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Research Brief

TO: Representative Max Gruenberg
FROM: Patricia Young, Manager
DATE: February 11, 2013
RE: Background and Legislative History of Certain Provisions Relating to Involuntary Termination of Parental Rights
LRS Report 13.149

You wished to know the background behind language in AS § 25.23.180(i). Specifically, you wished to know the reason the section applies to victims of sexual assault or sexual abuse of a minor, rather than to victims of sexual abuse at any age.

Alaska Statute § 25.23.180 pertains to the relinquishment and termination of parent and child relationships in the context of adoption proceedings. The provision you specifically asked about—subsection (i)—reads as follows (with emphasis added):

> Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section *do not affect the rights of a victim of sexual abuse of a minor or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.*

That language refers to the following (again, with emphasis added):

> (c) The relationship of parent and child may be terminated by a court order issued in connection with a proceeding under this chapter [adoption] or a proceeding under AS 47.10 [child in need of aid] on the grounds
>
> *(3) that the parent committed an act constituting sexual assault or sexual abuse of a minor under the laws of this state or a comparable offense under the laws of the state where the act occurred that resulted in conception of the child and that termination of the parental rights of the biological parent is in the best interests of the child.*

The provisions noted above—those to which we have added emphasis—originated from a measure in 1987 that was introduced specifically to address a particular child custody case that the Alaska Supreme Court had recently heard and remanded to the lower court for further proceedings.[1]

In that case—*S.J. v. L.T.*, 727 P.2d 789—the lower court had granted custody to the mother and terminated the parental rights of the biological father (the woman's stepfather) on public policy grounds for conceiving the child through a criminal relationship that had begun when the woman herself was an eight year old child. The father appealed and the Supreme Court overturned the lower court's decision on points of law. The majority concluded that because accusations of child sexual abuse had never been brought, the evidence presented had failed to support the original finding that the child had been conceived as a result of a criminal relationship. Further, according to Alaska law at that time, parental rights could be involuntarily terminated only in the context of an adoption or a child in need of aid proceeding. Because neither of those routes had been taken, the majority held the termination to have been improper.

[1] The Court issued its decision in *S.J. v. L.T.* in November of 1986. The first release of prefiled bills for the 1987 legislative session included Senate Bill 30, which resulted in the language that is the topic of this report.

in a dissenting opinion, however, Justice Burke argued that the relationship between the woman and her stepfather would not have been consensual, parental rights would never have attached, and therefore, termination of rights would not have been an issue. In the absence of a statutory procedure for such a situation but clearly not unsympathetic, the majority noted as follows:

> We take this opportunity to urge the legislature to consider issues such as those raised in this case in order to provide courts with necessary guidance in resolving sensitive questions.[2]

In a concurring opinion, Chief Justice Rabinowitz, stressed the following as concluding remarks:

> I think it of critical importance to emphasize that on remand it remains open to L.T. and to S.J. Jr. through his guardian ad litem to demonstrate to the superior court that no parental rights ever attached in S.J. In this regard I am of the view that the theory advanced by Justice Burke in his dissent has considerable merit. I also think it important that the courts of Alaska neither recognize nor enforce parental rights in the circumstance where they have been obtained in an egregious manner.[3]

Shortly after the Court issued its decision in November of 1986, the first session of the Fifteenth Legislature (1987 – 1988) convened and took up consideration of the prefiled Senate Bill 30, "An Act relating to termination of parental rights of perpetrators of certain sexual offenses." Testifying on SB 30 before the House Health, Education and Social Services Committee on May 17, 1987, Myra Munson, then-commissioner of the Department of Health and Social Services, urged speedy passage noting that the bill

> was written to address one specific case in which there is wide spread agreement about the answer. When a child is conceived through sexual abuse, it is clear why a mother and the child would want the parental rights of the father terminated. . . [The bill] needs to be passed this session before a judgment is made in that case.

Commissioner Munson's comments were made in response to your suggestion that cases other than those involving child sexual abuse might also benefit from the opportunity for involuntary termination of parental rights. She went on to point out that expanding the opportunity to all sexual abuse cases would likely be more controversial, and as such, she suggested consideration of that possibility at another time.

We hope this is helpful. If you have questions or need additional information, please let us know.

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[2] *S.J. v. L.T.*, 727 P.2d 789 at 795, footnote 8.

[3] *S.J. v. L.T.* 727 P.2d 789 at 800.