

HB

178

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 17, 1990

FURTHER REFERRALS: JUDICIARY  
FINANCE

Date of Committee Action: 3/20/90

The ~~LABOR & COMMERCE~~ Committee considered:

HB 178

HOUSE BILL NO. 178

TORT LIABILITY RELATED TO FOSTER CARE

"An Act relating to civil liability and uninsured property losses related to foster children."

**RECOMMENDATIONS:**

- be replaced with CS HB 178 (L+C)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:  
(Date/Dept)

- fiscal impact Admin.
- zero fiscal note Comm & Econ
- zero with analysis \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

[Signature] *Gryenhard*  
[Signature] *Bouyer*  
[Signature] *Finkelstein*  
[Signature] *Boucher*

	Do Not Pass	No Rec	Amend
<u>[Signature]</u> <i>Donley</i>	X		
<u>[Signature]</u> <i>Lerman</i>			✓
<u>[Signature]</u> <i>Collins</i>	X		

[Signature]  
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to indemnity of BRU: Risk Management  
foster parents.  
 Sponsor: HESS Components: \_\_\_\_\_  
 Requestor: Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	900.0	900.0	900.0	900.0	900.0	900.0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	900.0	900.0	900.0	900.0	900.0	900.0
<b>TOTAL</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>	<b>900.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is very difficult to estimate since the possible loss exposures are "open ended" on over 800 foster homes plus 35 residential facilities and past claims experience detail is lacking. The attached explains the reasoning used in arriving at the fiscal note estimate.

Prepared by: Donald J. Hitchcock *[Signature]* Phone: 465-2180  
 Division: Risk Management Date: 3-23-90  
 Approved by Commissioner: Frank S. Baxter *[Signature]* Date: 3-23-90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Continuation of Fiscal Note Analysis for CSHB 178 (HESS)

This bill provides for the protection of foster parents against loss or damage to tangible property-owned by the foster parent if the loss is not covered by insurance. The protection provided is excess of \$100.00 (\$100.00 deductible) per incident, without limitation, and is "all risk," covering fire, theft, vandalism, or any other type of damage allegedly caused by the foster child. Tangible property includes dwellings, money, jewelry, electrical appliances, furniture, plants, automobiles, etc.--any real or personal property-owned or in the custody of the foster parent.

This committee substitute further expands the fiscal impacts estimated for the previous bill version by extending the indemnification commitment to all "out-of-home care providers."

The bill also repeals the statute which provided civil immunity for the acts of the minors in a foster, receiving or detention home. Given the new indemnification commitment, the state may be held responsible to pay for damages if no insurance protection is available.

Also, with loss of immunity the State and the foster parent may be exposed to subrogation action on behalf of the insurance companies. In other words, the State may have to reimburse insurance companies who have paid for damages caused by the foster child. Such losses may include a burned home, stolen jewelry or any type of public liability caused by the child.

We have no actual loss statistics in order to project the State's estimated loss costs, however, we are advised that there are currently approximately 3,000 positions for foster care children in foster homes or residential care facilities, we have estimated average loss of \$300 per foster child. Our projections are based on the increased indemnification commitment as well as an escalated responsibility for third party claims.

Since all Risk Management funding is collected through Reimbursable Services Agreement (RSAs) from the agencies, this request would be added to the Department of Health and Social Services insurance RSA billing from the Division of Risk Management.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to civil liability and uninsured property losses related to foster children BRU: Insurance  
 Sponsor: HESS Committee Components: Operations  
 Requestor: House Labor & Commerce

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate sheet if necessary) No fiscal impact in FY 90.

The bill does not impact the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597  
 Division: Insurance Date: 2/2/90  
 Approved by Commissioner: Larry Merculieff Date: 5/2  
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 15, 1989

FURTHER REFERRALS: LABOR & COMMERCE  
JUDICIARY

Date of Committee Action: 1/16/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 178

HOUSE BILL NO. 178 [TORT LIABILITY RELATED TO FOSTER CARE]  
"An Act relating to civil liability and uninsured property losses related to foster children."

