

HB

252

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

FURTHER:

DATE: 5/11/02

DATE TURNED
IN TO OFFICE:

17. May 2002

Finance Committee considered

CS FOR HOUSE BILL NO. 252(RLS)

HB 252 CHILDREN IN NEED OF AID: SERVICES & LIABILITY

"An Act relating to the construction of certain statutes relating to children; relating to the scope of duty and standard of care for persons who provide services to certain children and families; relating to civil liability for damages to certain children and their families resulting from failure to comply with certain statutes; relating to intensive family preservation services; and providing for an effective date."

and recommends:

- be replaced with S CS CS HB 252 (FN)
- adopt previous CS forthcoming ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
LAW	4/30/02		<input checked="" type="checkbox"/>	#2
H&SS	3/22/02	80.0		#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Syda Green</i>	<input checked="" type="checkbox"/>			
<i>William Justice</i>	<input checked="" type="checkbox"/>			
<i>John Hoff</i>	<input checked="" type="checkbox"/>			
<i>Tommy Whiting</i>	<input checked="" type="checkbox"/>			
<i>Donna</i>	<input checked="" type="checkbox"/>			
<i>Blair D. Deenan</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>Paul Kelly</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>Paul Kelly</i>	<input checked="" type="checkbox"/>			



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 12 May 2002 TIME: 9:30 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
SCS CS 252 (FIN) 22-LS0454\I
Larterbach
5/12/02
no changes
Thx
Mindy

Adopted 5/12/02

WORK DRAFT

WORK DRAFT

WORK DRAFT

22-LS04541
Lauterbach
5/12/02

SENATE CS FOR CS FOR HOUSE BILL NO. 252(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Dyson, Foster, Whitaker, Cissna, McGuire, James
SENATORS Therriault, Davis

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the construction of certain statutes relating to children; relating to
2 the scope of duty and standard of care for persons who provide services to certain
3 children and families; relating to civil liability for damages to certain children and their
4 families resulting from failure to comply with certain statutes; relating to intensive
5 family preservation services; and providing for an effective date."

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

7 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 LEGISLATIVE INTENT. By the amendment of AS 47.10.005 in sec. 2 of this Act,
10 the legislature intends to express its recognition that parents possess inherent, individual rights
11 to direct and control the education and upbringing of their children.

12 * Sec. 2. AS 47.10.005 is amended to read:

1 Sec. 47.10.005. **Construction.** The provisions of this chapter shall be
2 liberally construed to the end that a child coming within the jurisdiction of the court
3 under this chapter may receive the care, guidance, treatment, and control that will
4 promote the best interests of the child, including the parents' participation in the
5 child's upbringing [CHILD'S WELFARE].

6 * Sec. 3. AS 47.10.086(a) is amended to read:

7 (a) Except as provided in (b) and (c) of this section, the department shall make
8 timely, reasonable efforts to provide family support services to the child and to the
9 parents or guardian of the child that are designed to prevent out-of-home placement of
10 the child or to enable the safe return of the child to the family home, when appropriate,
11 if the child is in an out-of-home placement. Within appropriations identified by the
12 department for the specific purpose of intensive family preservation services, the
13 department shall also offer intensive family preservation services when those
14 services are available and the child's safety in the home can be maintained during
15 the time the services are provided. The department's duty to make reasonable
16 efforts under this subsection to provide family support services includes the duty to

17 (1) identify family support services that will assist the parent or
18 guardian in remedying the conduct or conditions in the home that made the child a
19 child in need of aid;

20 (2) actively offer the parent or guardian, and refer the parent or
21 guardian to, the family support services identified under (1) of this subsection; the
22 department shall refer the parent or guardian to community-based family support
23 services whenever community-based services are available and desired by the parent
24 or guardian; and

25 (3) document the department's actions that are taken under [(1) AND
26 (2) OF] this subsection; the documentation required under this paragraph must
27 include

28 (A) documentation about whether intensive family
29 preservation services were appropriate, offered, used, or available to the
30 family; and

31 (B) if intensive family preservation services were

1 appropriate or offered to the family, enumeration of the reasons specific
2 to the case explaining why intensive family preservation services were
3 appropriate or offered.

4 * Sec. 4. AS 47.10.086(b) is amended to read:

5 (b) If the court makes a finding at a hearing conducted under AS 47.10.080(l)
6 that a parent or guardian has not sufficiently remedied the parent's or guardian's
7 conduct or the conditions in the home despite reasonable efforts made by the
8 department in accordance with this section, the court may conclude that continuation
9 of reasonable efforts of the type described in (a) of this section are not in the best
10 interests of the child. The department shall then make reasonable efforts to place the
11 child in a timely manner in accordance with the permanent plan and to complete
12 whatever steps are necessary to finalize the permanent placement of the child. If the
13 court concludes that continuation of reasonable efforts of the type described in
14 (a) of this section are not in the best interests of the child and intensive family
15 preservation services were not provided in the case, the court shall enumerate in
16 the record the reasons the services were not provided.

