

HB

259

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/21/00

FURTHER: REPORTED OUT OF SFC 4/17/00

DATE TURNED IN TO OFFICE: 17 April 00

Finance Committee considered

CS FOR HOUSE BILL NO. 259(FIN)

"An Act relating to 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."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR' _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>			
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Admin	3/16/00	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB 259 (JUD)

2000 LEGISLATIVE SESSION REPORTED OUT OF

Revision Date/Time (Note if correction)

SFC 4/17/00

Dept. Affected Law

Title "An Act relating to crimes and offenses relating

BRU Criminal Division

to aural representations, ... access devices ... computers; ..."

Component 1st Judicial Dist; 4th Judicial Dist;

Sponsor Senator Taylor

Criminal Appeals/Special Litigation

Requester Senate Judiciary Committee

Component No. 2198;2201;2203

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	6.7	6.7	6.7	6.7	6.7	6.7
Supplies						
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	15.0	15.0	15.0	15.0	15.0

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	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	15.0	15.0	15.0	15.0	15.0	15.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes. Child pornography, theft of personal information with the intent to defraud, theft of personal information resulting in damage to a person's financial reputation, deceptive business practices, "hacking" to get unauthorized information or introduce false information, and introducing damaging viruses, are all offenses where technology has offered new ways for criminals to victimize individuals. The amendments in this bill will update existing law to help law enforcement prosecute those who cause harm to others through the use of computers and other technology.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office

Phone 465-5370

Date/Time 3/21/00, 11:39 AM

Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency: Department of Law

Date 3/21/00

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSB 259 (JUD)

ANALYSIS CONTINUATION

Much of the bill expands on existing crimes already being prosecuted, and is not anticipated to cause increased workload. The new crimes defined in the bill are expected to result in approximately ten new prosecutions in the first year, with the number increasing in future years. These new white-collar cases will be handed by existing staff. Although no new personnel are believed to be necessary, other resources will be needed.

Investigation and prosecution of cybercrimes require that the prosecutor keep up with the constantly changing world of information technology. Those who use computers to commit crimes are very knowledgeable about technology, and usually have state-of-the-art equipment. Prosecutors must have the same or better knowledge and equipment as those who use the equipment for illegal purposes.

The Department of Law intends to have three of its prosecutors specialize in this technology driven area of law: one in Anchorage OSPA, and one each in the Juneau and Fairbanks district attorney's offices. These assistant district attorneys will need on-going training to stay ahead of the inventive ways people come up with to use technology to cause harm to others and to keep up with how law enforcement is responding in other jurisdictions. The department estimates \$10.0 per year will be spent on training, divided equally between the three components. \$5.0 per year is included to maintain state-of-the-art computer equipment, software, peripherals, and associated communications devices in Anchorage OSPA as a resource for the entire Criminal Division to use in preparing and presenting its cases.

ALASKA STATE HOUSE OF REPRESENTATIVES

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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 or guardian 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 Attorney General'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, caseworker, 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

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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[®], 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[®] with respect to releases from custody.

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

House STATE AFFAIRS Minutes



HOUSE STATE AFFAIRS STANDING COMMITTEE

January 25, 2000

8:05 a.m.

HB 259-PUBLIC DEFENDER CHILDREN'S PROCEEDINGS

CHAIR JAMES announced that the committee would next hear HOU NO. 259 "An Act relating to a parent's eligibility to be represented by the public defender before and during the pro cause and temporary placement hearing that is held after the takes emergency custody of a child."

Number 2869

REPRESENTATIVE COGHILL explained that HB 259 is the result of a meeting sponsored by Chair James with the Department of Administration, the Department of Law, Judge Steinkruger, an legislative staff from the Interior. From this meeting it is apparent that a 48-hour hearing is required when a child in aid (CINA) is taken into custody. It was his observation that when summoned to a 48-hour hearing, many parents had not had the opportunity to obtain counsel or were unaware that they could have counsel present at the hearing. The Office of Public Aid (OPA) saw that lack of knowledge as a shortfall in the current system. Representative Coghill noted that Representative Whelan also held several meetings in Fairbanks regarding this subject. Representative Coghill met with different family groups and that a family summoned into a 48-hour CINA hearing actually did not know what they were getting into. Representative Coghill felt there was grave misunderstanding of how important the 48-hour hearing is when a determination of CINA exists. He believed that the bill provided an opportunity to extend representation to a parent who did not understand what was going on as there seems to be much confusion in the first minutes when a child has been taken into custody and the parents are summoned to court. House Bill 259 attempts to supply the representation that parents need regarding their financial status because many parents do not even know how to call a lawyer in this situation.

REPRESENTATIVE COGHILL pointed out that HB 259 had no fiscal impact at this time. He offered a written amendment, labeled Amend 1, which read as follows:

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

Delete: [, whether or not indigent,]

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

Insert: , pending a determination of indigence,

TAPE 00-1, SIDE B

Number 2958

REPRESENTATIVE COGHILL commented that HB 259 is a straight-f bill. He agreed, as Amendment 1 states, that there has to be determination of indigence somewhere along the line, which h would probably ensure a zero fiscal note.

Number 2943

REPRESENTATIVE GREEN expressed concern that a disproportiona number of low-income people, who are not necessarily indigen might be having their children taken into custody in compari people who are financially secure. That was his observation result of information-gathering visits to the Division of Fa and Youth Services (DFYS). Representative Green asked if en of HB 259 would provide notification to the parents that the have the right to request a public defender, or, are the par under obligation to know they have that right.