RECOMMENDS:

- replacing with CS HB 178 (HESS)  the same title
- the attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the FINANCE Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
[Signature]  
 Chairman's signature

Outline of changes to CS HB 178 (HESS)

1. Expands indemnity to all uninsured, non-punitive civil damages related to foster care of children.
2. Changes coverage of the bill to out-of-home care provider which is defined to include all those out-of-home care providers of children in state custody.
3. Changes reimbursement for property damage section to require that out-of-home care providers document that the loss was caused by the child and file a report with law enforcement if the department requires.
4. Limits indemnity and reimbursement for damages caused and civil actions that arise from activities of the child during the period which the child was committed to the foster parents care.
5. Repeals AS 34.50.020(b), existing law which provides state and out-of-home care provider immunity for property damage caused by foster children.
6. Provides that the state may seek reimbursement from out-of-home care providers when the state provides indemnification for damages caused by the out-of-home care providers' willful or intentional misconduct.
7. Amends insurance statutes to prohibit discrimination against out-of-home care providers in sale of home owner and home fire/accidental loss policies and prohibit writing damage caused by foster children out of the coverage such policies provide.
8. Gives the state the right to defend the out-of-home care provider against claims where the state must provide indemnity.

DLNNIS M. MESTAS  
MICHAEL J. SCHNEIDER

*Mestas & Schneider, P.C.*

880 N STREET, SUITE 202  
ANCHORAGE, ALASKA 99501-3298

AREA CONF 807  
277-4551

January 30, 1990

VIA FAX AND MAIL

Representative Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Re: CS for House Bill 178: "An Act Relating to Indemnity  
of Foster Parents and Foster Parents' Uninsured Property  
Losses Related to Foster Children."

Dear Representative Donley:

The most recent draft of this bill (received by me on January 29, 1990), does not appear to immunize the state of Alaska or foster parents from liability to those who are injured or damaged as a result of negligent conduct. Because this bill, in its present form, does not appear to limit victims' rights, I have no objection to the present form of the bill.

Thanks for your consideration.

Sincerely yours,

MESTAS & SCHNEIDER, P.C.

  
Michael J. Schneider

kc

cc: Kent Dawson (via fax)

# HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811  
(907) 465-3759

STATEMENT ON HB 178  
by the  
HOUSE HESS COMMITTEE

House Bill 178 "tort liability related to foster care", was introduced as one of a package of measures proposed or supported by the House HESS Committee, as a result of the Committee's interim comprehensive review of the state's child protection and foster care systems. This bill responds to testimony presented at hearings in the fall of 1988 regarding the effectiveness of the state's foster care system.

HB 178 is similar to HB 258 which was heard by the House HESS Committee in the last legislature. It incorporates several suggested amendments to that bill. This measure is designed primarily to aid in the recruitment and retention of foster parents.

Section one relieves foster parents, state employees and representatives of the state of most civil liability associated with the care of foster children, except civil damages resulting from gross negligence or reckless or intentional misconduct.

Section two guarantees that property damages in excess of \$100 dollars caused intentionally by a foster child will be covered by the state, if there is otherwise no insurance coverage for such losses. The state may continue to cover losses up to \$100.

POSITION PAPER

HOUSE BILL NO. 178

For an Act entitled: "An Act relating to civil liability and uninsured property losses related to foster children".

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

Section 1 would relieve foster parents, state employees, and representatives of the state of virtually all liability for their own acts or omissions, except those which were intentional or grossly negligent. The Department supports this section of the proposed legislation.

Section 2 mandates the Department to reimburse a licensed foster parent for lost or damage exceeding \$100 on uninsured tangible property that was harmed by the intentional misconduct of a foster child in the foster home.

