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HB 258      An Act relating to the civil liability of, and liability insurance for, foster parents.

FILE CONTENTS

- 1)            Copy of HB 258
- 2)            Position Paper, DHSS
- 3)            Alaska Foster Parent Association statement
- 4)            Back-up material
  - I.    Memo to House HESS
  - II    LB&AA Report
  - III  Legislation offered in other states
- 5)            Testimony for House Hess, by Miriam Sumner
- 6)            AFPA Petition
- 7)            Recommended revisions to HB 258 by DOA AND hess

POSITION PAPER

HOUSE BILL NO. 258

For an Act entitled: "An Act relating to the civil liability of, and liability insurance for, foster parents."

Section 1 of this bill provides foster parents with immunity from liability for acts or omissions of a foster child placed in care of the foster parents and from negligent acts or omissions of the foster parents that result in harm to a child placed in a foster parent's care under AS 47.

This Department has been advised by the Department of Law that the language of 7 AAC 50.790 serves to commit the state to coverage of certain liability risks of foster parents who care for children in custody of the Department. According to the Department of Law foster parents are protected from liability for accidental injury to a child in their care including harm due to negligence on the part of the foster parent. However, there would be no protection from liability for intentional acts which injure a child or from liability arising from gross negligence. The regulations set out specific exceptions to liability coverage provided to foster parents by the state including: accidents involving vehicles, fire, and accidents occurring when there is no foster parent/child relationship. In addition, AS 34.50.020 would seem to make foster parents immune from liability for acts of children in their care, though a recent court ruling may limit or nullify the effect of that statute in protecting foster parents (and state) from liability for the acts of children in care.

Section 1 of this bill would relieve foster parents of virtually all liability for their own acts or omissions, except those which were intentional or grossly negligent, but would not similarly protect state employees acting in good faith. This would shift a liability for foster parent actions to the state and substantially increase the state's liability. Under these provisions and in light of recent court rulings concerning AS 34.50.020, the state would ultimately become liable for any harm caused by or to a child in foster care. To address the shortcomings in Section 1 and return to a circumstance approximating that which existed prior to the court ruling the Department suggests amending Section 1 to protect both state employees and foster parents. The suggested amendment language is attached.

Section 2 of the bill mandates the Department to provide liability insurance for foster parents. However, this section seems intended not to provide insurance shielding foster parents from liability (which is accomplished under Section 1) but to insure foster parents against loss or damage to their property.

The issue of potential property losses by foster parents has been problematic to the Department because of the costs involved and as a factor increasing the difficulty of recruiting and retaining foster parents. Foster parents have been told by their insurance companies that

they are not protected from loss or damage to their property caused intentionally by a foster child in their care. The Department of Administration, Division of Risk Management has orally advised the Department of Health and Social Services that this may be incorrect but to date it has not been tested through litigation and there is no definitive answer.

In the absence of a definitive answer to this problem and in the face of refusal of private insurers to cover such claims, the Department has chosen to reimburse foster parents for their documented losses upon request. Though the Department is under no legal obligation to reimburse foster parents for such losses and has received advice against the practice, a policy decision was made to continue doing so in order to facilitate retention of qualified foster parents. However, there is no statutory basis or dedicated funding for making such reimbursements. Currently, reimbursement for foster parent losses are made from funds budgeted to meet the needs of children in foster care. Use of these funds to cover foster parent losses causes several problems, including:

1. decreased money available to meet the needs of children in care;
2. several limitations on the amount of funds available to cover losses; and
3. inequity in reimbursement because, although these funds are used for dual purposes, they must be allocated between regions based on child foster care placements and needs of children rather than on the basis of unpredictable foster parent losses with the result that losses in one region may not be covered because of insufficient funds while losses in another region are reimbursed.

This mechanism has been functionally unsatisfactory and potentially insufficient to deal with even a single large property loss (such as destruction of a foster family home by an intentionally set fire). Fortunately losses to date have been relatively small with larger losses (in the range of tens of thousands of dollars) rare and still relatively small when compared to potential loss.

The Department has been advised by the Division of Risk Management that the costs of providing insurance proposed in Section 2 would be approximately \$450 annually per foster home or approximately \$400,000 annually to cover the nearly 900 licensed foster homes. This figure is an estimate of the premium costs for providing coverage for the structures of foster parent homes, their personal property, and the state's liability for harm caused to or by foster children. The Department would support a resolution of this issue which would protect foster parents from loss and would aid in recruiting and retaining foster parents. However, the costs of the solution proposed in Section 2 of this bill would not be justified by the scope of the problem to date. Other less expensive and more satisfactory solutions are available. [For example additional funds could be budgeted specifically to reimburse foster parents for their losses with

Position Paper  
House Bill No. 258  
Page 3

administration of these funds and determinations on reimbursement to be made by the Division of Risk Management commensurate with accepted insurance practice.] This would avoid much of the expense of providing insurance for all foster parents but would establish funding and a mechanism to reimburse foster parents appropriately. In addition the changes suggested to Section 1 could reduce these costs somewhat by reducing the state's liability.