REPRESENTATIVE COGHILL replied it was his intention that the parents be notified.

CHAIR JAMES suspected that the notification requirement woul implemented by the court system. She supposed the court wou the parents whether or not the parents wanted to be represen counsel.

Number 2856

REPRESENTATIVE COGHILL acknowledged that was his intention. mentioned that he and Representative Whitaker have worked t regarding responsibility and rights measures that should be presented as a briefing in a court. However, that is a sepa measure, not to be confused with HB 259. Representative Cog believed that if a person did come before a judge at a 48-ho hearing without counsel, HB 259 would require the judge to a the person of their right to counsel. House Bill 259 has no expressly said that but Representative Coghill did not want directive to that effect either.

Number 2796

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, explained that even now people do have the right to counsel 48-hour hearings. According to most of the judges with whom spoken, many parents do qualify for public defender services Under the current statute if parents appeared at a 48-hour h without an attorney, they have the option to either proceed an attorney through the probable cause hearing (which does n happen often), or request a continuance. Continuance occurs a parent indicated they wanted to obtain an attorney and eit they did not know they could do so or they had not taken ste to do so. The continuance then allows the hearing to be pos for another two or three days. Meanwhile, the child in cust stayed wherever the child had been placed, which was an ince for the parents to act quickly so they could regain custody their child. When parents obtained representation, they ret to court for the hearing.

MR. WOOLIVER informed the committee that at present, when DF takes custody of a child, DFYS provides a brochure to parent explains their rights as parents. One of those rights is th to a public defender. Mr. Wooliver observed that according Anchorage Police Department, it was not uncommon for the par have already taken the step of requesting a public defender. request a public defender, the court has to make an indigenc determination, a public defender is then appointed and the p appear at the hearing with counsel. Mr. Wooliver felt HB 259 facilitates the current process. Under HB 259, parents would have to first appear in court to obtain an indigence determi The notification provision of HB 259 allows the parents to a public defender at the time the child is taken into custod Therefore, parents can appear at the 48-hour hearing with representation even if a court determination of indigence ha yet been declared.

REPRESENTATIVE GREEN asked if obtaining an attorney quickly HB 259 would save money and reduce the case load, given the that deferments, postponements, or continuances do add to ca costs.

Number 2659

MR. WOOLIVER answered it was possible there might be fewer continuances. On the other hand, a parent might still not understand that they did have the right to a public defender was Mr. Wooliver's observation that the DFYS brochure advise people of their right to counsel but people did not always a themselves of that right. Mr. Wooliver reiterated that the is in a crisis situation so the system will continue to have where people do not obtain representation in a timely manner causes some continuances. However, HB 259 is expected to re the number of times someone comes in without an attorney, an reduce the need for a continuance.

REPRESENTATIVE WHITAKER wanted to know how many continuances and if Mr. Wooliver had data to support his answer.

Number 2605

MR. WOOLIVER said he might be able to obtain the data.

REPRESENTATIVE WHITAKER reiterated that the point of HB 259 protect every individual's rights. He expressed concern for percentage of people who do not understand their circumstanc for which HB 259 ensures protection of their rights. He bel HB 259 to be an important piece of proposed legislation.

Number 2531

REPRESENTATIVE KERTTULA expressed uncertainty regarding the for a zero fiscal note. She supposed there was a zero fisca because OPA assumed HB 259 would be amended so that OPA did represent non-indigent people. She asked when that might ha It sounded to her like OPA would ask the appropriate questio right up-front during the first custody hearing to determine

whether or not the parents were indigent and would qualify for representation. However, she saw a problem if OPA allowed people to have OPA representation and proceed through the system, only to find out later that the people involved did not, in fact, qualify for public defender representation. She felt this scenario would create a budget increase for OPA, contrary to the zero fiscal

Number 2485

REPRESENTATIVE OGAN made a motion to adopt Amendment 1.

Number 2465

REPRESENTATIVE COGHILL reiterated that it is desirable for counsel to be present at 48-hour hearings. Nevertheless, somewhere along the line there has to be a determination of indigence or a continuance. Amendment 1, which was forwarded to Representative Coghill's office from OPA, makes it more emphatic that counsel for the public defender's office is available, regardless of a determination of indigence.

Number 2424

REPRESENTATIVE HUDSON asked if it was easy to make a determination of indigence.

MR. WOOLIVER replied that the Alaska court system required people seeking a determination of indigence to meet certain financial criteria in order to be appointed to a public defender. The forms to submit and court procedures for making that determination are not an instant process.

REPRESENTATIVE KERTTULA asked if Amendment 1 is what OPA wanted

Number 2387

REPRESENTATIVE GREEN questioned whether HB 259 will create a public defender on OPA before an indigence determination has been made.

Number 2347

MR. WOOLIVER answered that under HB 259, OPA would be responsible for representing people who may or may not meet indigent status. In that sense, he stated, OPA's work load might increase. He did not know how much difference Amendment 1 would make.

Number 2309

CHAIR JAMES said she believes that people should have counsel at 48-hour hearings, as counsel is an important protection. In her experience, she had seen people after a court hearing who did not know what had happened to them or why they were at the hearing. It was her understanding that a public defender is a state employee. If that assumption is correct, a public defender would not be present at a 48-hour CINA hearing.