The ability of foster parents to obtain and afford insurance and to collect because of loss damage to property is erratic at best, creating a hardship. Should a foster parent's natural child destroy property, the insurance company will pay. If foster children destroy property, foster parents are finding it more difficult, if not impossible, to collect damages. Should they be able to collect for damages, the foster parents can expect their insurance rates to increase.

Additionally, 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 generally 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 verbally 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 has been under no legal obligation to reimburse foster parents for such losses and has received advice against the practice, a policy

Position Paper  
House Bill No. 178  
Page 2

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 is 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 universal property loss (such as destruction of a foster family home by an intentionally set fire). Fortunately, recent losses have been relatively small when compared to potential loss. However, the Department cannot estimate the cost, should this bill become law. There will be an increase in claims, the degree of which cannot be determined at this point.

While not intentional, Section 2 of the bill, in fact, creates an adversarial relationship between foster child and foster parent, if the only way a foster parent can collect for damages is by proving the child's intentional misconduct contributed to the loss of or damage to the property. This places the foster parent in the position of proving the foster child's behavior was deliberate. In some cases it will be the foster child's word against the word of the foster parent. It is not necessary nor desirable to place foster children and foster parents into an adversarial relationship. In addition, recovery by foster parents for damages to their property will be limited. Eliminating the requirement

Position Paper  
House Bill No. 178  
Page 3

that the damage was intentional will allow the foster parent to claim for accidental damages.

The Department recommends that additional funds be budgeted specifically to reimburse foster parents for their losses, with administration of these funds and determinations on reimbursement to be made by the Division of Risk Management commensurate with accepted insurance practice.

DEPARTMENT POSITION

The Department supports Section 1 of HB 178, which would extend immunity protection to state employees, representatives of the state, and foster parents. However, because the delicate relationship between those being cared for and those caring for children in out-of-home placement would deteriorate or be destroyed with the necessity of proving intentional damage to property, the Department recommends that Section 2 be deleted from HB 178 and that funding be appropriated to pay for damages based on accepted insurance practice. Administration of these funds and determination of reimbursement is most appropriate in the Division of Risk Management, Department of Administration.

RECOMMENDED: *Yvonne M. Chase*  
Yvonne M. Chase, ACSW  
Director  
Division of Family  
and Youth Services

DATE: 3/8/89

APPROVED: *Myra M. Munson*  
Myra M. Munson  
Commissioner  
Department of Health  
and Social Services

DATE: 3/8/89

# State of Alaska

HB 178

## Committees

CO-CHAIR, HOUSE JUDICIARY  
VICE-CHAIR, HOUSE LABOR AND COMMERCE  
HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES



P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4712  
465-4968/4986  
(SESSION)

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spennard, Upper Midtown Anchorage

## MEMORANDUM

TO: Members of the HB 178 Working Group  
FROM: Max Gruenberg *MFG*  
DATE: March 7, 1990  
RE: Soliciting comments on proposed draft of HB 178.

I would very much appreciate it if you would review the enclosed draft of HB 178. I have identified some problems areas with the draft as written, but I think this is a good starting point from which to start discussion on the bill.

Please contact me or my staff attorney Mark Handley at 465-4968 if you have any questions or comments by 5:00 p.m. Monday, March 12.

Thank you.

6-0752D  
Lauterbach  
2/10/90

Original sponsor(s): HESS Committee

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 178 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability and insurance for acts  
7 or omissions of or harm to children in the custody of  
8 the state; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 21.36.090(c) is amended to read:

11 (c) A person may not make or permit arbitrary or unfair dis-  
12 crimination between insureds or property having like insuring or risk  
13 characteristics, in the premium or rates charged for a policy or  
14 contract of property, casualty, surety, marine, wet marine or trans-  
15 portation insurance, or in the dividends or other benefits payable on  
16 the insurance, or in the selection of it, or in any other of the terms  
17 and conditions of the insurance. Arbitrary or unfair discrimination  
18 prohibited under this subsection includes consideration of the pres-  
19 ence of foster children in a home as being a different risk charac-  
20 teristic than the presence of natural children in a home in relation  
21 to property or casualty insurance of a foster parent.

