

**ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE**

January 17, 2002
3:12 p.m.

MEMBERS PRESENT

Representative Fred Dyson, Chair
Representative Peggy Wilson, Vice Chair
Representative John Coghill
Representative Gary Stevens
Representative Sharon Cissna
Representative Reggie Joule

MEMBERS ABSENT

Representative Vic Kohring

OTHER LEGISLATORS PRESENT

Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 252

"An Act relating to the construction of certain statutes relating to children; relating to the scope of duty and standard of care for persons who provide services to certain children and families; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 252

SHORT TITLE: STANDARD OF CARE FOR CINA SERVICES

SPONSOR(S): REPRESENTATIVE(S) COGHILL

Jrn-Date	Jrn-Page		Action
04/23/01	1136	(H)	READ THE FIRST TIME - REFERRALS
04/23/01	1136	(H)	HES
04/23/01	1136	(H)	REFERRED TO HES

WITNESS REGISTER

THERESA TANOURY, Director
Division of Family & Youth Services
Department of Health & Social Services
P.O. Box 110630
Juneau, Alaska 99811-0630

POSITION STATEMENT: Testified that HB 252 would put standards of practice into regulation; in order for DFYS to comply with these regulations, 51 new workers must be added to make caseloads more manageable.

BETTY ROLLINS
P.O. Box 55163
North Pole, Alaska 99705

POSITION STATEMENT: Testified in favor of HB 252; DFYS should be held to the same standards to which parents are held.

ART GRISWOLD
H.C. 60, Box 4493
Delta Junction, Alaska 99737

POSITION STATEMENT: Testified in favor of HB 252; legislation should be written which more narrowly defines the role of DFYS.

JOHN STREET
P.O. Box 835
Kenai, Alaska 99611

POSITION STATEMENT: Testified in favor of HB 252; he supports greater accountability within DFYS.

SALLYE WERNER
12731 Cardinal Circle
Anchorage, Alaska 99516

POSITION STATEMENT: Expressed concern that HB 252 would limit DFYS's ability to intervene when necessary; she supports the hiring of more social workers, which would enable them to have more manageable caseloads.

TINA CAFFROY
(No address available)

POSITION STATEMENT: During hearing on HB 252, related her family's experience with DFYS; She would like to see DFYS held more accountable and a third party identified as a resource for parents.

ROSEMARY SMITH
(No address available)

POSITION STATEMENT: During hearing on HB 252, testified regarding her family's negative experience with DFYS.

VERN SMITH

(No address available)

POSITION STATEMENT: During hearing on HB 252, testified regarding his negative experience with DFYS; he would like someone held accountable.

CHUCK ROLLINS

P.O. Box 55163

North Pole, Alaska 99705

POSITION STATEMENT: During hearing on HB 252, stated he thought that agencies should be held more accountable.

DIXIE DIXON

2600 Cordova Street, Number 100

Anchorage, Alaska 99503

POSITION STATEMENT: Questioned whether HB 252 was necessary; expressed concern that the bill's language was confusing and possibly created more problems than it solved.

JODI OLMSTEAD

P.O. Box 56853

North Pole, Alaska 99705

POSITION STATEMENT: During hearing on HB 252, recounted her personal experience that identified the need for great accountability

LIZ GREIG

186 Madcap Lane, Number 15

Fairbanks, Alaska 99709

POSITION STATEMENT: During hearing on HB 252, advocated for greater accountability for DFYS caseworkers.

TONY LOMBARDO, Director of Advocacy

Covenant House

609 F Street

Anchorage, Alaska 99501

POSITION STATEMENT: Testified against language in HB 252 that would allow abusers or derelict parents to participate in the determination of a child's welfare.

SCOTT CALDER

P.O. Box 75011

Fairbanks, Alaska 99707

POSITION STATEMENT: Testified in favor of HB 252.

ED MYERS

841 Ninth Avenue
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in favor of HB 252.

LAURIE CHURCHILL
P.O. Box 8693
Nikiski, Alaska 99635
POSITION STATEMENT: During hearing on HB 252, testified against
a court's ignoring the child-in-need-of-aid definitions in a
domestic violence case.

JOANNE GIBBENS, Program Administrator
Division of Family & Youth Services
Department of Health & Social Services
P.O. Box 110630
Juneau, Alaska 99811-0630
POSITION STATEMENT: Answered questions.

ACTION NARRATIVE

TAPE 02-1, SIDE A
Number 001

CHAIR FRED DYSON called the House Health, Education and Social
Services Standing Committee meeting to order at 3:12 p.m.
Representatives Dyson, Wilson, Coghill, and Stevens were present
at the call to order. Representatives Cissna and Joule arrived
as the meeting was in progress.