17 * Sec. 5. AS 47.10.142(b) is amended to read:

18 (b) The department shall offer available counseling services and intensive
19 famiiv preservation services to the person having legal custody of a minor described
20 in AS 47.10.141 and to the members of the minor's household if it determines that
21 counseling services or intensive family preservation services would be appropriate
22 in the situation. If, after assessing the situation, offering available [COUNSELING]
23 services to the legal custodian and the minor's household, and furnishing appropriate
24 social services to the minor, the department considers it necessary, the department
25 may take emergency custody of the minor.

26 * Sec. 6. AS 47.10 is amended by adding new sections to read:

27 **Article 3A. Intensive Family Preservation Services.**

28 **Sec. 47.10.500. Statewide program.** Subject to AS 47.10.510 and 47.10.520,
29 the department shall, within appropriations available for intensive family preservation
30 services, develop and implement intensive family preservation services systematically
31 and over time, with the ultimate goal of providing intensive family preservation

1 services on a statewide basis. The department may provide the services directly or
2 through contracts with private nonprofit providers.

3 **Sec. 47.10.510. Standards for providers.** The department shall develop
4 measurable standards that must be met by a provider before a contract may be
5 awarded to, or renewed with, the provider under AS 47.10.500.

6 **Sec. 47.10.520. Eligibility for services.** (a) The department may provide
7 intensive family preservation services to a child, the child's family, and other
8 appropriate nonfamily members only if

9 (1) there are no other available means that will prevent out-of-home
10 placement of the child or make it possible to immediately return the child to the child's
11 home; and

12 (2) the child has been placed in out-of-home care or is at actual,
13 imminent risk of out-of-home placement due to

14 (A) child abuse or neglect;

15 (B) a serious threat of substantial harm to the child's health,
16 safety, or welfare; or

17 (C) any other factor that could lead to out-of-home placement.

18 (b) The department need not provide services to an otherwise eligible family if

19 (1) services are not available in the community in which the family
20 resides;

21 (2) services cannot be provided because the program is filled to
22 capacity;

23 (3) the family refuses the services;

24 (4) the child's case plan does not include reunification of the child and
25 family; or

26 (5) the safety of a child, a family member, or a person providing the
27 services would be threatened.

28 **Sec. 47.10.530. Solicitation of funding sources.** The department shall solicit
29 federal and private resources that may be available to fund intensive family
30 preservation services.

31 **Sec. 47.10.590. Definition.** In AS 47.10.500 - 47.10.590, "intensive family

1 preservation services" and "services" mean intensive family preservation services, as
2 defined in AS 47.10.990.

3 * Sec. 7. AS 47.10.960 is amended to read:

4 **Sec. 47.10.960. Civil liability [DUTY AND STANDARD OF CARE NOT**
5 **CREATED]. Failure to comply with a provision of [NOTHING IN] this chapter**
6 **does not, by itself, constitute a basis for civil liability for damages [TITLE**
7 **CREATES A DUTY OR STANDARD OF CARE FOR SERVICES] to children and**
8 **their families being served under this chapter [AS 47.10].**

9 * Sec. 8. AS 47.10.990 is amended by adding a new paragraph to read:

10 (28) "intensive family preservation services" means services provided
11 to a family with a child who is in an out-of-home placement or is at imminent risk of
12 out-of-home placement that

13 (A) are designed to address problems creating the need for out-
14 of-home placement by assisting the family to improve parental and household
15 management competence, solve day-to-day practical problems that contribute
16 to family stress, identify the factors that created the risk of out-of-home
17 placement, and participate in the development of the family's case plan so as to
18 improve parental performance and enhance functioning of the family unit; and

19 (B) have the following characteristics:

20 (i) are offered at the family's option;

21 (ii) are provided in the family's home;

22 (iii) are available 24 hours a day and seven days a
23 week;

24 (iv) are provided within 24 hours of initial contact for
25 assistance;

26 (v) are provided on a time-limited basis by a single case
27 worker whose caseload is congruent with intensive family preservation
28 services standards established by the Child Welfare League of
29 America; caseloads shall be kept low to allow for the necessary intense
30 level of interaction with the family, and the services shall be most
31 intensive at the time of crisis; and

1 (vi) may, in appropriate instances and subject to
2 available appropriations, include monetary assistance for special needs
3 of the family, such as to obtain food, shelter, or clothing or to purchase
4 other goods or services that will enhance the effectiveness of other
5 services offered to help preserve the family.

