

**HB**

**259**

2/9/00

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 28, 2000

**SUBJECT:** Public Defender representation at initial CINA hearing (HB 259;  
Work Order No. 1-LS1099\D.1)

**TO:** Representative John Coghill, Jr.  
Attn: Rynniva

**FROM:** Terri Lauterbach  
Legislative Counsel

*Terri Lauterbach*

Enclosed is an amendment that would clarify that parents who are initially represented for free by the Public Defender Agency but who later do not meet the financial requirements for representation at public expense would need to pay the costs of the initial representation.

Please let me know if I can be of further assistance.

TML:jdr:glc  
00-041.jdr

Enclosure

A M E N D M E N T 1

*adopted  
2/9/00*

OFFERED IN THE HOUSE  
TO: CSHB 259(STA)

1 Page 1, line 6:

2 Delete "A"

3 Insert "Subject to the other provisions of this subsection, a"

4 Page 1, lines 7 - 8:

5 Delete ", pending a determination of indigency,"

6 Page 1, line 10:

7 Delete "under this subsection"

8 Insert "in connection with the hearing"

9 Page 2, line 2, following "expense.":

10 Insert "If a person who was represented by the Public Defender Agency at public  
11 expense without a court order in connection with a hearing held under AS 47.10.142(d) is not  
12 later determined to be eligible for court-appointed counsel at public expense under applicable  
13 laws and court rules, the court shall assess against the represented parent the cost to the  
14 Public Defender Agency of providing the representation."

# ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:  
119 N. Cushman, Suite 211  
Fairbanks, AK 99701  
(907)-456-5081  
Fax# (907)-456-8245



Session Contact:  
(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 416

## REPRESENTATIVE JOHN COGHILL

### HB 259 PUBLIC DEFENDERS FOR 48 HOUR HEARING SPONSOR STATEMENT

Pursuant to AS 47.10.142 (4)(d) after DFYS takes physical custody of a child, the court must immediately hold a hearing at which the court shall determine whether probable cause exists to deem the child a "Child In Need of Assistance" (CINA). The public defender's office would welcome the statutory change to allow them to legally provide assistance in an area they feel is necessary.

When a child is removed from the family home, the effects can be traumatic; so much so that the parents are unaware of what has just happened, why it has happened, and what should be done next. The common situation is that the parents are distraught because their child has been removed by the state and feel intimidated by the judicial process for CINA determinations. They don't even know they can ask the judge for a continuance to seek legal advice.

Under current law a person does not qualify for assistance from the public defender's office until indigence is determined. Many parents go to court not knowing their rights or the process because they can not find legal assistance in time for the 48 hour hearing. This legislation allows any parent to get legal assistance from the Public Defender's office for the 48-hour CINA hearing regardless of whether or not they are indigent. The best case scenario in many cases will mean an end to the case and the child is returned to the parents. In other cases, a continuance would be issued to allow the parents to provide additional information to the court that the caseworker and the AG's office have not provided.

If, after the court has reviewed the evidence, it rules the child is a CINA during the 48 hour hearing, the parents would then apply for further assistance from the public defender's office and their qualification would be determined by whether or not they were indigent.

While some may argue this legislation will result in added expenses to the State, this legislation could actually reduce the cost of CINA cases in Alaska. By providing all the information in a professional manner at the first hearing of determination, the number of children in state custody for 90 days to six months then returned to their family will be reduced. This means a reduction in foster care, case worker, and health care costs, as well as, long-term public defender, guardian ad litem, and AG expenses.

**FISCAL NOTE**

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

**BILL NO. CSHB 259 (STA)**

Revision Date: January 27, 2000  
 Title: "An Act relating to a parent's eligibility to be represented by the public defender..."  
 Sponsor: Representative Coghill  
 Requestor: (H) STA

Department Affected: Administration  
 BRU: Legal and Advocacy Services  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4414  
 Date: January 27, 2000

Approved by Commissioner: Robert Poe, Jr.  
 Agency: Department of Administration

Date: January 27, 2000

DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSEB 259 (STA)

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would allow the Public Defender Agency to represent parents whose children have been taken into emergency custody by state social workers without the parents first having to go through a formal indigency screening process and appointment by the court.

The Public Defender Agency does not anticipate any fiscal impact from this legislation if it is amended so that we are not obligated to represent non-indigent parents. We have to do the same amount of work in these cases anyway. If we can get started a little earlier, so much the better.

However, in predicting the lack of any fiscal impact, we are making the following assumptions. First, we assume that the bill will be amended so we do not represent non-indigent people. Our lawyers can ask a few questions and get a pretty clear idea of whether someone is indigent or not. If people are able to hire their own lawyers, we can refer them to private attorneys.

Second, we assume the words "may be represented" give us leeway as to whom we represent and the scope of the representation. We must be able to turn down requests for this type of immediate representation if we have a conflict of interest or for other legitimate reasons. In addition to conflicts of interest, we have to be careful that the Public Defender Agency takes the most serious case. For example, if a mother calls saying her children have been taken because her husband is accused of sexual abuse, we should make sure that we end up representing the husband, not her. The husband may end up being a defendant in an expensive criminal case. If we can represent him in both the Child in Need of Aid and criminal cases, we can save the expense of having another lawyer appointed through the Office of Public Advocacy in the criminal case. Finally, we have limited resources and cannot promise an immediate response in every case. If all our lawyers are in court hearings, we may have to delay taking intake calls.