Department Position

The Department opposes HB 258 in its present form as an unsatisfactory and expensive solution to the problem of foster parent liability and losses and one which increases the liability exposure of the state. However, the Department would support an amended version of the bill which incorporated the changes suggested for Section 1 and which deleted Section 2 in favor of budgetary and administrative remedies such as suggested.

RECOMMENDED:

Yvonne M. Chase  
Yvonne M. Chase, Director  
Division of Family  
and Youth Services

DATE:

April 22, 1987

APPROVED:

Myra M. Munson  
Myra M. Munson, Commissioner  
Department of Health  
and Social Services

DATE:

April 22, 1987

Sec. 09.65.093. CIVIL LIABILITY FOR FOSTER HOME CARE.

(a) Employees or representatives of the state and foster parents are not liable for civil damages as a result of acts or omissions by a minor placed in the care of foster parents under AS 47.

(b) An employee or representative of the state or a foster parent is not liable for negligent acts or omissions that result in harm to a minor placed in the care of foster parents under AS 47.

(c) This section does not preclude liability for civil damages as a result of the gross negligence or intentional misconduct of an employee or representative of the state or a foster parent.



# Alaska Foster Parents Association

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FEB 13 1987

## CIVIL LIABILITY OF FOSTER PARENTS 1987

### POSITION:

Legislation must be passed to limit liability of foster parents. Foster parents are individuals or families who provide in-home care and treatment for those children and youth who cannot live in their own home. Foster parents are partially reimbursed for costs, but volunteer their time, knowledge, and caring. Since foster parents are screened and licensed by the state, the state must help protect those foster parents from liability, except in cases of gross negligence or intentional misconduct.

### JUSTIFICATION:

Fear has been building in foster parents for the safety of their family, belongings, and way of life because of incidences throughout the state of foster parents being put in a liability position by youth and the agency. This problems has several parts including:

1. vague regulations that can be interpreted in many ways
2. community and agency misunderstanding of foster care and the role of foster parents.
3. rise in legal suits and threats of legal suits in all facets of American life.
4. the vulnerability of foster parents who care for children and youth that may have many problems and act those problems out in inappropriate ways, plus foster parents are limited in their decision-making ability.
5. the difficulty of foster parents paying for legal actions when they do not receive a salary and are required by regulation to have enough income to support their families, so they do not qualify for legal help.

In several situations, a complaint has been made about a foster parent violating a regulation. When that charge is found to be valid, the foster parent has no workable recourse to change that finding and may be left to face any legal consequences on their own without agency backing, even if the act that began this process was caused entirely by the child (such as runaway). There is some protection through the state's RISK MANAGEMENT, but AFPA feels this should be clarified by law.

**FUNDING:** This type of bill would require no funding, but would put the minds of foster parents at rest and help protect those individuals and families who are willing to volunteer their time and energies to helping children, youth, and families.

REP. TERRY MARTIN

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Alaska House of Representatives

M E M O R A N D U M

DATE: April 23, 1987

TO: Members,  
House Health, Education & Social Services Committee

FROM: Representative Terry Martin

SUBJ: House Bill 258 - An Act relating to the civil liability  
of, and liability insurance for, foster parents

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The issue of liability protection for licensed foster parents has been and continues to be a topic of much controversy.

For the most part, foster parents are honest, hard working people who open their homes and hearts to those unfortunate, and in many instances, troubled children in need of temporary care and housing. It seems unfair that foster parents, acting as agents of the state, should be faced with the prospect of losing their homes and/or property as a result of the negligent conduct of a child placed in their care.

The Foster Parents Handbook states, "Liability insurance is provided for all Division of Family and Youth Services foster families through the Department of Administration, Division of Risk Management. This insurance protects the foster parent against legal actions brought against foster parents because of accidental injury to the child or because of damage caused by the child to someone else's property or person." However, in the 1986 audit of DFYS, a memo by the Attorney General is referenced which states, "foster parents will generally be shielded from liability for injury to a child where they have attempted, in good faith, to conduct themselves reasonably. There is no insurance protecting a foster parent from the negligence of a child. And, except for the possible protection of AS 34.50.020 there is no protection against suit by third persons against foster parents because of negligent conduct of a child."



While most foster parents have homeowners and automobile insurance, insurance companies generally do not cover deliberate acts by foster children.

Often, in cases where a child must be placed immediately, the foster parents are not given complete background information on the child, such as a propensity to start fires, a history of stealing cars or a history of sexually molesting other children. In most instances, even knowing all the facts, the foster parent would still accept the child but by not knowing all the facts and accepting the child into their home, the foster parents are placed in a very vulnerable position by the state.

There is obviously a need to more clearly define the foster parents' areas of responsibility with regard to their liability protection.

HB 258 provides the foster parents with immunity against legal action for civil damages as a result of the acts by a minor placed in their care and negligent acts or omissions by the foster parents that result in accidental injury to the minor placed in their care.

HB 258 also requires the state to provide liability insurance to foster parents while caring for a child. This insurance would cover the loss of or damage to the property of or property under control of the foster parents as a result of the misconduct by a child placed in their care.

At present, claims submitted by foster parents to cover damage to their property as a result of misconduct by the foster child are first received by the social worker. Further processing of the claim is totally at the discretion of the social worker. Small dollar amount claims are paid through a special DFYS fund while larger dollar amount claims are paid through Risk Management, depending on whether the claim is approved for payment by DFYS. More definitive guidelines need to be developed so that claims are handled more fairly and efficiently.

Foster parents, licensed and trained by the state and acting as agents of the state, provide a vital role in the lives of their young charges. Many of the foster parents with whom I have spoken have the similar feeling that the state treats them more like babysitters than as team members.

HB 258  
Page 3

I think that it's time the state began to assume its share of the responsibility for these children and stop leaving the foster parents out on a limb.

Legislative Audit continues to support a better management information system for DFYS. Ending the need for maintaining both an antiquated automated payments system and a manual information system would allow overburdened line staff to devote more time to actual social work. The need for timely, accurate, pertinent information is absolutely critical to the effective management of a division as large, complex, and geographically dispersed as DFYS.

Recommendation No. 3

DFYS should develop standardized foster care procedures and encourage compliance through improved training and supervisory review. In addition, DFYS should continue working toward improved relations with foster parents in order to sustain a more viable foster care program.

Foster care costs have increased by more than two-thirds in the last three years to over \$6.3 million in FY 86. Over the last five years, foster care expenditures have almost doubled while there has been little growth in residential care expenditures making foster care even more important to DFYS' service delivery system. The increasing use of foster care has also resulted in more difficult children being placed in the care of foster parents.

Our current review revealed several areas in foster care which would benefit from increased DFYS commitment:

1. Licensing activities are not in compliance with DFYS procedures due to lack of timeliness.
2. Complaints are not classified and investigated consistently and often are not adequately documented.
3. Augmented rates for specialized foster care are not being equitably administered.
4. Training provided varies across the state and is rarely documented in foster parent files.
5. Foster parents are not fully informed about liability and loss which may result from foster care.
6. Relations between DFYS and foster parents are often less than cooperative.

Many of these deficiencies were identified in a 1983 Legislative Audit report. Management should review the situation in each area and act according to DFYS priorities.

## Foster Home Licensing

Besides ensuring some minimum level of safety, the licensing of foster homes is important in order to match the abilities and interests of foster parents with the needs of placements. This theoretical matching of homes and children has been subjugated by the reality that there are not enough slots for all the children needing placement.

Licensing activities are behind, as evidenced by:

1. Over 30% of the homes reviewed were issued licenses which were more than one month retroactively effective.
2. Over half of the homes in our review did not have a home study performed prior to licensing. (The home study is a time-consuming licensing prerequisite to ensure compliance with foster care standards).
3. Of the 75 homes with foster care placements reviewed, more than 60% were either without a current home study or license during the time a child was in the home.
4. As of June 1986, over 25% of foster care licenses have been expired for over one month.

A major factor that contributes to the situation is DFYS licensing priorities. Licensing duty priorities are not conducive to the timely licensing of foster homes. Investigations of complaints is the first priority while processing new foster home applications ranks last in a list of 15. As a result, emergency licensing of foster homes is the rule rather than the exception.

We recommend management reassess licensing duty priorities and personnel practices in order to make the licensing process a more timely and meaningful one. The annual review of licensing files by supervisors, as proposed in DFYS' response to our 1983 audit report, would aid in identifying and correcting current discrepancies in foster home license files. During our file review, only a few Youth Service foster parent files, most notably the Southcentral Region, evidenced any such review.

## Complaint Investigations

Licensing complaint investigations have long been a point of contention between foster parents and DFYS. Many foster parents view the process as arbitrary, covert, even vindictive. DFYS views it as necessary for the protection of children, even supportive of the foster home in that compliance is encouraged.

While our review noted problems of inconsistent treatment and poor documentation, overall we found investigations of complaints to be reasonable and fair. The only examples of investigations with questionable motives and dispositions were performed by a Palmer licensing worker no longer employed by DFYS.

Procedures for complaint investigations are outlined in the Community Care Licensing Manual. Despite the statewide applicability of these procedures, our review of complaint investigations found wide variations in how complaints are handled both between and within offices. Investigations often do not result in any constructive resolution. Investigator recommendations for bringing the home into compliance are not consistently made nor implemented by DFYS. Recommended licensing actions are not being taken and are often overridden by placement decisions when they are taken.

Documentation of investigations varied from adequate to non-existent. Evidence that the investigated party had been notified was often missing from the file. Standardizing the use of the Notification of Complaint form would not only improve documentation, but would also alleviate foster parent protests that DFYS never tells them why they are being investigated.

We found only the Southcentral Family Services office maintains a complaint log. We were told at Youth Services in Fairbanks that they had been instructed to discontinue logging of complaints. We feel the information which can be gained from an independent listing of complaints more than offsets the increased paperwork. Accordingly, we recommend all DFYS offices maintain complaint logs similar to that discussed in DFYS' response to our 1983 audit recommendation.

We reiterate our 1983 recommendation that DFYS train licensing personnel in their complaint investigation procedures and conduct supervisory reviews for compliance. DFYS has adequate procedures in place for complaint investigation; now it needs some training and monitoring to achieve adequate implementation of these procedures.

### Specialized Foster Care

Our 1983 audit report recommended executive and legislative support for specialized foster care. We continue to support the concept of paying augmented rates to foster parents for providing care to children who would otherwise be in more expensive residential care. While not appropriate for all children, an augmented rates program allows many to be

placed in a less restrictive foster home setting. This lesser restrictive placement, coupled with the cost savings involved, makes specialized foster care in the best interest of both the children and the State.

Augmented rates are not being equitably administered by DFYS. Family Services' Child Protective Service Manual defines augmented rates as "an increased payment which is paid for extra costs incurred in caring for children who have special problems." Interpretations of what constitute extra costs are made by line staff resulting in inequities such as:

1. Different amounts of augmentation for foster children with the same special problems.
2. Some foster parents are compensated for their time, while others are reimbursed only for defined costs.
3. Foster parents who complain the most tend to get the most augmentation. In some cases, the foster parent sets the rate DFYS pays.

Youth Services has their own augmented rates program. Youth are assessed for placement level of difficulty with Level I being standard rate and Level III being the most highly augmented rate. To care for Level II and III youth, foster parents must meet certain training and experience requirements. We found that both youth and foster parents are being consistently assessed across the state, however, the rates paid are not consistent. Payment for a Level III youth in the Northern Region is 250% of the standard rate; while in the Southcentral Region, DFYS pays 300% of the standard rate for a Level III youth.

In order to develop a more equitable augmented rates program, we recommend DFYS initiate changes to both the Family Services and the Youth Services programs. Family Services should update its 1978 criteria to more specifically define which extra costs will be reimbursed as augmented rates. This would reduce the current latitude line staff and foster parents have which results in negotiated augmented rates. Youth Services should make payment for a Level III youth constant across regions. Given Alaska's current revenue picture, we advise bringing the Southcentral Region in line with the Northern Region.

#### Foster Parent Training

The extent of foster parent training by DFYS varies across Alaska. It ranges from comprehensive, formal programs in Southcentral Alaska to almost nonexistent in other areas of the state. Some areas require attendance at...

foster parent orientation classes prior to licensing, while others use a home visit and an informal review of the regulations as orientation for foster parents.

During FY 86, DFYS contracted with the Alaska Foster Parent Association to provide statewide ongoing training. The contract required DFYS to jointly participate in implementation, however, DFYS did little to facilitate the successful completion of this contract. The training that was provided was geographically limited and of questionable value to some of the purported beneficiaries.

Foster parents who want training have been obtaining it through their local foster parent associations, college classes, and training sponsored by DFYS. In recent years, DFYS has been considering the possibility of requiring a certain amount of training to receive and maintain a foster care license. Those foster parents receiving augmented rates under the Youth Services program are currently required to have a certain amount of training. In our review of foster home license files across the state, we found only Southcentral Youth Services files to reflect a record of training received.

Increased DFYS commitment to foster parent training would not only promote better relations between foster parents and DFYS, but would also provide DFYS with a more qualified pool of foster parents. A multi-media self-study program such as that being developed by Southcentral Youth Services may be a cost-effective method for providing statewide training. Maintaining a record of training received in each foster home file would make it easier for those making placements to match the child's needs with the qualifications of the foster home.

#### Foster Parent Liability

Liability is currently an extremely volatile issue for foster parents. In 1981, DFYS made efforts to define areas of responsibility for various types of liability or losses resulting from foster care. The Foster Parents' Handbook tells foster parents that they are protected by the State against legal actions for accidental injury to the child and against suit for damages caused to third parties by the child.

In an effort to address foster parents' current concerns over liability, DFYS has contacted the Attorney General's Office and the Division of Risk Management. Discussions with Risk Management confirm that in the absence of gross negligence, foster parents will be protected by the State

for both injury to the child and to third parties. However, this assurance is not echoed in a recent memo from the Attorney General's Office which concludes:

foster parents will generally be shielded from liability for injury to a child where they have attempted, in good faith, to conduct themselves reasonably. There is no insurance protecting a foster parent from the negligence of a child. And, except for the possible protection of AS 34.50.020 there is no protection against suit by third persons against foster parents because of negligent conduct of a child.

The foster care regulations make clear that this liability insurance "will not cover matters for which foster parents are normally expected to have insurance, such as fire insurance for their home." The implication that foster parents' insurance will cover their loss if the foster child burns their home is true only if the act was accidental. As DFYS discovered in their 1981 efforts, deliberate acts by foster children are generally not covered by homeowner's insurance policies.

We recommend that DFYS, in conjunction with the Attorney General and the Division of Risk Management, develop some cohesive guidelines in the area of foster parent liability with regard to third party damages. Once determined, this information should be included in the Foster Parents' Handbook, as should some warning of the limitations of common homeowner's insurance. Foster parents need this information in order to make informed choices in accepting and rejecting placements.

#### Relations With Foster Parents

In our 1983 audit we noted that DFYS neglected to maintain a cooperative relationship with the foster parent community. In a March 1986 letter to the president of the Alaska Foster Parent Association (AFPA), the director of DFYS states "It would be less than candid of me to not admit that there has been a history of conflict and resentment between AFPA and the division."

The training contract for fiscal year 1986 was a disappointment for both parties. This contract emphasized "joint" responsibility for both DFYS and AFPA, but neither was satisfied with the other's performance. The quality and quantity of training which resulted would likely have increased if DFYS and AFPA had been more cooperative in implementing the terms of the contract.

We feel that the rift between DFYS and AFPA is diminishing. With DFYS' encouragement, there has been an influx of more moderates on the AFPA Board of Directors. DFYS efforts such as the June 1986 Foster Care Working Group encourage foster parent input and interaction with DFYS. With adequate follow through, such efforts could be major steps toward rebuilding a good working relationship.

DFYS needs the different perspective offered by foster parents. Despite their relatively low membership, AFPA is the only statewide organization of foster parents. Given the crucial role that foster care plays in DFYS' service delivery, a better relationship with foster parents in general, and AFPA in particular, will benefit all concerned.

Recommendation No. 4

DFYS should comply with the American Correctional Association (ACA) national standards in order to receive accreditation for its juvenile confinement facilities.

In May the three juvenile confinement facilities which house both detention and treatment programs were reviewed by the American Correctional Association (ACA). DFYS arranged the reviews in order to receive accreditation by the ACA, a national organization of correctional professionals. The review, for which DFYS had been preparing for four years, involved a thorough review of their physical plants; policies and procedures; and general program.

The ACA review committee compared these facilities with national standards developed for detention, training school, and community residential care facilities. To receive accreditation a facility must be in compliance with 100% of the mandatory standards and over 90% of the non-mandatory standards. The review committee's reports for all three of the facilities commented positively on the quality of life within the facilities, especially regarding the communication between staff and residents and the dedicated nature of personnel. Other major ACA findings are presented below:

Detention Overcrowding

The detention units at both McLaughlin Youth Center (MYC) and Fairbanks Youth Facility (FYF) were found to be continually operating over capacity. MYC, with a design capacity of 50, had an average daily population of 68 in FY 85; FYF, with a capacity of 8, had an average daily population during the first four months in 1986 of 12.8 recording highs of over 20 youth. The overcrowding was a major concern of the ACA review committee which they felt needed immediate relief.

DFYS staffing requests were held to only thirty-five positions on the basis that implementation of the requested new management information system would free staff time for direct service provision and offset the need for additional staff. However, because the MIS request was not funded and caseloads have increased, staff shortages were exacerbated despite the addition of the 35 positions.

In recognition of DFYS' critical need for a comprehensive management information system and need to capture the maximum federal funds, I have made funding and development of this system a departmental priority. I am also assigning the newly organized Department of Health and Social Services case processing group to aid DFYS staff in their development efforts and will make other department level resources available as necessary to ensure success.

### Recommendation No. 3

The Division of Family and Youth Services (DFYS) should develop standardized foster care procedures and encourage compliance through improved training and supervisory review. In addition, DFYS should continue working toward improved relations with foster parents in order to sustain a more viable foster care program.

DFYS generally agrees with auditors' identification of issues to be addressed to improve Alaska's foster care system. Much progress has been made to address problems since the 1983 Legislative Audit on Foster Care. In 1984, a systematic approach to achieving goals was jointly developed by foster parents and DFYS. Nearly one hundred issues in nine categories were identified for research, planning, and resolution. It was the consensus of foster parents and DFYS staff that five years would be needed for resolution of identified issues. There have never been "dedicated" resources for central management staff to oversee administration of the foster care program. State office management and program development staff are limited, comprising less than three percent of the DFYS budget. Despite the staff shortages, in the last year and one-half, substantial action was taken to improve the foster care system and relationships with the Alaska Foster Parents Association (AFPA). New actions include:

- ° quarterly meetings with AFPA and state office personnel;
- ° follow-up contact between quarterly meetings on a weekly or more frequent basis;
- ° revision of the policy and procedure manual to include: a copy of case plans for foster parents; two weeks notice, when possible, to foster parents before removing a child from the home; and notification to parents when there are changes in case plans;
- ° adoption of several forms suggested by AFPA;
- ° case plan revisions and other suggestions from AFPA.

- notification to all care providers of revisions to policy and procedures;
- consistent standards for parent support payments finalized in regulations;
- grievance procedure readied for promulgation in regulations;
- resolution of late payment issues;
- specialized foster care program being explored and developed including technology dependent infant program, and the Alaska Youth Initiative program;
- initiation of Youth Services specialized foster care program on a pilot basis;
- a new policy to fill vacancies with persons holding an MSW or BSW degree resulting in fifty-two professionals with a Master's degree in Social Work or a closely related field;
- training programs for foster parents provided jointly by AFPA and division staff;
- a comprehensive inventory of all children in DFYS custody in out of home care, information on each child's placement history, and a preliminary analysis; and
- specialized regional positions designated, monitoring procedures drafted, and piloting begun to ensure the systematic review of all children in foster care as required under Public Law 96-272 and Alaska statutes, and, on a limited basis, to perform case file monitoring and licensing file monitoring.

#### Foster Home Licensing

The DFYS agrees that licensing activities are behind. Here, as well as in Child Protective Services, staff resources have not kept pace with growth. To meet Child Welfare League standards, time devoted to the licensing of foster homes would need to be doubled. The audit correctly notes the importance of the licensing function and the need for additional recruitment efforts. However, with little likelihood of additional revenue and increased field staff to carry out these functions, expectations must be adjusted accordingly. State Office program staff have planned or are working on a number of regulatory and policy improvements to address field staff shortages. The following improvements will be completed or nearly completed this fiscal year:

- finalize licensing regulation changes with the assistance of the Foster Care Working Group, scheduled to submit recommendations by the end of the year.

- reduce the number of licensing criteria to be measured to those critical to ensuring safe and appropriate care in order to reduce staff time necessary for licensing;
- streamline the procedures to make them similar to licensing other facility types to avoid worker confusion;
- revise licensing manual procedures to include a supervisory review of some licensing files each year; and
- prioritize new foster home applications in order to train experienced foster parents for specialized foster care and to meet child placement needs by age range, specialization, and location rather than by new applicant interest.

#### Complaint Investigations

The DFYS concurs with auditors' conclusion that complaint investigations are generally "reasonable and fair". However, the conclusion that despite the existence of policies and procedures addressing complaint investigations, there are wide variations in how complaints are handled both between and within offices, is disturbing but consistent with DFYS management perception. To improve consistency with limited resources, the following is the division's plan for addressing this problem this fiscal year:

- promulgation of revised licensing regulations, currently described by some as "vague", to provide clear guidance to workers investigating violations of those standards;
- review the findings of the Foster Care Working Group on complaint investigations scheduled for completion in December, 1986, and consider the recommendations for policy adoption;
- require logging complaint receipt date, level of danger, and disposition into the computerized system using the on-line capability (this is currently available, but not mandatory); and
- utilize supervisory staff for orientation and training of new workers in light of inadequate training funds.

#### Specialized Foster Care

In recognizing the need for specialized foster care, the division developed a Youth Services pilot project. With the implementation of Title IV-E of the Social Security Act (federal Public Law 96-272), it became apparent that the division would need to develop a consistent definition of specialized foster care to ensure federal claiming. We agree with the audit finding that there are inconsistencies and that there should be equitable augmented rates applicable to both the Youth Services and Social Services foster care programs. Revised foster care purchase regulations, with the December, 1986,

recommendations of the Foster Care Working Group, will contain criteria applicable statewide for augmenting foster care rates. Foster care purchase regulation changes are scheduled for completion this fiscal year.

It should be noted that licensing, complaint investigation, and specialized foster care policy improvements are dependent on State Office program development staff. Further, cuts at the management level would result in delays or elimination of policy improvements.

#### Foster Parent Training

The division has long recognized that foster parents need skills and training in order to care for difficult children, and often, also, to maintain their family life in a positive and fulfilling manner. During FY 86, the division contracted with the AFPA, for the first time, to provide joint statewide training. A national expert provided consultation to foster parents, division foster care specialists, and division management in a special "kick-off" session. In spite of this effort, there were problems--some due to the lack of specific language in the contract, and some due to forces beyond the control of either AFPA or the division; for example, underfunding of child protection positions created in HB 88 resulted in delay of the foster care specialist positions being filled. It was necessary to establish effective new relationships at the regional rather than the state level, both for AFPA and the division. Expectations and goals were, in retrospect, exceptionally high for both AFPA and the division. The division remains committed to teaming with AFPA and is continuing the contract with the expectation that the experience of the first year will allow greater gains. If proposed regulations to require foster parent training are retained through the public hearing process, training of foster parents will be documented annually in each file.

#### Foster Parent Liability

Participation in a national teleconference on provider liability issues would indicate that the problems in Alaska are highly similar to the problems experienced in other states. The Foster Care Working Group is studying liability issues and will make recommendations to the division. The Division of Risk Management has agreed to provide a written statement to clarify liability coverage for foster parents and is recommending a review of AS 34.50.020 for an assessment of need for statutory clarification. Improvement and clarity of licensing regulations may also clarify some liability issues.

#### Relations With Foster Parents

The audit recognition of improved relations between the division and AFPA is appreciated. The DFYS and the AFPA continue to be committed to working together for the benefit of children. There have been difficulties, as noted earlier, at specific times, but this is not unusual given the natural tension that occurs in attempting to meet competing interests: conflict, nature

parent, foster parents, and agency. The fact that the tension is recognized, and there exists an agreement to work together, is positive. Despite major differences on some issues, the two organizations continue to work together on a frequent and planned basis.

Recommendation No. 4

DFYS should comply with the American Correction Association (ACA) national standards in order to receive accreditation for its juvenile confinement facilities.

The division fully agrees. In fact, the process of accreditation of its facilities was initiated unilaterally by DFYS, to evaluate and strengthen detention and treatment services.

It should be noted that meeting these standards does not simply mean that minimum requirements for safety and adequate program services are met. ACA standards require documentation that institutions exceed basic standards. Compliance ensures that the services provided are of high quality, and in accordance with nationally recognized and respected indicators.

The division has asked for and has received some capital funding for the costs associated with meeting these standards. The division still intends to meet these standards, within revenue limitations.

The youth services facilities serve only a fraction of the number of youth who enter the system, and the facilities do not function in isolation from other parts of the justice system. It is important to consider the impact of the other parts of the system--the police, courts, intake, diversion, and probation--on the institutions' functioning. Agencies must coordinate to form a sensible, practical scheme of services to meet the two major goals of rehabilitating youth and protecting the community. The long-range goal of DFYS is to achieve accreditation of all aspects of its Youth Services system--intake, community services, and institutions. Accreditation of facilities was the initial step.

The division is aware of other aspects of the Youth Services system which must be addressed before accreditation is feasible. Among these are lack of adequate resources, such as specialized probation staff and community support services. Other factors beyond DFYS control include: 1) lack of control over the numbers of clients entering the system, especially institutions; 2) necessity of addressing unusual and increasing demands made on the system including individual treatment decisions made by the court, meeting federal criteria, serving children requiring specialized treatment, increasing demands from the public to arrest and incarcerate youth offenders and non-offenders such as runaways.

The complexities of treating juvenile offenders, assisting their families, and protecting the community in the context of shrinking social services dollars and multiple agency involvement impact DFYS' ability to meet the

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 535

H.P. 401 House of Representatives, February 24, 1987  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative CLARK of Brunswick.  
Cosponsored by Representative COTE of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Regarding Liability for Foster Parents  
2 for Children and Adults.  
3

4 Be it enacted by the People of the State of Maine as  
5 follows:

6 Sec. 1. 22 MRSA §4066 is enacted to read:

7 §4066. Liability of foster parents

8 1. Immunity from liability. Except as provided  
9 in subsection 2. a person providing foster care to a  
10 child is immune from civil liability related to the  
11 provision of foster care to that child if that per-  
12 son:

13 A. Is licensed to operate a family foster home  
14 or a specialized children's home pursuant to  
15 chapter 1669;

1 B. Is approved by the department as meeting the  
2 standards for licensure of family foster homes  
3 and specialized children's homes, promulgated in  
4 accordance with section 8102; or

5 C. Is caring for a child at the request of the  
6 department pending the licensure or approval.

7 2. Exceptions to immunity; limits of liability.  
8 No person may be liable if they fall under either of  
9 the following exceptions.

10 A. Notwithstanding subsection 1, a person pro-  
11 viding foster care is liable for damages in a  
12 civil action for acts of willful, intentional  
13 abuse or neglect or gross neglect that result in  
14 serious harm to the foster child.

15 B. If a person is found liable pursuant to this  
16 subsection, the damages may not exceed \$10,000  
17 for any and all claims arising out of a single  
18 occurrence.

19 3. Enforcement of criminal and licensing law.  
20 This section is not intended to limit in any way the  
21 State's ability to take appropriate legal action to  
22 enforce criminal laws or laws and rules applicable to  
23 family foster homes and specialized children's homes.

24 Sec. 2. 22 MRSA §7914 is enacted to read:

25 §7914. Liability of adult foster home providers

26 1. Immunity from liability. Except as provided  
27 in subsection 2, a person licensed to operate an  
28 adult foster home pursuant to this subtitle is immune  
29 from civil liability related to the provision of  
30 boarding care to residents.

31 2. Exceptions to immunity; limits of liability.  
32 No person may be liable if they fall under either of  
33 the following exceptions.

34 A. Notwithstanding subsection 1, a person li-  
35 icensed to provide boarding care in an adult fos-  
36 ter home is liable to damages in a civil action  
37 for acts of willful, intentional abuse or neglect

1 or gross neglect that result in serious harm to  
2 the resident.

3 E. If a person is found liable pursuant to this  
4 subsection, the damages may not exceed \$10,000  
5 for any and all claims arising out of a single  
6 occurrence.

7 3. Enforcement of criminal and licensing law.  
8 This section is not intended to limit in any way the  
9 State's ability to take appropriate legal action to  
10 enforce criminal laws or laws and rules applicable to  
11 adult foster homes.

12 STATEMENT OF FACT

13 This bill provides immunity from civil liability  
14 to foster parents of children and adult foster home  
15 providers when the foster parent is licensed, ap-  
16 proved as meeting standards for licensure, or caring  
17 for a child at the request of the Department of Human  
18 Services pending licensure or approval.

19 A foster parent will not be immune from liability  
20 in a civil action for willful or intentional abuse or  
21 neglect, or for gross neglect that results in serious  
22 harm to the child or adult. Liability for a single  
23 occurrence would be limited to \$10,000.

24 This bill will not affect enforcement of criminal  
25 or regulatory laws.

26

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# STATE OF NEW YORK

719--A

Cal. No. 69

1987-1988 Regular Sessions

## IN SENATE

January 20, 1987

Introduced by Sen. GOODHUE -- read twice and ordered printed, and when printed to be committed to the Committee on Child Care -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report, and to be reprinted as amended, retaining its place in the order of second report

AN ACT to amend the social services law, in relation to liability of foster parents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The social services law is amended by adding a new section  
2 three hundred seventy-seven-a to read as follows:  
3 § 377-a. Liability of foster parents. Any person providing care to a  
4 minor pursuant to section three hundred seventy-six, three hundred  
5 seventy-seven or three hundred seventy-eight of this title shall be sub-  
6 ject to liability for injuries incurred by a minor under such care only  
7 where such injuries arise from the willful misconduct, gross negligence  
8 or criminal act of such person or where such injuries arise from the  
9 operation of such person's motor vehicle. For the purposes of any civil  
10 proceeding arising out of injuries to a child receiving care as  
11 described in this section, the good faith of persons providing such care  
12 shall be presumed provided that such person was acting in the discharge  
13 of his or her responsibilities within the scope of his or her license  
14 and certification pursuant to section three hundred seventy-eight of  
15 this title.  
16 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LE009109-01-7

## TESTIMONY FOR HOUSE HESS

Mr. Chairman and Committee members:

Alaska Foster Parent Association again requests you to pass this legislation that would limit the liability of foster parents and provide a method that insures foster parents will be reimbursed for damages to their property caused by foster children.

Foster parents are fearful of liability because of vague regulations, community and agency misunderstandings of foster care and/or the role of foster parents, the rise in legal suits and threats of legal suits, the vulnerability of foster parents dealing with youth who have great potential for loss, foster parents limited decision-making ability, and the difficulty of foster parents paying for legal action since they do not receive any salary and do not qualify for any legal assistance.

The first section of HB 258 eliminates the civil liability of foster parents except in cases of gross negligence or intentional misconduct.

The second section provides for damages to a foster parents belongings to be covered. Since insurance is not available for this purpose, it must be covered within the agency. Most of these children are wards of the state--therefore, the state is the parent and should be responsible for their actions.

It has been stated many times that DFYS does not have the statutory authority to cover damages done by the foster child, therefore, we must give them that statutory authority at least for those children in the custody of the state. When that statutory authority is given, the program could be administer in various way, including though the special needs funds already designated within DFYS or through Risk Management.

Alaska Foster Parent Association would prefer the more informal method through DFYS if a procedure was set up and followed that was easily accessed by foster parents in a timely manner.

The issue facing us here today is not specific implementation, but the statutory authority for DFYS to reimburse for damages of foster children who are wards of the state, as well as limited the civil liability of foster parents. Therefore, we urge you to pass this legislation with necessary language to insure these provisions.

The petition regarding this issue should be in your packets signed by 25 individuals and representatives of 10 foster parent groups or agencies. This is a statewide concern that needs immediate action.

Thank you.

*Miriam Sumner*

112 250

3/n

PETITION

①

We, the undersigned, do hereby request you to introduce, support, and pass legislation that would limit the liability of foster parents. This needs to cover two areas:

1. Any liability for actions of a foster parent other than in cases of gross negligence or intentional misconduct.
2. Statutory authority, funding, and a procedure that would insure foster parents are reimbursed for damages caused by a foster child.

-----  
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Rona L. ...	5842 L... St Juneau AK	780-9531	
Jennie ...	P.O. Box 194 Hoonah Ak.	945-3348	
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ella M. Dunkin	P.O. Box 3142 Ktn., Ak.	77007 Ktn FPA 225-3855	
Maureen Crosby	PO Box 7352 Ketch	225-2519	
WIL BROWN	371A KENAI AVE FT Richardson	428-0818	
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(2)

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Samuel Jacobs	12730 Brittany Dr Anchorage	333-2323	AFPA
Trish West	4033 Deborah Dr.	789-1546	Juneau

(3)

Name	ADDRESS	PHONE
Mrs. L. L. ...	SRB 7026 Palmer AK. 99645	745-7797

REPRESENTING  
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Joe Dalton	814 N. Bunn St Anchorage	
Francis ...	SRB 7026 Palmer 99645	

self  
self - AFPA.

25 self  
13 organizations

Recommended revisions to HB 258

Submitted by the Departments of Administration, Health and Social Services, and Law.

1. The title of the bill should be amended to read: "An Act relating to the civil liability and uninsured property loss of licensed foster parents."
2. Section 1 of the bill would remain unchanged.
3. Section 2 of the bill would be amended as follows:

\* Sec. 2. AS 47.35 is amended by adding a new section to read:

Sec. 47.35.110. UNINSURED PROPERTY LOSS. The state shall reimburse a licensed foster parent for the loss of or damage to tangible property of a value exceeding \$100 owned or under the lawful control of the foster parent which results from the intentional misconduct of a child in the custody of the state placed in the care of a foster parent under this title.