Number 2243

MR. WOOLIVER agreed that a public defender ought to be present for that to occur, the assigned attorney has to be notified in each case within 48 hours. Although parents are not required to hire an attorney, they are entitled to an attorney and still need someone to initiate the request for a public defender. Also, OPA has to check if a conflict exists for the assigned public defender regarding the applicant.

REPRESENTATIVE COGHILL announced that Blair McCune was present to testify before the committee.

Number 2190

REPRESENTATIVE SMALLEY agreed with Representative Kerttula that there will be an additional cost to OPA.

CHAIR JAMES called for the testimony of Blair McCune.

Number 2153

BLAIR MCCUNE, Deputy Director, Alaska Public Defender Agency testified from Anchorage via teleconference. He said the public defender process varied in different areas around the state. He cited the example of Anchorage where OPA currently did not take intake calls. If someone needed a public defender, OPA referred the applicant to the court. At the court, the applicant filed an application for a public defender and waited for a formal determination of indigence. Upon receipt of a determination of indigence, OPA could then represent an applicant. This process does take time, but it can be done before the 48-hour hearing which parents are advised of their rights. Child-in-need-of-care rules governing these hearings require that parents be notified of their right to counsel at public expense.

MR. MCCUNE answered Representative Hudson's question by saying sometimes it was easy to make an indigence determination and sometimes it was not. Often OPA can quickly determine whether someone is able to pass an indigence screening. OPA asks a series of questions; for example, an important one would be whether the applicant is currently on public assistance. If the applicant is receiving public assistance, OPA can safely assume that the applicant has had indigence screening through one of the state or federal agencies. In questionable cases, OPA would be better advised to refer the applicant to the court system for a formal indigence determination. If an applicant can afford their own lawyer, then OPA can refer them to lawyers in private practice who can represent the applicant.

MR. MCCUNE turned to the fiscal impact of HB 259. He referred to lines 7-8 on page 1, which reads "may be represented...by the Public Defender Agency." He acknowledged that OPA must exercise care regarding conflicts of interest in these cases. He said he tries to conserve state resources by assigning OPA staff attorneys (they are state employees as Chair James correctly surmised) to those cases that will be the most time-consuming or serious. The Office of Public Advocacy also strives to conserve resources by representing both a CINA case and a criminal case if no conflict of interest exists. Mr. McCune believes OPA would not feel any

impact due to HB 259 if the words "may be represented" provide OPA with flexibility in who they represent and delineated the scope of representation. Nevertheless, he reminded the committee that OPA did have limited resources and could not promise an immediate response in every case. For example, if all OPA lawyers were attending court hearings, OPA might not be able to respond to an intake call right away. Mr. McCune endorsed the words "may be represented" as the correct interpretation. He agreed that this will help people who need help without resulting in further impact to OPA.

Number 1890

REPRESENTATIVE GREEN posed his concern with a scenario in which 12 CINA children were taken into custody in the same time. He asked if a defense was prepared for all the children at once. He also asked if OPA was notified at the time of intake or if they wait for someone to request representation and then provide a public defender at the first 48-hour hearing. He asked if the legislature was creating an additional burden on OPA by HB 259. He would OPA normally provide representation anyway, it just be a question of who paid for it.

Number 1811

MR. MCCUNE offered to explain the OPA process. OPA did not currently represent anyone until the court had made such an appointment. The court will call OPA and inform OPA that it has been appointed to represent "Mrs. Smith" in a child-custody case. The Office of Public Advocacy then checks their conflicts manual to see if OPA has any conflict in representing "Mrs. Smith." If so, OPA will call the court and say due to conflict of interest another OPA attorney needs to be appointed to represent "Mrs. Smith." When OPA does represent "Mrs. Smith" in a criminal case, OPA will read the petition, exercising care about whom OPA is representing and begins work at that point. Mr. McCune said HB 259 will allow OPA to take some custody intake calls. "Mrs. Smith" can call the public defender office to report her children have been taken into custody. OPA would call the court and ask for a copy of the petition involving "Mrs. Smith" and review social workers' notes, medical reports, or police reports.

MR. MCCUNE noted that often parents will agree with OPA that there are reasons why the state was involved in their life. Not all cases go to contested hearings, in fact, only a small percentage do. If a case does go to a contested hearing, OPA must have time to get the paperwork needed to represent the person in court. House Bill 259 would allow OPA to take the custody intake call, get the petition sent to the court, verify what OPA was dealing with, and get started earlier. Mr. McCune did not anticipate more work; rather, he anticipated being able to do work earlier.

MR. MCCUNE pointed out that most of OPA's workload is criminal cases. In 1996 the legislature passed a law which clarified OPA's responsibility to represent anybody in a criminal case only if they are formally appointed. That law has also been applied to civil cases. House Bill 259 would change the law so that OPA can be involved in CINA cases at an earlier stage as opposed to criminal

cases only.

Number 1521

REPRESENTATIVE GREEN said it sounds to him, after listening McCune's testimony, that with more people involved, OPA's work could increase, which could impact their ability to do their work unless OPA hires more employees.

REPRESENTATIVE GREEN then posed a scenario in which people who are automatically represented at a 48-hour hearing were later found to be non indigents. Do they reimburse OPA for the extra work OPA performed?

Number 1479

MR. MCCUNE answered that in CINA cases there was no payback provision. He said there are payback provisions in criminal and attorney's fees are charged to citizens who use the public defender in appellate cases. Mr. McCune believed that OPA would not start work on a case unless OPA was reasonably sure the parent was indigent. Mr. McCune affirmed that most of the parents involved in CINA represented by OPA and who appear before them are people determined to be indigent. He asserted that OPA is careful not to represent people that OPA would not represent anyway.

Number 1427

REPRESENTATIVE GREEN wanted affirmation that if HB 259 passes OPA would not anticipate a budget increase next year.

Number 1420

REPRESENTATIVE KERTTULA reiterated her belief that OPA is increasing its work load since OPA does not represent [all] now. She understood that OPA is relying on their own school pending a determination of indigence, to determine whether or not a parent involved in a CINA call is indigent. After listening Mr. McCune's explanation, Representative Kerttula believed that OPA is taking control of that step in the process and making the indigence determination right then. She wanted confirmation that her understanding is correct in that OPA will reject some people and take some people right at the point of call.

Number 1381

MR. MCCUNE affirmed Representative Kerttula's understanding of the process. He believed HB 259's use of the language "may be represented" allows OPA to make an initial indigence determination. He affirmed his belief that OPA would have flexibility in their response to calls in the initial stages.

Number 1355

REPRESENTATIVE KERTTULA stated that is the reason she supports HB 259. However, she believed OPA will experience increased costs and OPA will have a fiscal note in connection with HB 259.

Number 1330

REPRESENTATIVE HUDSON made a motion to adopt Amendment 1. T being no objections, Amendment 1 was adopted.

REPRESENTATIVE OGAN read the following from Representative Coghill's sponsor statement, "this means a reduction in foster care, case worker, and health care costs, as well as long-term public defender, guardian ad litem, and attorney general expenses. Representative Ogan believed Representative Coghill was assuming that if parents' rights are addressed early on then perhaps those who have had their children taken away will get their children back sooner, which will cost less money to the state.

Number 1218

REPRESENTATIVE COGHILL replied in the affirmative. He reiterated there are many, many parents that get caught up in 48-hour hearings. It is clear to him that parents suffer emotionally and because they do not understand the legal system, even if they knew to obtain counsel, they would not know who to get. House Bill 259 attempts to make counsel available and let people have access to counsel. He felt that if parents were notified that they had access to counsel or did have counsel, then the determination of child-in-need-of-aid cases would be less because once a parent is involved in the child-in-need-of-aid system, they have to go through all steps of the system. A court time line is set up for the first 48-hour hearing onward and those time lines have to be fulfilled. He stated that there can be continuances, counsel for foster care; but if at the 48-hour hearing, counsel determines there was no CINA case, then the case could end at that point. Representative Coghill knew that many times the only recourse before a judge is an agency determination and a parent's plea. He felt HB 259 is just one more way of protecting the best interests of both of the child and the parents.

Number 1077

CHAIR JAMES stated, in answer to Representative Ogan's question that it was difficult and speculative, when trying to change the system, to determine whether there is going to be a reduction in cost. She felt the numbers were not available.

Number 1043

REPRESENTATIVE WHITAKER expressed concern that the discussion centered around dollars as opposed to protecting individual constitutionally guaranteed rights. He did not believe HB 259 was concerned with saving a dollar or spending a dollar. He believed it is a question of absolutely demanding that individuals in this kind of situation have and know their rights are protected. He agreed that the legislature cannot be irresponsible with spending; however, HB 259 is a much larger issue. He reiterated it is not a dollar issue, but rather a constitutionally guaranteed individual rights issue.

CHAIR JAMES agreed with Representative Whitaker. Then she

announced Scott Calder from Fairbanks wanted to testify.

Number 973

MR. CALDER said he liked HB 259 and Amendment 1. However, h not feel HB 259 got to the heart of the problem. He offered following suggestions:

Amend:

A. Page 1, line 7;

Delete "[AS 47.10.142]."
Insert "AS 47.10 and AS 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.

Number 872

CHAIR JAMES recognized Mr. Calder's concerns were legitimate

Number 865

MR. CALDER re-emphasized the necessity of including cases ar under AS 47.10 and AS 47.12. He agreed the issue should not centered around dollars, but the basic rights of people befo judicial branch. He concluded that it is reasonable for par be represented, always recognizing appropriate separation of in this matter.

Number 408

REPRESENTATIVE HUDSON spoke to Mr. Calder's proposed recommendations. Representative Hudson suggested that Mr. C put those in writing and transmit them. Representative Huds those recommendations could go forward with HB 259 to the Ju Committee. Representative Hudson made a motion to move HB 2 amended out of the House State Affairs Standing Committee wi zero fiscal note and individual recommendations. He asked f unanimous consent. There being no objection, CSHB 259(STA) from the House State Affairs Standing Committee.

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House STATE AFFAIRS Minutes



HOUSE STATE AFFAIRS STANDING COMMITTEE
January 27, 2000
3:05 a.m.

HB 259 - PUBLIC DEFENDER CHILDREN'S PROCEEDINGS

Number 0017

CHAIR JAMES brought before the committee HOUSE BILL NO. 259, Act relating to a parent's eligibility to be represented by public defender before and during the probable cause and temporary placement hearing that is held after the state takes emergency custody of a child." [Following adoption of an amendment to the bill at the previous hearing, CSHB 259(STA) had been moved from the committee; however, a memorandum from Terri Lauterbach, Legislative Counsel, accompanying a draft of the committee substitute (C) recommended further clarification.]

CHAIR JAMES asked the sponsor whether he believes the parent question should repay the state if it is determined they are eligible for the services of the Public Defender Agency.

Number 0185

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, sponsor agreed that was his intent. He said although the current bill language reflects that, he is open to discussion.

CHAIR JAMES suggested the committee, if in agreement, could consider a conceptual amendment to Ms. Lauterbach clarifying the sponsor's intention.

REPRESENTATIVE KERTTULA made a motion to rescind the committee action [moving CSHB 259(STA) from committee on January 25, 2000] and to bring the bill back before the committee for correction.

Number 0287

REPRESENTATIVE WHITAKER asked whether the new CS would come for final approval or would simply move from this committee.

CHAIR JAMES answered that everyone could look at it as soon as the committee received it, before passing it on. However, she would expect to bring it back for another meeting.

REPRESENTATIVE GREEN responded that he wouldn't go that route; he wanted to see the amendment. If it took two minutes to reconvene and bring it before the committee the next time, he suggested that should be done.

CHAIR JAMES pointed out a further option of not rescinding the previous action but letting the House Judiciary Standing Committee fix the bill. She mentioned sending along the memorandum for

Terri Lauterbach.

Number 0453

REPRESENTATIVE WHITAKER asked Representative Coghill his preference, given those choices.

REPRESENTATIVE COGHILL said it would fit in either case. He expressed willingness to move it along, in conjunction with concept brought up in Ms. Lauterbach's memorandum, which he indicated meets with his intent.

CHAIR JAMES said she doesn't want to be responsible for its languishing in committee, but she likes to pass legislation her committee that doesn't need to be fixed.

REPRESENTATIVE GREEN commented, "I tend to agree with the sp because I asked that very question of our attorney, and he s was covered." He suggested the House Judiciary Standing Com is the place to determine whether it is or isn't covered.

CHAIR JAMES inquired about the wishes of the rest of the com She pointed out that they could turn down the motion to resc previous action.

Number 0657

REPRESENTATIVE SMALLEY said he would support the motion to r however, because he believes it is the committee's responsib to fix the bill. He suggested that wouldn't delay it that m

REPRESENTATIVE GREEN voiced his opinion that a state affairs committee should look at what is best for the state, regardl the legal language, which should be addressed by a judiciary committee.

CHAIR JAMES said she wishes it were that way, but it isn't. indicated committees deal with all parts of bills that they

Number 0831

REPRESENTATIVE OGAN suggested that when signing the committe report, members put "amend." Furthermore, changes could be the House floor. He would have no objection to moving this on, he said, with the caveat that the problem be taken care

CHAIR JAMES noted that a vote would be needed on whether to the previous action.

REPRESENTATIVE OGAN said he would support rescinding the act purposes of signing the committee report with a recommendati amending it. He would also support moving it out afterwards

REPRESENTATIVE KERTTULA expressed support for Chair James' comments, then suggested this might go faster if the current committee fixed it rather than waiting for the House Judicia Standing Committee to do so.

REPRESENTATIVE WHITAKER asked whether Chair James agrees the bill would move more quickly in that case.

Number 0909

CHAIR JAMES said her own position is that she doesn't want it to languish, as she believes this is important legislation. She doesn't know how soon this could be heard in the House Judiciary Standing Committee, or what the attitudes of those members would be. Another concern is that the sponsor believes and has a legal opinion that the bill covers the intent. Having read the CS herself, she agrees with Terri Lauterbach, however, that it doesn't specifically and therefore it must be assumed. "When you assume something, that doesn't necessarily mean it's so," she cautioned. "It could be read either way." She surmised such a decision would be at the policy or regulation level.

CHAIR JAMES clarified that her first choice is to rescind the previous action, pass a conceptual amendment, and then have everyone look at the subsequent CS before passing it on to the committee. On the other hand, if this will make the bill languish - about which she is uncertain - then she is willing to do whichever to her means not rescinding the action. She said rescinding the action and saying the bill needs to be amended is embarrassing and would make her feel derelict in her duties.

Number 1043

REPRESENTATIVE GREEN responded that he respectfully but vehemently disagrees. Almost every bill he has served on has passed legislation on to the House Finance Committee, at the least, for review because of a fiscal note or some other issue. Common legislation is passed on either with a letter or, as Representative Ogan indicated, with recommendations to amend it. Although he agreed this can be fixed, he emphasized that it isn't uncommon to pass legislation on to the House Judiciary Standing Committee as an example.

CHAIR JAMES pointed out that she has been on the House Judiciary Standing Committee most of the eight years of her legislative service too. There, they have passed numerous bills with conceptual amendments, then looked at the CS before it is moved to the next committee.

Number 1138

REPRESENTATIVE KERTTULA said she views this as the prerogative of the chair. On behalf of both herself and Representative Sma, she expressed willingness to follow Chair James' decision on this matter.