22 \* Sec. 2. AS 47.35 is amended by adding new sections to read:

23 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The  
24 state shall indemnify a foster parent, a state employee, and a rep-  
25 resentative of the state for uninsured civil damages that are a result  
26 of

27 (1) acts or omissions by a foster child that occur while  
28 the child is under the care of the foster parent under this title; or  
29 (2) negligent acts or omissions by the foster parent, state

1 employee, or representative of the state that result in harm to a  
2 foster child placed in the care of the foster parent under this title  
3 if the acts or omissions occur while the child is under the care of  
4 the foster parent.

5 (b) This section does not apply to civil damages that are a  
6 result of wilful or intentional misconduct of a foster parent, state  
7 employee, or representative of the state.

8 (c) For purposes of indemnification for damages for harm to the  
9 foster child caused by an act or omission of the foster parent occur-  
10 ring while the foster child is in the foster parent's care under this  
11 title, "intentional misconduct of a foster parent" under (b) of this  
12 section includes intentionally allowing a foster child to engage in an  
13 activity prohibited by the department in regulations adopted under (e)  
14 of this section.

15 (d) Notwithstanding AS 09.17.080(d), the state is liable for  
16 full civil damages for personal injury to a foster child under (a)(2)  
17 of this section if the injury is the result of intentional misconduct  
18 of the foster parent as described in (c) of this section. The state  
19 may seek indemnification from the foster parent for damages it pays  
20 under this subsection to the extent that the foster parent's inten-  
21 tional misconduct contributed to the child's injury.

22 (e) The department shall by regulation specify activities in  
23 which a foster child may not engage. The regulations must be detailed  
24 in nature, specifically describing or naming the prohibited activity.

25 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) Subject to (c) of  
26 this section, the division of risk management, Department of Adminis-  
27 tration, shall reimburse a licensed foster parent for the uninsured  
28 loss of, or uninsured damage to, tangible property under the lawful  
29 control of a foster parent to the extent that the loss or damage

1 exceeds \$100 if the loss or damage resulted from the misconduct of a  
2 child in the custody of the state who was placed in the care of the  
3 foster parent under this title.

4 (b) Under the conditions described in (a) of this section and  
5 subject to (c) of this section, the division of risk management may  
6 reimburse a foster parent for an uninsured loss or uninsured damage  
7 that does not exceed \$100.

8 (c) In order to be reimbursed under (a) or (b) of this section,  
9 the foster parent shall provide evidence satisfactory to the division  
10 that the loss or damage was caused by an act or omission of the child  
11 that occurred while the child was in the custody of the foster parent.  
12 Before reimbursing a foster parent under (a) or (b) of this section,  
13 the division may also require the foster parent to report the loss or  
14 damage to appropriate law enforcement authorities.

15 \* Sec. 3. AS 34.50.020(b) is repealed.

16 \* Sec. 4. The Department of Health and Social Services shall notify the  
17 revisor of statutes and the lieutenant governor in writing when it has  
18 adopted regulations under AS 47.35.110(e), enacted by sec. 2 of this Act.  
19 The notice must specify the effective date of the regulations.

20 \* Sec. 5. AS 47.35.110(c) and (d), enacted by sec. 2 of this Act, take  
21 effect on the effective date of the regulations adopted by the Department  
22 of Health and Social Services under AS 47.35.110(e), enacted by sec. 2 of  
23 this Act.



# Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



## POSITION PAPER HB 178 LIABILITY OF FOSTER PARENTS

Alaska Foster Parent Association supports this legislation which would address civil liability and uninsured property losses of foster parents. The importance of this legislation is far reaching and will positively impact the entire foster care system.

