

**HB**

**259**

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: January 10, 2000

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 1/25/00

The STATE AFFAIRS Committee considered:

HB 259

HOUSE BILL NO. 259

PUBLIC DEFENDER CHILDREN'S PROCEEDINGS

"An Act relating to a parent's eligibility to be represented by the public defender before and during the probable cause and temporary placement hearing that is held after the state takes emergency custody of a child."

recommends it be replaced with the following committee substitute CSHA 259 (STA)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) Admin

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeannette A' James</i>	✓			
<i>Patricia Kuntz</i>		✓	✓	
<i>James H. [unclear]</i>	✓			
<i>Bill [unclear]</i>	✓			
<i>[unclear]</i>	✓			
<i>Scott [unclear]</i>	✓			
<i>H. Smalley</i>				✓

CHAIR'S SIGNATURE *Jeannette James*



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (H) STA. AFF.  
 Committee on MB 259 Committee Name Dated 1-25-00  
Bill / Subject

→ AMEND:

- (A) - PAGE 1, LINE 7;
  - DELETE: "[A.S. 47.10.142]"
  - INSERT: "A.S. 47.10 AND A.S. 47.12"
- (B) - LINE 9;
  - INSERT: "FIRST" BEFORE "HEARING".
- (C) - LINE 13; (SAME AS 'A', ABOVE).
- (D) - PAGE 2, LINE 10;
  - DELETE: "[UPON REQUEST]" AND "[ALL]"
  - INSERT: "NOT" BEFORE "RELEASE".
- (E) AND, LINE 11;
  - DELETE: THE WORDS FOLLOWING "SUBSECTION" BEGINNING "[EXCEPT INFORMATION...]" TO THE END.
- (F) ADD COURT RULES CHANGE FOR NOTICE REQUIREMENTS

SIGNED: SCOTT TRAFFORD, CALDER  
Testifier  
SAFE FAMILIES  
Representing  
P.O. 75011 FBILS 99707 (907) 474-0174  
Address / Phone Number

Note for the file:

Due to the attached message from the bill drafter, HB 259 was put back on the schedule for the next State Affairs meeting.

A motion was made to rescind the previous meeting's action which moved the amended bill out of committee. During the discussion, Green refused to accept a conceptual amendment without seeing the final product – James didn't want to move a flawed bill out without fixing it – no one wanted to delay the bill in spite of it all - and the final vote was NO.

Thus the move to rescind failed and the CS moved out the same as it was passed at the last meeting.

A handwritten signature in cursive script, appearing to read "J. Green", is centered on the page.

# 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 25, 2000

**SUBJECT:** CSHB 259(STA)  
**TO:** Representative Jeannette James  
Attn: Barbara Cotting  
**FROM:** Terri Lauterbach  
Legislative Counsel

*TLauterbach*

Enclosed is the CS you requested for HB 259.

The changes made by the House State Affairs Committee have made the bill unclear with respect to whether the cost of representation at the first hearing must be paid by the parents if it is later determined that they do not meet the indigency test.

I strongly recommend that the bill be clarified.

TML:glc  
00-028 glc

Enclosure

CS FOR HOUSE BILL NO. 259(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a parent's eligibility to be represented by the public defender  
2 before and during the probable cause and temporary placement hearing that is  
3 held after the state takes emergency custody of a child."

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

5 \* Section 1. AS 18.85.100 is amended by adding a new subsection to read:

6 (e) A person who is the natural or adoptive parent of a child who is taken into  
7 emergency custody of the state under AS 47.10.142 may be represented, pending a  
8 determination of indigency, at public expense and without a court order by an attorney  
9 employed by the Public Defender Agency in connection with the hearing held under  
10 AS 47.10.142(d). Representation under this subsection may include investigation and  
11 other preparation before the hearing is held as well as representation at the hearing.  
12 Continued representation of the person by the Public Defender Agency after the  
13 hearing is held under AS 47.10.142(d) is contingent on satisfaction of the eligibility  
14 requirements of (a) - (d) of this section, the issuance of an appropriate court order, and

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compliance with the applicable laws and court rules relating to court-appointed counsel employed at the public's expense.

\* Sec. 2. AS 18.85.120(d) is amended to read:

(d) Except as provided in AS 18.85.100(e), as [AS] a condition of receiving services under this chapter, a person shall affirm indigency under oath to the court and execute a general waiver authorizing the release to the court of income information regarding any income source the person has had for a period of three years immediately preceding the person's first court appearance in connection with each cause. At the conclusion of all services by the public defender to the person, the court shall upon request release to the attorney general all information received under this subsection except information that might incriminate or tend to incriminate the person.