6 * Sec. 9. AS 47.17.030(d) is amended to read:

7 (d) Before the department or a local government health or social services
8 agency may seek the termination of parental rights under AS 47.10, it shall offer
9 protective social services and pursue all other reasonable means of protecting the
10 child. The department or agency shall also consider the eligibility of the child
11 and family for intensive family preservation services under AS 47.10.500 -
12 47.10.590.

13 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 STUDY. (a) The Department of Health and Social Services shall conduct a study in
16 at least one region of the state in order to

17 (1) develop a valid and reliable process for accurately identifying clients who
18 are eligible for intensive family preservation services;

19 (2) collect data on which to base projections of service needs, budget requests,
20 and long-range planning related to intensive family preservation services;

21 (3) develop regional and statewide projections of needs for intensive family
22 preservation services;

23 (4) develop a cost estimate for implementation and expansion of intensive
24 family preservation services on a statewide basis;

25 (5) develop a long-range plan and time frame for ultimately making intensive
26 family preservation services available to all eligible families; and

27 (6) collect data regarding the number of children in foster care, group care,
28 institutional care, and other out-of-home care due to medical needs, mental health needs,
29 developmental disabilities, and juvenile offenses and to assess the feasibility of expanding
30 intensive family preservation services eligibility to include all of these children.

31 (b) By November 30, 2004, the Department of Health and Social Services shall

1 submit a report to the governor describing the study required under this section and including
2 the department's conclusions and recommendations that are based on the study. The
3 department shall notify the legislature that the report is available.

4 (c) In this section, "intensive family preservation services" has the meaning given in
5 AS 47.10.990.

6 * **Sec. 11.** Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

7 * **Sec. 12.** Sections 3 - 6 and 9 of this Act take effect July 1, 2003.

8 * **Sec. 13.** Sections 8 and 10 of this Act take effect July 1, 2002.

ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 102

REPRESENTATIVE JOHN COGHILL

HB 252 STANDARD OF CARE FOR CINA SERVICES Sponsor Statement

We must continue our work of balancing child protection with family preservation during government intervention. Parents are held to a standard of care by our state with the threat of losing parental rights if they fail in meeting these standards.

HB 252 is introduced with the purpose of recognizing parents in their God given role to raise their children as they see fit. This bill also recognizes that parents fail in varying degrees and the Division of Youth Services is called upon to protect the children while trying to preserve the family. Therefore we are adding the parent's participation in the event of a child coming under court jurisdiction.

Failing to properly care for children is not just a parental issue. Our State Division of Youth Services also is made up of humans that from time to time may fail in a standard of caring. Therefore HB 252 is requiring that a standard of care be instituted within our State so that each department employee is held to at least the same standard of care that we require of parents in Alaska.

Since we are invoking police and judicial powers to our agency personnel I believe that a higher standard of duty, conduct and care is needed. Currently under AS 47.10.960 there is no duty or standard of care imposed department employees. The lack of a standard of care obscures the fiduciary duty of the State to the parents and children for which they are making these decisions.

This legislation also directs DFYS to offer Intensive Family Preservation Services to families who are able to and want to learn the skills necessary to remain together and change the conditions that would mandate the placement of their children. These services would be provided at the family's option and would consist of an intensive short-term intervention to help the family work through the crisis and stabilize. By remaining intact and safe, families can grow strong and overcome their problems together.

As was pointed out in testimony in the House Finance Committee, DFYS has "more power over more vulnerable Alaskans than any agency in government." It should therefore be the most accountable.

Children and parents should be able to sue the state when it wrongfully abuses its power. The remedies for children and parents should include both equitable relief (to make the government do the right thing) and recover civil damages for losses because of oppressive government conduct or government's failure to fulfill its duties assigned by the legislature.

The fact that the government is legally liable should make it more alert to assuring that it fulfills its duties to children and families and parents.

In conclusion, this legislation only places in statute what most Alaskans believe is currently the case when government takes a child into custody; they are held accountable for their actions on as close as a level playing field as the parents are held accountable.

Alaska State Legislature



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Representative John Coghill

SECTIONAL ANALYSIS: SCS CSHB 252

Version U

Section 1.

Expresses the legislative intent behind section 2 of the legislation.

Section 2.

Changes the standard for construction of statutes in AS 47.10 from a standard promoting "the child's welfare" to a standard promoting "the best interests of the child, including the parents' participation in the child's upbringing".

Section 3-6.