CHAIR JAMES indicated she would let the vote of the committee decide. She called a brief at-ease. [Small section of blank page due to recorder malfunction.] After calling the meeting back in order, she requested a roll call vote on the motion to rescind the committee's action on January 25, 2000, in moving CS HB 259(S) from committee. Voting to rescind the action were Representatives Kerttula, Smalley and James. Voting against it were Representatives Green, Whitaker and Ogan. Therefore, the motion failed.

failed by a vote of 3-3. Chair James announced that the com would move CSHB 259(STA) forward as-is that day.

Number 1332

REPRESENTATIVE COGHILL stated:

Just for the record, I would like to just say that conceptually I agree that there needs to be an amendmen And what I will be carrying on with this is, "If determination is made that the natural or adoptive pare is not indigent, he or she shall reimburse the Public Defender Agency ... at the applicable billing rate." .. That is my intent anyway. So, if that's needed, I'll take that into the Judiciary Committee.

CHAIR JAMES commented that if there is any question about an it is always better to make it clearer. "So, if you think i already says that, and other people think it doesn't, you'd be sure it says that; that's my advice," she concluded. [CS 259(STA), unamended at this meeting, was again moved from committee.]

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House JUDICIARY Minutes



HOUSE JUDICIARY STANDING COMMITTEE

February 9, 2000

1:20 p.m.

HB 259 - PUBLIC DEFENDER CHILDREN'S PROCEEDINGS

CHAIRMAN KOTT announced that the next order of business would be HOUSE BILL No. 259, "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 when the state takes emergency custody of a child." Before the committee was CSHB 259(STA).

Number 1003

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, sponsored HB 259 and explained that HB 259 addresses getting counsel to parents who need to deal with a system that is sometimes very difficult to understand. Many times a child is taken into protective custody and there is a statutorily mandated 48-hour hearing. In Anchorage he noted, people are previewed to see whether they are indigent and then are given counsel before a judge at the 48-hour hearing; however, that is not always the case. He has proposed a bill therefore, that will get counsel to people at that 48-hour hearing because once the determination is made that a child needs assistance, the family enters into a system that is a whole world, and they need to understand what is going on at that juncture. He explained that HB 259 is intended for getting counsel as easily as possible for people that are in need.

Number 1156

REPRESENTATIVE CROFT made a motion to adopt Amendment 1, which he read:

Page 1, line 6:

Delete "A"

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

Page 1, lines 7-8:

Delete ",pending a determination of indigency,"

Page 1, line 10:

Delete "under this subsection"

Insert "in connection with the hearing"

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

Insert "If a person who was represented by the Public Defender Agency at public expense without a court order in connection with a hearing held under AS 47.10.142(d) is not later determined to be eligible for court-appointed counsel at public expense under

applicable laws and court rules, the court shall assess against the represented parent the cost to the Public Defender Agency of providing the representation."

CHAIRMAN KOTT objected for the purpose of discussion.

REPRESENTATIVE COGHILL explained that Amendment 1 simply say the expense can be prorated back to a person who is found, at the hearing, to be able to afford it.

Number 1237

CHAIRMAN KOTT withdrew his objection and announced that with objection, Amendment 1 had been adopted.

Number 1258

HARRY NIEHAUS testified via teleconference from Fairbanks, specifying that he was speaking on behalf of the Guardians of Family Rights, in support of HB 259. He referred to page 2, 7, where it reads, "any income source the person has had for period of three years." He asked if it is three years or on

REPRESENTATIVE COGHILL indicated it is three years in existi

Number 1319

MARCI SCHMIDT testified via teleconference, encouraging the of HB 259. She explained that many parents and other family members that have entered into the Division of Family and Youth Services (DFYS) process have felt that they needed represent during the first hearings. She indicated that a lot of people been beguiled into admitting probable cause without knowing they are saying. She believes HB 259 would be cost-effective would help out in the long run in getting people to cooperate getting some cases dismissed and clearing up some workloads.

REPRESENTATIVE GREEN asked Ms. Schmidt whether she believes would help or hinder the process to have a notification made an attorney will be provided, but that if it is found later the person can afford the attorney, that person will be charge the service.

MS. SCHMIDT indicated that she doesn't think it will hinder process. She explained that it is very hard to find a private attorney in child-in-need-of-aid (CINA) cases, which are long expensive and dragged out. She said it would be cost-effective also might encourage privatized attorneys to come forward and represent a client. She added that currently it is about \$1 to get an attorney in the private sector.

Number 1460

BLAIR McCUNE, Deputy Director, Public Defender Agency, Department of Administration, testified via teleconference from Anchorage pointed out that his agency had submitted a fiscal note with analysis. His agency believes that they could start earlier cases, which is better; it is important to have some leeway

their duties here, however, and the words "may be represente very important to them. Mr. McCune noted that conflicts of interest are tricky in these cases; the agency may sometimes to sort out a conflict before determining whether to represe someone. He added, "And also I think we have to be careful the most serious case in order to save money and time down t road."

MR. McCUNE advised members that his agency doesn't anticipat additional work on those cases. He stated, "We'd be working and hopefully get things resolved quicker, but I can't promi hour-a-day coverage and unlimited resources devoted to this. within our resources, I think getting parents representation in these cases is a good idea." Mr. McCune expressed agreem with the amendment adopted. As far as eligibility and recou of costs, he said that is up to the legislature. He added:

Of course, we don't want to represent people who are financially able to hire their own attorneys. We can recommend some attorneys. I know in Anchorage there ar some attorneys who do take these cases and charge maybe a little less than the previous speaker said, but I kno in other areas of the state it is difficult. But if we find somebody who's presumptively eligible - in other words, somebody who has currently received some public assistant or has had counsel appointed for them in the past - I think we'd feel real comfortable going ahead a representing them without a determination of indigency.