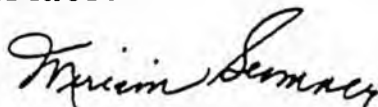
Limiting the liability of foster parents is a national priority whose time has come. Fear of liability has severely limited the recruitment and retention of foster homes. Valuable foster parents have been lost when they realize that they could be liable for acts or omissions and are possibly jeopardizing their income and property by volunteering to be foster parents. It is difficult to recruit foster homes when they have no liability protection or liability insurance.

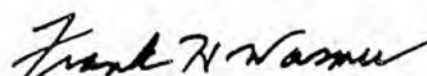
We do want recognition that foster parents may make mistakes, but do not want to exempt foster parents from negligent acts. Therefore, we suggest deletion of the word negligent on line 16.

Reimbursement to foster parents for loss or damage is important, especially when foster parents are reimbursed only for cost of care. Since many of the children and youth are emotionally damaged, they "act out" their anger, hurt, and frustrations in many ways, including damage. This is not intentional misconduct, but a normal reaction to the rage found in abused and neglected youngsters. We suggest deletion of the word "intentional" on line 27.

At some time, the \$100.00 limit needs to be addressed and defined. Does this \$100.00 limit refer to each incident or to an accumulation over a set time frame? Some youth create damage or loss that clearly exceeds this \$100.00 limit, while others are regularly destructive. Each incident may be relatively minor but could amount to several hundred dollars per month.

We feel an additional section needs to be added to this bill to provide for coverage of costs to the foster parents for medical attention or psychological intervention needed to correct problems caused by a foster child in state custody. This might be for medical attention for a foster youth assaulting a foster parent or their children. Or it might be therapy and/or medical treatment if a foster youth physically or sexually abuses a member of the foster family. Although these occasions are not common, the damage is disastrous and a real financial burden to foster parents.

  
Miriam Sumner  
President

  
Frank H. Wasmer  
Vice President

# MEMORANDUM

State of Alaska

TO: The Honorable Johnny Ellis  
Chairperson  
House HESS

DATE: March 16, 1989

FILE NO: 790/10755

TELEPHONE NO: 465-3170

THRU:

SUBJECT: Committee Request

FROM: Yvonne M. Chase, ACSW *YMC*  
Director  
Division of Family  
and Youth Services  
Department of Health  
and Social Services

During the hearings in foster care week, the HESS committee requested copies of the Division's policy and procedural manual for the youth corrections section of this agency. This manual has recently been revised; the family services section's manual is in the final stages of revision and will be sent to the printer before the end of March. I would also be happy to provide the committee with copies of that manual as soon as they are available. I have attached a memo from Richard Illias, the field administrator for youth corrections, which addresses the specific question of the committee.

YMC:jsd

Attachments

## MEMORANDUM

State of Alaska

TO: Yvonne Chase, Director  
Family & Youth Services

DATE: March 13, 1989

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Special Needs

FROM: Dick Illias   
Youth Corrections Administrator

I understand that foster parents recently raised a concern during a legislative hearing that Youth Corrections required them to provide a police report before approving a special needs request for damages or loss. That is not true.

The Youth Corrections policy and procedure manual covers this issue in the last paragraph of page 153 and in sub-paragraph #5 on page 154. If the financial loss was caused by theft or criminal mischief, the foster parent must report the incident to the local law enforcement agency. Foster parents are not required to produce a copy of the police report. The requirement to report the loss to a local law enforcement agency is contained on the instructional sheet accompanying DFYS form #06-3440, titled "Foster Parent Report of Stolen/Damaged Property or Personal Injury". The documentation is provided in a section of the foster parent report. A copy of the report form and instructions is contained in the Youth Corrections procedure manual appendix, page #5.a.1 & 2.