HB 252-STANDARD OF CARE FOR CINA SERVICES

Number 032

CHAIR DYSON announced the first item of business, HOUSE BILL NO.
252, "An Act relating to the construction of certain statutes
relating to children; relating to the scope of duty and standard
of care for persons who provide services to certain children and
families; and providing for an effective date." He noted his
understanding that the bill's sponsor did not intend for HB 252
to pass out of committee today. He indicated that witnesses
would be given four minutes each to testify.

Number 056

REPRESENTATIVE COGHILL, speaking as the sponsor of HB 252,
presented HB 252 to the committee. He said he would like to

make progress on the bill, and he thanked the committee for hearing a bill without the intention of moving it out. He cited AS 47.10.960:

Duty and standard of care not created.

Nothing in this title creates a duty or standard of care for services to children and their families being served under AS 47.10.

REPRESENTATIVE COGHILL noted that the state required "reams of paperwork to hold parents accountable." He said, "And yet, we ourselves can be held to the place where we're not accountable." He expressed his opinion that this needed to be addressed. He acknowledged that there would be cost involved, but he reminded members of the cost to families when there was an overstepping of authority [by DFYS].

Number 087

REPRESENTATIVE COGHILL stated that he would not "call into question the mission statement and the move of the Division of [Family &] Youth Services (DFYS), generally." He referenced the first paragraph of his sponsor statement and noted:

It's a balancing of protection, family preservation, and government intervention. And there's always discussion [of] balance between "How do we protect children when they are in harm's way?" and "How do we keep government from overstepping that bound?" And I think there's always a tension involved in that.

Certainly, if you look in the fourth paragraph, we have given some police and judicial powers that give a lot of discretion to the DFYS as they intervene in families' lives. ... That's the only way we could get around immediate protection of children [versus] due process of law - because there are children who need immediate attention, and ... if you spend [the] time to go to the court to get a search warrant, for example, that harm could already be done. So we have ... moved our laws around to allow that kind of ... standard, if you will, of government intervention.

Number 110

REPRESENTATIVE COGHILL noted that much of the discussion he receives from constituents is regarding the overstepping of bounds. He continued:

Sometimes, it was legitimate. Nobody likes the government coming in ... taking over. ... But if there [are] ... legitimate reasons ..., let them complain, let them go through that process. They have due process. But many times they have felt the weight of the government, because the government made a mistake. ... I think there has to be a realization that we hold parents accountable to a standard of duty and a standard of care for their children, and there are severe consequences if they do not stand up to that standard of duty or care. We don't always ask them, "Can you afford that standard of care?" ... And fact is, if they have children, they have to deal with it.

REPRESENTATIVE COGHILL said the state also has limited resources, including "people resources." And yet, he noted, the state is excusing itself from the standard of duty. He anticipated the reason he would hear is, "We can't afford to." He said he thought the state wouldn't accept that [reason] from parents. He queried, "How do we delineate a standard of duty and a standard of care?" He acknowledged that DFYS has attained a standard of duty through its policies and procedures. "It's just that we have excused them from them in law, and I don't think that's wise," he added. "I don't think we excuse parents, and I don't think we ought to excuse government."

REPRESENTATIVE COGHILL said one of the reasons he came to the legislature was to ensure that government restraint was always at the right place. He continued:

Certainly we have to have police powers, certainly we have to have protection powers, but we also have to restrain government from becoming ... tyrannical. Those words are inflammatory, ... I understand. But when you start dealing with individuals' lives, it gets really emotional, both on the policy-giver and ... those who have to feel the weight of that authority.

Number 149

REPRESENTATIVE COGHILL referred to HB 252 and noted that paragraph (1) recognizes that parents do have an inherent right,

which has not been recognized statutorily. He stated that he thought they should be given that right, since they have been expected to act responsibly under that right. He stated that once a child gets into a court proceeding, the statute should demand parental participation. Many policies, procedures, and court actions already demand this, but it's not clear "up front."

REPRESENTATIVE COGHILL referred to HB 252, noting that paragraph (2) endeavors to make the statute consistent with "what is now a professional ethics code of standards and practice under the social workers code." He concluded by referring to the Supreme Court opinion in Troxel v. Granville and saying:

In our view, a right of parents to direct the upbringing of their children is among the "unalienable rights" which the Declaration of Independence proclaims that all men are endowed by their creator. And in our view, that right is also among other rights retained by the people which the Ninth Amendment says the constitution of enumerated rights shall not be construed to deny or disparage.

REPRESENTATIVE COGHILL remarked that he thought it was a matter of asserting a "little brighter line" regarding parental authority and the state's authority to "cross over that." He continued, "I think it becomes very clear that we have to have certain duties incumbent upon us to cross that line." Representative Coghill commended HB 252 to the committee and referred to the fiscal note attached to it. He said, "The reason I said, 'Let's not pass this out,' [is] because I believe in progress. Maybe we can't swallow the whole thing this year, but I think we need to start in that direction."

Number 191

REPRESENTATIVE CISSNA wondered if "this is the right place to put it." She said the fact that parents are ultimately responsible for their children seems to be "a given." She stated that there are other places in the statute that address parents' ultimate financial responsibility for their children. She expressed her concern that when the state must assume guardianship of a child, it is done as a last chance to assist a child in his/her safety. She said that if parents are incapable of caring for their children safely, then as a society we can't allow [them to retain guardianship].

Number 216

REPRESENTATIVE COGHILL mentioned that this could be discussed when determining any language changes to HB 252. In Alaska, he noted, many social service agencies' policies mandate that "we will care for children, ... families, and support services." He said that family support has been "key to the government." When intervention in a family is necessary, the state demands a standard of [the family], and yet it relinquishes itself from a higher standard, he stated. This bill puts a greater liability on the state. When a standard is set in statute, he pointed out, "you'll have to answer to it."

REPRESENTATIVE COGHILL paraphrased AS47.10.014 ,which reads:

Neglect.

For purposes of this chapter, the court may find neglect of a child if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.

REPRESENTATIVE COGHILL noted that parents are being held accountable regarding many subjective issues, while the state is not subject to the same scrutiny.

Number 244

REPRESENTATIVE CISSNA agreed that families are held to one standard, but that "in the end caseworkers do not expect families to have their children in a middle-class ... home when they can't provide it." She said, "But ... it seems as if we do." She noted that many times when children are taken into custody, they are not provided with the things they must have. "We must do better," she emphasized. She added that the state is unwilling to [fund the necessary changes].

Number 261

CHAIR DYSON acknowledged this was a discussion the committee needed to have. He requested that committee dialogue on the bill be postponed until after the public testimony.

Number 264

REPRESENTATIVE CISSNA sought clarification on the bill by asking, "Is your change ... saying it's okay for parents to abuse their children?"

Number 272

REPRESENTATIVE COGHILL responded that this bill does not permit any abuse of children. On the contrary, he noted, it is to keep the state from abusing children. The state should be "answerable to that standard," he added. He commented that this was also a philosophical discussion - whether the state or family comes first. He said, "The state has certain authorities for protection, but maybe not for authority in upbringing. I think the parents should trump the state in that regard." His goal, he concluded, was not to diminish children's safety in any way.

Number 283

REPRESENTATIVE CISSNA noted she took exception, saying, "It reads that way to me."

Number 285

REPRESENTATIVE COGHILL restated that he was open to discussion about language in the bill.

Number 290

THERESA TANOURY, Director, Division of Family & Youth Services, Department of Health & Social Services, acknowledged that this was a philosophical issue, and that DFYS was not "against standards." She noted that DFYS has standards that exist in federal law, state law, policies and procedures, and state and national codes of ethics. Workers are held to standards by DFYS. She pointed out that HB 252 takes these policies and procedures and puts them into regulation. In doing that, she said that higher accountability is created which mandates that all of these standards must be met, including those for reasonable caseloads. She added, "It's not that social workers don't want to have standards, or don't want to practice and follow the policies and procedures"

MS. TANOURY observed that child protection laws are some of the most specific laws that exist. Both federal and state laws dictate when case plans must be done, what each case plan must

address, and how often that case plan is reviewed. She explained the reason that these standards are not in regulation is because workers could never meet them due to "impossible" caseloads. She said the standards set forth in policies and procedures should not be lowered, however, because they are standards "we want to aspire to." Minimum contact standards, outlined in policy and procedures, require workers to see children monthly. Ms. Tanoury pointed out that if those standards are put into regulation, caseloads must be lowered so workers "can actually do it." The fiscal note prepared by DFYS reflects funding for 51 more workers to meet the proposed standards.

Number 327

CHAIR DYSON introduced the House Health, Education and Social Services Standing Committee aide, Jason Hooley. He announced he would "rotate around" witnesses from the Legislative Information Office (LIO) sites. He requested that witnesses speak to specific problems that HB 252 will address. He encouraged witnesses to "avoid personalities" and speak to the problems. The committee, he added, is sympathetic to people who have been wronged or who have seen children wronged.

Number 355

BETTY ROLLINS testified via teleconference and noted that there are many excellent workers in DFYS. She expressed her opinion that many have caseloads that are too large. She is, however, very concerned about who has authority over DFYS. She asked, "Where does the buck stop?" Ms. Rollins acknowledged that many children are abused or neglected. She noted that with current adoption incentive programs, younger and "more adoptable" children are being taken [out of their homes], and those that are "less adoptable" are "still languishing in care." She speculated that this was because each child adopted is "worth about six thousand dollars to [DFYS]."

MS. ROLLINS recounted that she had heard one worker say, "It's only a job." It's not only a job, she stated; workers are dealing with children's lives. She concluded by saying, "We must expect of the system what we, ... at the very least, ... expect of the parent." She added that without some standard of care, she doesn't believe this expectation exists.

Number 379

ART GRISWOLD testified via teleconference in favor of HB 252. He is the father of eight children, and he believes parents' rights should be protected. He noted that none of his eight children are incarcerated, and that he probably raised them with "a stricter hand than most people." He expressed his opinion that regulations should be written with more "legislative dictatorialship" to give greater direction to the departments. He said he'd noticed government to be "self-regulating, even going to the point of ignoring some of the legislative intent." This greater direction would give "no chance of escaping it or [giving it broader] interpretation."

Number 402

JOHN STREET testified via teleconference. He acknowledge that DFYS has "many good people." Nonetheless, he noted that there is no recourse for "people who are questionable." He stated that when a problem with an individual is reported [to DFYS], there is no one who will respond to it. He commended Ms. Tanoury for doing a fine job. He noted that even when "numerous people as well as numerous organizations" have reported a problem, nothing occurs to "right this wrong."

MR. STREET added that he thought that parents and foster parents were "being held hostage" by DFYS when they didn't "toe the mark." People who know and live with the child know what he/she needs. He summarized by saying, "We need the accountability; we need to be able to go to individuals - not DFYS in general - but to the individual people who are not doing the job ... we want." He emphasized that children are the reason DFYS exists. If the state continues to lose foster parents, children will have no place to go, he concluded.

Number 432

SALLYE WERNER testified via teleconference from Anchorage. She is a volunteer child advocate in Anchorage. She is a Court Appointed [Special] Advocate (CASA). She told members she was speaking on her own behalf. She has spoken with other CASA [volunteers], however, and they are concerned that state intervention [in a child welfare case] takes too long; by the time children are taken into state custody they are "deeply troubled and damaged." She continued, "Besides the [cost to children's lives], we spend an awful lot of money and time trying to offset and compensate for those ... who are able to [intervene with] parents earlier, often before the children are moved from the home. I think we could really avoid that and

help our children have a much better life." She said that she was concerned that this language [in HB 252] might make involvement by DFYS more difficult. She is strongly in favor of "hiring enough social workers to do the job." She added that in many cases when things are not being done, she thinks it is because social workers are overloaded. Often when people want to do something to benefit a child, they are told that regulations or policies don't allow it, she stated.

MS. WERNER said she is hoping to gain some information and insight [at the committee hearing]. She was concerned that putting the language of HB 252 into effect would limit [agencies'] ability to adapt by requiring legislative action to implement change. Ms. Werner said she was "greatly impressed" by the social workers and the attorneys she has had contact with. She encouraged the committee to come up with ways to get parents more involved with and concerned about their children. She questioned the need for HB 252, saying, "Every case that I'm involved in, the parents are notified and involved in any way they can [be]." In fact, she stated, she has had difficulty getting parents involved.

Number 465

CHAIR DYSON thanked Ms. Werner for her service to children through the CASA program. He encouraged her to forward to the committee any suggestions she may have for changes in regulation or policy.

Number 478

TINA CAFFROY testified via teleconference. She stated that she has been working with special needs children for 26 years and has been a licensed foster parent for 6 years. She recounted her experience as a foster parent in which she had been "treated ... rudely, deceitfully, ... and degradingly." She noted that she and her husband had been "lied to repeatedly, ... verbally threatened, ... sworn at, intimidated, ... slandered, ... and blackmailed."

MS CAFFROY related to the committee her experience with a special-needs boy placed in her family's home. She noted that this 11-year-old boy is severely disabled and is developmentally between the ages of 2 and 5. She said her family has fallen in love with this boy, and they have been "trying desperately, for the last two years, to make him a permanent member of our family by taking guardianship." She stated that DFYS told her family

on January 31, 2001, that the permanency plan would be changed. They are still waiting for "DFYS to follow through with their paperwork" to make that happen. She noted that DFYS had told her family that this paperwork was not a priority.

MS. CAFFROY said this boy had been removed from her family's home on December 18, 2001. The night before his removal, the boy threw "a violent temper tantrum." She said she attempted to "passively restrain him and ... make eye contact." In doing so, she noted, two small bruises, "the size of the head of a Q-tip" were left on his ear. The next day his teacher "turned him in for child abuse." She stated he was subsequently removed from the school and relocated to another foster home. "Before any investigation was done," she said, "I was labeled a child abuser." She stated she was told by the social worker in the Kenai office that "anytime a mark is left, ... it is immediately considered child abuse, and the law dictates the child must be removed from the home." She added that she has since been assured by two "licensing officers" that this is untrue and [this situation] was handled improperly.

MS. CAFFROY noted that a social worker had mistakenly thought Ms. Caffroy was unable to hear her, and called Ms. Caffrey a "child abuser" to others. Although an apology was promised, Ms. Caffroy stated that she had never heard one. She summarized by saying that she would like to see DFYS held accountable for its work and actions. She noted her desire for a third party to look into this matter. She has sought assistance from many parties, she said, but has received no satisfactory relief that holds DFYS accountable. She stated that she would also like the "regulations be standardized throughout the state." She would like this case looked into independently in order for her family's foster son to be returned to their home, she said.

Number 527

CHAIR DYSON noted that Representative Chenault was present at the hearing; he had related some cases of concern on the Kenai [Peninsula] to Chair Dyson.

Number 535

ROSEMARY SMITH testified via teleconference. She is the mother of six, and she is involved with the National Child Safety Council. She remarked that "DFYS in Alaska is the most unusual governmental agency [she had] ever run into." She stated that her grandchild was taken without notifying "any of the family."

Number 549

CHAIR DYSON asked for clarification regarding the notification of the child's parents.

Number 551

MS. SMITH responded that she, the child's grandparent, had not been notified. She pointed out that the child is in Arizona. A caseworker informed her that the foster parents were going to adopt the child. She stated that she was appalled by this and that "the case worker in point had lied several times before, but this [was] incredible." Ms. Smith stated that she "put in for adoption" of her grandchild. Her name had never been submitted for the adoption by the worker, she reported.

Number 563

MS. SMITH summarized by saying it took three months to get information to her regarding her grandchild. She stated that she doesn't understand how an agency "could have that much power to take a child and ... destroy their lives." She shared her belief that DFYS needs "someone to regulate them" and that parents should have "some say in whether they want their child."

Number 571

REPRESENTATIVE WILSON asked for clarification regarding whether the child's parents were aware of what was going on.

Number 576

MS. SMITH responded that she believed that "eventually" the parents had access to all necessary information regarding their child.

Number 581

CHAIR DYSON asked whether the parents had an opportunity to appear in court at the termination of parental rights hearings.

Number 582

MS. SMITH replied that parental rights had not yet been terminated.

Number 583

VERN SMITH testified via teleconference. He is Ms. Smith's son and father of the child in question. His child, he stated, was taken away from her mother. He intimated that this had been a difficult and frustrating experience, which included taking off work for months at a time. He stated that he was denied visitation with his daughter, and he could not "hold anybody accountable for their actions." He acknowledged that there are "children out there that ... need the ... department's help." However, he stated that DFYS can take a child "without any real information."

TAPE 02-1, SIDE B
Number 597

MR. SMITH continued by saying that some social workers will do some "atrocious" things that abuse their power. He stated he feels "railroaded" by DFYS and that this has been an awful experience. He would like, he said, someone to be held accountable.

Number 590

CHAIR DYSON asked whether Mr. Smith was living with the child's mother or paying child support when the child was taken.

Number 588

MR. SMITH stated that no, he was not living with the child's mother, but yes, he was paying a "monthly sum."

Number 582

CHUCK ROLLINS testified via teleconference and noted he thought HB 252 would not "legitimize child abuse." He stated his belief that the intent behind the Alaska constitution was that "all power resides in the people, not with ... people in the legislature, not with the government agencies, but with the people." He said he thought that parents, until their rights are terminated, ought to be given "some say-so in how their children are raised."

MR. ROLLINS stated he thought that the state should not encourage children to "feel like they are loners or outcasts." He concluded by saying there should be more accountability. He recounted a story he'd heard last week about a women's shelter

that had received \$1.5 million from the state, but it had simply closed its doors.

Number 562

DIXIE DIXON testified via teleconference from Anchorage. She is a CASA [volunteer] and CASA board member in Anchorage. She noted that a CASA should be contacted regarding the Kenai case referred to earlier. She expressed her first concern, asking, "Is this bill really necessary with this open-ended wording?" She continued, "Can we fine-tune it to [more clearly define] the expectations and roles of DFYS?" She stated that she wondered if [the committee] was focused on "a very few limited, bizarre cases" to the detriment of most cases served by DFYS. She suggested that they might be. She mentioned that HB 252's language was very confusing; the bill, she believes, doesn't seem to solve problems, but instead, creates them.

Number 542

CHAIR DYSON inquired, "Who informed the CASA group last night about this impending bill?"

Number 541

MS. DIXON said Ms. Werner had downloaded it from the Internet.

Number 537

MS. WERNER stated that she didn't recall who had told her, but she had heard about HB 252 at a child advocacy team meeting. She noted it was not someone from DFYS who had informed her about the bill. She stated that she had asked at the guardian ad litem's office for an explanation of HB 252. "No one had even seen it," she said.

Number 527

REPRESENTATIVE COGHILL stated he would enjoy further correspondence with both Ms. Dixon and Ms. Werner regarding HB 252.

Number 524

REPRESENTATIVE CISSNA thanked the witnesses and remarked that the committee needed to hear from more, not fewer, people.

Number 514

JODI OLMSTEAD testified via teleconference. She noted that she wished to address the "no duties and standards of care" and how it applied to her life. She stated nothing had been corrected in the ten years since there had been a "false allegation of child abuse." She noted that there was no check and balance and that her son's education was compromised. She said she was accused of child abuse without merit, because her son was afraid to come home "because he came face-to-face with a moose." She added that she was denied three grievances and that no one had ever been in her home or looked into [the situation]. She noted that as a result of the second grievance, the ombudsman's office sent regional directors a notice instructing them give her relief, but this did not occur. She stated, "I think these people need their feet held to the fire."

Number 498

LIZ GREIG testified via teleconference about a pregnant woman living with an abusive partner. This woman sought services at a battered women's shelter in preparation to leave the abusive partner, Ms. Greig said, but she was "bullied" into seeing a DFYS caseworker. Ms. Greig noted that the woman had requested the DFYS caseworker to speak with the abusive partner; however, the "caseworker refused to do so." After the birth of her child, the woman returned home to find \$200 in food stamps missing; she presumed they had been used to buy drugs, Ms. Greig stated. The woman sought relief from the DFYS worker, the battered women's shelter counselor, and the troopers, to no avail, according to Ms. Greig. Ms. Greig expressed her opinion that the caseworker didn't do her job and was not held accountable. She was concerned, she said, that battered women, when seeking help, will become "re-victimized" by DFYS. She said she thought caseworkers should be held more accountable.

Number 470

CHAIR DYSON queried whether the woman had left children unattended when she went to the shelter.

Number 469

MS. GREIG responded that the woman was seeking assistance to leave the abuser and that she wasn't living in the shelter.

Number 463

CHAIR DYSON questioned what the woman's abuse had to do with DFYS.

Number 460

MS. GREIG said she believed the woman's abuser "instigated" the contact with the DFYS caseworker.

Number 456

TONY LOMBARDO, Director of Advocacy, Covenant House, testified via teleconference. He said:

Welcome back. ... My name is Tony Lombardo, and I'm the Director of Advocacy for Covenant House, which is a privately funded, nonprofit agency which cares for homeless youth and at-risk youth in Anchorage. ...

We are opposed to both the wording and the apparent intent of Section 1 of the bill. The problem with Section 1 is that the youth most often brought into state's custody and the care of the [Division] of Family and Youth Services, or otherwise served by the shelters in this state, are there precisely because the families are unable or unwilling to provide for the safety, care, or welfare of those youth, especially the youth that end up in state custody. The is the same ... for the youth who come to us ... (indisc.) [who] are [covered by] the statute that empowers us under 47.10.320. The intent of that statute may, very likely, be affected by the ... change [proposed in HB 252] as well. By and large, ... [47.10] is not about good families and good kids. It's about children in need of aid and dysfunctional or absent parents.

It would be unreasonable to tie the hands of the state in its attempt to provide for the health, safety, and welfare of such youth by requiring that a perpetrator of harm be allowed to participate in that child's upbringing. Similarly, it is unreasonable to mandate ... the state, or any other care provider, to necessarily expend time and energy to coordinate care with an abuser or a negligent or disinterested family member whose dereliction of duty has necessitated

either the sheltering of that child in a private charity or state custody.

Number 425

Please understand that Covenant House maintains family reunification as its top priority in all our cases. ... However, in many cases that goal ... proves undesirable or unattainable because the circumstances present within a given family compromise the health or safety or welfare of the children who [have] come to us. I want to reemphasize that we're not talking about healthy families. The change ... [proposed to] 47.10, the intent chapter, ... may affect all the subsequent sections, including the one we operate under - and that causes us concern.

For both the State of Alaska and the private community of care, the reality of ... children in need of aid is that often we don't have healthy ... parents involved. ... Therefore, we ask that you do not compromise the discretion allowed by the current wording of the statute.

Thank you very much.

Number 420

CHAIR DYSON noted his impression that the present code or the addition of language in HB 252 would not necessitate "dealing with the parents whose parental rights have been terminated." He noted that before parental rights are terminated, the law mandates that the state must work toward reunification [of the family]. He asked whether Mr. Lombardo was suggesting that the provision not be mandated by law.

Number 413

MR. LOMBARDO responded, "No, not at all." He expressed his concern that the change in [language] might, even in the case of a child in state custody, mandate his parents' continued involvement.

Number 407

CHAIR DYSON noted that Representative Coghill was open to suggestions. He affirmed that his own perception was that [the

state] wants parental and familial involvement, even when the child is in state custody. He stated that the current predisposition of the law is reunification of the family until parental rights have been terminated.

Number 396

REPRESENTATIVE COGHILL stated, "Certainly, at this point, it's under court jurisdiction anyway. ... It's just showing that we are interested in protecting the parents' part of that as well as the child's."

Number 387

SCOTT CALDER testified via teleconference. He noted that he was unable to drive himself to the LIO because his driver's license had been suspended due to failure to pay child support "based on the state having kidnapped and tortured my only child in April of 1993." He stated that "DFYS is not predisposed to follow the law" to preserve families. He mentioned that no one wants to make it more difficult for DFYS to become involved. He did note that he would like to see it become more difficult for "DFYS to do harm."

MR. CALDER stated that people who didn't see the need for the bill had not been harmed by DFYS. He commented that foster parents have the same problems [with DFYS] as biological parents. He continued, "It is not true that children of DFYS have bad parents. This is an unproven proposition. This is a political statement. This is imposed upon all parents and all people in the state of Alaska improperly." He emphasized that DFYS has been "unhealthy" for a number of years. He said, "It's unhealthy for every child in the state of Alaska, as long as we do not have the duty or standard of care." Mr. Calder noted that AS 47.10.960 states that there is no duty or standard of care for services to children and their families.

MR. CALDER emphasized, "We can't have a child protection system if we don't care and if we don't have standards for that." He stated that HB 252 "requires consistency and quality." Mr. Calder offered that the claim of existing protection is a false one. He followed by saying, "Anybody who says that the courts or the ombudsman, or anybody whomsoever, is protecting anyone's rights is not telling the truth." He suggested that the committee should take action on HB 252. He concluded, "We simply would like to see that the quality of [DFYS employees'] work exists, that there is some caring."

Number 339

ED MYERS testified via teleconference. He stated he deals with parents who are unhappy with DFYS. These parents feel, he offered, that there is no effective form of appeal. He recounted the story of his neighbor, a grandparent of a child in foster care, who has requested visitation rights and received no response [from DFYS].

MR. MYERS explained the story of a woman who "opened the door one day and there were two policemen and two social workers who said they wanted to come in." The woman responded, "No. I want to see your warrant." According to Mr. Myers, the woman was told she would be in "for an awful lot of trouble" if she didn't allow them in [her house]. She allowed them in and they took her children, he explained; she has not had custody of them since. Mr. Myers indicated that this woman has no recourse and fears retaliation.

MR. MYERS furnished the story of a North Pole man who had social workers come to his house to "check out" his home. The man eventually acquiesced and let the workers into his house without a warrant. After finding nothing, the workers interviewed the children at school, said Mr. Myers, whereupon they took them into custody. He explained that one child escaped, returned home, and was videotaped. The child's videotaped story, he offered, was "180 degrees different from that of the social worker." Mr. Myers indicated this parent would have liked to "have [had] some effective way to grieve that," but his children were promptly returned to his custody without further communication from DFYS.

Number 294

MR. MYERS volunteered the story of a woman whose children had been in foster care "off and on for several years." He has observed, he stated, that she has grounds for a grievance over DFYS's handling of her case. She has received "no satisfaction within the DFYS structure" regarding her complaints, he noted. He suggested that she needs an "outside group" to handle her complaints.

MR. MYERS noted that he has heard many complaints from parents who are attempting to provide for their children, but are unable to "hold down a job" because they are "jumping through so many

[DFYS] hoops." He stated that these parents have no one to whom they can voice their complaints.

MR. MYERS concluded by saying that there is no duty and standard of care for workers. He surmised that there must be some way to set these duties and standards of care. He continued, "I don't know of any organization that has more unrestricted power over something that is so very fundamental." His final comment was regarding a list of Supreme Court cases. He paraphrased the intent of these cases, saying that "before you can terminate [parental custody of] a child, it should be of the standard of proof of beyond a reasonable doubt," not "clear and convincing evidence." Parental rights are fundamental rights, he noted, and they are being infringed upon by the assumption that "parents are guilty until proven innocent." He recommended that HB 252 be "implemented wisely."

Number 248

CHAIR DYSON thanked all witnesses for their testimony.

Number 245

REPRESENTATIVE COGHILL acknowledged that the cost associated with HB 252 is very high. He reiterated that he was open to discussion on changes to language; perhaps "family" instead of "parents" should be used. He confirmed that he would like to proceed with HB 252; he believes the standards can be made clear. The standards, he noted, must be in accordance with the professional ethics codes. He added, "I would rather see [DFYS] delineate those in their own regulation; I think that they have done that. ... I ... am convinced that we should proceed down the road of putting a responsible line there."

REPRESENTATIVE COGHILL commented that "under child protection we have pushed due process to the limit." He advocated that the state needs to be certain that an agency which takes a child into custody is held accountable. Both government and parents need to be restrained from doing wrong [to children], he noted. He stressed the need to look at the cost; if "it's that many social workers, if we're that bound up," then perhaps members should speak to the finance committee to investigate options for "lateral shifting."

Number 206

CHAIR DYSON advocated that these regulations be consistent with the professional standards [of DFYS workers].

Number 198

REPRESENTATIVE COGHILL offered to "bring in the full text and ... get an executive to [DFYS]."

Number 192

CHAIR DYSON suggested that an effective date be added to HB 252.

Number 188

REPRESENTATIVE CISSNA agreed that paragraph (1) of the bill recognizes that parents have certain rights; however, she noted that parents do lose rights when their children have lost a certain measure of safety. Some parental rights are lost unless parents change the conditions.

REPRESENTATIVE CISSNA suggested having "unless" [in Section 1, paragraph (1)] and specifying what conditions revoke parental rights. She continued:

Sometimes I think we ... are a little too rigid on what we specify. ... Because of cultural issues, sometimes, we define things differently culturally, and so we'll take certain children out of one culture's home more readily than we will another, just because of the way we ... define what people say. ... So, I agree with that, but I think that if we could specify some kind of condition....

Number 162

REPRESENTATIVE CISSNA identified proposed language changes to paragraph (2) wherein parents' participation is included. She suggested adding "and maximize the greatest amount of parental participation", which would be determined by the court in each situation. She concurred that maximum parental involvement is a desired goal, but that some [parents'] involvement is not safe for children.

Number 132

CHAIR DYSON recommended that Representative Cissna draft some language to that effect.

Number 131

LAURIE CHURCHILL testified via teleconference. She referred to a child custody case she has involvement in, saying, "The Kenai court system has, basically, sidestepped the children-in-need-of-aid rules." She stated that the court had never declared her children in need of aid when, in fact, they were in need of aid. Ms. Churchill expressed her concern over the lack of stringent guidelines for removing children from homes. She noted her children were taken through a protective order in a domestic violence hearing. She was concerned that this could transpire "without any accountability."

Number 110

CHAIR DYSON noted his understanding that the law mandates DFYS to go before a judge or magistrate within 48 hours of taking children. The parent may appear at this meeting to present his/her case. This must occur again at 30 days, he stated.

Number 105

MS. CHURCHILL explained that her children were not taken by DFYS, but the Kenai court gave her children to the petitioner of the domestic violence case. She said the children were subsequently removed from the petitioner's custody by the court; the children, however, were never declared children in need of aid. She said, "It was done through the guise of a protective order." The children, she added, were then placed with the petitioner's parents. She said, "This happened over a year ago, and they still will not give me back my children. ... They took them on the basis that I asked my children who they wanted to live with."

Number 095

CHAIR DYSON asked whether the children were placed with their biological father.

Number 093

MS. CHURCHILL responded, "No, he's not related to my two sons. He was my ex-boyfriend."

Number 090

CHAIR DYSON asked who has custody of the children.

Number 085

MS. CHURCHILL replied that her ex-boyfriend's parents temporarily have custody. They are only biologically related to Ms. Churchill's daughter, she stated. She added that she wished her children had been declared children in need of aid, but that she felt this was "sidestepped" and her right to due process had been violated. She said she thought the committee should address protective orders "so that the court is not just allowed to take someone's children."

Number 073

CHAIR DYSON asked if Ms. Churchill had a lawyer.

MS. CHURCHILL indicated that she did receive legal representation, but not until 3-1/2 months after her children were taken. She stated that she thought that the Indian Child Welfare Act should apply to her case.

Number 063

CHAIR DYSON stated that his recollection of the latest change to the law allowed for a parent without representation to request the judge to delay a ruling until counsel is acquired.

Number 030

REPRESENTATIVE WILSON commented that in some cases people may feel they haven't received due process when, indeed, they have. She stated that she would like to better understand how due process works.

Number 018

CHAIR DYSON suggested DFYS personnel give Representative Wilson a copy of the pamphlet given to parents when a child is taken into custody.

REPRESENTATIVE WILSON asked if parents were given a copy of this when children were removed.

CHAIR DYSON answered yes, DFYS personnel were supposed to.

TAPE 02-2, SIDE B

Number 001

CHAIR DYSON noted the importance of trying to give parents equal footing when dealing with an intimidating, unfamiliar process by ensuring the opportunity for delay of court action until parents have legal representation. He pointed out that visitation of children taken into custody is not being facilitated well. He asked, "Nobody thinks that's working perfectly, do we?"

Number 015

JOANNE GIBBENS, Program Administrator, Division of Family & Youth Services, Department of Health & Social Services, responded, "No." She indicated that DFYS has requested funding to increase the number of visitation centers around the state. She noted that [research indicates] that reunification takes place more quickly when frequent visitation occurs.

Number 034

CHAIR DYSON concluded by saying, "Every step of the way we can do better." [HB 252 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:47 p.m.