**FISCAL NOTE**

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. HB 259

Revision Date: January 21, 2000  
 Title: "An Act relating to a parent's eliqibility 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 2000	FY 2001	FY 2 002	FY 2003	FY 2004	FY 2005
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>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**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 21, 2000

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

Date: January 21, 2000

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 259

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.

**Subject:** PLAN B

**Date:** Tue, 25 Jan 2000 16:55:55 -0900

**From:** Barbara Cotting <Barbara\_Cotting@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Beth\_Tobey <Beth\_Tobey@legis.state.ak.us>,  
Paulyn\_Swanson <Paulyn\_Swanson@legis.state.ak.us>,  
Gretchen\_Keiser <Gretchen\_Keiser@legis.state.ak.us>,  
Linda\_Hay <Linda\_Hay@legis.state.ak.us>,  
Jennifer\_Adzima <Jennifer\_Adzima@legis.state.ak.us>,  
Ryan\_Colgan <Ryan\_Colgan@legis.state.ak.us>,  
Melinda\_Hofstad <Melinda\_Hofstad@legis.state.ak.us>,  
Loretta\_Bevegni <Loretta\_Bevegni@legis.state.ak.us>

We just got HB 259 (the one that was moved from committee this morning) back from the drafter. The amendment caused some fiscal questions and needs FIXING before Rep. James is willing to transmit it.

SC0000000 - we'll have a State Affairs meeting Thursday morning after al., 8:00 a.m., just a quickie we hope. Please let your bosses know.

THANKS!

Barbara

AMENDMENT

#1

OFFERED IN THE HOUSE STATE AFFAIRS

BY REPRESENTATIVE COGHILL

TO: HB 259

1 Page 1, line 6, after the word "person":

2 Delete: [, whether or not indigent,]

3 Page 1, line 8, after the word "represented":

4 Insert: , pending a determination of indigency,

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HOUSE BILL NO. 259

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE COGHILL

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a parent's eligibility to be represented by the public defender  
2 before and during the probable cause and temporary placement hearing that is  
3 held after the state takes emergency custody of a child."

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

5 \* Section 1. AS 18.85.100 is amended by adding a new subsection to read:

6 (e) A person ~~whether or not indigent~~, who is the natural or adoptive parent  
7 of a child who is taken into emergency custody of the state under AS 47.10.142 may  
8 be represented at public expense and without a court order by an attorney employed  
9 by the Public Defender Agency in connection with the hearing held under  
10 AS 47.10.142(d). Representation under this subsection may include investigation and  
11 other preparation before the hearing is held as well as representation at the hearing.  
12 Continued representation of the person by the Public Defender Agency after the  
13 hearing is held under AS 47.10.142(d) is contingent on satisfaction of the eligibility  
14 requirements of (a) - (d) of this section, the issuance of an appropriate court order, and

*AM #1  
Passed  
Pending a determination  
of indigency*

1 compliance with the applicable laws and court rules relating to court-appointed counsel  
2 employed at the public's expense.

3 \* Sec. 2. AS 18.85.120(d) is amended to read:

4 (d) Except as provided in AS 18.85.100(e), as [AS] a condition of receiving  
5 services under this chapter, a person shall affirm indigency under oath to the court and  
6 execute a general waiver authorizing the release to the court of income information  
7 regarding any income source the person has had for a period of three years  
8 immediately preceding the person's first court appearance in connection with each  
9 cause. At the conclusion of all services by the public defender to the person, the court  
10 shall upon request release to the attorney general all information received under this  
11 subsection except information that might incriminate or tend to incriminate the person.

# 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 anyone to get legal assistance from the Public Defender's office for the 48-hour 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.

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

### MEMORANDUM

**DATE:** December 27, 1999

**TO:** Elmer Lindstrom  
Special Assistant to the Commissioner

**FROM:** Roger P. Withington  
Research Analyst

**SUBJECT:** Children Returned Home

Per your request of December 23, 1999, I have calculated, from PROBER<sup>®</sup>, for all of the children who were released from DFYS custody and returned to their parents during FY1999, the length of time these children spent in continuous DFYS custody. This information is provided in the following table.

Length of Time in Custody Episode	Number of Children
2 Days or Less	50
3 to 90 Days	56
91 to 182 Days	45
6 Months to 1 Year	56
1 - 2 Years	75
2 - 3 Years	44
3 - 4 Years	20
4 + Years	30
Total	376

I urge you to use caution when interpreting these numbers. The DFYS has a chronic and ongoing problem with field staff entering accurate information into PROBER<sup>®</sup> with respect to releases from custody.

If I may be of further assistance, please feel free to contact me.

## 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 Coohill  
 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 2003	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>

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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

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**FISCAL NOTE**

**STATE OF ALASKA**

**BILL NO. CSHB 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.

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FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: (907) 264-4414  
 Date: January 21, 2000

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

Date: January 21, 2000

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 259

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