Number 1602

CHAIRMAN KOTT wondered if the zero fiscal note is derived fr assumption that few indigent people will have to be accommod if the assumption is that the few numbers out there will be absorbed in the current budget.

MR. BLAIR responded:

What I anticipate is that the people who we would work with under this would be people who we would eventually be appointed to represent in the course of business the way things usually are going under the current legislation. ... We could represent people we would eventually be appointed to represent, but start with th earlier. And that's my assumption.

CHAIRMAN KOTT requested clarification on the fiscal note ana where it reads, "The Public Defender Agency does not anticip fiscal impact from this legislation if it is amended so that not obligated to represent non-indigent parents."

MR. BLAIR responded that the language was in the analysis be the committee substitute (CS) was adopted for HB 259. He sa would proofread it better and take the language out.

CHAIRMAN KOTT wondered how much discretion the Public Defend Agency has in representing the people that are in these type cases.

MR. BLAIR replied that the answer is none. He explained that they are appointed by the court to represent the person, unless there is a conflict of interest or some reason for them to withdraw, the agency will take the case.

CHAIRMAN KOTT, noting that there were no further testifiers, public testimony.

Number 1765

REPRESENTATIVE CROFT made a motion to move CSHB 259(STA), as amended, with individual recommendations and the attached fiscal note from the committee. There being no objection, C 259(JUD) was moved out of the House Judiciary Standing Commi

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House FINANCE Minutes



HOUSE FINANCE COMMITTEE

February 23, 2000

1:50 P.M.

HOUSE BILL NO. 259

"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."

REPRESENTATIVE JOHN COGHILL testified in support of HB 259. He explained that HB 259 is the result of a meeting with agency representatives in Fairbanks, last spring. He noted that concerns were expressed that some persons are unable to obtain legal representation for the 48-hour child in need of assistance (CINA) hearing. The Division of Family and Youth Services is required to hold a CINA hearing within 48 hours after a child is taken into custody. The ability to receive services from the Alaska Public Defender Agency is not uniform across the state. The legislation would provide for representation. Provision would be made for indigent determination or pro-rated pay back for services.

BLAIR MCCUNE, PUBLIC DEFENDER'S OFFICE testified via teleconference in support of HB 259. He observed that the legislation would allow the Agency to start their work on CINA cases earlier. He stressed the importance of the language "may be represented, pending a determination of indigency" on page 1, line 7. He explained that the Agency must be careful not to enter a situation where a conflict of interest exists. The Alaska Public Defender Agency would want to take the more serious case if multiple charges were involved. He did not anticipate additional costs with the legislation.

Vice Chair Bunde noted that the language is permissive. He questioned if the Alaska Public Defender Agency would be liable if they were unable to immediately respond to a case, due to their caseload. Mr. McCune noted that they would not be liable and added that the Agency is required to represent zealously and competently when they begin working on a case. He expressed confidence that cases would be well represented and stated that his concern is with possible conflicts of interest that could arise when a more serious charge is involved in the same case. The Alaska Public Defender Agency has not had sufficient funding for staff to be on-call. Vice Chair Bunde clarified that his concern would be that the Agency not be in violation if they did not have an attorney available to respond to a case.

HARRY NIEHAUS, GUARDIANS OF FAMILY RIGHTS, NORTH POLE

testified via teleconference. He observed that page 1, line 6 refers to a "person who is the natural or adoptive parent." He questioned why legal guardian was not included. He stressed the need to include guardians in the legislation. He referred to legislation that would allow a continuance in cases where a public defender is not available.

Representative Coghill noted that the question of a continuance would be addressed in other legislation and felt that it was out of the scope of HB 259. Parents can ask for a continuance under current law. He indicated that he would be willing to consider the addition of guardians.

MARCI SCHMIDT, MATSU testified via teleconference in support of HB 259. She emphasized that it is crucial for parents in CINA hearings to have representation. She maintained that many parents do not receive representation because they do not know that it is available. She noted that there are not sufficient private attorneys available to take on CINA cases.

Vice Chair Bunde questioned if the House Judiciary Committee discussed guardians or the need to broaden the legislation to cover those with temporary custody of children. Representative Coghill responded that the addition of guardians or those with temporary custody was not discussed in the House Judiciary Committee.

Mr. McCune observed the state statute does not contain specific language, but refers to court rules: "an indigent person who is under formal charge of having committed a serious crime, or if entitled to representation under the Supreme Court delinquency or child in need of aid rules". He observed that there can be problems relating to the addition of guardians because there can be temporary guardianship where a parent is out of town in addition to legal guardians. Temporary guardians may not be included under the rules. He did not have a suggestion for language to add long term guardianship.

Representative Austerman noted that the Administration does not have a policy relating to guardians and theorized that, if there were a problem, there would be a policy. Mr. McCune explained that the court system decides that a child should be represented and appoints the Alaska Public Defender Agency to represent them. He did not think that the Agency should be in the situation of representing short-term guardians.

Vice Chair Bunde questioned if there is a legal definition of "legal guardian" as opposed to a short-term guardian such as a baby sitter.

Representative Austerman spoke in support of the legislation. He suggested that the issue be researched.