A request for special needs will not be denied because a foster parent is unable to document the police report number. If a foster parent documents the date, time, and police agency notified; Youth Corrections staff may accept that information as documentation or may directly request additional information from the law enforcement agency. Ordinarily we would request additional information because the police investigation report may provide evidence to determine the foster child's responsibility.

Prior to final approval of a special needs request to reimburse a foster parent for damages or loss, it must be determined if the youth in foster care was responsible for the loss or damage. The potential for the youth to directly reimburse the foster parents through restitution is also examined as an alternative to special needs approval. If the loss or damage was the result of a law violation by a foster child, a court order for restitution may be obtained. Approval of a special needs request may be delayed while this information is being gathered by Youth Correction's staff. If there is insufficient evidence to determine that a youth in foster care was

Yvonne Chase  
3/13/89

Page 2

responsible for damage or loss, then the special needs request may be disapproved. Reference page 134, paragraphs #4 and #7 of the Youth Corrections procedure manual and the instructions on the Foster Parent Report of Stolen/Damaged Property.

DI/br

# ZBFA Report 06-4261-865

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 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.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Health and Social Services  
 Title: An Act Relating to Civil Liability and uninsured loss related to foster children  
 and uninsured loss related to foster children  
 Sponsor: HESS Committee Components: Foster Care  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	50.0	50.0	50.0	50.0	50.0	50.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>	<b>50.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) The Department cannot accurately estimate the cost should this bill become law. There will be an increase in claim the degree of which cannot be determined at this point. Claims could be as low as \$5,000 or as high as \$105,000 or more.

Prepared by: *Russ Webb* Phone: 465-3170  
 Division: Family and Youth Services Date: 1/17/90  
 Approved by Commissioner: *Myra Munson* Date: Jan 15, 1990  
 Agency: Health and Social Services

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: DFYS  
 Title: An Act relating to civil liability and uninsured losses related to foster children BRU: Purchased Services  
 Sponsor: \_\_\_\_\_ Components: Foster Care  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		50,000	50,000	50,000	50,000	50,000
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		50,000	50,000	50,000	50,000	50,000

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		50,000	50,000	50,000	50,000	50,000
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		50,000	50,000	50,000	50,000	50,000

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) The Department cannot accurately estimate the cost should this bill become law. There will be an increase in claims, the degree of which cannot be determined at this point. Claims could be as low as \$5,000 or as high as \$105,000 or more.

Prepared by: Yvonne M. Chase, Director Phone: 465-3170  
 Division: Family and Youth Services Date: 2/8/89  
 Approved by Commissioner: Myra M. Morrison, Commissioner Date: 3/8/89  
 Agency: Department of Health and Social Services

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 178  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: An Act relating to civil liability and uninsured property losses related to foster children BRU: Insurance  
Sponsor: HESS Committee Components: Operations  
Requester: \_\_\_\_\_

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Bill does not impact the division.

Prepared by: Joan Brown, Administrative Officer  
Division: Insurance

Phone: 465-2597  
Date: 2-22-89

Approved by Commissioner: Larry Merculieff  
Agency: Department of Commerce & Economic Development

Phone: \_\_\_\_\_  
Date: 4/23/89

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

page 1 of 1

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to indemnity of BRU: Risk Management  
 foster parents.  
 Sponsor: HESS Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	325.0	325.0	325.0	325.0	325.0	325.0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	325.0	325.0	325.0	325.0	325.0	325.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

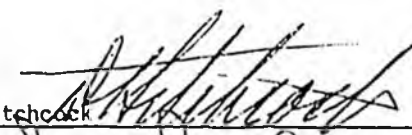

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	325.0	325.0	325.0	325.0	325.0	325.0
TOTAL	325.0	325.0	325.0	325.0	325.0	325.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is very difficult to estimate since the possible loss exposures are "open ended" on an estimated 800 foster homes and past claims experience detail is lacking. The attached explains the reasoning used in arriving at the fiscal note estimate.

