

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

April 29, 2002

9:05 a.m.

**MEMBERS PRESENT**

Representative Pete Kott, Chair  
Representative Brian Porter  
Representative Carl Morgan  
Representative Ethan Berkowitz  
Representative Reggie Joule

**MEMBERS ABSENT**

Representative Vic Kohring  
Representative Lesil McGuire

**OTHER LEGISLATORS PRESENT**

Representative Carl Moses  
Representative Sharon Cissna

**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."

- MOVED CSHB 252(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 526

"An Act relating to the deadline for filing financial disclosure statements for public members and public member nominees of the Select Committee on Legislative Ethics."

- MOVED HB 526 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 252

SHORT TITLE: CHILDREN IN NEED OF AID: SERVICES & LIAB.

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
01/17/02		(H)	HES AT 3:00 PM CAPITOL 106
01/17/02		(H)	Heard & Held MINUTE(HES)
02/07/02		(H)	HES AT 3:00 PM CAPITOL 106
02/07/02		(H)	<Bill Canceled>
02/12/02		(H)	HES AT 3:00 PM CAPITOL 106
02/12/02		(H)	Heard & Held
02/12/02		(H)	MINUTE(HES)
02/13/02	2257	(H)	COSPONSOR(S): DYSON
02/14/02		(H)	HES AT 3:00 PM CAPITOL 106
02/14/02		(H)	Heard & Held
02/14/02		(H)	MINUTE(HES)
02/21/02		(H)	HES AT 3:00 PM CAPITOL 106
02/21/02		(H)	Moved CSHB 252(HES) Out of Committee
02/21/02		(H)	MINUTE(HES)
02/25/02	2378	(H)	HES RPT CS(HES) NT 1DP 3NR 1AM
02/25/02	2378	(H)	DP: CISSNA; NR: COGHILL, KOHRLING,
02/25/02	2378	(H)	JOULE; AM: DYSON
02/25/02	2378	(H)	FN1: (HSS)
02/25/02	2390	(H)	JUD REFERRAL ADDED AFTER HES
02/25/02	2390	(H)	FIN REFERRAL ADDED AFTER JUD
03/04/02		(H)	JUD AT 1:00 PM CAPITOL 120
03/04/02		(H)	Moved CSHB 252(JUD) Out of Committee
03/04/02		(H)	MINUTE(JUD)
03/06/02	2479	(H)	JUD RPT CS(JUD) NT 3NR 2AM
03/06/02	2479	(H)	NR: BERKOWITZ, MEYER, KOOKESH;
03/06/02	2479	(H)	AM: COGHILL, ROKEBERG
03/06/02	2479	(H)	FN1: (HSS)
04/04/02		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/04/02		(H)	Heard & Held
04/04/02		(H)	MINUTE(FIN)
04/04/02	2806	(H)	COSPONSOR(S): FOSTER, WHITAKER
04/08/02	2839	(H)	COSPONSOR(S): CISSNA
04/15/02		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/15/02		(H)	Moved CSHB 252(FIN) Out of Committee

			MINUTE(FIN)
04/16/02	2942	(H)	FIN RPT CS(FIN) NT 6DP 4NR
04/16/02	2942	(H)	DP: WHITAKER, HARRIS, HUDSON, FOSTER,
04/16/02	2942	(H)	MULDER, WILLIAMS; NR: BUNDE, CROFT,
04/16/02	2942	(H)	DAVIES, LANCASTER
04/16/02	2942	(H)	FN1: (HSS)
04/17/02	2986	(H)	COSPONSOR(S): MCGUIRE
04/29/02		(H)	RLS AT 9:00 AM BUTROVICH 205

BILL: HB 526

SHORT TITLE:DISCLOSURE BY ETHICS COMMITTEE MEMBERS

SPONSOR(S): RLS

Jrn-Date	Jrn-Page		Action
04/26/02	3169	(H)	READ THE FIRST TIME - REFERRALS
04/26/02	3169	(H)	RLS
04/29/02		(H)	RLS AT 9:00 AM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE JOHN COGHILL

Alaska State Legislature  
Capitol Building, Room 102  
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 252.