Mr. Niehaus clarified that his concern is in regards to long

term guardians and noted that the issue is addressed in Court Rule 22.

HB 259 was heard and HELD in Committee for further consideration.

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House FINANCE Minutes



HOUSE FINANCE COMMITTEE
February 25, 2000
1:45 P.M.
HOUSE BILL NO. 259

"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."

Co-Chair Therriault provided members with a proposed committee substitute; work draft 1-LS1099\H dated 2/24/00 (copy on file). The committee substitute adds "guardian" to HB 259 and clarifies that the "natural parent, adoptive parent or guardian of a child" who is taken into emergency custody may be represented at public expense and without a court order by an attorney with the Alaska Public Defenders Agency. The committee substitute also defines "guardian" on page 2, line 7; "guardian" means a natural person who is legally appointed guardian of the person of a child.

Representative Austerman MOVED to ADOPT work draft 1-LS1099\H dated 2/24/00. There being NO OBJECTION, it was so ordered.

RYNNIEVA MOSS, STAFF, REPRESENTATIVE COGHILL provided information relating to HB 259. She clarified that the definition and assertion of guardian is consistent with CINA rules. She noted that the definition is identical to the definition used in CINA rules.

Co-Chair Therriault noted that there is one zero fiscal note from the Department of Administration.

Co-Chair Mulder MOVED to report CSHB (FIN) out of Committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 259 (FIN) was REPORTED out of Committee with "no recommendation" and a zero fiscal note by the Department of Administration dated 1/28/00.

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Bill History/Action Display



BILL: HB 259 SHORT TITLE: PUBLIC DEFENDER CHILDREN'S PROCEEDINGS
 BILL VERSION: CSHB 259 (FIN)
 SPONSOR(S): REPRESENTATIVES(S) COGHILL, Croft, Dyson, Therriault, Masek

CURRENT STATUS: (S) FIN STATUS DATE: 3/21/00

TITLE: "An Act relating to 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."

Full Text Detailed 2000 fiscal note information currently not available on-line.

Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
1/10/00	<u>1887</u>	(H) PREFILE RELEASED 12/30/99
1/10/00	<u>1887</u>	(H) READ THE FIRST TIME - REFERRALS
1/10/00	<u>1887</u>	(H) STA, JUD, FIN
1/28/00	<u>2026</u>	(H) STA RPT CS(STA) 5DP 1NR 1AM
1/28/00	<u>2027</u>	(H) DP: JAMES, GREEN, HUDSON, WHITAKER,
1/28/00	<u>2027</u>	(H) OGAN; NR: KERTTULA; AM: SMALLEY
1/28/00	<u>2027</u>	(H) ZERO FISCAL NOTE (ADM)
2/11/00	<u>2171</u>	(H) JUD RPT CS(STA) 4DP
2/11/00	<u>2171</u>	(H) DP: GREEN, CROFT, KERTTULA, KOTT
2/11/00	<u>2171</u>	(H) ZERO FISCAL NOTE (ADM) 1/28/00
2/11/00	<u>2189</u>	(H) COSPONSOR(S): CROFT
2/23/00	<u>2269</u>	(H) CORRECTED JUD RPT CS(JUD) 4DP
2/23/00	<u>2269</u>	(H) DP: KOTT, GREEN, CROFT, JAMES
2/23/00	<u>2269</u>	(H) ZERO FISCAL NOTE (ADM) 1/28/00
2/28/00	<u>2326</u>	(H) FIN RPT CS(FIN) NT 3DP 6NR
2/28/00	<u>2327</u>	(H) DP: THERRIAULT, MULDER, GRUSSENDORF;
2/28/00	<u>2327</u>	(H) NR: BUNDE, AUSTERMAN, MOSES, DAVIS,
2/28/00	<u>2327</u>	(H) WILLIAMS, PHILLIPS
2/28/00	<u>2327</u>	(H) ZERO FISCAL NOTE (ADM)
3/03/00	<u>2397</u>	(H) RLS TO CALENDAR 3/3
3/03/00	<u>2397</u>	(H) READ THE SECOND TIME
3/03/00	<u>2397</u>	(H) FIN CS ADOPTED UNAN CONSENT
3/03/00	<u>2397</u>	(H) ADVANCED TO THIRD READING UNAN CONSENT
3/03/00	<u>2397</u>	(H) READ THE THIRD TIME CSHB 259(FIN)
3/03/00	<u>2397</u>	(H) PASSE Y36 E4
3/03/00	<u>2408</u>	(H) COSPONSOR(S): DYSON, THERRIAULT, MASEK
3/03/00	<u>2408</u>	(H) TRANSMITTED TO (S)
3/06/00	<u>2529</u>	(S) READ THE FIRST TIME - REFERRALS
3/06/00	<u>2529</u>	(S) JUD, FIN
3/21/00	<u>2677</u>	(S) JUD RPT 2DP 2NR
3/21/00	<u>2677</u>	(S) DP:TAYLOR, HALFORD; NR: ELLIS,
3/21/00	<u>2677</u>	(S) TORGERSON
3/21/00	<u>2677</u>	(S) (H) ZERO FISCAL NOTE (ADM)
3/21/00	<u>2678</u>	(S) REFERRED TO FINANCE

Similar Subject Match or Exact Subject Match

ATTORNEYS

CHILD ABUSE

CIVIL PROCEDURE