizona	38-642
California	Labor Code 3212.1
Illinois	5/6-151.1
Louisiana	33:2011
Maryland	Labor 9-503
Massachusetts	32-94B
Minnesota	176.011
Nevada	617.453
New Hampshire	281-A:17
New York	Labor 207-K
North Dakota	65-01-02
Oklahoma	49-110
Rhode Island	45-21.2-9
Tennessee	50-6-301
Texas	Labor 401.001
Virginia	65.2-402

**NATIONAL CONFERENCE OF STATE LEGISLATURES**  
**Workers Compensation Coverage for Hepatitis C, Cancer, Heart Disease**

Alabama § 11-43-144 (f), Compensation for illness due to hepatitis C infection for firefighters. Includes Hypertension, Heart Disease, Respiratory Disease, AIDS, Cancer, and Hepatitis.

Colorado § 8-41-208, Coverage for job related exposure to hepatitis C. The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer. Shall be presumed to be within the course and scope of employment if conditions are satisfied.

Arizona § 23-1043.03 Compensation for illness due to hepatitis C infection for firefighters, EMT's, police officers, paramedics, corrections officers, forensics lab techs/scientists, or any other person who regularly handles blood or bodily fluids.

California Labor Code § 3212.8 Compensation for illness due to hepatitis infection (presumably all forms) for firefighters and police officers, whether volunteer or employed.

Florida § 112.181 Compensation for illness due to hepatitis C infection for firefighters, paramedics, EMT's, police officers, and corrections officers employed full-time by the state or other political subdivisions of the state.

Idaho § 72-438 Compensation for illness due to all forms of hepatitis for all employees; for exceptions see 72-212. Including silicosis, cardiovascular or pulmonary or respiratory disease and AIDS.

Kansas § 44-510 (e) Compensation for illness due to hepatitis infection (presumably all forms) for police officers, ambulance attendants, and mobile intensive care technicians or firefighters, including volunteers.

Maine  
39-A § 609; Compensation limits; Includes cancer.

Maryland General Health Code § 18-213.1 Compensation for illness as a result of any form of hepatitis infection for police officers, ambulance attendants, and mobile intensive care technicians or firefighter, including volunteers.

Michigan 418.405; Firemen, policemen, etc.; respiratory and heart diseases or illness as personal injuries

Missouri 287.067; Occupational disease defined--loss of hearing, radiation injury, communicable disease, others; Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to

be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

New York General Municipal Law § 24-207-N, O, P Compensation for illness as a result of hepatitis infection for corrections officers, EMTs or advanced EMTs, police officers, and firefighters.

Nevada

N.R.S. 617.453 Cancer as occupational disease of firemen

N.R.S. 617.455 Lung diseases as occupational diseases of firemen and police officers

N.R.S. 617.457 Heart diseases as occupational diseases of firemen and police officers

Pennsylvania

77 P.S. § 27.1 Includes some cancers and heart diseases

South Carolina § 42-11-30. Presumption that heart or respiratory diseases occurring in fire fighters arose out of and in course of employment.

Virginia § 65.2-402 Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer

Washington 51.32.185 Includes cancer and some respiratory and heart diseases

### **Chaptered Bills**

MD S.B. 633, Chaptered APRIL 22, 2003; Extends the presumption of a compensable occupational disease under the workers' compensation law to include Baltimore City deputy sheriffs who suffer from heart disease or hypertension resulting in partial or total disability or death; requires that workers' compensation benefits in addition to retirement benefits; requires Baltimore City deputy sheriffs to submit medical reports to the Baltimore City Sheriff

NV A.B. 451, Chaptered MAY 30, 2003. Relates to occupational diseases; clarifies provisions governing compensation for certain firemen who develop disabling cancer as an occupational disease.

NV S.B. 184, Chaptered JUNE 12, 2003. Relates to public employees; expands the definition of accident benefits for purposes of industrial insurance to include preventative treatment for hepatitis administered as a precaution to certain local police officers; creates a statutory presumption that hepatitis is an occupational disease for certain local police officers.

NM H.B. 840, APRIL 11, 2003; Pocket Veto by GOVERNOR. Relates to worker's compensation; removes silicosis and asbestosis exemptions in the New Mexico occupational disease disablement law.

NY S.B. 7367, Chaptered JANUARY 30, 2003, Provides a presumption of that a disease of the heart was incurred in the performance of duty for EMTs and advanced EMTs in certain cities.

VA H.B. 757, Chaptered APRIL 8, 2002, Relates a presumption that hepatitis, meningococcal meningitis, tuberculosis, herpes or HIV causing the death or disability of firefighters, paramedics, emergency medical technicians, members of the State Police Officers' Retirement System, members of county, city or town police departments, sheriffs and deputy sheriffs, city sergeants or deputy city sergeants of certain cities, and the Capitol Police shall be occupational diseases

VA H.B. 1237, Chaptered APRIL 6, 2002; Provides that medical evidence contesting the relationship between employment and disease shall not be considered substantial competent medical evidence sufficient to overcome the respiratory disease, heart disease, or cancer presumptions for the purpose of workers' compensation; defines firefighter as any firefighter, paramedic or emergency medical technician employed by any public or private employer.

VA H.B. 1877, Chaptered MARCH 22, 2003; Eliminates the provision in Workers' Compensation that delays the application of the presumption that certain diseases causing the death or disability of a firefighter or certain other employees who have a documented occupational exposure to blood or body fluids are presumed to be occupational diseases until 6 months after the employee has undergone a preemployment physical examination.

AZ S.B. 1197, Chaptered JANUARY 29, 2003, Concerns workers' compensation and peace officers assigned to hazardous duties

July 2003

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 31  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Workers Compensation Coverage RDU Insurance (116)  
 Component Insurance Operations  
 Sponsor Anderson  
 Requester House Labor & Commerce Component No. 354

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</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 ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This is a benefits bill and has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone 907.269.7900  
 Division Insurance Date/Time 2/7/05 10:46 AM  
 Approved by: Edgar Blatchford, Commissioner Date 2/7/2005  
 Agency Commerce, Community & Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 31  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An act relating to presumption of RDU Risk Management  
coverage of w/c in certain occupations Component Risk Management  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 71

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

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

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

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Risk Management (RM) will be adversely affected by the changes in this legislation. RM administers the self insurance program providing workers' compensation protection for all state employees, including illness claims filed by occupations affected by this legislation.  
  
 The self insured worker's compensation claims will realize increased litigation and benefit costs. As the number of reported exposures will vary by year, it is difficult to present accurate projections.  
  
 Future Risk Management's workers' compensation assessments to those agencies with employee occupations affected will reflect actual costs incurred as premiums charged each agency are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Risk Management Date/Time 2/9/05 10:00 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/9/2005  
 Agency Administration

# LEGAL SERVICES

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## MEMORANDUM

December 15, 2004

**SUBJECT:** Establishing a presumption of coverage in Workers Compensation for occupational diseases. (Work Order No. 24-LS0225VA)

**TO:** Representative Tom Anderson  
Attn: Josh Applebee

**FROM:** Barbara R. Craver *BRC*  
Legislative Counsel

You asked for a bill to provide a broad presumption of coverage in workers compensation for public safety employees and other first responders. You attached several state laws and some articles. Enclosed is a draft bill. Your attachments indicated that the primary concern was the unique risks for disease suffered by fire fighters and by persons engaged in occupations involving exposure to human blood or bodily fluids.

In regard to fire fighters, I defined the term "fire fighters" as those who are covered by workers compensation under AS 23.30.243.<sup>1</sup> This would cover volunteer fire fighters serving regularly organized volunteer fire departments. The Washington law (RCW 51.32.185) defines fire fighters by reference to the definitions in its public employment retirement system. The Texas bill (not enacted) applies the presumption to fire protection personnel who are various kinds of permanent fulltime employees. You could limit the application of this bill to fire fighters covered by the Public Employees Retirement System (PERS), but that would not include the numerous volunteer fire fighters who are not employees of PERS members. Because AS 23.30.243 extends workers compensation coverage to volunteers as well as employees, I incorporated that

---

<sup>1</sup> Sec. 23.30.243. Extending coverage to certain fire fighters.

(a) For the purposes of workers' compensation any injury, disability or death incurred by a fire fighter by reason of the fire fighter's participation in authorized training, proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in the state is considered to have arisen out of and been sustained in the course of employment, and the fire department or regularly organized volunteer fire department of the fire fighter's primary employment or registration is considered to be the employer, except when the injured, at the time of injury or death, is acting for compensation from another.

(b) Nothing in this section requires the extension of benefits to a fire fighter employed by a municipality which by law or regulation expressly prohibits the activity giving rise to the injury, disability, or death.

section to define the scope of fire fighters covered. Please let me know if you would like a different definition.

This bill only allows the presumption of work-related cancer for fire fighters who had a "qualifying medical exam" upon becoming a fire fighter or during employment as a fire fighter if the exam showed no sign of cancer. This is derived from the Washington code, RCW 51.32.185(3) and the Texas bill. The Texas bill you provided extends the presumption to a person who has an exam during employment as a fire fighter to rule out pre-existing cancer. I cannot find a definition in those laws and bills for "qualifying exam." In the bill draft, I have directed the department to define by regulation what a "qualifying exam" would be, because a medical exam might not be thorough enough to detect cancer. Because this bill includes volunteers with regularly organized fire departments, it is possible that those departments do not require medical exams, so you may wish to consider whether this limitation unfairly exempts those fire fighters from the presumption. Because of this medical exam requirement, it is possible that many current fire fighters will not qualify for the presumption either because their employer won't pay for a qualifying exam or because the fire fighter has already developed cancer.

In regard to the presumption established for workers exposed to human blood or bodily fluids, I did not limit that to "first responders." We do not have any current definition in the statutes for "first responders", or any other term that covers all the occupations you had listed: fire fighters, airport police, corrections officers, trooper and other first responders. Because contagious diseases transmitted through exposure to human blood and bodily fluid were covered specifically for fire fighters in the Washington code section (RCW 51.32.185(4)), and generally for any occupation in the Idaho law (I.C. 72-436), I took the more general approach and provided a presumption for any occupation involving exposure to human blood or bodily fluids. If you would like that presumption applied more narrowly, please let me know.

Section Two provides that claims may be made based on exposure which occurred prior to the effective date of the law.

If I may be of further assistance, please advise.

BRC:lmb  
04-195.lmb

Enclosure

**HB**

**53**



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SS HB53  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to child in need of RDU Legal and Advocacy Services  
aid proceedings;... Component Public Defender Agency  
 Sponsor Reps. Coghill, Ramras...  
 Requester House HESS Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	139.0	139.0	139.0	139.0	139.0	139.0
Travel	6.1	6.1	6.1	6.1	6.1	6.1
Contractual	46.0	46.0	46.0	46.0	46.0	46.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	13.4	1.4	1.4	1.4	1.4	1.4
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>207.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	207.9	195.9	195.9	195.9	195.9	195.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>207.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>	<b>195.9</b>

Estimate of any current year (FY2005) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time	2	2	2	2	2	2
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 SS HB53 is an omnibus bill significantly changing the child protective statutes (CINA) and in some instances the adoption statutes. Many portions of the bill will have a fiscal impact on the operations of the Public Defender Agency and will be discussed specifically on the following page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division Public Defender Agency Date/Time 3/15/05 9:31 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/15/2005  
 Agency Department of Administration

## FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. SS HB 53

### ANALYSIS CONTINUATION

Fiscal Note Analysis for SS HB 53: (continued)

Sections 9, 10, portions of 13 and 15, 17, 18, 21, 22, 23, 24, 25, 26, 27, 32, 47, 48, 52 of this bill change statutes and court rules concerning confidentiality in child protective proceedings (CINA). CINA hearings will be presumptively open to the public, unless the court orders otherwise, based upon a motion to close it under certain circumstances enumerated in the bill. The Agency opens over 900 new child protective proceedings a year. It is anticipated that in at least half of the Agency's cases the attorney will be repeatedly moving to close hearings. This additional motion practice will also require service on a member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to a half-time attorney position, factoring in support staff. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled.