These sections direct the Department of Health and Social Services to offer, through contract providers, intensive family preservation services to families under certain circumstances. These services will be funded with funding already appropriated for the specific purposes of "intensive family preservation services".

Section 7.

Amends AS 47.10.960 DUTY AND STANDARD OF CARE NOT CREATED to state that the department's failure to comply "does not, by itself, constitute a basis for civil liability for damages".

Section 8.

Defines "intensive family preservation services".

Section 9.

Provides that before an agency can seek to terminate parental rights, intensive family preservation services must be offered to the parents.

Section 10.

Directs DHSS to conduct a study in at least one region of the state to develop projections for the need and the cost of intensive family preservation services, develop a long-range plan, and complete a report on the study by November 30, 2004.

Section 11.

Makes sections 1 and 2 effective immediately.

Section 12.

Makes Sections 3-6 and 9, requiring intensive family preservation services, effective July 1, 2003

Section 13.

Makes section 8 and 10 effective July 1, 2002.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM

April 30, 2002

SUBJECT: CSHB 252(RLS) (Work Order No. 22-LS0454\W)

TO: Representative John Coghill
Attn: Rynnieva Moss

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

The purpose of this memo is to alert you to a potential equal protection problem with the new language used for sec. 7 of CSHB 252(RLS), as added by the House Rules Committee.

The potential equal protection problem arises from the fact that the language refers to failure to comply with a provision of "this title" but civil liability is only limited as to children and their families being served under AS 47.10. Many types of people are covered by AS 47 ("this title"), including longevity bonus recipients, juvenile delinquents, vulnerable adults, child care agencies, people in mental health facilities, and developmentally delayed children, just to name a few. The language in sec. 7 of the CS implies that these other types of people could sue for damages for failure to comply with a provision of AS 47, but families served under AS 47.10 could not. In order to prevail against a constitutional challenge based on the equal protection clause, the legislature would have to give a legitimate governmental reason why families served under AS 47.10 should be treated differently with respect to civil liability than families and individuals served under other chapters of AS 47.

Let me provide an example. Suppose the Department of Health and Social Services misuses public assistance records in violation of AS 47.05.030. If the family involved is not served under AS 47.10, the family could sue the state for damages based on noncompliance with the statute, but could not do so if the family was served under AS 47.10. A court would want to know the basis on which the legislature decided to draw a distinction between the two families.

Here's another example. Suppose a mental health facility administers psychotropic medication to a patient in violation of AS 47.30.836 - 47.30.839. If the patient was a member of a family being served under AS 47.10, the patient could not sue the facility based on noncompliance with the statute, but the patient could sue based on noncompliance with the statute if the patient's family was not being served under AS 47.10. Again, a court would want to know the legislature's reason for this distinction.

Representative John Coghill
April 30, 2002
Page 2

As these two examples also demonstrate, the language of sec. 7 of the CS would remove civil liability for noncompliance with AS 47 not only for the state and the Department of Health and Social Services, but also for other entities covered by AS 47, such as mental health facilities. That's because the language says "Failure to comply..." without stating whose "failure."

If this does not comport with your intent, or if I may be of other assistance, please advise.

TML:pjc
02-051.pjc

Failure by the department to comply with a provision of this chapter does not, by itself, constitute a basis for civil liability for damages to children and their families being served under AS 47.10.

--- specifies "whose" failure so private parties must still follow the law

--- confines to chapter, not whole title, so we're really focusing on CINA families

--- clarifies that only "technical" failures to follow the law can't be sued on, but if damages are shown, there can still be compensation

SENATE COMMITTEE REPORT

DATE: 5/10/02

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/10/02

Judiciary Committee considered CS FOR HOUSE BILL NO. 252(RLS)

HB 252 CHILDREN IN NEED OF AID: SERVICES & LIAB.

"An Act relating to the construction of certain statutes relating to children; relating to the scope of duty and standard of care for persons who provide services to certain children and families; relating to civil liability for damages to certain children and their families resulting from failure to comply with certain statutes; relating to intensive family preservation services; and providing for an effective date."

and recommends:

- be replaced with S CS CS HB 252 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
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- same title
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- House Bill:**
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 - new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DHSS	2/2/02	✓		1
DAL	4/30/02		✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do	Do NOT	NO REC	AMEND
	PASS	PASS		
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SENATE FINANCE COMMITTEE
HB 252-CHILDREN IN NEED OF AID: SERVICES & LIAB.
SIGN-IN

NAME: Ryanneva Moss Subject/Bill No: HB 252
Co./Dept./Title: Legislative Aide Rep Coghil Phone: 445-3719
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions