

**HB**

**252**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 252(HES)  
 ( H ) Publish Date: 2/25/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health & Social Services  
 Title: RELATING TO CONSTRUCTION OF THE CINA STATUTES AND BRU: Family and Youth Services  
SCOPE OF DUTY FOR SOCIAL WORKERS Component: FYS Management  
 Sponsor: COGHILL  
 Requestor: HOUSE (HES) Component Number: 2306

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	80.0	50.0	50.0			
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>80.0</b>	<b>50.0</b>	<b>50.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 0 )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	80.0	50.0	50.0			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type- do not abbreviate)						
<b>TOTAL</b>	<b>80.0</b>	<b>50.0</b>	<b>50.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The intent of this proposed legislation appears to be one that is in line with the department's desire to provide support to families who can benefit from it, and to improve safety and well being of children. Intensive Family Preservation services are provided in many communities across the nation. These programs work intensely with a small number of families, for a short period of time, to help the family through a threatening time of crisis. Intensive Family Preservation services can be beneficial in preventing children from entering protective custody, and in reducing the amount of time children spend in protective custody. These services have limits in their appropriateness and effectiveness.

Currently, DFYS receives federal and state funds to provide family support, family preservation and time

Prepared by: Theresa Tanoury, Director Phone 465-3191  
 Division: Family & Youth Services Date/Time 02/22/2002  
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 02/22/2002  
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA  
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BILL NO. CSHB 252(HFS)

ANALYSIS CONTINUATION

ANALYSIS CONTINUED:

limited family reunification services. These funds are disbursed through the grant process to 26 agencies in communities throughout Alaska.

The legislation obligates the division to consider using Intensive Family Preservation services when and where available; and it allows the division to determine the appropriateness of the services.

The legislation also states an expectation that the department will research and pursue outside funding to develop these services. The detailed prospective study (which includes development and training), data analysis, and projection process will need to be completed by an outside source with specific expertise. This fiscal note is for the expected cost of this process. Funding to cover the cost of this process is requested for three years. Cost covers expense related to the required study. Since the CS HB252 allows phase in of these services to occur, the department will spend first year funding on developing and training for intensive family preservation services.

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## REPRESENTATIVE JOHN COGHILL

### Memorandum

Date: April 17, 2002

To: Members of the House  
House Rules Committee

From: Representative John Coghill 

Re: CHIT Sheet

I am asking for your support in passing HB 252. In 1998, this same body passed HB 375 which included new laws to protect children in Title 47.10 "Children in Need of Aid". This legislation imposed on the Department and its agents under AS 47.10.084 the "responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, nurture, train, and discipline the child, the duty of providing the child with food, shelter, education, and medical care, and the right and responsibility to make decisions of significance concerning the child."

Because the Department of Law expressed concerns that they did not know if they could conform to the new time lines, the legislature included AS 47.10.960 in the legislation. AS 47.10.960 went way beyond what I believe the legislature intended. It that nothing in Title 47 "creates a duty or standard of care for services to children and their families being served under AS 47.10." This statute negates the duties and responsibilities in AS 47.10.084.

This bill recreates the duty and standard of care intended in HB 375 while releasing the Department from being civilly liable for monetary damages "solely on the basis that the duty was not performed within the time period specified" under Chapter 10 of Title 47.

HB 252 also defines and install in statute "Intensive Family Preservation Services". It sets the stage for DFYS to contract with community organizations to provide counseling and parenting skills, solve day-to-day problems that place stress on families, and 24 hours assistance in implementing the case plan of a family who has a child in out-of-home placement or is in "imminent risk" of that placement.

My office will be contacting you with a CHIT Sheet. Thank you for your consideration.

**Subject: Re: Rules CS HB 252**

**Date: Mon, 22 Apr 2002 16:19:50 -0800**

**From: "Susan Cox" <Susan\_Cox@law.state.ak.us>**

**To: <Rynniewa\_Moss@legis.state.ak.us>**

Rynniewa, I appreciate the effort at finding some middle ground. Unfortunately, I think that explicitly opening the door for civil liability under AS 47.10.084, 086, and .088 is very problematic. We have no problem acknowledging that the state can be civilly liable for damage to CHILDREN when they are not properly cared for or protected (along the lines of the duties listed in 47.10.084(a)), but adding the potential for liability to parents will be costly and time-consuming. I would be happy to discuss this with you further, and will be back in the office tomorrow afternoon. If you would like to talk to someone while I am traveling home, Gail Voigtlander in our Anchorage torts section is totally up to speed on this. She can be reached at 269-5190. Thanks, Susan

<<< Rynniewa Moss <Rynniewa\_Moss@legis.state.ak.us> 4/22 3:27p  
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### Proposed Rules Committee Substitute

The new language will specifically preserve the right of parents and children to sue in equity for violation of statutory duties.

I have had professionals in the field say that the fiscal note is pure speculation. The 2% number is clearly picked from thin air. The only rationale given is that a parent or child may sue in the middle of a CINA action for damages. Comments are that this claim is preposterous. Here is some of the rationale dispelling the Department of Law's concerns:

1. As LAW points out, the parties are already represented by attorneys and GAL's. Anyone can appeal to the court to order DFYS to do something or stop some action. This is routine.
2. None of these legal representatives are free to bring damage actions as they are nearly all state employees or state contractors. As far as I can tell after talking to the AG's office, GAL's, and the public defenders office, there has NEVER, in thousands of cases over decades, been an independent lawsuit brought.
3. So it must be the private bar that the state is worried about. Lawyers do not bring damage actions unless there is damage and they can prove it. All situations in the middle of a CINA action are temporary and subject to change at the next hearing. Lasting damage worthy of a lawsuit is very rare and then only litigated years later once it can be proven.
4. Common law negligence actions are legally conceivable during a CINA proceeding now. NONE has ever been brought for the reasons above. Even assuming that actions based on the violation of statutory duties are slightly easier to prove, there is still the proof of damages barrier that is simply unassailable until the CINA action is completed and lasting damage to a party is evident.
5. Any action brought by a CINA party would be on a contingency fee basis because 99% of them are children and poor parents. No lawyer will take a case that would make them expend significant resources (time and costs) with no prospect of a significant payday. Lawyers don't like to lose money and work for free. Lawsuits are brought when a lawyer believes that there is a substantial chance of a substantial recovery. Neither condition exists during a CINA action.
7. Courts would be extremely reluctant to hear damage actions based on the same facts that are under debate in a CINA case. They hate duplication of effort--with the embarrassing prospect of different results--even more than the rest of us.

*Rynnica*