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SENATE

JUDICIARY

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SB

84

SENATE COMMITTEE REPORT

DATE: 2/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 84

SB 84 CHILD PROTECTION CONFIDENTIALITY

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

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

24-GS1082\Y
Mischel
3/2/05

CS FOR SENATE BILL NO. 84()

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

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24-GS1082\F
Muschel
2/28/05

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

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 implementation of this Act.

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

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

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

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

Nancy Schaufelberger

To: Brian Hove
Subject: Fiscal Note - SB 84

Brian,

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

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

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

Nancy

The attached FN replaces
the original PDA FN.

AS

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Governor Component No. 1631
 Requester Senate HESS

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	54.3	54.3	54.3	54.3	54.3	54.3
Travel	2.4	2.4	2.4	2.4	2.4	2.4
Contractual	18.0	18.0	18.0	18.0	18.0	18.0
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	82.7	76.7	76.7	76.7	76.7	76.7

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	82.7	76.7	76.7	76.7	76.7	76.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	82.7	76.7	76.7	76.7	76.7	76.7

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

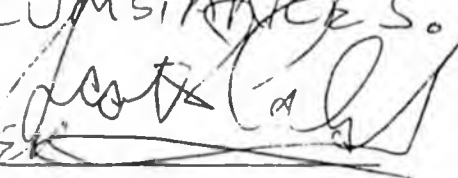
Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 2/25/05 9:01 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/25/2005
 Agency Department of Administration



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (5) JUDICIARY
 Committee on SS CSS B 84 Committee Name
 Dated 2-24-05
 Bill / Subject

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

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



Alaska State Legislature

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

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

SEE

JMD

PAGE

Signed: MARCI SCHMIDT
Testifier

Representing (Optional)
2040 WASENA FISHHOOK
Mailing Address
907 775-0298 / 357-3618
Phone Number

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

Dear Honorable Senate Judiciary Committee:

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

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

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

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

Respectfully submitted,


Marci Schmidt



ALASKA STATE LEGISLATURE

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

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

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

SIGNED:

Scott Crawford
 SCOTT CRAWFORD CLAWDEN

Testifier

P.O. 75011 / FBKS / 99707

Representing

(907) 474-0174

Address / Phon Number



FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will provide greater public access to child-in-need-of-aid (CINA) hearings and records and other information that has been historically closed to the public.

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

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

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

COMMITTEE COPY

The Honorable Ben Stevens
January 25, 2005
Page 2

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

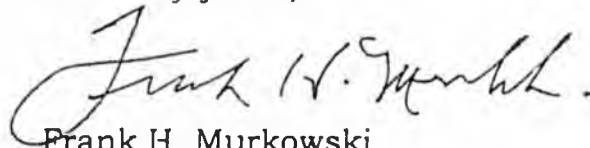
Information from state agency CINA records would be made available to the public in three situations: when a parent or guardian in a CINA case makes a public disclosure concerning the Department of Health and Social Services' involvement with the family; when the alleged perpetrator named in a report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

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

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

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 84
 (S) Publish Date: 1/26/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title Confidentiality of CINA Matters RDU CIVIL
 Component Human Services
 Sponsor Possible Governor
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	37.4	37.4	37.4	37.4	37.4	37.4
Travel	0.1	0.1	0.1	0.1	0.1	0.1
Contractual	4.4	4.4	4.4	4.4	4.4	4.4
Supplies	0.8	0.8	0.8	0.8	0.8	0.8
Equipment	0.5	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	43.2	43.2	43.2	43.2	43.2	43.2

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	43.2	43.2	43.2	43.2	43.2	43.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	43.2	43.2	43.2	43.2	43.2	43.2

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction):

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

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR Component No. 2666

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	84.1	84.1	84.1	84.1	84.1	84.1
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual						
Supplies	7.5					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	92.6	85.1	85.1	85.1	85.1	85.1

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

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

Estimate of any current year (FY2005) cost:

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Marcia Kennai, Deputy Commissioner

Phone 907-465-3397

Division: Office of Children's Services

Date/Time 01/07/2005

Approved by: Joel S. Gilbertson, Commissioner

Date 01/10/2005

Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Governor
 Requester Senate HESS Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	54.3	54.3	54.3	54.3	54.3	54.3
Travel	2.4	2.4	2.4	2.4	2.4	2.4
Contractual	18.0	18.0	18.0	18.0	18.0	18.0
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	82.7	76.7	76.7	76.7	76.7	76.7

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	82.7	76.7	76.7	76.7	76.7	76.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	82.7	76.7	159.6	159.6	159.6	159.6

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to confidentiality... RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Governor
 Requester Senate HESS Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	119.3	119.3	119.3	119.3	119.3	119.3
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual	35.0	35.0	35.0	35.0	35.0	35.0
Supplies	1.0	0.4	0.4	0.4	0.4	0.4
Equipment	5.0	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	161.3	156.2	156.2	156.2	156.2	156.2

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	161.3	156.2	156.2	156.2	156.2	156.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	161.3	156.2	156.2	156.2	156.2	156.2

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill changes statutes and court rules governing confidentiality in child protective proceedings (CINA) and some agency documents. CINA hearings will be presumptively open to the public, unless the court orders otherwise, based upon a motion to close it under certain circumstances enumerated in the bill. Approximately 1000 CINA cases are opened annually. OPA provides guardian ad litem representation in all CINA cases for the children, and also provides parental representation for the parents where the Public Defender Agency has a conflict. In essence, every CINA case is the equivalent of two cases to OPA if not more (in cases where there are more than two parents involved). Representation for both children and parents is provided by staff GALs and attorneys from separate OPA sections, as well as contractors in areas of the state where OPA has no staff or where OPA staff have a conflict. (Analysis continued on page two)

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

FISCAL NOTE # 4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 84(HES)

ANALYSIS CONTINUATION

It is anticipated that in a significant portion of OPA's cases the attorney representing either the child or parent will move to close the hearing. Prior to doing this, an investigation must be conducted up front to determine if an open hearing would be detrimental to the child's best interests. In addition, any motion practice regarding hearing closure must be served on any member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to one full time attorney (a half-time attorney for child advocacy and a half-time attorney for parental advocacy), factoring in a third of personal services for a support staff member. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled. Finally, contractors will bill additional hours for investigation, motion practice, and motion service regarding hearing closures.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

FISCAL NOTE # 4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 84(HES)

ANALYSIS CONTINUATION

It is anticipated that in a significant portion of OPA's cases the attorney representing either the child or parent will move to close the hearing. Prior to doing this, an investigation must be conducted up front to determine if an open hearing would be detrimental to the child's best interests. In addition, any motion practice regarding hearing closure must be served on any member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to one full time attorney (a half-time attorney for child advocacy and a half-time attorney for parental advocacy), factoring in a third of personal services for a support staff member. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled. Finally, contractors will bill additional hours for investigation, motion practice, and motion service regarding hearing closures.

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

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

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

I. Findings and Intent (Section 1):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Addition of a definition (Section 15):

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

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

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

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

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

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

VIII. Applicability (Section 19):

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

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

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

X. Governor's Report (Section 21):

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

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

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

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

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

SB

86

SENATE COMMITTEE REPORT

DATE: 4/5/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 86

SB 86 STATE/MUNI LIABILITY FOR ATTORNEY FEES

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

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

5686



FRANK H. MURKOWSKI
GOVERNOR
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to, as a matter of sovereign immunity, limit the award of attorney's fees against the state and municipalities.

Since territorial days, Alaska has had a statutory policy of requiring the losing party in most litigation to pay a portion of the prevailing party's attorney fees. In recent years, this policy has been embodied primarily in Alaska Rule of Civil Procedure 82, which the Alaska Supreme Court adopted in response to a legislative delegation, made immediately following statehood, in AS 09.60.010. In most cases, the prevailing party receives a partial fee award, equal to no more than 20 percent of a money judgment or 20 percent of actual fees in a non-monetary case.

In cases brought against state or local governments, departures from the general rule of partial fee reimbursement have occurred with some regularity, with the governmental party required to reimburse all of the prevailing party's fees. Ordinarily, the basis for these enhanced fee awards has been the judicially created public interest litigant policy, wherein selected litigants bringing suits to advance ends deemed by the court to reflect strong public policies are granted full fees as a subsidy from the state treasury. The cost of this subsidy has been significant to the state in all recent fiscal years and, on a more irregular basis, has been significant to the municipalities targeted by such lawsuits.

There are instances where a Legislative policy sufficiently supports full attorney fee awards and the legislature has chosen to provide for them by statute. Full reimbursement is also important for eminent domain proceedings. Beyond these contexts, the Legislature has not identified a policy that would support a direct public subsidy to private litigants that goes beyond the traditional norm of partial fee awards. To ensure that public money is not disbursed as a subsidy to these litigants without an appropriate legislative authorization, this bill would provide, as a matter of sovereign immunity, that the state or a municipality would not be liable for an attorney fee award in excess of certain percentages of a money

COMMITTEE COPY

The Honorable Ben Stevens
January 27, 2005
Page 2

judgment or, if a money judgment is not recovered, certain percentages of the reasonable actual attorney fees the prevailing party incurred in litigating the issues upon which the party prevailed. This would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule.

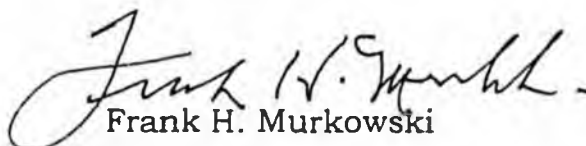
Section 1 of the bill describes the purposes of the Legislation. It notes the fiscal impact of enhanced fee awards, and specifically relies on the legislature's constitutional authorities in regulating this area. Section 1 states clearly that this bill, if enacted into law, would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations.

Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the state and municipalities are not liable to pay more than 20 percent of the money judgment. In civil actions in which no money judgment is recovered, the liability of the state and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed, and 20 percent for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the state and municipalities for attorney fees is capped at 20 percent of reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed. These limits on liability are very similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party. These limitations do not apply if the statutes provide differently, if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Section 3 of the bill would make the bill, if enacted into law, applicable only to civil actions or appeals initiated after it takes effect.

I urge your prompt consideration and passage of this bill.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 86
 (S) Publish Date: 1/31/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to liability for attorney RDU Risk Management
fees in certain civil actions 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)

Section 2 provides enhanced immunity for State and municipalities to not be liable to pay attorney fee awards exceeding those provided for in Civil Rule 82 (unless otherwise provided by specific statute).

Risk Management is not affected by this new limitation.

Any monetary judgment awarded on personal injury (tort) actions against the State of Alaska covered by the Risk Management self insurance program are presently addressed by Civil Rule 82 - which remains unchanged.

Prepared by: J. Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 12/10/04 10:46 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 12/10/2004
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 86
 (S) Publish Date: 1/31/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the liability of the state and RDU CIVIL
municipalities for attorney fees..." Component Labor & State Affairs
 Sponsor _____ Component No. _____
 Requester Governor

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would, as a matter of sovereign immunity, limit the award of attorney fees against the state and municipalities. Though the bill will apply to almost all actions against the state and municipalities, it will have a particular effect on attorney fees awarded to parties determined by the courts to be public interest litigants. HB 145, passed by the legislature in 2003, has been challenged in court and found by the superior court to be unconstitutional because it was viewed as requiring a court rule change, thus needing a two-third vote by both houses of the legislature, which it did not receive. In addition the court found it to be an unconstitutional denial of due process and equal protection insofar as it required public interest litigants to pay attorneys fees. That decision is being appealed to the Alaska Supreme Court. This bill responds to the Superior Court decision by narrowly focusing on the award of fees against the state or municipality and limiting the award to the amount applicable under Civil Rule 82 unless

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 12/9/04 4:09 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 12/9/2004
 Agency Department of Law

FISCAL NOTE #2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 86

ANALYSIS CONTINUATION

otherwise provided for in specific statutes, or if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Sectional Analysis of CSHB 117(CRA)/CSSB 86(CRA) (Liability of State and Municipalities for Attorney Fees)

CSHB 117(CRA)/CSSB 86(CRA) addresses the use of state or municipal funds to subsidize certain types of litigation through awards of attorney fees to prevailing parties that are higher than the partial awards that are the norm in Alaska. The legislation would limit these enhanced awards to instances where the legislature has made a policy judgment to provide for them by statute.

Sec. 1. The findings, purpose and intent section notes the fiscal impact of enhanced fee awards, and determines that except where provided by specific statute, where needed as a court sanction, or in the context of an exercise of eminent domain, no public policy sufficiently supports such awards to justify their fiscal impact. The section relies on the legislature's constitutional authorities to regulate suits against the State and to confer immunities on the State and municipalities, as well as on the doctrine of sovereign immunity. Section 1 states that this Act neither precludes nor repeals specific statutes authorizing the award of costs or fees in particular situations.

Sec. 2. The single substantive provision of the bill creates a new section in the chapter of title 9 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the State and municipalities are not liable to pay more than 20 percent of the money judgment as an attorney fee award to the adverse party. In civil actions where no money judgment is recovered, the liability of the State and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual fees that were necessarily incurred in litigating issues on which the party prevailed, and at 20 percent of the same figure for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the State and municipalities for attorney fees is capped at 20 percent of reasonable actual fees that were necessarily incurred in litigating issues on which the party prevailed. These limits do not apply where statutes provide differently, where the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or their counsel, or in cases involving the condemnation of property under the power of eminent domain.

Sec. 3. The Act will apply only to civil actions or appeals initiated after the Act becomes effective.

Sec. 4. The Act will take effect immediately.



Alaska State Legislature

Please enter into the record my testimony to the SJUD
committee name

Committee on SB 86, dated 4-15-05
bill # / subject public hearing date

I believe the proposed SB 86 violates Article I, Section 1 of the Alaska Constitution, i.e.,
 "that all persons have corresponding obligations to the people and the State."

SB 86 will cloud and / or eliminate the inherent rights and the "obligations to the people and to the state" will not be fundamentally clear.

I have successfully and personally used this section to gain court acceptance and obtain legal standing in certain cases filed by our organization
 The Alaska Constitutional Legal Defense Fund.

To actually change this "Inherent Rights" section of the Alaska State Constitution would, and should, require a popular vote of the people of Alaska.

Signed: Dale Bondurant Dale Bondurant
Testifier

Alaska Constitutional Legal Defense Fund

Representing (optional)
31864 Moonshine Dr Soldotna, AK 99669

Address
262-0818

Phone number



State of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
(907) 283-2030

Date: 4-14-05

Please accept the enclosed original(s) of written testimony for the
STUD teleconference hearing that was
scheduled on 4-15-05.

A copy of this testimony was transmitted to your committee via fax on
4-14-05.