This bill, in sections 8, 11, 13, and 49-51, also provides a party to a Child in Need of Aid proceeding the right to demand a jury trial on a petition to terminate parental rights. Termination trials are currently conducted by the court. Not many CINA cases proceed to termination trial. A review by the court system of the number of cases statewide that proceed to termination revealed an estimate of 180 termination cases in FY04. Assuming that number for the future, it is estimated that in 50%, or 90 of these cases, a jury trial will be requested. Accepting this number of actual termination trials, the Public Defender Agency estimates that it is appointed in approximately 75% of these cases, or 68 cases. It is also estimated that it would add approximately 3 days of trial to each termination proceeding if it were tried by a jury as opposed to the court, because of the need for jury selection, opening and closing statements, and a more lengthy presentation of evidence, including live and expert witnesses, and jury instructions. If 68 of the Agency's termination trials are jury trials, and each one takes on average three extra trial days, it would result in 204 more trial days for our attorneys. That translates into one 3/4-time attorney IV position. Each attorney receives a salary based upon 37.5 hours a week, for a total of 1950 hours a year. 204 extra days of trial requires approximately 1530 hours, approximately 78% of a year's worth of attorney work. Therefore, we will need one additional 3/4-time attorney to handle this increased workload. Because the greatest number of CINA cases are handled by the Anchorage office, we would place the attorney in that location. The attorney costs include clerical support and one-time equipment costs in the first year.

Other provisions of the bill will have a fiscal impact on the Agency as well, but the extent of the impact cannot be predicted with any accuracy. In sections 12 and 15 it provides for family members to request and obtain a review hearing of denied visitation or a denied adoption request. It is unclear from the language in the bill whether these family members would be considered parties, and whether they would be entitled to the appointment of counsel, if indigent. In any case, additional review hearings requested by others than traditional parties to the case will result in a fiscal impact to the Agency, but the extent cannot be predicted.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SSHB53-LAW-T&WC;HS  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to child-in-need-of-aid  
proceedings..." RDU CIVIL  
Sponsor Representative Coghill Component Torts & Worker's Compensation &  
House HESS Human Services  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4
Travel	5.1	5.1	5.1	5.1	5.1	5.1
Contractual	298.6	298.6	298.6	298.6	298.6	298.6
Supplies	31.6	31.6	31.6	31.6	31.6	31.6
Equipment	128.2	17.6	17.6	17.6	17.6	17.6
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>2,487.9</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>2,487.9</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>	<b>2,377.3</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	19	19	19	19	19	19
Part-time	3	3	3	3	3	3
Temporary						

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

This bill amends AS 47.10 (Children in Need of Aid). Passage of this legislation will impact the Department of Law in a number of ways.

1. Section 7 strengthens the rights of biological grandparents in a custody proceeding for a child in need of aid when one or both of the child's parents are dead and the child has been abandoned by a remaining parent. It is anticipated that a number of instances will arise where the State would take the position that granting custody to the child's biological grandparents is not in the child's best interest. We estimate that each existing CINA attorney would handle 2 such contested custody proceeding each year and that each would take about 3 days. Each paralegal would also handle 2 such contested hearings per year for one day. Total fiscal impact from the additional work load is \$76,671. Half of an

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
Division Administrative Services Division Date/Time 3/14/05 4:31 PM  
Approved by: K. Daughhete for Scott N. Nordstrand, Acting Attorney General Date 3/14/2005  
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION

attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

2. Section 8 conveys the right to demand a jury trial in a hearing on a petition to terminate parental rights. In the Department of Health and Social Services analysis of the bill, an estimate of 90 new jury trials would result if this section of the bill is passed. The Department of Law believes that this estimate may be low, as a case may turn into several trials when there are a number of children involved in the petition, and also a number of parents - a case may involve one mother but more than one father. Also, parents who would have otherwise relinquished parental rights may see a new chance with a jury rather than with a judge who may be familiar with their history as parents. Preparation for a jury trial, rather than a hearing, requires preparation of a much more detailed presentation. Consequently, we estimate each CINA attorney would need to handle about two of these cases per month at 3 days each and each paralegal would also handle two per month at 2 days each. Total fiscal impact from the additional workload is estimated at \$938,523 and includes funding for 5 new attorneys and a paralegal and 2 new Law Office Assistants.

3. Section 10 changes statutes that apply to confidentiality of child in need of aid matters. Longstanding policies, practices and procedures of every agency and branch of government involved in child welfare protection will be altered. As a result it is anticipated that disputes will arise over the interpretation and implementation of this legislation. The additional operating costs to resolve such disputes are estimated based on 400 additional attorney hours per year at a cost of \$49,696. Half of an attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

4. Section 12 of the bill allows a parent, family member, or guardian who is denied visitation rights the right to request a review hearing thereby increasing the number of hearings attorneys must prepare for and attend. Sections 14 and 15 make a relative preference for adoption but adds three reasons why adoption may be denied to the relative. These sections will give rise to a number of contests and good cause findings. Taken together, these sections will cause an increase in the caseload that will add another 2 days of work to each CINA attorney's schedule and one day of work for each paralegal. This is a conservative estimate based on the assumption that some issues will be worked out early on in the placement process. We estimate that each attorney will experience an increased workload of just under one week a month. That will cost \$938,523 which will fund 5 additional attorneys, one paralegal, and two law office assistants.

5. Section 27 addresses immunity from liability but does not actually provide immunity, it provides that if you comply with the law, you are immune. The Department believes there will be lawsuits filed where a litigant disagrees with whether AS 47.10 was followed regarding one or more of its provisions.

6. Section 30 of the bill amends AS 47.10.960 and requires the adoption of regulations establishing a duty and standard of care for services to children and their families served under AS 47.10. Passage of this amendment will open the state to the argument that the mandatory provisions of the act could be the basis for statutory civil actions for damages. At present, if there are concerns about functions not being properly carried out in a Child in Need of Aid (CINA) case, children, parents, foster parents, and the department can and do bring those matters to the attention of the judge involved in the CINA matter. Parents are represented by counsel, and guardians ad litem are often appointed to advocate on behalf of the child's best interests. If any of the involved parties files an independent lawsuit for damages outside the CINA case, it will require substantial additional resources to respond and could complicate and impede conclusion of the CINA case.

As of March 2005, approximately 2,000 children were in state custody in out-of-home placement. If only 2 percent of those children, or their parents, chose to initiate tort litigation based on a perceived failure of the department to comply with a mandatory provision of AS 47.10, there would be 40 new cases a year. We estimate it would take a tort litigator 15-20 hours to gather and review the necessary factual information from the underlying CINA proceedings, and another 20-25 hours to litigate the threshold question of whether the plaintiff had a cognizable legal claim based on violation of a CINA statute. A conservative estimate of the time needed to defend these new cases would be 1,600 hours per year. If the court found a statutory damages claim to be viable, many more hours would be required to engage in discovery, depositions, and trial preparation. Full litigation of just one such case a year would be expected to take 100 hours of attorney time. These cases are usually very document intensive, and we anticipate 20-30 hours of paraprofessional time would be required and an average of \$1,500 for direct case costs including deposition and document production costs in each of the new cases.

## 2005 LEGISLATIVE SESSION

### ANALYSIS CONTINUATION

We estimate that at a minimum, the services of one and a half full-time equivalent attorney positions and one full-time equivalent paraprofessional would be required to defend the state from new tort claims filed as a result of the bill. \$60,000 is included for direct case costs. Total fiscal impact estimated from section 30 is \$484,386.

In addition to litigation stemming from CINA cases, we anticipate that this bill may spawn new tort litigation based on law enforcement's alleged failure to comply with statutory provisions regarding runaway and missing minors. AS 47.10.141 imposes many obligations on law enforcement agencies and peace officers to locate these minors and take them into protective custody. Without the language in current AS 47.10.960, a minor or parent may assert that these mandatory requirements create potential tort liability analogous to that found by the Alaska Supreme Court in *Busby v. Municipality of Anchorage*, 741 P.2d 235 (Alaska 1987). That case found that former AS 47.37.170(b) imposed a mandatory duty to take intoxicated persons into protective custody, the failure of which created potential tort liability. We cannot estimate how many such cases might be litigated, but note that the potential defendants to these claims would not be limited to state agencies or personnel.

7. The creation in statute of the Citizens' Review Panels for Permanency Planning is likely to result in additional regulation and legislation work as the Panel adopts policies and regulations that govern it and rely on resources within the State's CINA network to conduct its reviews and prepare its annual report to the Governor. Fiscal impacts arising from this new work are not determinable at this time. It is likely that any regulations work will need to be funded by the Department of Health and Social Services if it becomes a priority and there are not sufficient resources to take on regulations projects or legislative drafting when it is needed.

Position costs are based on the department's current cost allocation plan, and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 per position is included. Proportionate support position funding is included in the cost schedule at a rate of approximately one support position for every three professional positions. Position authorizations for support positions are required, however, and one FTE law office assistant position is included. This will be necessary if sections are passed that in and of themselves would not cause the need for an additional law office assistant, but taken as a whole, would.

# FISCAL NOTE

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB053SS-DHSS-OCS1-03-11-05

Revision Date/Time (Note if correction): \_\_\_\_\_  
Title RELATING TO CHILD-IN-NEED-OF AID MATTERS

( ) Publish Date: \_\_\_\_\_  
Dept. Affected: Health & Social Services

Sponsor COGHILL  
Requester HOUSE (HES)

RDU Children's Services  
Component Foster Care Base Rate

Component No. 2236

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</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	60.9	60.9	60.9	60.9	60.9	60.9
1003 GF Match	118.3	118.3	118.3	118.3	118.3	118.3
1004 GF	2,918.0	2,918.0	2,918.0	2,918.0	2,918.0	2,918.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>	<b>3,097.2</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department Office of Children's Services budget are summarized below.

Sec.13 (u). Child Placement in Foster Homes Known as A Home Requesting Adoption.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner  
Division Office of Children's Services  
Approved by: Joel S. Gilbertson, Commissioner  
Agency Department of Health and Social Services

Phone 465-3397  
Date/Time 03/08/2005  
Date 03/11/2005

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

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

**BILL NO. HB053SS-DHSS-OCS1-03-11-05**

**ANALYSIS CONTINUATION**

Sec 13 (u) Analysis Con't:

This subsection prohibits the Department from placing a child in a foster home requesting adoptions before 30 days after the date of the first permanency hearing, before the decision to terminate parental rights, and before the court approves placement. The results of this section would mean multiple placements, delayed permanency, and potential non-compliance with the Federal Review. The OCS estimates permanency could be delayed for a minimum of 4 months, resulting in extended foster care. On average, foster care payments exceed adoptions by \$224.00 monthly. There are approximately 200 adoptions per year. If this bill were to be enacted into law, Section 13 would increase costs to the Department by at least \$44.8.

Sec. 34.- Relative Placement

This section amends AS 47.14.100(e) which prohibits the department from placing a child in a foster home if a relative, family friend, or neighbor requests placement of the child and the home would be a safe environment.

The State cannot receive IV-E federal reimbursement for the care of a child that is not placed in a licensed home. If children are placed with relatives, the relatives may choose whether to be licensed as foster parents or not. Unlicensed friends or neighbors would not be eligible for payment through Title IVE. Therefore, for those who choose not to license, the only payment option under this bill would be to authorize enough state general funds to cover lost federal revenue.

On any given day, the State has approximately 2,000 children in custody. Of the 2,000, approximately 8 percent may be in residential care; 13 percent placed with licensed relatives; and 18 percent with unlicensed relatives. This bill would allow those 18 percent of unlicensed relatives to begin receiving foster care rates funded by general funds. The OCS can assume that 75% of the unlicensed family placements would begin receiving foster care payments within the first year.

The remaining 61 percent of the children in custody could potentially be placed in unlicensed homes that would not qualify for federal reimbursement. Given little or no incentive to license, it can be assumed that 50 percent or more of the remaining placements will migrate to unlicensed homes and receive foster care payments through the general fund.

The cost for these children in unlicensed homes would be approximately \$7,725.0 million per year. Of that amount, approximately \$2,918.0 would have been reimbursable under Title IV-E and therefore, under this bill, would need to be funded by the State.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB053SS-DHSS-OCS2-03-11-05

Revision Date/Time (Note if correction): \_\_\_\_\_

( ) Publish Date: \_\_\_\_\_  
Dept. Affected: Health & Social Services

Title RELATING TO CHILD-IN-NEED-OF AID MATTERS

RDU Children's Services

Component Front Line Social Workers

Sponsor COGHILL

Requester HOUSE (HES)

Component No. 2305

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	578.9	578.9	578.9	578.9	578.9	578.9
Travel	50.0	50.0	50.0	50.0	50.0	50.0
Contractual	50.0	50.0	50.0	50.0	50.0	50.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>

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

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts	76.5	76.5	76.5	76.5	76.5	76.5
1003 GF Match	178.5	178.5	178.5	178.5	178.5	178.5
1004 GF	423.9	423.9	423.9	423.9	423.9	423.9
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>	<b>678.9</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

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

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department's Office of Children's Services budget are summarized below.

Sec. 8. Right to demand jury trial in certain cases. This section allows any party to a child in need of aid (CINA) case to demand a jury trial for a hearing held regarding a petition to terminate parental rights. The amendment retains the current definition of party, which is the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian or Indian tribe that has intervened and any other person the court has determined may be a party to the case.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner  
Division: Office of Children's Services  
Approved by: Joel S. Gilbertson, Commissioner  
Agency: Department of Health and Social Services

Phone 465-3191  
Date/Time 03/08/2005  
Date 03/11/2005

FISCAL NOTE  
FN #

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO HB053SS-DHSS-OCS2-03-11-05

**ANALYSIS CONTINUATION**

If this bill becomes law, based on the most current available data, we anticipate at a minimum, the possibility of 90 jury trials per year or 50 percent of the 180 termination proceedings reported by the Alaska Court System in FY 04. It is conservatively estimated that jury trials will add three days to court proceedings, and two additional days of preparation time for social workers. These additional days will be necessary for trial preparation, jury selection, jury education, jury deliberation and the changes in court practices and procedures that would occur with a jury trial. It is estimated that an additional 37.5 hours of staff time will be required for each jury trial. This additional time requirement will detract the time a social worker has to invest in caseload investigating reports of harm; emergency custody processes; efforts to locate relative placements or foster home placements; developing case plans; requesting assessments for mental health or substance abuse; arranging visitations; attending treatment team and permanency planning meetings; and other court appearances such as probable cause, disposition hearings, adjudication hearings and other court-ordered appearances. This list is not all inclusive, but represents a sampling of the mandatory duties and responsibilities of a child protective social worker. Being unavailable during jury trial will force social workers to perform the normal scope of duties for other cases outside usual business hours. The Office of Children Services estimates the additional time required to prepare and attend jury trials would result in \$205.0 of overtime expenditures each fiscal year. \$61.5 of these overtime costs would be eligible for IVE federal reimbursement and the remaining \$143.5 would be general fund match. This calculation is based on the average cost of a Social Worker II and III statewide and does not take into consideration regional differentials.

Termination trials generally require expert witness testimony. Most of the state's expert witnesses are located in the larger communities and may testify telephonically. A jury trial, however, necessitates witnesses testify in person adding to the cost of each trial. Because it is difficult to empanel impartial juries in many small communities, we anticipate a change of venue in a number of cases adding to the cost for all parties who must appear in person: social workers, parents, attorneys, witnesses, guardian ad litem. The OCS estimates associated increased travel and per diem costs for division staff and expert witnesses at \$50.0. These expert witness fee costs would be eligible for IVE federal reimbursement of about \$15.0 with the remaining \$35.0 in general fund match.

Most importantly, jury trials will also result in more delays for the children. Alaska's recent Federal Review assessed the state as poor in meeting deadlines for termination hearings. Timely petitions often result in delays in court scheduling, delaying permanency for children. Jury trials are even more difficult to schedule and will result in additional delays for permanency that could ultimately result in a disallowance of federal reimbursement for non-compliance.

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

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

**BILL NO. HB053SS-DHSS-OCS2-03-11-05**

**ANALYSIS CONTINUATION**

**Sec.12. Right to Review Hearings**

Section 12 provides that if a parent or family member of a child in state custody is denied visitation, the Department will inform the parent or family member as to the reason for the denial and their right to request a review hearing. The OCS believes there would be an increase in staff time required for hearing preparation and court time, but has no data upon which to base an estimate. Visitation denials are not tracked.

**Sec. 15 (n). Blood Relative Denied Adoption May Request a Review Hearing.**

Section 15 provides a person related to a child by blood who is denied a request for adoption, the right to a review hearing. The OCS believes there would be an increase in staff time required for hearing preparation and court time, but has no data upon which to base an estimate. Adoption denials are not tracked.

**Sec. 16. Report of Prescription Drugs**

Section 16 adds requirements whereby the Department must maintain information about the use of psychotropic or other mental health medication required by children in custody, and this information be reported to the Legislature annually. Even though OCS files do include medical records, the additional burden on already overworked OCS staff to collect and aggregate all detailed information from caregivers such as teachers, child care providers, and foster parents and write up a report on each child would require an additional psychiatric nurse in 4 regions. Social workers do not have the skills required to address these medical reports. The increased cost to the state is estimated to be \$373.9 in personal services costs plus an addition \$50.0 for travel, per diem, and administrative costs.

# FISCAL NOTE

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB053SS-DHSS-OCS3-03-11-05

Revision Date/Time (Note if correction): \_\_\_\_\_

( ) Publish Date: \_\_\_\_\_  
Dept. Affected: Health & Social Services

Title RELATING TO CHILD-IN-NEED-OF AID  
MATTERS

RDU Children's Services

Component Children's Services Management

Sponsor COGHILL

Requester HOUSE (HES)

Component No. 2666

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	85.1	85.1	85.1	85.1	85.1	85.1
Travel						
Contractual	60.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>145.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</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	41.7	41.7	41.7	41.7	41.7	41.7
1003 GF Match	43.4	43.4	43.4	43.4	43.4	43.4
1004 GF	60.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>145.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</b>	<b>85.1</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department's Office of Children's Services (OCS) budget are summarized below.

Sec. 9, 10, 19, 26 and Other. Confidentiality

Sections 9, 10, 19, 26 and various other SS HB 53 amendments and additions are not dissimilar to those included in SB 84 that allow public access to CINA proceedings and confidential information.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner  
Division Office of Children's Services  
Approved by: Joel S. Gilbertson, Commissioner  
Agency Department of Health and Social Services

Phone 465-3191  
Date/Time 03/08/2005  
Date 03/11/2005

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

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

**BILL NO. HB053SS-DHSS-OCS3-03-11-05**

**ANALYSIS CONTINUATION**

Sec. 9, 10, 19, 26 and Other. Confidentiality - Analysis Con't

Should either bill become law, the Department anticipates the increase in public concern and requests for information will necessitate an additional position within the OCS to assist in the effort to respond in a timely manner. This position would be an Associate Coordinator, Range 18, under the current Program Coordinator for Community Relations at a cost of \$85.1 per fiscal year of which \$43.4 would be funded with general fund match.

Sec. 43. Notification of Status of Investigations

Section 43 requires the OCS notify each person who made a report of harm about the status of the investigation without disclosing confidential information. Because the OCS case management and provider payment system (ORCA) does not now capture all addresses and does not report on the required data, system changes at a one-time cost of approximately \$60.0 would be required. These reports are not federally mandated and therefore not eligible for federal match.

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## REPRESENTATIVE JOHN COGHILL

### FAMILY RIGHTS ACT

HB 53

Sponsor Statement.

My belief that children belong to their parents and that families should be preserved was why I ran for office the first time in 1998. To protect vulnerable children the government requires parents to raise their children by certain standards, and I believe government should be held to those high standards when they take children into their custody. Dealing with the Office of Children's Services should have good due process and should be transparent so that everyone involved knows what the rules are and what is required of them.

HB 53 is an omnibus bill that does many things. It creates a duty and standard of care for social workers who are making decisions for children in state custody. It makes the process transparent by making confidential information currently unavailable accessible to certain people, making court proceedings open to the public, and giving parents the right to a jury trial in proceedings to terminate their parental rights.

This legislation also strengthens the rights of grandparents, especially those who have already been instrumental in raising the child. Many times when parents run awry of OCS, grandparents get placement of the child. If parental rights are terminated, the grandparents should have preference for adoption. Other relatives or family friends should also be considered for placement before a child is placed with complete strangers. Grandparents also gain accessibility to information and hearings in CINA cases through this legislation.

An additional safeguard to transparency and due process is the re-establishment of state and local citizens review panels that will adopt policies and procedures by regulation, compile reports, report to the governor annually, and conduct hearings on complaints filed against OCS.

The bill encourages the use of Child Advocacy Centers (CAC) in areas they are available and requires audio recordings for all other interviews of children believed to have been sexually abused. This creates accountability in interviewing and protects the child from multiple interrogations.

This legislation goes a long way in protecting and preserving families in Alaska and making government accountable for its actions when children are in State custody.

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## REPRESENTATIVE JOHN COGHILL

### THE FAMILY RIGHTS ACT - CSSH B 53(HESS)

#### Sectional

**Section 1.** Amends Title 13, Article 2 "Guardians of Minors" to add as a qualification for the court to appoint a guardian if an adult family member applies for guardianship, unless the court finds that appointment would not be in the best interest of the child.<sup>1</sup>

**Sec. 2.** Gives preference to an adult family member who has cared for a child for twelve consecutive months or more to adopt the child(ren) unless the court finds there is good cause not to grant the adoption.<sup>2</sup>

**Sec. 3.** Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

**Sec. 4.** Intent language for the Family Rights Act.<sup>3</sup>

**Sec. 5.** This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It

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<sup>1</sup> New language added to Version S. Eliminates language in Version S, Sec. 6(a) which amended Title 47.10 by creating a new subsection to address guardianship. The sponsor agrees that amending the guardianship laws is a more appropriate approach. AS 13.26.055 currently reads as follows:

*"Sec. 13.26.055 Court appointment of guardian of minor; qualifications; priority of minor's nominee. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor."*

<sup>2</sup> In this section and section 9 the phrase "including grandparents" was deleted. The definition of "adult family member" includes grandparents.

<sup>3</sup> The Department of Law was wanting to delete language that recognized that parent's have inherent rights, promotes safety and protection of children and families, and brings fairness and equality to biological family members and children in the state. The bill's sponsor believes it is important for the legislature to set policy in the child protection arena and believes that language is an important element of the bill.

also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

**Sec. 6.** Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.<sup>4</sup>

**Sec. 7.** Right to a jury trial for the termination of parental rights. **Department of Law amended Version S to limit the right to a jury trial to AS 47.10.080(o) or AS 47.10.088.**<sup>5</sup>

**Sec. 8.** Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

**Sec. 9.** Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Grandparents, foster parents, or other out-of-home care providers may attend hearings otherwise closed to the public but may be limited in their participation in the hearing.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of an adult family member to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of an adult family member under Title 47.

**Sec. 10.** Legal has added some cleanup language to this section, including replacing the word relative with "adult family member". They also amended the process to include provisions for a jury trial.

**Sec. 11.** Provides that the court shall make one additional finding in the permanency plan, that being that the department has made reasonable efforts to finalize the permanent plan. It is needed to satisfy federal requirements for foster care reimbursement.

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<sup>4</sup> Old Section 6 of the bill was deleted. Subsection (a) was moved to page 2 line 13; subsection (b) was deleted because it was addressed in the language in Section 15; subsection (c) was moved to Section 15.

<sup>5</sup> AS 47.10.080, Judgments and order, and AS 47.10.088, Termination of parental rights and responsibilities, are the two termination provisions that parents would have the right to demand a jury trial.

**Sec. 12.** This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial. **New language by Department of Law clarifies that a non-party adult family member would not qualify for publicly appointed legal counsel.**<sup>6</sup>

**Sec. 13.** ^ mends AS 47.10.80 (Judgments and Orders) to add three provisions:

- (t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.
- (u) Requires foster parents to provide regular visitation with family and to **encourage** foster parents to serve as mentors for facilitating family reunification.
- (v) It opens adjudication hearings to the public unless an exception in Section 10 applies.

**Sec. 14.** The section amends the residual rights section of Title 47. 10 to include language that defines "major medical treatment" to include "medication used to treat a diagnosed mental health disorder".<sup>7</sup>

**Sec. 15.** Provides that OCS cannot approve an adoption by a non-related party if a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

**Sec. 16.** This section sets out three reasons the department could deny the adoption of a child by a blood relative: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.<sup>8</sup>

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<sup>6</sup> The language in Version S clarified that interested persons are not entitled to a court-appointed attorney because they are not parties to the CINA case. The Department of Law preferred their language because we were creating a new legal phrase, "interested person" that could be confused with "interested party". The new language leaves less room for misinterpretation.

<sup>7</sup> Version S had a new subsection requiring parental consent to administer psychotropic or other mental medication. The new language makes that right inclusive of residual rights already requiring permission for major medical treatment.

<sup>8</sup> In Sections 16, 33, & 34 language referring to "a person related by blood" has been replaced with language consistent with the rest of the bill referring to "adult family members".

If an adult family member is denied adoption they are entitled to a review hearing and the hearing is open to the public, but the non-party adult family member is not entitled to publicly appointed legal counsel.

**Sec. 17.** Section 17 adds a new section to CINA statutes to provide for relinquishment of parental rights. The relinquishment must be in writing and signed by the parent. A copy of the relinquishment is given to the parent and the parent has 10 days to withdraw from the relinquishment.

It provides that parents can retain some privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

A voluntary relinquishment can be withdrawn under Rule 60(b) of Alaska Rules of Civil Procedure **Relief from Judgment or Order**-“Mistakes-Inadvertance-Excusable Neglect-Newly Discovered Evidence-Fraud”

It also provides that after termination and before entry of adoption a person who voluntarily relinquishes parental rights may request an hearing and show good cause to enforce or modify a privilege retained in the termination order or to vacate the termination order and reinstate parental rights. Such a parent would be entitled to a public attorney.

**Sec. 18.** Language clean up.

**Sec. 19.** Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

**Sec. 20.** Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. TO obtain additional privileged information form Department of Health & Social Services or OPA or the public defender, a Disclosure of Information Release Form must be completed by a parent. Also attorney-client privileged would be protected.

**Sec. 21.** The Department of Law made some language change to this section from Version S.<sup>9</sup> This section now provides that as long as the child is in state custody, disclosure to certain officials will stay in effect, unless a parent or legal guardian says it is not longer needed.

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<sup>9</sup> Version S amended the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested. This came about in a case when parents' rights were terminated but the paternal grandmother was still attempting to get assistance from a legislative office to gain custody of her granddaughter. The department could no longer disclose confidential information in the case.

Additionally, in this section, the department will now be required to notify a state official or employee of the opportunity to file a grievance.

**Sec. 22.** The section inserts mention of exceptions for Disclosure of agency records that are spelled out in Sections 26 & Section 27.<sup>10</sup> **New language added to Version S, makes disclosure provisions inclusive of Court Rules.**

**Sec. 23.** Language clean up to replace "foster parents" with "a foster parent". Also disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.<sup>11</sup> **The department is added language to subsection (12) to extend the authority to establish a review panel to the governor and the legislature.**

**Sec. 24.** Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

**Sec. 25.** Clarifies that information made available to party with interest is confidential information. The regulatory language is deleted because it has been added to Section 27.

**Sec. 26.** The section directs OCS to work with law enforcement agencies in assisting schools, both public and private, in developing procedures for disclosure of confidential information to schools in an as expedited timeline as possible.

**Sec. 27.** The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials, but additionally, when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child. The agencies allowed to disclose confidential information have been expanded to include not only Health and Social Services, but also the Department of Administration.<sup>12</sup>

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<sup>10</sup> Exceptions to confidentiality have been expanded in Section 27 to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

<sup>11</sup> Department of Law requested that "adult family member" language in this section be reverted back to the original phrase "relatives". Our legal department recommends that "relatives" be replaced with family members as this term is defined in the bill.

Also the Department of Law had recommended that "a guardian ad litem" appointed by the court be removed because they had access to the information. Our legal department said this section is what gives the the authority already to obtain the information and recommends we leave the language in.

<sup>12</sup> This change was made at the request of the Office of Public Advocacy and the Office of the Public Defender.

The department may withhold disclosure of child's name, picture or other information that would readily identify the child if it determines it is in the best interest of the child or other children in the household. The department can also withhold information if it would interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial.

This section acknowledges that the person receiving confidential information has a fiduciary responsibility to keep the information confidential.

Gives Department of Health & Social Services and the Department of Administration authority to promulgate regulations.

**Sec. 28.** New language to this section establishes in statute a grievance process but leaves the ability to set policies and procedures to the regulatory process.<sup>13</sup>

**Sec. 29.** Provides that there is no civil liability for timeline failures but there is a civil liability for gross negligence or reckless or intentional misconduct.<sup>14</sup>

**Sec. 30.** Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

**Sec. 31.** Defines "adult family members"<sup>15</sup>, "family members"<sup>16</sup>, and "near fatality"<sup>17</sup> in CINA statutes.

**Sec. 32.** Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

**Sec. 33.** Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member and friend has an issue that is not in the best interest of the child. **Language was deleted that required parental approval of placement.**

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<sup>13</sup> This subjects the structuring of the grievance procedure to a public hearing and public scrutiny process.

<sup>14</sup> Exception language for gross negligence or reckless or intentional misconduct was removed at the request of the Department of Law. Department of Law assured Representative Coghill that this is already the case through common law. In *Karen L. v. State of Alaska*, 953 P.2d 871, 874 (Alaska 1998) the court cited *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995) "stating that 'a plaintiff's right to recover emotional damages caused by mere negligence should be limited to those cases where the defendant owes the plaintiff a pre-existing duty.'" According to *Karen L.* there is a duty of care on the part of the State for the child in state custody and, therefore, there is common law that would create a civil liability in cases of not only gross negligence or reckless or intentional misconduct, but also "mere negligence".

<sup>15</sup> A person who is 18 years of age or older and who is related to the child as the child's legal parent, grandparent, aunt, uncle, or sibling.

<sup>16</sup> A person who any age or older and who is related to the child as the child's legal parent, grandparent, aunt, uncle, or sibling.

<sup>17</sup> "Near fatality" in AS 47.14.990 is defined as "means physical injury or other harm, as certified by a physician, caused by an act or omission that created a substantial risk of death."

Provides guidelines for when a child cannot be placed with an adult family member: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

Each time in Section 33 where the word "relative" appears, "adult family member" replaces the word. **New language clarifies that a non-relative will still be required to be licensed as a foster home prior to any child being placed in their care.**

**Further new language requested by the Department of Law provides that if placement is in the best interest of the child, parental objection can not prohibit the placement.<sup>18</sup>**

**Placement can also be denied if that placement would relocated the children to a home that would make visitation or reunification with the parents difficult.**

**Sec. 34.** Provides that when a child is placed in a home other than a home of a relative, the department must fully disclose to the relative the nature of the placement.

**Sec. 35.** Creates a State Citizens Review Panel consisting of volunteers who are broadly representative of the state.

**Sec. 36.** Duties of the panel are to examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

**Sec. 37.** Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel. The department shall serve as staff to the panel.

**Sec. 38.** Instructs panel that they may not disclose to ANYONE records or other information containing personally identifying or other information made confidential under state or federal law about a child or witnesses involved in a case under review by the panel.

**Sec. 39.** Directs the panel to conduct public outreach and gather information on the department's current procedures and practices.

**Sec. 40.** Directs the department to prepare an annual report and provide it to the governor. It also requires the department to submit a written response to the report to the governor within six months of the date the report is submitted to the governor.

**Sec. 41.** Imposes a civil penalty for violating the confidentiality clauses for up to \$2,500 per violation.

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<sup>18</sup> If a parent objects to a placement, the Department can petition the court for approval of a placement.

- Sec. 42.** Creates immunity for state panel members and persons provided support to the panel.
- Sec. 43.** Defines "state panel" as the Citizen Review Panel and "near fatality" in Title 47.14, Juvenile Programs and Institutions by reference to AS 47.10.990.<sup>19</sup>
- Sec. 44.** Requires OCS to notify a person who has made a ROH with a status report within 20 days.
- Sec. 45.** Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.
- Sec. 46.** Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.
- Sec. 47.** Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include **grandparents** as being entitled to be heard at any hearings.
- Sec. 48.** Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.
- Sec. 49.** Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.
- Sec. 50.** Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.
- Sec. 51.** Language cleanup by legal services.
- Sec. 52.** Amends Rule 22(c) to allow for a child's name or picture to be used for a permanency plan after parental rights have been terminated.
- Sec. 53.** Accommodates Section 17 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.
- Sec. 54.** Amends Alaska Adoption Rule 9(g) to accommodate Section 17 of HB 53.
- Sec. 55.** An indirect amendment to Alaska Adoption Rule to accommodate Section 17.
- Sec. 56.** Court Rule change to accommodate Section 11.
- Sec. 57.** Amends Court Rule 18(d)(1) to change reference to Section 17.

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<sup>19</sup> "Near fatality" in AS 47.14.990 is defined as "means physical injury or other harm, as certified by a physician, caused by an act or omission that created a substantial risk of death."

**Sec. 58.** An indirect court rule<sup>20</sup> amendment to Court Rules 9 and 13 of Alaska Adoption Rules and Rule 18 of CINA for relinquishment of parental rights in Section 17.

**Sec. 59.** Describes the indirect rule changes for opening court hearings to the public, jury trials, protecting attorney-client privileges, and allowing disclosure of child's name and picture for permanency plan.

**Sec. 60.** This section outlines the sections of the bill, which can be and are adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

**Sec. 61.** Applicability language.

**Sec. 62.** Gives authority to Health & Social Services to adopt regulations to implement the changes to law made by HB 53.

**Sec. 63.** Revisor's instruction to change heading of AS 47.10.088 to "Involuntary termination of parental rights and responsibilities".

**Sec. 64.** The conditional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

**Sec. 65.** The open hearing provisions of this act become effective July 1, 2005.

**Sec. 66.** All other sections of the bill have an immediate effective date clause.

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<sup>20</sup> Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

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## REPRESENTATIVE JOHN COGHILL

### THE FAMILY RIGHTS ACT - CSSHB 53(HESS)

#### Sectional

**Section 1.** Gives preference to an adult family member, including a grandparent, who has cared for a grandchild for two years or more to adopt the child(ren) unless the court finds that the grandparent is not fit to raise the child.

**Sec. 2.** Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

**Sec. 3.** Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

**Sec. 4.** Language intent for the Family Rights Act.

**Sec. 5.** This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

**Sec. 6.** Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.

**Sec. 7.** Provides for adult family members, including grandparents, to petition for custody proceedings under AS 47.10.110 (appointment of guardian or custodian) to obtain custody of a child when the child is found to be a child in need of aid and one or both parents are dead or the child has been abandoned by the other parent; creates a presumption that the awarding custody to an adult family member is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the adult family member; and puts in statute provisions that adult family member will be contacted by written notice of the procedures to obtain custody and the adult family member will sign a receipt of the notice.

**Sec. 8.** Right to a jury trial for the termination of parental rights.

**Sec. 9.** Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

**Sec. 10.** Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of an adult family member to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a adult family member under Title 47.

**Sec. 11.** Legal has added some cleanup language to this section. They also amended the process to include provisions for a jury trial.

**Sec. 12.** This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial.

**Sec. 13.** Amends AS 47.10.80 (Judgments and Orders) to add five provisions:

(t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

(u) Requires foster parents to provide regular visitation with family and serve as mentors for facilitating family reunification.

(v) It opens adjudication hearings to the public unless an exception in Section 10 applies.

**Sec. 14.** Provides that OCS cannot approve an adoption by a non-related party if a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

**Sec. 15.** This section sets out three reasons the department could deny the adoption of a child by a blood relative: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.

If a relative is denied adoption they are entitled to a review hearing and that hearing is open to the public.

**Sec. 16.** Requires the Department obtain permission from the parents of a child to administer psychotropic or other mental health medication to a child in state custody.

**Sec. 17.** Language cleanup by the legislative legal.

**Sec. 18.** Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

**Sec. 19.** Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. This is an expansion from parental disclosure.

**Sec. 20.** This section amends the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested.

The department will now be required to notify a state official or employee of the opportunity to file a grievance.

**Sec. 21.** The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials. Exceptions to confidentiality have been expanded to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

**Sec. 22.** Disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.

**Sec. 23.** Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

**Sec. 24.** Clarifies that information made available to party with interest is confidential information. The regulatory language is deleted because it has been added to Section 26.

**Sec. 25.** Cleanup language by legislative legal and clarifying information is confidential.

**Sec. 26.** The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials, but additionally, when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department may withhold disclosure of child's name, picture or other information that would readily identify the child if it determines it is in the best interest of the child or other children in the household. The department can also withhold information if it would interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial.

This section acknowledges that the person receiving confidential information has a fiduciary responsibility to keep the information confidential.

Gives department authority to promulgate regulations.

**Sec. 27.** Provides that disclosure or nondisclosure is not cause for civil liability.

**Sec. 28.** Sets in statutory law a grievance procedure in CINA cases. Grievances must be submitted in writing and must be reviewed by a supervisor within three working days. If the supervisor determines there could be a legitimate complaint a meeting is set within 10 days between the complainant, the supervisor, and the staff member who is the subject of the complaint.

An individual can file more than one grievance. The section also provides that a grievance can further be filed with the review panel.

**Sec. 29.** Creates a duty and standard of care, but clarifies the intent of AS 47.10.960 when passed in HB 375 in 1998 that failure to meet timelines does not constitute grounds for civil liability.

**Sec. 30.** Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

**Sec. 31.** Defines "adult family members" and "near fatality" in CINA statutes.

**Sec. 32.** Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

**Sec. 33.** Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member and friend has an issue that is not in the best interest of the child.

Provides guidelines for when a child cannot be placed with a family member: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

**Sec. 34.** Provides that when a child is placed in a home other than a home of a relative, the department must fully disclose to the relative the nature of the placement.

**Sec. 35.** Creates a State Citizens Review Panel consisting of volunteers who are broadly representative of the state.

**Sec. 36.** Duties of the panel are to examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

**Sec. 37.** Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel. The department shall serve as staff to the panel.

**Sec. 38.** Instructs panel that they may not disclose to ANYONE records or other information containing personally identifying or other information made confidential under state or federal law about a child or witnesses involved in a case under review by the panel.

**Sec. 39.** Directs the panel to conduct public outreach and gather information on the department's current procedures and practices.

**Sec. 40.** Directs the department to prepare an annual report and provide it to the governor. It also requires the department to submit a written response to the report to the governor within six months of the date the report is submitted to the governor.

**Sec. 41.** Imposes a civil penalty for violating the confidentiality clauses for up to \$2,500 per violation.

**Sec. 42.** Creates an immunity for state panel members and persons provided support to the panel.

- Sec. 43.** Defines "state panel" and "near fatality" in Title 47.14, Juvenile Programs and Institutions
- Sec. 44.** Requires OCS to notify a person who has made a ROH with a status report within 20 days.
- Sec. 45.** Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.
- Sec. 46.** Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.
- Sec. 47.** Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.
- Sec. 48.** Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.
- Sec. 49.** Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.
- Sec. 50.** Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.
- Sec. 51.** Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.
- Sec. 52.** Language cleanup by legal services.
- Sec. 53.** Adds a new subsection to Rule 22 that allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed. This implements Section 18 of the HB 53.
- Sec. 54.** Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.
- Sec. 55.** Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.
- Sec. 56.** An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

**Sec. 57.** An indirect court rule<sup>1</sup> amendment to open custody petition hearings, adjudication hearings, and termination hearings to the public except in certain circumstances.

There is also an indirect court rule amendment in Section 8 and Section 11 providing for a jury trial in a termination hearing.

Rule 22 has an indirect court rule amendment by allowing for the disclosure of confidential information on a child, including a child's name or picture under certain circumstances.

**Sec. 58.** This section outlines the sections of the bill, which can be and are adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

**Sec. 59.** Applicability language.

**Sec. 60.** Gives authority to Health & Social Services to adopt regulations to implement the changes to law made by HB 53.

**Sec. 61.** Requires the governor to review the changes made in HB 53 that deal with opening meetings to the public and being able to disclose some information and submit a report to the public and the legislature outlining the success or failure of the change and making suggestions for changes.

**Sec. 62.** The conditional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

**Sec. 63.** Gives the department 180 days after the enactment of the bill to adopt a duty and standard of care.

**Sec. 64.** The open hearing provisions of this act become effective July 1, 2005.

**Sec. 65.** All other sections of the bill have an immediate effective date clause.

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<sup>1</sup> Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

# ALASKA STATE HOUSE OF REPRESENTATIVES



Session

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## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: April 8, 2005  
To: Jean Mischel, Legal Counsel  
From: Rynniva Moss, Legislative Aide *RW Moss*  
Re: CSSSHB 53(STA) Version C

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OCS just came over to talk to us about the federal government telling them that HB 14 and Sections 23 and 26 of CSSSHB 53(STA) Version C. I am attaching the federal language (Sec. 471. [42 U.S.C. 671] (a).

This affects HB 14 more than HB 53 but I am not convinced the feds or OCS are reading the statute right. The language that is confusing to me is on line 10: "and the safeguards so provided shall prohibit disclosure, to any committee or legislative body other than an agency referred to in clause (D)". (D) refers to audit by a government agency which would include the Ombudsman's Office or I presume Legislative Budget and Audit. Committee or legislative body is a group; not a single legislator with a fiduciary responsibility to his or her constituent.

Sections 23 and 26 of HB 53 would permit disclosure of confidential information to people other than the parent. Under existing law, AS 47.10.903(b), we already do that.

Could you review this cite and see if the feds are correct in stating that we cannot adopt HB 14, Section 23, and portions of Section 26 without risking Title IV(B) & (E) funding, which is approximately \$29 million?

**Gibbens, Joanne**

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**From:** Gibbens, Joanne  
**Sent:** Tuesday, April 05, 2005 10:55 AM  
**To:** Jan Rutherfordale (E-mail)  
**Subject:** FW: IV-E Confidentiality Requirements

**Importance:** High

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

**From:** Bergvall, Gudrun E.  
**Sent:** Monday, April 04, 2005 11:02 AM  
**To:** Gibbens, Joanne  
**Subject:** IV-E Confidentiality Requirements

I have attached the IV-E confidentiality statute and regulations, the Child Welfare Policy Manual IV-E section on confidentiality, and 45 CFR 205.50 and the CAPTA confidentiality statute which is referenced in the Policy Manual. In addition, I have attached the Child Welfare Policy Manual CAPTA section on confidentiality, since it says in the IV-E section of the Policy Manual that if the IV-E confidentiality requirements are in conflict with the CAPTA confidentiality requirements, then the CAPTA requirements would prevail :

#### **State Plan for Foster Care and Adoption Assistance**

**SEC. 471. [42 U.S.C. 671] (a)** In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

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TITLE 45--PUBLIC WELFARE CHAPTER XIII--OFFICE OF HUMAN DEVELOPMENT SERVICES,  
DEPARTMENT OF HEALTH AND HUMAN SERVICES PART 1355--GENERAL--Table of Contents .

**Sec. 1355.21** State plan requirements for titles IV-E and IV-B. (a) The State plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

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## **Child Welfare Policy Manual**

**April 04, 2005**

## 8.4E TITLE IV-E, General Title IV-E Requirements, Confidentiality

**1. Question:** Under title IV-E, what information can be released? In particular, what information is child welfare information when a child is placed as a result of a juvenile offense?

**Answer:** The issue of confidentiality is not focussed around the specific nature of the information, but rather the source of the information. No information that is gained from the child welfare agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i). If the court gains information regarding a juvenile from the child welfare agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply. Other parties would abide by their own confidentiality restrictions.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the child welfare agency, the information is safeguarded under the provisions of Section 471(a)(8). If the psychologist's relationship to the child does not involve the child welfare agency, then Section 471(a)(8) does not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

**2. Question:** Who can release information? In particular, can parties other than the State title IV-E agency (such as the court) release information?

**Answer:** The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in State violation of the State Plan requirements for Foster Care and Adoption.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

**3. Question:** Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-E confidentiality requirements?

**Answer:** No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in the State's violation of the State plan requirements under title IV-E. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in Section 471(a)(8) of the Social Security Act and 45 CFR 205.50 would not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

**4. Question:** Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

**Answer:** Section 471(a)(8) of the Social Security Act requires a State Plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the foster care and adoption assistance programs. It also indicates that a State Plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the State Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except

that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E foster care and adoption assistance programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the foster care and adoption assistance programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the foster care and adoption assistance programs is expressly provided for under section 471 (a)(6). That section requires that a State Plan, in order to qualify for FFP for foster care and adoption assistance, provide that the appropriate State agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the State Agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

- **Source/Date:** ACYF-PA-85-02 (12/19/85)
- **Legal and Related References:** Social Security Act - section 471 (a)(6) and (8); H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

**5. Question:** What are the title IV-E confidentiality requirements?

**Answer:** Title IV-E of the Social Security Act requires that States provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E foster care and adoption assistance. In addition, in accordance with 45 CFR 1355.30 (p)(3), records maintained under title IV-E of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs.

To the extent that the records of the title IV-E agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); ACYF-CB-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.30; Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

**6. Question:** Will States compromise compliance with title IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(v) and (vi) of CAPTA?

**Answer:** Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under title IV-E are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(A)(vi), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Where the CAPTA provision is permissive (such as in sections 106 (b)(2)(A)(v)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106; 45 CFR 205.50

**7. Question:** Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-E. Do the confidentiality provisions in title IV-E restrict the information that can be discussed in open court?

**Answer:** Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under title IV-E and to assure that confidential information is not disclosed to unauthorized recipients. While, under title IV-E, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information. The confidentiality requirements of title IV-E do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information concerning a child who is receiving title IV-E foster care or adoption assistance, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provisions is a State plan compliance issue under title IV-E.

- **Source/Date:** ACYF-CB-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50; 45 CFR 1355.21 (a)

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#### 42 U.S.C. 5106a

(b)(2) COORDINATION.--A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this title, including--

(A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes--

....

(v) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this Act shall only be made available to--

individuals who are the subject of the report;

Federal, State, or local government entities, or any agent of such entities, having a need for

such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

child abuse citizen review panels;

child fatality review panels;

a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and

other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

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TITLE 45--PUBLIC WELFARE CHAPTER II--OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES PART 205--GENERAL ADMINISTRATION--PUBLIC ASSISTANCE PROGRAMS--  
Table of Contents

**Sec. 205.50 Safeguarding information for the financial assistance programs.** (a) State plan requirements. A State plan for financial assistance under title IV-A of the Social Security Act, must provide that: (1) Pursuant to State statute which imposes legal sanctions: (i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with: (A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI (AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients. (B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs. (C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. (D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97-34, the Economic Recovery Tax Act of 1981. (E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity. (F) The administration of a State unemployment compensation program. (G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened. [[Page 30]] (ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients: (iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited. (iv) Publication of lists or names of applicants and recipients will be prohibited. Exception. In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes. (v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that: (A) The recipient is a fugitive felon (as defined by the State); (B) The location or apprehension of such felon is within the law officer's official duties; and (C) The request is made in the proper

exercise of those duties. (2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement: (i) Types of information to be safeguarded include but are not limited to: (A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section); (B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to Sec. 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies; (C) Agency evaluation of information about a particular individual; (D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual. (ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs. (iii) Except in the case of information requested pursuant to Secs. 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately. (iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information. (v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source. (3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions [[Page 31]] imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed. (ii) All information obtained pursuant to the income and eligibility verification requirements at Secs. 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means. (iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under Secs. 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information. (4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103-31. Under this requirement: (i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, alien registration notices, and partisan voting information. (ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information; (iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency. (iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA. (b) Voluntary voter registration activities. For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed. (c) State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam. A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i)(D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that: (1) They are public officials as defined by State or Federal law of general applicability; and (2) The information to be disclosed and used is required in connection with their official duties. [45 FR 56684, Aug. 25, 1980, as amended]

at 47 FR 46506, Oct. 19, 1982; 49 FR 35599, Sept. 10, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 54 FR 42243, Oct. 13, 1989; 57 FR 30157, July 8, 1992; 58 FR 49220, Sept. 22, 1993; 59 FR 26142, May 19, 1994; 61 FR 58143, Nov. 13, 1996]

## Child Welfare Policy Manual

April 04, 2005

### 2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

**1. Question:** What are the CAPTA confidentiality requirements?

**Answer:** The CAPTA Amendments of 1996 require that States preserve the confidentiality of all reports and records on child abuse and neglect in order to protect the privacy rights of the child and the child's parents or guardians, except in certain limited circumstances. CAPTA prohibits disclosure of confidential child abuse and neglect information to persons or entities outside those enumerated in the statute. Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect.

The only exception to the restrictions on disclosure of otherwise confidential child abuse and neglect information is in cases of child abuse or neglect that result in the death or near death of a child. In such cases, CAPTA requires public disclosure of the findings and information about the case.

- **Source/Date:** ACYF-NCCAN-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

**2. Question:** Would legislation which protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions in section 106 (b)(2)(v) of CAPTA?

**Answer:** No. The CAPTA Amendments of 1996 require that States preserve the confidentiality of all records in order to protect the rights of the child and the child's parents or guardians, except in certain circumstances. The statute specifies the persons to whom and circumstances in which disclosure of CPS records can be made. In addition, it allows States to release CPS records to entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State interest.

The CAPTA language strikes a delicate balance between protecting the privacy rights of individuals and the release of CPS records when there is a legitimate State purpose for the disclosure. In creating this balance, it is clear that the Congress did not intend that all records be made public.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**3. Question:** Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

(Updated 02/03/2005)

**Answer:** Yes. Under the CAPTA amendments, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent"; or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan

programs for abused and neglected children and develop future policy directions.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**4. Question:** The confidentiality provision at section 106 (b)(2)(A)(v) of CAPTA requires that States have a State law or operate a Statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records except in certain circumstances. The statutory language states that such records, "shall only be made available to" a specified list of persons and entities. Under the CAPTA Amendments of 1996 are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (v)?

**Answer:** No. The language prohibits State disclosure of confidential child abuse and neglect information to persons or entities outside the enumerated categories, and permits, rather than requires, such disclosure to those included in the specified categories.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**5. Question:** Is there a prohibition against redisclosure of confidential child abuse and neglect information?

(Updated 02/03/2005)

**Answer:** Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

**6. Question:** Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(v) and (vi) of CAPTA?

(Updated 02/03/2005)

**Answer:** Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(A)(vi), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Whereas the CAPTA provision is permissive (such as in sections 106 (b)(2)(A)(v)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97) (updated 2/3/05)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

**7. Question:** Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

**(Updated 02/03/2005)**

**Answer:** Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

- **Source/Date:** ACYF-CB-PI-98-01 (1/7/98) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106106 (b)(2)(A)(x) and (c)

# ALASKA STATE HOUSE OF REPRESENTATIVES



**Contact:**

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**Session**

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State Capitol  
Room 204

## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: March 16, 2005  
To: Jean Mischel, Legal Counsel  
From: Rynniva Moss, Legislative Aide *RW Moss*  
Re: HB 53 version L

---

I forgot in my memo to address the need for a definition for "family member" as referred to in Section 12.

The definition should be made on page 19 and I would assume it would be the same as adult family member except they would be of any age.

Thanks for all your hard work. This is a tremendous amounts of work we are asking of you but you are doing a yeoman's job.

# ALASKA STATE HOUSE OF REPRESENTATIVES



Session

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## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: March 16, 2005

To: Jean Mischel, Legal Counsel

From: Rynnieva Moss, Legislative Aide *RW Moss*

Re: CSSH B 53( ) Version

**Page 1, line 6:**

Delete:

"to the retention of certain privileges of a parent in a"

Insert:

"proceedings regarding voluntary"

**Page 1, line 2:**

Delete:

"proceeding"

**Page 2, line 9, following "Adoption Rules":**

Insert: ", and Rules 17.2 and 18, Alaska Child in Need of Aid Rules"

**Page 2, line 22, through page 3, line 4:**

Delete all material.

**Re-number the following bill sections accordingly.**

Page 8, line 29:

Insert new bill section:

(l) Within 12 months after the date a child enters foster care as calculated under AS 47.10.088 (f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following provisions:

(1) the persons entitled to be heard under AS 47.10.070 or under (f) of this section are also entitled to be heard at the hearing held under this subsection;

(2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether

(A) and when the child should be returned to the parent or guardian;

(B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department; and

(C) the child should be placed in another planned, permanent living arrangement and what steps are necessary to achieve the new arrangement;

(3) if the court is unable to make a finding required under (2) of this subsection, the court shall hold another hearing within a reasonable period of time;

(4) in addition to the findings required by (2) of this subsection, the court shall also make appropriate written findings related to

(A) whether the department has made the reasonable efforts required under AS 47.10.086 to offer appropriate family support services to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter; and

(C) if the permanent plan is for the child to remain in out-of-home-care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

**(D) whether the department has made reasonable efforts to finalize the permanent plan for the child;**

(5) the court shall hold a hearing to review the permanent plan at least annually until successful implementation of the plan; if the plan approved by the court changes after the hearing, the department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the department.

Page 4, line 27:

Delete: "and"

Insert: "or"

**Page 4, line 24:**

After the word "petition"

Insert: "pursuant to AS 47.10.110"

**Page 9, lines 11 & 12:**

Delete: "party"

Insert: "person"<sup>1</sup>

**Page 9, lines 17 & 18:**

Delete: "the parent can show, by a preponderance of the evidence, that"

**Page 9, lines 23:**

After the word "and", insert:

"encourage foster parents"

**Page 9, line 13:<sup>2</sup>**

After the word "member"

Insert: Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

**Page 9, line 28:**

New subsection to AS 47.10.084:

**(d) When a child is in the custody of the department and the child is prescribed a psychotropic or other mental health medication, the department shall consider this a major medical treatment and obtain the consent of the child's parent or legal guardian before administering the medication.<sup>3</sup>**

<sup>1</sup> Department of Law wants to make sure it is clear that a family member has a right to have a hearing on denial of information, placement, or participation in an adjudication hearing, that right does not make them a party to the CINA custody case.

<sup>2</sup> You can wordsmith this to your liking.

<sup>3</sup> There might be a simpler way to add psychotropic or other mental health medication as a major medical treatment in subsection (c).

**Page 11, line 13:**

Delete the first "a"

Insert: "An interested person"

**Page 11, line 18:<sup>4</sup>**

After the word "hearing."

Insert: "Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

**Page 11, line 24:**

Insert new bill section to read:

**"Sec. 47.10.089. Voluntary relinquishment of parental rights and responsibilities.**

(a) The rights of a parent with reference to a child, including parental right to control the child, to withhold consent to an adoption, or to receive notice of a hearing on a petition for adoption, may be relinquished to the department and the relationship of parent and child terminated in a proceeding as provided in this section.

(b) A relinquishment must be in writing, signed by a parent, regardless of the age of the parent, in the presence of a representative of the department or in the presence of a court of competent jurisdiction with the knowledge and approval of the department. A copy of the signed relinquishment shall be given to the parent.

(c) A relinquishment may be withdrawn within 10 days after it is signed. The relinquishment is invalid unless it states that the parent has the right of withdrawal under this subsection.

(d) In a relinquishment of parental rights executed under this section, a parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child. A retained privilege must be in writing and state with specificity.

(e) Not sooner than 10 days after a relinquishment is signed, the court shall enter an order terminating parental rights if the court determines that termination of parental rights under the terms of relinquishment is in the child's best interests. If a parent has retained any privileges under (d) of this section, the court shall incorporate the retained privileges into the termination order with a recommendation that they be incorporated into an adoption or legal guardianship decree.

---

<sup>4</sup> You can wordsmith this to your liking.

(f) A relinquishment may not be withdrawn and a termination order may not be vacated on the ground that a retained privilege has been withheld if the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act upon a retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil Procedure.

(g) After a termination order is entered, but before the entry of an adoption or legal guardianship decree, a party or a parent who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of a privilege retained in the termination order. The court may modify or enforce the retained privilege if it is in the best interests of the child to do so.

(h) After a termination order is entered, but before the entry of adoption or legal guardianship decree, a parent who voluntarily relinquished parental rights to a child under this section may request a review hearing, upon a showing of good cause, to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the parent shows by clear and convincing evidence that reinstatement of parental rights is in the best interests of the child and that the parent is rehabilitated and capable of providing the care and guidance that will serve the moral, emotional, mental, and physical welfare of the child.

(i) A parent seeking a review under (g) or (h) of this section is entitled to the appointment of an attorney to the same extent as if the parent's rights had not been terminated."

**Renumber the following sections accordingly.**

**Page 12, line 25:**

Delete: "department"

Insert: "Department of Health & Social Services and the Department of Administration"

**Page 12, lines 28 & 29:**

Delete: "an adult family member"

Re-insert: "parent"

**Page 12, line 30:**

Language to be added to clarify the information disclosed in the subsection does not include anything that would violate the attorney-client privilege.

**Page 16, lines 16 - 19:**

Delete all language and insert:

**"Sec. 47.10.094. Immunity from liability.** (a) A person may not bring an action for damages against the state, the commissioner, or the commissioner's designee based upon improper disclosure of, or failure to disclose, information under AS 47.10.093(k).

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

**Page 17, line 24:**

Delete "ombudsman for a panel review"

Insert:

"review panel"

**Page 17 - page 18:**

Delete:

"ombudsman"

Insert:

"review panel"

Delete ombudsman and insert "review panel" and

**Page 19, lines 1 - 8:**

Delete all language.

Insert:

**"Sec. 47.10.960. Civil liability.** Failure to comply with a provision of this title does not constitute a basis for civil liability for damages. This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct."

**Page 19, line 18:**

Delete: "biological or adoptive"

Insert: "legal"

**Page 19, Section 33:**

The Department of Law wants to add language to this section that would allow for a placement of the child even when the parents object. They feel this section allows parents to veto placement.

Also, the department says there is a problem with subsection (f) in that once a child is placed with a relative or friend, they might become a foster home, or when placement is made the relative or friend would already be a foster home.

**Page 22, line 13:**

After the word "governor"

Insert: "the legislature,"

**Page 24, line 24 through Page 25, line 1.**

Delete all language.

**Page 29, line 3:**

Insert a new bill section:

"\*Sec. \_\_\_\_ The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules is amended to read:

(g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child may withdraw a consent or relinquishment by notifying in writing the court, or the person or agency obtaining the consent or relinquishment, within 10 days of the birth or signing of the consent or relinquishment whichever is later. Notification is timely if received or postmarked on or before the last day of this time period. The parent may move the court to permit withdrawal of the consent or relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent or AS 25.23.180(g) or AS 47.10.089(h) for relinquishment.”

**Renumber the following bill sections accordingly.**

**Page 29, line 8, following “AS 25.23.180”:**

Insert: “or AS 47.10.089”

**Page 29, line 10:**

Delete: “AS 25.23.180, whether”

**Page 29, line 11:**

Delete: “AS 25.23.180”

Insert: “AS 47.10.089”

**Page 29, line 22:**

Insert new bill sections to read:

“Sec. \_\_\_\_ . The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of Aid Rules, is amended to read:

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid; {AND}

(3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(4) whether the Department has made reasonable efforts to finalize the permanent plan for the child.

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

DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in Need of Aid Rules, is amended to read:

**(d) Relinquishment.**

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. sec. 1913(c)."

**Page 29, line 24:**

Delete: "AS 25.23.180(j)," added by sec. 2"

Insert: "(a) AS 47.10.089(d), added by sec. \_\_\_\_"

Insert new subsections:

**"(b) AS 47.10.089(g) and (h), added by sec. \_\_\_\_ of this Act, amend Rule 13, Alaska Adoption Rules, by authorizing a review hearing for a voluntary relinquishment before the entry of an adoption decree.**

(c) AS 47.10.089, added by sec. \_\_\_ of this Act, amends Rules 18(d)(1), Alaska Child in Need of Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of the relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing before the entry of an adoption or legal guardianship decree.

(d) AS 47.10.089, added by sec. \_\_\_ of this Act, amends Rule 18, Alaska Child in Need of Aid Rules, by authorizing a review hearing for a termination before entry of an

(e) adoption or legal guardianship decree.

\*Sec. \_\_\_ The uncoded law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 47.10.088 from "Sec. 47.10.088. Termination of parental rights and responsibilities" to "Sec. 47.10.088. Involuntary termination of parental rights and responsibilities."

**Renumber the following bill sections accordingly.**

**Page 31, lines 12-14:**

Delete all language.

**Page 32, line 5:**

Insert new material:

"(f) Rule 9(g), Alaska Adoption Rules, amended by sec. \_\_\_ of this Act, takes effect only if sec. \_\_\_ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

**Renumber "sec. \_\_\_" language and subsection lettering in CONDITIONAL EFFECT clauses.**

**Page 32, line 8:**

“(h) Section \_\_ of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as amended by sec. 12 of this Act, take effect only if sec. \_\_ of this Act receives two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

- (i) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. \_\_ of this Act, takes effect only if sec. \_\_ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. \_\_, Constitution of the State of Alaska.

**Page 32, line 8:**

Delete: “(g) AS 25.23.180(j) added by sec. 2”

Insert: “(j) AS 47.10.089, added by sec. \_\_”

Renumber “sec. 56”

24-LS0251\L  
Mischel  
3/14/05

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly, McGuire, Lynn**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to child-in-need-of-aid proceedings; amending the construction of  
2 statutes pertaining to children in need of aid; relating to a duty and standard of care for  
3 services to children and families, to the confidentiality of investigations, court hearings,  
4 and public agency records and information in child-in-need-of-aid matters and certain  
5 child protection matters, to immunity regarding disclosure of information in child-in-  
6 need-of-aid matters and certain child protection matters, to the retention of certain  
7 privileges of a parent in a relinquishment and termination of a parent and child  
8 relationship proceeding, to eligibility for permanent fund dividends for certain children  
9 in the custody of the state, and to juvenile delinquency proceedings and placements;  
10 establishing a right to a trial by jury in termination of parental rights proceedings;  
11 reestablishing and relating to a state citizens' review panel; amending the duty to  
12 disclose information pertaining to a child in need of aid; authorizing additional family

1 members to consent to disclosure of confidential or privileged information about  
2 children and families involved with children services within the Department of Health  
3 and Social Services to officials for review or use in official capacities; relating to reports  
4 of harm and to adoptions and foster care; mandating consent for the medication of  
5 children in state custody; prescribing the rights of family members related to child-in-  
6 need-of-aid cases and establishing a familial priority for adoption in certain child-in-  
7 need-of-aid cases; modifying adoption and placement procedures in certain child-in-  
8 need-of-aid cases; amending treatment service requirements for parents involved in  
9 child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules;  
10 amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and  
11 providing for an effective date."

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

13 \* Section 1. AS 25.23 is amended by adding a new section to read:

14 **Sec. 25.23.127. Adult family member preference to adopt.**

15 Notwithstanding a child's stated preference under AS 25.23.125 and 25.23.040(a)(5),  
16 an adult family member, including a grandparent, who has had physical custody of a  
17 child for at least two consecutive years when the parental rights to the child have been  
18 terminated under AS 47.10.080(c)(3) shall be permitted to adopt the child before any  
19 other person upon the filing of a petition by the adult family member under  
20 AS 25.23.080 unless the court finds that the adult family member is not fit to raise the  
21 child. In this section, "adult family member" has the meaning given in AS 47.10.990.

22 \* Sec. 2. AS 25.23.180 is amended by adding a new subsection to read:

23 (j) In a relinquishment of parental rights executed under (a) of this section, a  
24 parent may retain privileges with respect to the child, including the ability to have  
25 future contact, communication, and visitation with the child. A retained privilege  
26 must be stated with specificity in writing, and, if a termination order is entered  
27 following the relinquishment, the court shall incorporate a retained privilege into the

1 termination order. A relinquishment may not be withdrawn or invalidated, and a  
2 termination order may not be vacated, on the ground that a retained privilege has  
3 been withheld from the relinquishing parent or that the relinquishing parent has been  
4 unable, for any reason, to act upon a retained privilege.

5 \* Sec. 3. AS 43.23.005(f) is amended to read:

6 (f) **The** [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]  
7 commissioner may waive the requirement of (a)(4) of this section for an individual  
8 absent from the state

9 (1) in a time of national military emergency under military orders  
10 while serving in the armed forces of the United States, or for the spouse and  
11 dependents of that individual; or

12 (2) while in the custody of the Department of Health and Social  
13 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed  
14 outside of the state by the Department of Health and Social Services for purposes  
15 of medical or behavioral treatment.

16 \* Sec. 4. AS 47.10.005 is amended to read:

17 **Sec. 47.10.005. Construction.** The provisions of this chapter shall be  
18 liberally construed to

19 (1) achieve the end that a child coming within the jurisdiction of the  
20 court under this chapter may receive the care, guidance, treatment, and control that  
21 will promote the child's welfare and the parents' participation in the upbringing of  
22 the child;

23 (2) recognize that a parent possesses inherent individual rights to  
24 direct and control the education and upbringing of the parent's child;

25 (3) promote and protect the safety, welfare, health, and good of  
26 children, grandparents, and family members living in the state;

27 (4) benefit future generations; and

28 (5) bring fairness and equality to biological family members and  
29 children in the state.

30 \* Sec. 5. AS 47.10.020(a) is amended to read:

31 (a) Whenever circumstances subject a child to the jurisdiction of the court

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under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the best interests of the child require that further action be taken. The court shall make the appointment on its own motion or at the request of a person or agency having knowledge of the child's circumstances. If, under this subsection, the court appoints a person or agency to make a preliminary inquiry and to report to it, or if the department is conducting an investigation of a report of child abuse or neglect, the court may issue any orders necessary to aid the person, the agency, or the department in its investigation or in making the preliminary inquiry and report. Upon [THEN, UPON THE] receipt of the report under this subsection, the court may

- (1) close the matter without a court hearing;
- (2) determine whether the best interests of the child require that further action be taken; or
- (3) authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts.

\* Sec. 6. AS 47.10.020 is amended by adding a new subsection to read:

(e) Nothing in this section requires the department to obtain authorization from the court before

- (1) conducting an investigation of a report of child abuse or neglect; or
- (2) filing a petition.

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

**Sec. 47.10.025. Adult family member's rights.** (a) An adult family member, including a grandparent, of a child who has been adjudicated a child in need of aid under this chapter may initiate special proceedings by filing a petition to obtain custody of the child if

- (1) one or both of the child's parents are dead; and
- (2) the child has been abandoned by a remaining parent.

(b) In a proceeding initiated under (a) of this section, the court shall presume that awarding custody to an adult family member, including a grandparent, is in the best interest of the child. A presumption under this subsection may be overcome by

1 evidence of abuse, neglect, or other harm to the child attributable to the adult family  
2 member.

3 (c) The department shall attempt to locate all living adult family members of a  
4 child and to investigate the adult family member's ability to care for the child before  
5 placing the child or approving an adoption of the child under this chapter. The  
6 department shall provide written notice to all identified adult family members of their  
7 rights under this chapter and of the procedures necessary to gain custody of the child.  
8 The adult family members shall sign a receipt of the notice and, if the adult family  
9 member is competent, state that the adult family member understands the adult family  
10 member's right to initiate proceedings to gain custody of the child and either intends or  
11 declines to proceed.

12 \* **Sec. 8.** AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.065. Right to demand jury trial in certain cases.** A party has the  
14 right to demand a jury trial for a hearing under this chapter on a petition to terminate  
15 parental rights. If a hearing to adjudicate whether a child is a child in need of aid  
16 under AS 47.10.011 is consolidated with a hearing on a petition to terminate parental  
17 rights, the right to a jury trial under this section applies only to the issue of whether  
18 parental rights should be terminated after the court enters a finding under  
19 AS 47.10.080(a). In this section, "party" has the meaning given in Rule 2, Alaska  
20 Child in Need of Aid Rules of Procedure.

21 \* **Sec. 9.** AS 47.10.070(a) is amended to read:

22 (a) The court may conduct the hearing on the petition in an informal manner.  
23 The court shall give notice of the hearing to the department, and it may send a  
24 representative to the hearing. The court shall also transmit a copy of the petition to the  
25 department. The department shall send notice of the hearing to the persons for whom  
26 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled  
27 to notice under AS 47.10.030(d). The department and the persons to whom the  
28 department must send notice of the hearing are entitled to be heard at the hearing.  
29 **Except as provided in (c) of this section, and unless prohibited by federal or state**  
30 **law, court order, or court rule, a hearing is open to the public** [HOWEVER, THE  
31 COURT MAY LIMIT THE PRESENCE OF THE FOSTER PARENT OR OTHER

1 OUT-OF-HOME CARE PROVIDER AND OF ANY GRANDPARENT OF THE  
2 CHILD TO THE TIME DURING WHICH THE PERSON'S TESTIMONY IS BEING  
3 GIVEN IF IT IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2)  
4 NECESSARY TO PROTECT THE PRIVACY INTERESTS OF THE PARTIES  
5 AND WILL NOT BE DETRIMENTAL TO THE CHILD. THE PUBLIC SHALL BE  
6 EXCLUDED FROM THE HEARING, BUT THE COURT, IN ITS DISCRETION,  
7 MAY PERMIT INDIVIDUALS TO ATTEND A HEARING IF THEIR  
8 ATTENDANCE IS COMPATIBLE WITH THE BEST INTERESTS OF THE  
9 CHILD].

10 \* **Sec. 10.** AS 47.10.070 is amended by adding new subsections to read:

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

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

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

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

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

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

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

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

30 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not  
31 closed under (c) of this section, the court shall hear in camera any information offered

1 regarding the location, or readily leading to the location, of a parent, child, or other  
2 party to the case who is a victim of domestic violence. Access to testimony heard in  
3 camera under this subsection is limited to the court and authorized court personnel.

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

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

22 (g) Nothing contained in this section limits the rights of adult family members,  
23 including grandparents, under this title.

24 \* **Sec. 11.** AS 47.10.080(c) is amended to read:

25 (c) If the court finds that the child is a child in need of aid, the court shall

26 (1) order the child committed to the department for placement in an  
27 appropriate setting for a period of time not to exceed two years or in any event **not to**  
28 **extend** past the date the child becomes 19 years of age, except that the department or  
29 the child's guardian ad litem may petition for and the court may grant in a hearing

30 (A) one-year extensions of commitment that do not extend  
31 beyond the child's 19th birthday if the extension is in the best interests of the

1 child; and

2 (B) an additional one-year period of state custody past [AGE]  
3 19 years of age if the continued state custody is in the best interests of the  
4 person and the person consents to it;

5 (2) order the child released to a parent, adult family member  
6 [RELATIVE], or guardian of the child or to another suitable person, and, in  
7 appropriate cases, order the parent, adult family member [RELATIVE], guardian, or  
8 other person to provide medical or other care and treatment; if the court releases the  
9 child, it shall direct the department to supervise the care and treatment given to the  
10 child, but the court may dispense with the department's supervision if the court finds  
11 that the adult to whom the child is released will adequately care for the child without  
12 supervision; the department's supervision may not exceed two years or in any event  
13 extend past the date the child reaches [AGE] 19 years of age, except that the  
14 department or the child's guardian ad litem may petition for and the court may grant in  
15 a hearing

16 (A) one-year extensions of supervision that do not extend  
17 beyond the child's 19th birthday if the extensions are in the best interests of the  
18 child; and

19 (B) an additional one-year period of supervision past age 19 if  
20 the continued supervision is in the best interests of the person and the person  
21 consents to it; or

22 (3) unless a jury trial has been requested by a party, order, under  
23 the grounds specified in (o) of this section or AS 47.10.088, the termination of  
24 parental rights and responsibilities of one or both parents and commit the child to the  
25 custody of the department, and the department shall report quarterly to the court on  
26 efforts being made to find a permanent placement for the child; if a jury trial has  
27 been requested by a party, the court shall conduct a jury trial on the termination  
28 of parental rights under this section.

29 \* Sec. 12. AS 47.10.080(p) is amended to read:

30 (p) If a child is removed from the parental home, the department shall provide  
31 reasonable visitation between the child and the child's parents, guardian, and family.

1 When determining what constitutes reasonable visitation with a family member, the  
2 department shall consider the nature and quality of the relationship that existed  
3 between the child and the family member before the child was committed to the  
4 custody of the department. The court may require the department to file a visitation  
5 plan with the court. The department may deny visitation to the parents, guardian, or  
6 family members if there is clear and convincing evidence that visits are not in the  
7 child's best interests. **If the department denies visitation to a parent or family**  
8 **member of a child, the department shall inform the parent or family member of a**  
9 **reason for the denial and of the parent's or family member's right to request a**  
10 **review hearing as an interested party.** A parent, **family member,** or guardian who  
11 is denied visitation may request a review hearing **as an interested party.** **In this**  
12 **section, "interested party" means a person who has the right to request a hearing**  
13 **on a departmental decision involving visitation by a family member.**

14 \* Sec. 13. AS 47.10.080 is amended by adding new subsections to read:

15 (t) The court or a jury, if a jury trial is requested, may not terminate parental  
16 rights solely on the basis that the parent did not complete treatment required of the  
17 parent by the department for reunification with the child if the parent can show, by a  
18 preponderance of the evidence, that the treatment required was unavailable to the  
19 parent and the department did not provide the treatment.

20 (u) For a child who is placed in foster care, when the department finds that it  
21 is in the best interest of a child and that the foster family will not be placed in undue  
22 risk of harm, the department shall require foster parents to provide regular  
23 opportunities for visitation with the child by the parents of the child and to serve as  
24 mentors for facilitating family reunification.

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

28 \* Sec. 14. AS 47.10.088(i) is amended to read:

29 (i) The department shall concurrently identify, recruit, process, and approve a  
30 qualified person or family for an adoption whenever a petition to terminate a parent's  
31 rights to a child is filed. **The department may not approve an adoption by a**

1 person or family who is not related to the child by blood if an adult family  
2 member of the child requests that the department approve the adult family  
3 member for the adoption unless the adoption by the child's adult family member  
4 is not in the child's best interest, is prohibited under (l) of this section, or is  
5 otherwise contrary to federal or state law. If the court issues an order to terminate  
6 under (j) of this section, the department shall report within 30 days on the efforts being  
7 made to recruit a permanent placement for the child if a permanent placement was not  
8 approved at the time of the trial under (j) of this section. The report must document  
9 recruitment efforts made for the child.

10 \* Sec. 15. AS 47.10.088 is amended by adding new subsections to read:

11 (l) The department may not approve an adoption by a person related to the  
12 child by blood if the department

13 (1) makes a determination, supported by clear and convincing  
14 evidence, that adoption of the child by the adult family member will result in physical  
15 or mental injury to the child; in making that determination, poverty, including  
16 inadequate or crowded housing, on the part of the person related to the child by blood  
17 is not considered prima facie evidence that physical or mental injury to the child will  
18 occur;

19 (2) determines that a member of the adult family member's household  
20 who is 12 years of age or older was the perpetrator in a substantiated report of abuse  
21 under AS 47.17; or

22 (3) determines that a member of the adult family member's household  
23 who is 12 years of age or older is under arrest for, is charged with, has been convicted  
24 of, or has been found not guilty by reason of insanity of, a serious offense;  
25 notwithstanding this paragraph, the department may approve an adoption by the adult  
26 family member if the adult family member demonstrates to the satisfaction of the  
27 department that conduct described in this paragraph occurred at least five years before  
28 the intended adoption and the conduct

29 (A) did not involve a victim who was under 18 years of age at  
30 the time of the conduct;

31 (B) was not a crime of domestic violence as defined in

1 AS 18.66.990; and

2 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or  
3 a law or ordinance of another jurisdiction having similar elements.

4 (m) For the purpose of determining whether the home of an adult family  
5 member meets the requirements for adoption of the child, the department shall conduct  
6 a criminal background check from state and national criminal justice information  
7 available under AS 12.62. The department may conduct a fingerprint background  
8 check on any member of the adult family member's household who is 12 years of age  
9 or older when the adult family member requests adoption of the child. For the  
10 purposes of obtaining criminal justice information under this subsection, the  
11 department is a criminal justice agency conducting a criminal justice activity under  
12 AS 12.62.

13 (n) A person related to a child by blood who is denied a request for an  
14 adoption under (i) of this section may request a review hearing by the court. If the  
15 department denies a request by a person related to a child by blood to adopt a child  
16 under (i) of this section, the department shall inform the adult family member of the  
17 reason for the denial and of the adult family member's right to request a review  
18 hearing.

19 (o) A trial or hearing conducted under this section is open to the public unless  
20 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed  
21 to the public. The court shall uphold the department's decision under this section if the  
22 court finds, by clear and convincing evidence that the decision is in the best interest of  
23 the child and otherwise complies with the requirements of this section.

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

25 **Sec. 47.10.089. Administration of prescription drugs.** When a child is in  
26 the custody of the department under AS 47.10.084 and the child is prescribed a  
27 psychotropic or other mental health medication, the department shall obtain the  
28 consent of the child's parent or legal guardian before administering the medication.

29 \* **Sec. 17.** AS 47.10.090(c) is amended to read:

30 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday  
31 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]

1 18th birthday, within 30 days after [OF] the date on which the court releases  
2 jurisdiction over the child [MINOR], the court shall order all the court's official  
3 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A  
4 person may not use these sealed records unless authorized by order of [FOR ANY  
5 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR  
6 USE FOR] good cause [SHOWN].

7 \* Sec. 18. AS 47.10.090(d) is amended to read:

8 (d) Except as provided in AS 47.10.070, 47.10.080(v), and 47.10.093, the  
9 [THE] name or picture of a child [MINOR] under the jurisdiction of the court may not  
10 be made public in connection with the child's [MINOR'S] status as a child in need of  
11 aid unless authorized by order of the court or unless to implement the permanency  
12 plan for a child after all parental rights of custody have been terminated. This  
13 subsection does not prohibit the release of aggregate information for statistical or  
14 other informational purposes if the identity of any particular person is not  
15 revealed by the release.

16 \* Sec. 19. AS 47.10.092(a) is amended to read:

17 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member  
18 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005  
19 - 47.10.142 may disclose confidential or privileged information about the child or the  
20 child's family, including information that has been lawfully obtained from agency or  
21 court files, to the governor, the lieutenant governor, a legislator, the ombudsman  
22 appointed under AS 24.55, the attorney general, and the commissioner  
23 [COMMISSIONERS] of health and social services, administration, or public safety, or  
24 an employee of these persons, for review or use in their official capacities. The  
25 department shall disclose additional confidential or privileged information and make  
26 copies of documents available for inspection about the child or the child's family to  
27 these state officials or employees for review or use in their official capacities upon  
28 request of the official or employee and submission of satisfactory evidence that an  
29 adult family member [A PARENT] or legal guardian of the child has requested the  
30 state official's assistance in the case as part of the official's duties. A person to whom  
31 disclosure is made under this section may not disclose confidential or privileged

1 information about the child or the child's family to a person not authorized to receive  
2 it.

3 \* **Sec. 20.** AS 47.10.092 is amended by adding new subsections to read:

4 (d) The duty imposed on the department under (a) of this section to disclose  
5 information to and make copies of documents available for inspection by state  
6 officials and employees upon proof that a parent has requested the assistance of the  
7 state official or employee with respect to a child's case does not lapse when the  
8 parent's parental rights have been terminated with respect to the child. However, the  
9 duty does lapse after termination of the parent's parental rights if another parent or  
10 legal guardian of the child subsequently files a notice with the department that the  
11 assistance of the state official or employee is no longer requested.

12 (e) The department shall notify an official identified under (a) of this section  
13 of the opportunity to file a grievance under AS 47.10.098 - 47.10.099 when the  
14 official is denied access to all or part of a requested record

15 \* **Sec. 21.** AS 47.10.093(a) is amended to read:

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

22 \* **Sec. 22.** AS 47.10.093(b) is amended to read:

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

25 (1) a guardian ad litem appointed by the court;

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

30 (3) a foster parent [PARENTS] or adult family member  
31 [RELATIVES] with whom the child is placed by the department as [MAY BE]

1 necessary to enable the foster parent [PARENTS] or adult family member  
2 [RELATIVES] to provide appropriate care to [FOR] the child [WHO IS THE  
3 SUBJECT OF THE CASE], to protect the safety of the child [WHO IS THE  
4 SUBJECT OF THE CASE], and to protect the safety and property of family members  
5 and visitors of the foster parent [PARENTS] or adult family member  
6 [RELATIVES];

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

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

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

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

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

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

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

28 (11) a caregiver of a child or an entity responsible for ensuring the  
29 safety of children as necessary to protect the safety of a child; and

30 (12) a review panel established by the department for the purpose  
31 of reviewing the actions taken by the department in a specific case.

1 \* **Sec. 23.** AS 47.10.093(c) is repealed and reenacted to read:

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

5 \* **Sec. 24.** AS 47.10.093(f) is amended to read:

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

11 \* **Sec. 25.** AS 47.10.093(g) is amended to read:

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

18 \* **Sec. 26.** AS 47.10.093 is amended by adding new subsections to read:

19 (k) The department may disclose to the public, upon request, confidential  
20 information, as set out in (l) of this section, when

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

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

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

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

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

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

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

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

15 \* **Sec. 27.** AS 47.10 is amended by adding a new section to read:

16 **Sec. 47.10.094. Immunity from liability.** A person may not bring an action  
17 for damages against the state, a municipality, or state or municipal agencies, officers,  
18 employees, or agents based on the disclosure or nondisclosure of information in  
19 accordance with this chapter.

20 \* **Sec. 28.** AS 47.10. is amended by adding new sections to read:

21 **Sec. 47.10.098. Grievance procedure.** (a) An individual may file a  
22 grievance with the department for a complaint involving the disclosure of records  
23 under this chapter if the complaint is based on

24 (1) the application of a department policy or procedure;

25 (2) compliance with this chapter or a regulation adopted under this  
26 chapter; or

27 (3) an act or failure to act by the department.

28 (b) An aggrieved individual shall submit a written complaint, on a form  
29 provided by the department, to the supervisor of the person whose action is being  
30 grieved stating the specific concern, the name of the department staff member  
31 involved, and the desired relief sought. The supervisor shall provide a copy of the

1 grievance procedure to the aggrieved individual. The grievance procedure must  
2 include

3 (1) review of the grievance by the supervisor within three working  
4 days after receipt of the grievance to determine

5 (A) the nature of the complaint; and

6 (B) whether the action or inaction of the department falls  
7 within the grounds established under (a) of this section;

8 (2) if the supervisor determines that the grievance falls within the  
9 grounds established under (a) of this section, contacting the aggrieved individual to  
10 schedule an informal meeting, within 10 days after the supervisor's decision, with the  
11 supervisor, the aggrieved individual, and the department staff member identified in the  
12 grievance in order to attempt to informally resolve the grievance;

13 (3) if the supervisor determines that the grievance does not fall within  
14 the grounds established under (a) of this section, notifying the aggrieved individual of  
15 the inapplicability of the grievance procedure and closing the file;

16 (4) the availability of more than one informal meeting if it is in the best  
17 interest of the parties to the grievance;

18 (5) written recommendations of the supervisor and filing of a summary  
19 of the informal meetings within five working days after the conclusion of the informal  
20 meetings; a copy of the recommendations and summary must be sent to the aggrieved  
21 individual; and

22 (6) opportunity for review under AS 47.10.099.

23 **Sec. 47.10.099. Review panel for grievances.** (a) An aggrieved individual  
24 may file a request with the ombudsman for a panel review of the recommendations of  
25 the supervisor of the person whose action is being grieved under AS 47.10.098.

26 (b) A review panel shall be appointed by the ombudsman within 21 working  
27 days after receiving a request for a panel review. The panel must consist of a regional  
28 administrator from the department or the administrator's designee, a social worker, and  
29 a private citizen who has expertise in the area of the administration of human services.  
30 The panel members shall serve without compensation.

31 (c) A review panel appointed under this section shall meet at least one time.

1 either in person or telephonically, to conduct a fact-finding meeting at which the  
2 aggrieved party and the department staff member involved in the grievance may  
3 appear. The panel may rely on outside information gathered to resolve the grievance  
4 as well as information received at the meeting. If the department staff member  
5 involved in the grievance is unable to attend the meeting, a written explanation of the  
6 staff member's absence shall be provided to the panel before the meeting.

7 (d) Following the fact-finding meeting held under (c) of this section, the  
8 review panel shall convene telephonically or in person to deliberate and resolve the  
9 grievance.

10 (e) Within 10 working days after the meeting held under (d) of this section,  
11 the review panel shall issue written findings and a resolution. The panel shall send a  
12 copy of the findings and resolution to the aggrieved party, the ombudsman, and to the  
13 department staff member named in the grievance.

14 (f) The aggrieved party may appeal the findings and resolution to the  
15 ombudsman within 15 days after receipt of the findings and resolution. Failure to  
16 appeal to the ombudsman shall be considered a final resolution, and the file shall be  
17 closed.

18 (g) Within 30 days after receipt of an appeal to the ombudsman, the  
19 ombudsman shall issue a written decision to accept or reject the findings and  
20 resolution of the review panel.

21 (h) The information reviewed by the review panel shall be made part of a  
22 confidential record, and information containing identifying information of recipients  
23 of department services, along with all other information made confidential by state or  
24 federal law, may not be discussed publicly by any person involved in the grievance.

25 (i) The ombudsman shall prepare a report of a grievance that contains a  
26 summary of the complaint, the review or evaluation process used, and the outcome of  
27 the review or evaluation, including any recommendations made as a result of the  
28 review. Before the report is disclosed, the ombudsman shall modify a report prepared  
29 or produced under this subsection to exclude all personal identifying information of a  
30 child, the child's family, and witnesses.

31 \* Sec. 29. AS 47.10.960 is amended to read: