

LEGAL SERVICES

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MEMORANDUM

March 22, 2013

SUBJECT: Amendment to Governor's Crime Bill
(Work Order No. 28-LS8002\A.1)

TO: Representative Max Gruenberg
Attn: Miles Brookes

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed an amendment to the governor's crime bill that you requested, amending AS 25.23.180(i), an adoption statute, which permits a person who is a victim of sexual abuse of a minor or incest to seek legal and equitable remedies against the perpetrator, even if the perpetrator's parental rights have been terminated as to a child conceived by the illegal relationship. The amendment would expand the coverage of AS 25.23.180(i) to allow the victim such remedies for all forms of sexual abuse. The amendment is blank so that you can adapt it to whatever version of the bill is available at the time you wish to offer it.

I did not eliminate the phrase "of a minor," because the term "sexual abuse of a minor" is a defined term. See AS 25.23.140. Instead I added "sexual assault," also a defined term.

Questions about the effect of AS 25.23.180(i) and about the amendment. I reviewed the case you referred me to, *S.J. v. L.T.*, 727 P.2d 789 (Alaska 1986), which held, among other things, that parental rights could only be terminated under the adoption or child in need of aid statutes.¹ I also reviewed the minutes of the 1987 committee hearing that you described to me in which the committee discussed SB 30, which made changes to the law on the termination of the parental rights of a person who caused the conception of a child by sexual abuse of a minor or sexual assault. Officials of the Department of Health and Social Services sought to assure that the parental rights of such a person could be terminated in connection with an adoption. The testimony by a Mr. Sanderson was that section 10, now AS 25.23.180(c)(3), was the heart of the bill, and that the passage of the bill would assure that the perpetrator's rights would be terminated. Minutes, *Hearing on CSSB 30 (JUD) before the House Health, Education and Social Service Committee*, 15th

¹ The trial court had terminated parental rights on the grounds of public policy - the child had been conceived as a result of sexual abuse of a minor.

Legislature, Second Session (May 17, 1987) (testimony of Jack Sanderson) The balance of the testimony seems to be about this concern.

AS 25.23.180(i) seems to cover an issue, retaining the right to sue a perpetrator, that is resolved by AS 09.10.065,² which provides that a person may bring an action based on sexual offenses at any time.³ The matter of legal claims based on the right to inherit are addressed in AS 25.23.130, which provides at subsection (d) that the termination of parental rights under AS 25.23.180(c)(3) renders the child a stranger to the parent for most purposes except inheritance. Under AS 25.23.130(e), the child's inheritance rights are not voided unless the decree terminating parental rights so provides.⁴

There also appears to be some confusion about which person's claims AS 25.23.180(i) is designed to protect. AS 25.23.180(i) appears to be saving claims that the parent who was abused might have, not the claims of the child who was conceived. It does not appear to me that the termination of the parental rights to a child conceived in an illegal relationship would in any way affect a claim that the victim of sexual abuse or incest might have against the perpetrator.

Thus it is not clear what additional effect the existing statute, or the amendment, might have.

Single subject concerns. As we discussed, the amendment may pose a single subject problem. The governor's crime bills, SB 22 and HB 73, concern primarily crime and criminal procedure. There are provisions amending sections from Title 47 concerning child abuse in each bill. However, these provisions, secs. 35 - 38 of CSSB 22(JUD) (now pending in the Senate Judiciary Committee) and secs. 36 - 38 of HB 73 (now pending in the House Judiciary Committee), do not appear to fit within the criminal law subject matter of the bill. These sections concern the standards for determining reasonable effort by parents in child in need of aid proceedings under AS 47.10.086(c), and the persons required to report child abuse under AS 47.17.020. There is a criminal penalty for failure to report as required under AS 47.17, so these sections impose criminal liability on two new groups. But neither of the statutes being amended involve changes to criminal law and procedure, a broad, but single, subject. *See Galbraith v. State*, 693 P.2d 880, 885 - 86 (Alaska App. 1985). The amendment to AS 25.23.180(i) is similarly outside of the general subject of criminal law. However, the bill does have a focus on amendment of statutes regarding protection against abuse, and thus it is possible to identify a unifying theme for the bills, and one which would include your amendment and the amendments of Title 47.

² It appears that AS 09.10.065 was enacted after the 1987 modifications to AS 25.23.

³ Likewise, criminal charges for such offenses can be brought at anytime. AS 12.10.010.

⁴ AS 25.23.130(d) and (e) were enacted with AS 25.23.180(i).

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The courts have given the single subject requirement a liberal interpretation, adopting, in *Gellert v. State*, 522 P.2d 1120 (Alaska 1974), the position stated by the Minnesota Supreme Court in 1891:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Id. at 1123, quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891). As a result, the courts rarely strike legislation down for violation of the rule. Five years after *Gellert*, the Alaska Supreme Court stated that the test

requires no more than that the various provisions of [a] single legislative enactment fairly relate to the same subject, or have a natural connection therewith.

Short v. State, 600 P.2d 20, 24 (Alaska 1979). Thus a court might hold that the general theme of the bills is sufficient under the single subject rule to encompass your amendment.

Title change. Addition of your amendment will require a title change to the bill. If you offer the amendment to the Senate version of the bill, you will need a concurrent resolution to suspend the uniform rules that apply to prohibit the change in the second house.

KJS:ljw
13-194.ljw

Enclosure