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

POSITION STATEMENT: Expressed concerns with [Version X].

SUSAN COX, Chief  
Assistant Attorney General  
Civil Division (Juneau)  
Department of Law  
PO Box 110300  
Juneau, Alaska 99811-0300

POSITION STATEMENT: Expressed concerns with [Version X].

JOYCE ANDERSON, Administrator  
Select Committee on Legislative Ethics  
PO Box 101468

Anchorage, Alaska 99510-1468

POSITION STATEMENT: Testified on HB 526.

**ACTION NARRATIVE**

TAPE 02-7, SIDE A

Number 0001

CHAIR PETE KOTT called the House Rules Standing Committee meeting to order at 9:05 a.m. Representatives Kott, Porter, Berkowitz, and Joule were present at the call to order. Representative Morgan arrived as the meeting was in progress.

HB 252-CHILDREN IN NEED OF AID: SERVICES & LIAB.

CHAIR KOTT announced that the first order of business would be 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."

Number 0048

REPRESENTATIVE PORTER moved to adopt CSHB 252, Version 22-LS0454\X, Laurterbach, 4/24/02, as the working document. There being no objection, Version X was before the committee.

Number 0086

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, testified as the sponsor of HB 252. Representative Coghill directed the committee's attention to page 2, line 3, where language including the parent was inserted. He informed the committee of his goal to promote the well being of families. He then turned attention to the family preservation services portion of the bill, which was inserted in the House Health, Education and Social Services Standing Committee. The bill specifies that under certain circumstances, family preservation services would be requested, and he noted that he would ask the department to do so without added cost. He noted that the department wants to do this and is actually heading in that direction. Therefore, this would provide the department with the opportunity to study it.

REPRESENTATIVE COGHILL turned to Section 7 regarding the limitation on civil liability. He pointed out that AS 47.10.960

specifies that nothing in this [title] creates a standard or duty of care. Version X [repeals and reenacts] Section 7 that says failure to comply with the provisions of the chapter, save three specific statutes, doesn't constitute a basis for civil liability. The three statutes [for which a violation would constitute civil liability] are as follows: AS 47.10.084, AS 47.10.086, and AS 47.10.088. However, Representative Coghill said he was open to discussion on that.

Number 0467

REPRESENTATIVE COGHILL informed the committee that he brought this legislation forward in order to start discussion in regard to what is the standard or duty of care for the department. He chronicled the process that resulted in the language in Version X, Section 7, regarding the three areas of statute specified as barriers for which [the department] can and should be held civilly liable. Representative Coghill related his belief that due process has been bypassed in order to be able to protect children. There are established rules [specifying] where the state can and should protect children. However, this bypass of due process has created quasi-judicial, quasi-legislative, and policing powers for [the department]. In so doing, any misuse would be very egregious to families. Therefore, he said he believes the standard and duty of care should be high. There must be a way to hold [the department] accountable [when the department foregoes] due process, which is Section [7].

Number 0711

THERESA TANOURY, Director, Division of Family & Youth Services (DFYS), Department of Health & Social Services (DHSS), announced that she would be speaking to AS 47.10.960. In regard to this particular section, Ms. Tanoury related that she and Representative Coghill have reached a point to agree to disagree. This section is cause of great concern because it allows individuals to bring personal injury actions against workers, supervisors, managers, and the state. She explained:

When people feel they have suffered emotionally from actions taken by a worker, or when they feel the worker has not complied with those three sections of [AS] 47.10, they would be able to sue the worker, if ... draft X passed. In essence, workers could be sued for doing their jobs. Currently, these individuals can take their complaints into court under the child-in-need-of-aid (CINA) proceeding.

MS. TANOURY pointed out that under Version X, the CINA proceedings and the civil proceedings would occur simultaneously. Ms. Tanoury noted that [the division] is being sued as it has been in the past, and people are held accountable. [The division] has professional standards and state ethics standards. She highlighted the fact that [division employees] are asked to do many things that are seen as causing emotional trauma or not following the letter of the law. These are situations, the separation of children from their parents, that will always be emotional. She pointed out that AS 47.10.084 has a section that addresses reasonable visitation, which [the division] already knows isn't happening. Because of the lack of resources, the division can only offer an hour a week of [supervised] visitation. The courts have already said that such isn't reasonable visitation. Therefore, the division uses people in the community to supervise visitation; but, that's still not enough. She noted that the division has requested funding to remedy that; funding for visitation centers where families and children can come together. However, that hasn't been successful. Under the "reasonable efforts" section, it specifies that [the division] should do what is reasonable to rectify the situation that lead the parents to the division in the first place. Therefore, the parents need access to services, which is a parental right. However, when the services aren't available or they require waiting, the courts rule in the parents' favor. Failure [to have access to services] would mean that parents could sue the division. This is tied to the division's lack of resources to do the job.

MS. TANOURY remarked that this is a very ripe area for litigation. The policy question is whether the legislature wants to extend the door open to civil issues. Ms. Tanoury expressed concern with regard to the chilling effect this would have on employee morale and work. The possibility of being sued by a parent, even when making decisions in the best interest of the child, would have a great impact on the decisions being made on the behalf of children.

MS. TANOURY pointed out that both the House Health, Education and Social Services Standing Committee and House Judiciary Standing Committee passed HB 252 with amended language that didn't include this [civil liability language]. This language was changed in the House Finance Committee, and she was unable to discuss the committee substitute that was passed with the House Finance Committee members. Furthermore, the language in Version X requires a fiscal note [from the division].

Number 1022

SUSAN COX, Chief, Assistant Attorney General, Civil Division (Juneau), Department of Law (DOL), said that Version X leaves the door open to civil liability for violations of the three particular provisions in the CINA statutes. She recalled that Representative Coghill read part of [AS 47.10].084(a) regarding to the division's responsibilities to children in its care. The problem is that AS 47.10.084(c) discusses the parents' residual rights, including the right and responsibility for reasonable visitation. The [DOL expects] that parents' perception is that they don't receive reasonable visitation, and therefore the language in Version X could be used to sue for emotional distress and damages. This ability to sue [on those grounds] is currently not available. Similarly, [AS 47.10.]086(a) in part specifies "the department shall make timely, reasonable efforts to provide family support services to the child and to the parents .... The department's duty to make reasonable efforts ... to (1) identify family support services ...". This is of great concern if this becomes another vehicle for collateral litigation, which is anticipated.

MS. COX pointed out that the department currently has liability, under the common law, to children if the department fails to protect them from harm. This liability pertains to children in custody and in foster care. The courts have recognized that the department's duty is to the children. The Alaska Supreme Court has considered the question regarding whether parents have a right to file their own suit on their own behalf for the emotional distress related with CINA proceedings. The Alaska Supreme Court has rejected that and found that the [division's] duty is to the children not the parent, and the recourse for the parent is in the CINA proceeding. Specifically, in the 1998 Karen L. case [Karen L. v. Alaska Div. of Family and Youth Services] the court said, "Social workers should be helping children in need of aid, they should not be spending their time in burdensome collateral litigation." This legislation [Version X] could impact the work of social workers in CINA cases. Furthermore, there could be a fiscal impact. The DOL submitted a fiscal note after the adoption of the House Finance Committee CS, although the bill had left the House Finance Committee. If this proposed House Rules Standing Committee CS was reported out of committee, Ms. Cox wasn't sure whether the fiscal note would be impacted; however, she was certain that there would be a fiscal note. She anticipated that there would be more cases from parents complaining about the CINA process.

MS. COX acknowledged that the parents do have rights. However, she begged to differ the assertion that [the department] bypasses due process in the protection of children. The CINA statutes provide for due process in the system. She related her belief that if there was a due process violation in the construction of the CINA statutes, the attorneys dealing with child protection would've had to deal with that in the Alaska Supreme Court.

Number 1301

LISA NELSON, Assistant Attorney General, Human Services Section, Civil Division (Anchorage), Department of Law, testified via teleconference. Ms. Nelson informed the committee that due process rights in CINA cases are truly plentiful. In the CINA system, there is always a judge and guardian ad litem [present]. Furthermore, each parent has an attorney. Ms. Nelson pointed out that in CINA cases, within 48 hours one must prove in court that these children were rightfully taken. She reviewed the numerous hearings that take place in order to keep the department on track. "The social worker is always scrutinized," she emphasized. She concluded by stressing that there are plenty of safeguards within the CINA system.

CHAIR KOTT asked if the fiscal note is tied to Section 7 [of Version X].

MS. COX replied yes. She reiterated that the fiscal note was drafted based on the House Finance Committee (HFIN) CS, which is somewhat different than [Version X]. That [the HFIN] fiscal note is based on an estimate of the number of cases the department expects to see, and the cost for potential litigation. No figures were included for the cost of liability. Ms. Cox explained that until the House Finance Committee hearing, it was somewhat ambiguous as to whether this section was attempting to create new liabilities or merely change the language in the current statute. Therefore, there was the possibility to argue that new liabilities weren't being created, although new cases would occur. Now, it seems clear, that this is about creating new liabilities, which the department expects due to the prospect of people suing because of parents not receiving reasonable visitation, alcohol treatment, et cetera. "The argument that we might have made in defense of new language is ... getting away from us, and I think it would be a losing one," she said.

Number 1501

REPRESENTATIVE BERKOWITZ related his understanding that the fiscal note is based on suits that would be groundless in law, without attention to potential actual award of damages.

MS. COX specified that was the basis for the fiscal note for the House Finance Committee CS. She noted that the fiscal note was prepared after the passage of that CS. Under [Version X] she predicted the fiscal note would be worse.

Number 1521

CHAIR KOTT asked if it would be fair to say that absent Section 7, or with modifications [to Section 7] the department is supportive of the bill.

MS. TANOURY replied yes.

Number 1554

REPRESENTATIVE COGHILL highlighted that this [legislation] deals with the most important resource of Alaska, its children and the families that they reside in. Quite often, the due process favors the system rather than the family. The whole genesis for this bill was to interject the family in a greater way. Many times a social worker can put a family through visitation changes and programs that run the family into the ground legally. He charged that the department changes the rules as it goes. Therefore, he reiterated his problem with the due process issue. "It's not about due process for the family, it's about due process for the system," he charged.

REPRESENTATIVE COGHILL related that he is trying very hard to work with the department in regard to how to protect the children. He said that he has tried to develop language that doesn't exempt them from civil liability for this entire chapter [title]. "They can exact of parents things that are ... really on a judgment call, and do damage to families that families have absolutely no recourse on," he remarked. From his personal experience, he has seen that the court listens to the department in regard to the well being of the child. Quite often, the parent is viewed as the "bad doer." Although Representative Coghill said he understood the need for the system, he questioned the recourse when the system is the "bad doer." He emphasized that every governmental agency in Alaska is already under the civil liability protection from which the department

is trying to exempt itself. Representative Coghill stressed that the department should at least be held liable for its actions relating to parenting, parental rights, and visitation. Representative Coghill noted his objection to the system rolling over and crushing families. He remarked that the fiscal note is based more on supposition rather than reality.

CHAIR KOTT closed public testimony.

REPRESENTATIVE BERKOWITZ noted that he would like to introduce Amendment 1, which modifies Section 7.

The committee took a brief at-ease.

REPRESENTATIVE BERKOWITZ announced his appreciation of Representative Coghill's and the department's effort on this issue. He said that this discussion should recognize that everyone has the best interests of the children in mind. Representative Berkowitz said that he is amongst those most loathed to immunize anyone. However, it appears that there are other grounds for pursuing action against the department for breeches of duty or violations of constitutional obligations. The current budget eliminates 32 front-line social workers. Therefore, it would be irresponsible for the [legislature] to ignore the best interests of the children. Representative Berkowitz related his belief that reducing the fiscal note enables a solid piece of legislation to pass this body without much discomfort.

Number 1832

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 1, which reads as follows:

**Proposed alternative language for Section 7 of CSHB 252(FIN)**

Sec. 7. AS 47.10.960 is amended to read:

AS 47.10.960. Civil liability [Duty and standard of care not created]. Failure to comply with a provision of [Nothing in] this title does not constitute a basis for civil liability for damages [creates a duty or standard of care for services] to children and their families being served under AS 47.10.

REPRESENTATIVE PORTER announced that he supports the efforts of the sponsor. However, there isn't a middle ground with this issue. Furthermore, this strict liability area doesn't allow a reasonable standard to be established in regard to whether a certain service should or shouldn't be provided. Representative Porter recalled a similar situation that arose during his law enforcement days when public intoxication was decriminalized. The statute had ambiguously established a requirement for law enforcement to intervene and take intoxicated people to treatment. On one occasion in Anchorage, an officer stopped an intoxicated person in Anchorage. The officer talked with the individual about going to a shelter, and the officer was reasonably convinced that the individual would make it to the shelter. Unfortunately, the individual was hit by a car and killed. The court interpreted this ambiguous statute as establishing this strict liability and thus held the municipality and the police department liable. Representative Porter likened that situation to the one being established under [Section 7 of CSHB 252(FIN)]. Furthermore, this bill seems to establish a requirement for DFYS to take over the entire area of runaway children since it requires the division to provide shelter. Representative Porter announced that he would have to reluctantly support this amendment.

Number 1960

REPRESENTATIVE COGHILL pointed out, "In looking at the amendment, just remember that this is everything in Title 47."

REPRESENTATIVE PORTER remarked that this [amendment] doesn't preclude a civil case but rather it precludes a strict liability.

CHAIR KOTT asked if there was objection to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 2002

REPRESENTATIVE PORTER moved to report CSHB 252, Version 22-LS0454\X, Laurterbach, 4/24/02, as amended out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 252(RLS) was reported from the House Rules Standing Committee.

HB 526-DISCLOSURE BY ETHICS COMMITTEE MEMBERS

CHAIR KOTT announced that the last order of business would be 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."

REPRESENTATIVE PORTER informed the committee that the House Rules Standing Committee was asked by the Chairman of the Select Committee on Legislative Ethics to consider HB 526, which Representative Porter viewed as positive. He explained that during the last selection process for the Select Committee on Legislative Ethics, a public member went through the entire process of selection and confirmation and then discovered what had to be revealed in the financial disclosures. That individual, due to their employment, felt such was too excessive. Therefore, [HB 526] allows the financial disclosure to coincide with the appointment and confirmation process in order that the legislature would have access to that information. More importantly, it would provide the public member with the requirements so that he/she could determine whether they want to continue with the process at all.

Number 2099

JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics, testified via teleconference in agreement with Representative Porter's explanation. She related her belief that this situation has happened with more than one nominee. During a recent meeting [of the Select Committee on Legislative Ethics] it was mentioned that during the confirmation process it would be appropriate for the House and Senate Judiciary Standing Committees to have the financial disclosure statements available with the resume.

CHAIR KOTT closed public testimony.

Number 2449

REPRESENTATIVE BERKOWITZ moved to report HB 526 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 526 was reported from the House Rules Standing Committee.

**ADJOURNMENT**

The House Rules Standing Committee meeting was recessed to the call of the chair at 9:58 a.m. [This meeting didn't reconvene.]