Thank you,

M. B. Byrnes



Alaska State Legislature

Please enter into the record my testimony to the SJUD
committee name

Committee on SB 86, dated 4-15-05
bill # / subject public hearing date

I believe the proposed SB 86 violates Article I, Section 1 of the Alaska Constitution, i.e., "that all persons have corresponding obligations to the people and the State."

SB 86 will cloud and / or eliminate the inherent rights and the "obligations to the people and to the state" will not be fundamentally clear.

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The Alaska Constitutional Legal Defense Fund.

To actually change this "Inherent Rights" section of the Alaska State Constitution would, and should, require a popular vote of the people of Alaska.

Signed: Dale Bondurant Dale Bondurant
Testifier

Alaska Constitutional Legal Defense Fund

Representing (optional)

31864 Moonshine Dr Soldotna, AK 99669

Address

262-0818

Phone number

SB

87

SENATE COMMITTEE REPORT

DATE: 2/18/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 87

SB 87 SEAT BELT VIOLATION AS PRIMARY OFFENSE

"An Act relating to motor vehicle safety belt violations."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

- APPROPRIATION - no fiscal note

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



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 87

“An Act relating to motor vehicle safety belt violations.”

Currently, Alaska state law requires *all* individuals to wear a seat belt while driving or riding in any vehicle. Senate Bill 87 changes the enforcement measures of this law to allow police officers and state troopers to pull over individuals who are not wearing their seat belt. Presently, officers may cite drivers only if they are pulled over for another violation. As a direct result of this legislation, we have the opportunity to save both lives and the state hundreds of thousands of dollars in emergency, rehabilitative and insurance costs annually.

Motor vehicle accidents are the *leading cause of death* for Americans of every age from 6 to 33 years of age and Alaska has one of the leading accident related death rates of all 50 states (National Safety Council, 2002; Kaiser Healthfacts: State Health Facts). Although seat belt use is required by statute and is the single most effective safety device in preventing injuries and fatalities, we are currently unable to enforce its use. In Alaska, a change in enforcement powers would lead to a 10-15% increase in seat belt use. That increase alone will prevent hundreds of injuries and save 6 lives each year (National Transportation Safety Board, 2002.)

The primary enforcement seat belt law has been proven to save billions of dollars that society bears annually from motor vehicle accidents. Eighty-five percent of all costs involved in a motor vehicle crash are borne by society (National Highway Traffic Safety Administration, 2002.) On a national level in 2003, the total cost of motor vehicle crashes was over *230 billion dollars* (Alaska paid nearly a half a billion dollars), a cost of \$820 per person (National Highway Traffic Safety Administration 2002.) Safety belt usage saves approximately 50 billion dollars annually; conversely we spend an *extra* 26 billion on non-use (MADD, 2003.)

Enacting a primary seat belt law may save more lives than any other single piece of legislation we consider this session. Currently, 21 states plus the District of Columbia have chosen to enforce a primary seat belt law (Insurance Journal, 2005.) If every state did, we would save lives, prevent injuries and save Americans billions of dollars in health care, taxes and insurance costs in the first year alone. This bill saves money and lives. I urge you to consider the evidence before you and support SB 87.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 87
 (S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Primary seat belt use RDU Administration & Support
 Component Commissioner's Office
 Sponsor Bunde
 Requester _____ Component No. 530

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)*
 DOT public information efforts will be conducted by Traffic Safety Office, and will change only to emphasize primary use and enforcement, as well as continuing current message that seat belt use saves lives.

Prepared by: John Manly Phone 465-3904
 Division Communications, DOT&PF Date/Time 2/11/05 1:10 PM
 Approved by: Mike Barton Date 2/11/2005
 Agency Commissioner, DOT&PF

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 87
 (S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title Safety Belt Violations RDU CRIMINAL
 Component CDCO
 Sponsor Senator Bunde
 Requester Judiciary 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)
 The bill repeals that portion (AS 28.05.095(e)) of Alaska's seatbelt law that prohibits peace officers from stopping or detaining a motor vehicle for the sole purpose of determining compliance. The Department of Law does not anticipate any fiscal impact from passage of this legislation

Prepared by: Robert Meiners, Dep. Director Phone 465-5427
 Division: Administrative Services Date/Time 2/14/05 11:43 AM
 Approved by: Robert Meiners for Scott Nordstrand, Acting Attorney General Date 2/14/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 87
 (S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Seat belt violations BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Bunde
 Requester _____ Component No. 768

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						
TOTAL OPERATING	0.0	1.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)

The court system does not anticipate any fiscal impact from the passage of SB 87.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/15/05 4:34 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/15/2005
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 87
(S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title: Seat Belt Violation as Primary Offense RDU: Alaska State Troopers
Sponsor: Senator Bunde Component: AST Detachment
Requester: _____ Component No.: 2325

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)
Passage of this bill will have no fiscal impact on the Department of Public Safety. The provision in the bill repealing AS 28.05.095(e) will allow law enforcement officers to contact motorists, when they are observed to be driving their vehicle without properly wearing their seat belt.

Prepared by: Captain Al Storey Phone 269-5682
Division: Alaska State Troopers Date/Time 2/15/05 11:50 AM
Approved by: Commissioner William Tandeske Date 2/15/2005
Agency: Department of Public Safety



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Con Bunde
Current Version: SB 87
Contact: Lauren Wickersham, 465-3881

Fact Sheet for: Senate Bill 87

Short Title: SEAT BELT VIOLATION AS PRIMARY OFFENSE

Summary:

- Allows peace officers to pull over and cite individuals for not wearing a seat belt.
- Changes the current seat belt law from a secondary to a primary offense.
- Does not change current law that requires seat belt use in a motor vehicle.

Benefits:

- Saves the state hundreds of thousands of dollars in emergency, rehabilitative and insurance costs annually.
- Primary seat belt laws are proven to save lives and reduce injuries related to motor vehicle crashes.

Background:

- Twenty-one other states and the District of Columbia have enacted primary seat belt laws. Supporters include many local and national safety groups, Department of Public Safety Commissioner William Tandeske, the chiefs of police in Fairbanks and Anchorage, and the U.S. Department of Transportation.

Sec. 28.05.095. Use of seat belts and child safety devices required.

(a) Except as provided in (c) of this section a person

(1) 16 years of age or older may not occupy a motor vehicle while being driven unless restrained by a safety belt; and

(2) may not operate a motor vehicle unless restrained by a safety belt.

(b) Except as provided in (c) of this section, a driver may not transport a child under the age of 16 in a motor vehicle unless the driver has provided the required safety device and properly secured each child as described in this subsection. If the child is less than four years of age, the child shall be properly secured in a child safety device meeting the standards of the United States Department of Transportation for a child safety device for infants. If the child is four but not yet 16 years of age, the child shall be properly secured in a child safety device approved for a child of that age and size by the United States Department of Transportation or in a safety belt, whichever is appropriate for the particular child.

(c) Subsections (a) and (b) do not apply to

(1) passengers in a school bus, unless the school bus is required to be equipped with seat belts by the United States Department of Transportation, or an emergency vehicle;

(2) a vehicle operator acting in the course of employment delivering mail or newspapers from inside the vehicle to roadside mail or newspaper boxes;

(3) a person or class of persons exempted by regulation under AS 28.05.096; or

(4) a person required to be restrained by safety belts under (a) or (b) of this section if the motor vehicle is not equipped with safety belts.

(d) A person may not remove a safety belt from a vehicle solely to be exempted under (c)(4) of this section.

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section.

Sec. 28.05.096. Exemptions and alternative safety devices.

(a) The commissioner of public safety may adopt regulations to exempt a person or a class of persons from the requirements of AS 28.05.095 if the commissioner determines that the use of a safety belt or child safety device is impractical because of physical or medical conditions of the person or class of persons.

(b) The commissioner of public safety shall specify alternative means of protection for children exempted under this section.



Municipality of Anchorage



4811 Dragage Street • Anchorage, Alaska 99507-1600 • Telephone (907) 786-4611 • <http://www.muni.org>

Mayor Mark Begich

Anchorage Police Department

February 15, 2005

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Senator:

The focus of SB 87, the Primary Seat Belt Law, is to enhance driver and passenger safety. Too often, we respond to accidents where occupants were not wearing seat belts and they sustained major injury or death because they were ejected from the car. In some these same accidents, other passengers who were wearing seat belts sustained only minor injuries.

There may be citizens who would resist the idea of government being so intrusive as to mandate their safety. What is often lost in this argument is the understanding that, should someone not wearing a seat belt die in an accident, that death can place a heavy emotional burden on the *other* driver—who was wearing one.

Finally, last year it seemed there were concerns among some legislators that a Primary Seat Belt Law would facilitate an excuse to make traffic stops in an abusive manner. Toward that concern, I will point out that there are already several hundred laws in the traffic code—from burnt out lights, cracked windshields, to even snow-obscured license plates, any of which could facilitate a legal traffic stop. This is only about safety. I support this bill because it supports my mission, to protect and serve; and the passage of this bill will help me to better ensure the safety of all Alaskans.

Sincerely,

Walt Monegan
Chief of Police

Community, Security, Prosperity



State of Alaska
Department of
Public Safety

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 4, 2005

The Honorable Con Bunde
Alaska State Senate
State Capitol, Room 505
Juneau, Alaska 99801

Dear Senator Bunde,

I'm writing to express my continued support for a primary seat belt law in Alaska.

My support is based on twenty-six years of service as an Alaska State Trooper, where I personally investigated a large number of motor vehicle crashes resulting in death or serious injury. In the accidents where no seatbelt was being utilized, one can only speculate that the sustained injuries may have been less severe and the loss of life would have been reduced had a seat belt been worn by all of the occupants.

The mission of the Department of Public Safety is in part, to protect life and property. As the commissioner of this department, I am committed to doing everything in my power to ensure the safety of all Alaskans. Plain and simple, study after study reports that seat belts save lives. Any legislation that will enhance the ability of law enforcement to advance safety in this state should be endorsed wholeheartedly.

