

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 221

BY REPRESENTATIVE CHENAULT

1 Page 1, line 1:

2 Delete "**and**"

3 Insert "**relating to the scope of representation required by the office of public**
4 **advocacy in civil cases;**"

5
6 Page 1, line 2, following "**Procedure**":

7 Insert "**; and providing for an effective date**"

8
9 Page 1, following line 3:

10 Insert a new bill section to read:

11 "*** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
12 to read:

13 FINDINGS AND INTENT. (a) The legislature finds that

14 (1) the ruling in In the Matter of Alaska Network on Domestic Violence and
15 Sexual Assault, 264 P.3d 835 (Alaska 2011), substantially expanded the doctrine established
16 in Flores v. Flores, 598 P.2d 893 (Alaska 1979), which held that public representation must be
17 provided to an indigent party in a child custody case where the opposing party is represented
18 by a public agency, and substantially expanded the duty of the office of public advocacy to
19 represent indigent persons in civil cases;

20 (2) there is no authoritative precedent, state or federal, to support an extension
21 of due process rights to an indigent parent who is proceeding without counsel in a child
22 custody case only because the other parent is represented by counsel provided by a private,
23 nonprofit organization;

(3) it is the legislature's exclusive role to appropriate money from the state treasury under art. IX, sec. 13, Constitution of the State of Alaska; and

(4) under art. II, Constitution of the State of Alaska, the legislature may pass laws establishing the scope of representation by the office of public advocacy.

(b) It is the intent of the legislature under sec. 3. of this Act to

(1) overrule the decision in *In the Matter of Alaska Network on Domestic Violence and Sexual Assault*, 264 P.3d 835 (Alaska 2011);

(2) establish criteria to determine when an entity is considered a public agency for purposes of appointing the office of public advocacy as counsel in civil cases; and

(3) clarify the scope of representation required by the office of public advocacy in civil cases."

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 1, following line 11:

Insert a new bill section to read:

"* **Sec. 3.** AS 44.21.410(a) is amended to read:

(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.26.360 - 13.26.410;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.131;

(3) provide guardian ad litem services to children in child protection actions under AS 47.17.030(e) and to wards and respondents in guardianship proceedings who will suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense under AS 13.26.025;

(4) provide legal representation in cases involving judicial bypass procedures for minors seeking abortions under AS 18.16.030, in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775; **in this paragraph,**

(A) "parent"

(i) means a natural parent of a child or a person who has lawfully adopted a child; and

(ii) does not include a putative father whose paternity has not been established;

(B) "party" means an indigent parent of a child who is the subject of a child custody proceeding;

(C) "public agency" means a department, office, agency, division, board, commission, public corporation, or other organizational unit of or created under the executive branch of the state government;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under AS 47.15 (Interstate Compact for Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for the termination of parental rights on grounds set out in AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for protective orders on behalf of a minor; and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests;

(6) develop and coordinate a program to recruit, select, train, assign, and supervise volunteer guardians ad litem from local communities to aid in delivering services in cases in which the office of public advocacy is appointed as guardian ad litem;

(7) provide guardian ad litem services in proceedings under AS 12.45.046 or AS 18.15.355 - 18.15.395;

(8) establish a fee schedule and collect fees for services provided by the office, except as provided in AS 18.85.120 or when imposition or collection of a fee is not in the public interest as defined under regulations adopted by the commissioner of administration;

(9) provide visitors and guardians ad litem in proceedings under AS 47.30.839;

(10) provide legal representation to an indigent parent of a child with a disability; in this paragraph, "child with a disability" has the meaning given in AS 14.30.350;

(11) investigate complaints and bring civil actions under AS 44.21.415(a) involving fraud committed against residents of the state who are 60 years of age or older; in this paragraph, "fraud" has the meaning given in AS 44.21.415."

Renumber the following bill section accordingly.

Page 2, following line 7:

Insert new bill sections to read:

"* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 44.21.410(a), as amended by sec. 3 of this Act applies to civil actions filed on or after the effective date of this Act.

* **Sec. 6.** Section 3 of this Act takes effect immediately under AS 01.10.070(c)."