Prepared by: Donald J. Hitchcock  Phone: 465-2180  
 Division: Risk Management Date: 01/23/90  
 Approved by Commissioner: Frank S. Baxter  Date: 1/24/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Continuation of Fiscal Note Analysis for CSHB 178 (HESS)

This bill provides for the protection of foster parents against loss or damage to tangible property owned by the foster parent if the loss is not covered by insurance. The protection provided is excess of \$100.00 (\$100.00 deductible) per incident, without limitation, and is "all risk," covering fire, theft, vandalism, or any other type of damage allegedly caused by the foster child. Tangible property includes dwellings, money, jewelry, electrical appliances, furniture, plants, automobiles, etc.--any real or personal property owned or in the custody of the foster parent.

We estimate the average value of a foster home dwelling at least \$150,000 with at least \$75,000 in contents. This fiscal note is designed to respond to one total dwelling loss per year plus an additional \$100,000 for miscellaneous losses and adjusting expenses.

Risk Management has been advised the State has approximately 800 foster homes at present--so we believe this fiscal note may be conservative. The note assumes approximately 25 percent of the foster homes will have miscellaneous losses during a year that could fall within the scope of this new legislation.

Since all Risk Management funding is collected through Reimbursable Services Agreement (RSAs) from the agencies, this request would be added to the Department of Health and Social Services insurance RSA billing from the Division of Risk Management.

STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HOUSE HESS

May 5, 1987

3:00 pm

April 23, 1987

8:30 AM

April 6, 1989

8:30 AM

January 16, 1990

8:30 AM

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 178 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to indemnity and uninsured property  
7 losses related to foster children."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 47.35 is amended by adding new sections to read:

10 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The  
11 state shall indemnify a foster parent, a state employee, and a repre-  
12 sentative of the state for civil damages that are a result of

13 (1) acts or omissions by a minor placed in the care of the  
14 foster parent under this title; or

15 (2) negligent acts or omissions by the foster parent, state  
16 employee, or representative of the state that result in harm to a  
17 minor placed in the care of the foster parent under this title.

18 (b) This section does not apply to civil damages that are a  
19 result of gross negligence or reckless or intentional misconduct of a  
20 foster parent, state employee, or representative of the state.

21 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) The division of  
22 risk management, Department of Administration, shall reimburse a  
23 licensed foster parent for the uninsured loss of, or uninsured damage  
24 to, tangible property under the lawful control of a foster parent to  
25 the extent that the loss or damage exceeds \$100 if the loss or damage  
26 resulted from the misconduct of a child in the custody of the state  
27 who was placed in the care of the foster parent under this title.

28 (b) Under the conditions described in (a) of this section, the  
29 division of risk management may reimburse a foster parent for an

1 uninsured loss or uninsured damage that does not exceed \$100.  
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Original sponsor(s): HESS Committee

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 178 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability, indemnification, and  
7 insurance in relation to children in the custody of  
8 the state who are placed with out-of-home care pro-  
9 viders."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 21.36.090(c) is amended to read:

12 (c) A person may not make or permit arbitrary or unfair dis-  
13 crimination between insureds or property having like insuring or risk  
14 characteristics, in the premium or rates charged for a policy or  
15 contract of property, casualty, surety, marine, wet marine or trans-  
16 portation insurance, or in the dividends or other benefits payable on  
17 the insurance, or in the selection of it, or in any other of the terms  
18 and conditions of the insurance. Arbitrary or unfair discrimination  
19 prohibited under this subsection includes consideration of the pres-  
20 ence in a home or other building of a minor who is in the custody of  
21 the state as being a different risk characteristic than the presence  
22 of a minor who is not in the custody of the state in relation to  
23 property or casualty insurance of an out-of-home care provider, as  
24 defined in AS 47.35.130.

25 \* Sec. 2. AS 47.35 is amended by adding new sections to read:

26 Sec. 47.35.110. INDEMNIFICATION OF OUT-OF-HOME CARE PROVIDERS.

27 (a) The state shall indemnify a minor's out-of-home care provider for  
28 uninsured civil damages, other than punitive damages, that are a  
29 result of

1 (1) acts or omissions by the minor that occur while the  
2 minor is under the care of the out-of-home care provider; or

3 (2) negligent acts or omissions by the out-of-home care  
4 provider that result in harm to the minor placed in the care of the  
5 provider if the acts or omissions occur while the minor is under the  
6 care of the provider.

7 (b) In order to be eligible for indemnification under (a) of  
8 this section, the out-of-home care provider shall offer the state the  
9 opportunity to defend the provider in the action for civil damages and  
10 shall assist the state in the defense if the state accepts the oppor-  
11 tunity to defend the provider.

12 (c) The state may seek to recover from the out-of-home care  
13 provider for damages the state pays under (a)(2) of this section to  
14 the extent that the provider's wilful or intentional misconduct con-  
15 tributed to the minor's injury.

16 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) Subject to (c) of  
17 this section, the division of risk management, Department of Adminis-  
18 tration, shall reimburse an out-of-home care provider for the unin-  
19 sured loss of, or uninsured damage to, tangible property under the  
20 lawful control of the provider to the extent that the loss or damage  
21 exceeds \$100 if the loss or damage resulted from the misconduct of a  
22 minor in the custody of the state who was placed in the care of the  
23 provider.

24 (b) Under the conditions described in (a) of this section and  
25 subject to (c) of this section, the division of risk management may  
26 reimburse an out-of-home care provider for an uninsured loss or unin-  
27 sured damage that does not exceed \$100.

28 (c) In order to be reimbursed under (a) or (b) of this section,  
29 the out-of-home care provider shall provide evidence satisfactory to

1 the division that the loss or damage was caused by an act or omission  
2 of the minor that occurred while the minor was in the custody of the  
3 provider. Before reimbursing a provider under (a) or (b) of this  
4 section, the division may also require the provider to report the loss  
5 or damage to appropriate law enforcement authorities.

6 Sec. 47.35.130. DEFINITION. In AS 47.35.110 - 47.35.120, "out-  
7 of-home care provider" and "provider" mean an agency or a person,  
8 other than the minor's legal parents, with whom the minor is currently  
9 placed and who is in the custody of the state under AS 47.10.-  
10 080(b)(3), (c)(1), or (c)(3), 47.10.142, or 47.10.230(c), including a  
11 foster parent, a relative other than a parent, a person who has peti-  
12 tioned for adoption of the minor, or a residential child care facili-  
13 ty.

14 \* Sec. 3. AS 34.50.020(b) is repealed.  
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1/15/90

Original sponsor(s): HESS Committee

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 178 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to indemnity of foster parents and  
7 foster parents' uninsured property losses related to  
8 foster children."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 47.35 is amended by adding new sections to read:

11 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The  
12 state shall indemnify a foster parent for civil damages that are a  
13 result of

14 (1) acts or omissions by a minor placed in the care of the  
15 foster parent under this title; or

16 (2) negligent acts or omissions by the foster parent that  
17 result in harm to a minor placed in the care of the foster parent  
18 under this title.

19 (b) This section does not apply to civil damages that are a  
20 result of gross negligence or reckless or intentional misconduct of a  
21 foster parent.

22 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) The division of  
23 risk management, Department of Administration, shall reimburse a  
24 licensed foster parent for the uninsured loss of, or uninsured damage  
25 to, tangible property under the lawful control of a foster parent to  
26 the extent that the loss or damage exceeds \$100 per incident if the  
27 loss or damage was proximately caused by the acts of a child in the  
28 custody of the state who was placed in the care of the foster parent  
29 under this title.

1 (b) Under the conditions described in (a) of this section, the  
2 department may reimburse a foster parent for an uninsured loss or  
3 uninsured damage that does not exceed \$100.  
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