I believe that primary seat belt legislation, coupled with the ongoing education efforts that are being promoted, will produce results that should reduce the alarming number of serious injuries and deaths on our roadways. If this department can be of assistance to you with any proposed seat belt legislation, please don't hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "William Tandeske".

William Tandeske
Commissioner

**Alaska Injury
Prevention Center**



Alaska Injury Prevention Center

PO Box 210736
Anchorage, AK 99521-0736
Tel. 907-929-3941
FAX 907-929-3940
Email: asc1@alaska.net

February 10, 2005

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Dear Senator Bunde,

I would like to take this opportunity to offer my expertise and experience if necessary to advance your efforts on a primary seat belt law for Alaska. I'm the author and primary researcher for a study funded by a non-profit group called the Automotive Coalition for Traffic Safety. This research project, *Alaska Seat Belt Cost Analysis*, compiled and analyzed the hospital costs associated with seat belt use in Alaska. The research has gotten a good deal of statewide recognition as an argument to be used for primary enforcement of seat belt laws. The study shows that from 1996 through 1999, medical costs for unbelted occupants totaled more than \$13 million, dollars of which, 50% were paid with public funds. I've attached the Executive Summary, but if you would like a complete copy, please contact me.

Fairbanks was the first city in Alaska to pass an ordinance giving police the authority to stop someone for not wearing a seat belt – primary enforcement. There was considerable public backlash over the new ordinance and it was eventually repealed, but the fine for the existing law was significantly increased. Anchorage also considered a similar municipal ordinance that would allow primary enforcement of seat belt use within the city limits and asked for a copy of the research findings.

Alaska has been chosen by the National Highway Traffic Safety Administration as one of 13 states to receive special initiatives to reduce our DUI deaths, and to increase our seat belt usage. At 77%, Alaska's seat belt usage rate has improved tremendously over previous years, but there are still a significant number of non-users in the state. If we are able to get a primary enforcement law passed, we would expect to see the seat belt usage rate climb to around 90%.

As the evaluator for the recent Click It or Ticket enforcement campaigns, we conducted random telephone surveys on 1,600 Anchorage residents. One of the questions asked was if they were in favor or apposed to police stopping someone for not wearing a seat belt. Sixty-seven (67%) percent said they were in favor of such a law.

I hope this helps,


Ron Perkins, MPH
Executive Director, AIPC



Municipality of Anchorage

Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>

Mayor Mark Begich

Department of Health and Human Services



February 9, 2005

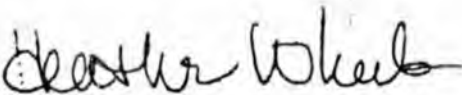
Senator Con Bunde
State Capitol, Room 506
Juneau, Alaska 99801-1182

The Municipality of Anchorage, Department of Health and Human Services strongly supports your effort to pass a primary seatbelt law this session. The passage of a Primary seatbelt Law is one of DHHS' 2005 legislative priorities. Primary seatbelt enforcement allows a law enforcement officer to stop a vehicle and issue a citation when the officer observes an unbelted driver or passenger. It has been 13 years since a (secondary) seatbelt law was introduced allowing an officer to cite for non-seatbelt use only if the vehicle was stopped for another infraction. According to the National Highway Traffic Safety Administration, primary seatbelt laws increase seatbelt use by 9 to 14 percentage points. We presently have a 72% usage rate.

It is estimated that \$12 million, 71 major injuries, and 6 lives would be saved in Alaska each year if a primary seatbelt law was passed (BELTUSE software program, NHSTA). Motor vehicle crashes are the leading cause of injury death to people between the ages of 10-34 years of age (Alaska Bureau of Vital Statistics, 2002).

A primary seatbelt law would save not only lives, but would save significant amount of public money. Over 50% of the medical costs for people unrestrained at the time of the crash are paid by public funds ("Alaska Seatbelt Analysis", Sept. 2003, Alaska Injury Prevention Center). Studies show that patients who were not buckled up at the time of a motor vehicle crash were twice as likely to sustain a serious head injury and over one and one half times more likely to be discharged with a permanent disability (Alaska Trauma Registry, 1991-2000 10 year data report). Considering that a crash costs 55 percent more when a crash victim is unbelted, it is in the state's interest to reduce the cost of health care to enact a primary seat belt law. Twenty-one states and Washington D.C. (July 2004) have passed primary seatbelt laws.

Action requested: Support passage of SB 87, a Primary Seatbelt Law.


for Beverly K. Wooley, Director

Community, Security, Prosperity

LESSMEIER & WINTERS

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Senator Con Bunde
State Capitol, Room 506
Juneau, Alaska 99801

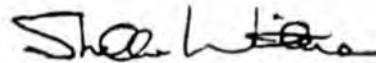
February 14, 2005

Re: Senate Bill 87

Dear Senator Bunde:

On behalf of State Farm Insurance Companies, I would like to express support for SB 87. State Farm has long supported mandatory seatbelt laws and primary enforcement. This legislation will undoubtedly save lives. If there is any information we can provide to you, or anything else we can do in support of this bill, please let me know.

Sincerely,



Sheldon E. Winters

SEW/caf

SenBunde01SEW.wpd

ALASKA PUBLIC HEALTH ASSOCIATION

Committed To Advancing Alaska's Public Health Since 1978



ALPHA

February 17, 2005
(S) STA SB 87

IN SUPPORT OF SB 87 "PRIMARY SEAT BELT LAW"

On behalf of the Alaska Public Health Association, representing two hundred and twenty public health professionals who are deeply committed to developing sound public health policy to improve the health of all Alaskans, we encourage you to vote **YES** on SB 87.

The Alaska Public Health Association and our national organization, the American Public Health Association, have long established resolutions in support of the use of seat belts to save lives, including the attached resolution our members adopted at our 2004 Annual Meeting.

APHA's first resolution in support of seat belt legislation is from 1958 - before statehood! Then, as now, public health professionals have been strong advocates of the effectiveness of seat belts in minimizing the degree of injury and death resulting from traffic accidents.

Seat belts are the single most effective safety device in preventing injuries and fatalities. Enacting a primary seat belt law, SB 87, will save lives and money.

Based on research by the National Highway Traffic Safety Administration, enacting a primary seat belt law contributes to a 10-15% increase in seat belt use. Similar results of close to a 15% increase in seat belt use have been observed in Fairbanks this past year following the recent increase in fines by the borough for seat belt violations.

To quote Senator Bunde in his sponsor letter. "Enacting a primary seat belt law may save more lives than any other single piece of legislation before you this session."

As important public health legislation, we encourage you to support SB 87 and pass it out of the (S)State Affairs Committee.

Thank you.

Marie J. Lavigne, Executive Director
Alaska Public Health Association

*Thank you
Senator Bunde!!
for introducing SB87.*

Attachment: 2004-2 ALPHA Resolution

ALPHA Resolution 2004-2**Recommending the Alaska Legislature Approve A Primary Seatbelt Law**

Whereas a primary enforcement allows a law enforcement officer to stop a vehicle and issue a citation when the officer observes an unbelted driver or passenger,

Recalling that it has been 13 years since a (secondary) seatbelt law has been introduced where enforcement can only be written after the officer stops the vehicle or cites the offender for another infraction;

Whereas 21 states and DC (July, 2004) have passed a primary seatbelt law; (National Highway Safety Association, 2004);

Recognizing that motor vehicle crashes are a leading cause of injury death to people between the ages of 10-34 years of age (Alaska Bureau of Vital Statistics, 2002);

Whereas 84% of people who wear seatbelts are more likely to walk away uninjured compared with only 60% of the unbelted occupants (DOT Alaska Accident Report, 2001);

Whereas \$12 million, 71 major injuries prevented, and 6 lives saved in Alaska per year if a primary seatbelt was passed (BELTUSE software program, NHSTA);

Whereas studies show that patients who were not buckled up at the time of a motor vehicle crash were almost twice as likely to sustain a serious head injury and over one and half times more likely to be discharged with a permanent disability (Alaska Trauma Registry, 1991-2000 10 year data report);

Whereas 50% of the medical costs for people unrestrained at the time of the crash was paid by public funds ("Alaska Seatbelt Analysis", Sept. 2003, Alaska Injury Prevention Center)

Whereas a primary seatbelt law would increase seatbelt use by 11 points, from 71%-92%; NHSTA, spring, 2004);

Whereas a recent study reported that a primary law does not lead to an increase of police harassment; (Accident Analysis & Prevention, 36 (2004) 819-828;

THEREFORE BE IT RESOLVED that the Alaska Public Health Association urge the Alaska Legislature and Governor Murkowski to introduce and pass legislation that amends the secondary seatbelt enforcement to a primary enforcement law.

Statement of Desired Outcomes: Adoption of primary seat belt law by the legislature

Fiscal Impact: Activities ALPHA could undertake at no additional cost

1. Invite members to testify and write letters of support to the legislature.
2. Testify at public hearings on the public health benefits of seat belt use.
3. Distribute on its website and to its members information in support of a primary seat belt law, using public health injury surveillance data.

Juneau Safe Kids Coalition

Box 110616, Juneau, Alaska 99811-0616

February 14, 2005

To Whom it May Concern:

The Juneau Safe Kids Coalition which consists of volunteers and organizations concerned with reducing unintentional injuries for children 14 and under (the number one killer of children 14 and under) supports passage of SB 87

While it has been proven over and over again that seat belts do save lives many do not take the time or effort to do so especially if there is no enforcement from those who are responsible for our safety on roads and highways.

Adults who do not buckle up themselves tend to not buckle their children after age 4 but with passage of SB 87 (supporting primary enforcement) it has been shown throughout the United States that seat belt usage increases to 82% in states that have primary enforcement for seat belt use.

In April 2004 the first Alaska Transportation Safety Stewardship Conference, which had members from all levels of government, non-profits, industry advocates and the private sector, recommended the passage of primary seat belt laws. SB 87 will do just that.

Thank you for your time and consideration on this life-saving piece of legislation.

Sincerely,



Karen Lawfer
Coordinator



Are no accident!

Man dies in crash; girls critically hurt

2003 Juneau-Douglas High School graduate killed in one-car rollover at Mile 32 of Glacier Highway

JUNEAU EMPIRE

Juneau resident Brant Cooper, 19, died Sunday afternoon after the vehicle he was driving collided with a rock wall and rolled upside down near Mile 32 of Glacier Highway.

Cooper was ejected and died at the scene, police said.

Two female passengers, both 17, were medivaced in critical condition to a Seattle hospital. One was ejected from the vehicle, and another was partially ejected. Police would not release their names.

The accident is still under investigation.

"We're investigating the factors at this point, and speed is one of the things we're looking at," Sgt. Kris Sell said.

Reached at their home, Coopers' parents did not wish to comment.

Passing motorists found the wrecked vehicle at about 2:10 p.m. and called police. Four Juneau police cars responded, along with an emergency team from Capital City Fire and Rescue.



BRANT COOPER

Cooper was driving out-bound toward the end of the road, police said. Mile 32 is just north of Tee Harbor and about eight miles from the end of the road. At the accident scene, a guard-

rail is on the water side of the road and the rock wall on the other.

Cooper played trumpet with the Juneau-Douglas High School musicians who traveled to Chicago in March to play at the Heritage Music Festival of Gold.

"He just had a great disposition," JDHS band teacher Ken Guiher said. "If anyone was feeling down or something, he was always trying to cheer them up. He was a neat kid to be around. He was always real positive, and he just worked real hard."

...
~~Accident occurred 10/31/04~~
Juneau Empire - 11/1/04



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Anchorage Daily News

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Minnesota man killed in crash by Knik bridge

ROLLOVER: A teenager, who is unhurt, caused the accident, troopers said.

By ZAZ HOLLANDER
Anchorage Daily News

(Published: August 26, 2004)

PALMER -- A 17-year-old Willow girl changing lanes to make an illegal U-turn apparently caused a fatal rollover on the Glenn Highway, Alaska State Troopers said.

A Minnesota man, 46-year-old Ronald Melbostad, was killed, troopers said.

Bobbi Spain was southbound, driving slower than 65 mph in the right lane, when she moved into the fast lane to get over to an emergency-vehicles-only turn lane, troopers said.

Melbostad's black 1999 GMC pickup was passing Spain in the fast lane, they said.

"She clipped the right rear of the truck, causing it to slide sideways and then roll," trooper Lt. Rick Roberts said.

Melbostad and another passenger were not wearing seat belts and were thrown from the pickup when the truck rolled, troopers said. Then the pickup caught on fire.

Melbostad sustained massive trauma during the collision and died at the scene, troopers said.

The driver, Melbostad's 22-year-old nephew, Wasilla resident Jeffrey M. Melbostad, was transported to Valley Hospital for treatment of his injuries. Another passenger, 20-year-old Christine Hansen of Wasilla, was also taken to Valley Hospital. Neither was admitted, a nursing supervisor said.

Spain sat with friends in the dry grass along the highway Wednesday afternoon, about 30 minutes after the accident, which occurred at 12:50 p.m. at Mile 33.5 near the Knik River access.

Asked what happened, Spain said, "I was switching lanes and they tried to get in front of me."

She said she wasn't hurt.

A trooper approached and asked her to accompany him to his car.

After the accident, Spain's white 1996 Chevrolet pickup remained in the fast lane, crumpled on the



Alaska State Troopers investigate the scene of a fatal accident Wednesday in the southbound lanes of the Glenn Highway along the Palmer Hay Flats. The white truck at top left clipped the rear end of the black truck, causing it to roll. One person died in the accident. *(Photo by Stephen Nowers / Anchorage Daily News)*

Click on photo to enlarge

a local hospital and treated for non-life-threatening injuries. Reeder credited the belts and an air bag with keeping the injuries to Kroll and her children from being worse.

Police suspect that Banducci and Day had been drinking before the crash, they said.

Police closed O'Malley Road between Our and Elmore roads for four hours after the accident.

The third fatal crash occurred about 12:50 p.m. Wednesday when Morrison, driving a 1988 Jeep Cherokee north on Bragaw Street, drove into the Glenn Highway intersection apparently against the light, Reeder said.

"Witnesses all indicate that the northbound light was red," she said. "For whatever reason -- which we'll never know -- he did not stop."

The Jeep managed to clear the outbound lanes but was struck in the inbound lanes on the passenger side by a large 1999 Dodge pickup.

Morrison was wearing a seat belt, but the collision was too violent for it to help him, Reeder said. The crash crumpled the passenger compartment around the driver, killing him instantly.

"It was such a significant impact, being T-boned by a vehicle doing 55 (mph)," Reeder said.

A German shepherd was thrown from the Jeep and killed, she said.

The driver of the pickup, Brian Devilbiss, 44, of Palmer, was uninjured but "emotionally not fine," Reeder said.

Police closed the inbound lanes of the Glenn between Boniface Parkway and Bragaw for more than four hours.

Daily News reporter Peter Porco can be reached at pporco@adn.com or 257-4582.

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