

Alaska State Legislature
House of Representatives
Representative Tammie Wilson



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HB 10
Sectional Analysis

Section 1. AS 47.05.065

This section is amended to ensure that remedial and rehabilitative programs are offered to all families so they have the opportunity to remedy the parental conduct or condition in the home that placed the child at risk of damage or harm and that the more stringent requirement of “active” efforts (as opposed to “reasonable” efforts) are made. That the child is placed in a safe, secure, and stable environment that is in the least restrictive setting that most approximates a family home in which the child’s needs may be met and that is within reasonable proximate to the child’s home

Sec. 2. AS 47.10.011

This section is amended to ensure that the more stringent standards are used by the court when determining, by a preponderance of the evidence, that a child is in need of aid.

Sec. 3. AS 47.10.011

This section is amended by adding a new subsection so that the same standards used to make a determination of physical damage or harm are parallel to the more stringent standards of U.S.C. 1901-1963, as set forth in the Indian Child Welfare Act of 1978, (ICWA) regardless of whether the child is an Indian child.

Sec. 4. AS 47.10.013(a)

This section is amended to require that the court substantiate the more stringent standards of “serious” risk, as opposed to “substantial” risk. It also adds “emotional or physical damage,” in addition to “harm” to parallel ICWA standards.

Sec. 5. AS 47.10.015.

This section is amended to ensure that the more stringent standards of ICWA are used by the court when determining, by a preponderance of the evidence, that a child was a victim of harm or neglect from the conduct by, or conditions created by a parent,

guardian or custodian.

Sec. 6. AS 47.10.030(c)

This section is amended to require the court to make a finding that the conditions or surroundings that prevention of imminent physical damage or harm to the child requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall take the child into custody and make temporary placement of the child that the court directs.

Sec. 7. AS 47.10.080(c)

AS 47.10.80(1) requires the department to place the child in a setting as provided under AS 47.14.100 or 25 U.S.C. 1915(b) and requires active efforts to find a permanent placement for the child.

Sec. 8. AS 47.10.080(f)

This section is amended to require an additional finding by the court as to whether the child should be returned to the custody of the parent or guardian.

Sec. 9. AS 47.10.080(l)

It requires a more stringent standard that when the department is establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether “returning the child to the child’s parent or guardian is likely to result in serious emotional or physical damage to the child”.

Sec. 10. AS 47.10.080(p)

This section is amended to require the more stringent standards of ICWA in that active efforts must provide opportunities for and to facilitate reasonable visitation if the child is removed from the parental home.

Sec. 11. AS 47.10.080 NEW SUB SECTION

AS 47.10.080 is amended by adding a new subsection which would require that an order issued under this section not allow removal of a child from the child's home or continued placement of the child outside the child's home unless there is, at the time the order is issued, clear and convincing evidence, including the testimony of a qualified expert witness who is not employed by the department, that the child is likely to suffer serious emotional or physical damage if left with or returned to the child's parent or guardian.

Sec. 12. AS 47.10.081(b)

This section has been revised to require the determination of whether continued custody of the child by the child's parent or guardian is likely to result in serious emotional or physical damage and be included in the disposition report.

Sec. 13. AS 47.10.086(a)

This section has been repealed and reenacted to identify family support services; and that remedial services and rehabilitative programs may include services and programs provided by the community, or other organizations. It also requires “active” measures in referring and obtaining support services for a parent or guardian.

The department’s duty to make active efforts under this subsection includes the duty to assist the child’s parent or guardian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. The department shall tailor its active efforts to the facts and circumstances of the case and list the efforts.

Sec. 14. AS 47.10.086(b)

This section is amended to parallel the more stringent standards as in ICWA.

Sec. 15. AS 47.10.086(d)

This section is amended to parallel the more stringent standards as in ICWA.

Sec. 16. AS 47.10.086(e)

This section is amended to parallel the more stringent standards as in ICWA.

Sec. 17. AS 47.10.086(f)

This section is amended to parallel the more stringent standards as in ICWA.

Sec. 18. AS 47.10.088(a)

This section is amended to parallel the more stringent standards as in ICWA.

It requires that evidence beyond a reasonable doubt, including the testimony of a qualified expert witness, who is not employed by the department, that continued custody of the child by the parent or guardian is likely to result in serious physical or emotional damage to the child.

Sec. 19. AS 47.10.088(b)

This section is amended for house-keeping purposes and to parallel the more stringent standards as in ICWA.

Sec. 20. AS 47.10.088(d)

The section is amended to read that the department shall petition for termination of a parent’s rights to a child, without making further active efforts, when a child is under the jurisdiction of the court under AS 47.10.010 and 47.10.011 and the court has made a finding under AS 47.10.086(b) that the best interests of the child do not require further active efforts by the department unless the department had documented a compelling reason for determining that the petition would not be in the best interest of the child. A compelling reason under this subsection may include care by a relative for the child.

Sec. 21. AS 47.10.088(g)

This section is amended so that the department must parallel the ICWA standards. In filing a petition to terminate parental rights, the department must determine that continued custody of the child by the child's parents or guardian would likely result in serious emotional or physical damage.

Sec. 22. AS 47.10.142(a)

This section is amended to parallel the more stringent standards as in ICWA.

Sec. 23. AS 47.10.142(b)

This section is amended to allow for the department to take emergency custody of a minor from the minor's parent or guardian only if it is necessary to prevent the imminent physical damage or harm to the child.

Sec. 24. AS 47.10.142(d)

This section is amended to parallel the more stringent standards as in ICWA.

The court must determine that allowing the department's continuing temporary legal custody of the child is based on the necessity to prevent imminent physical damage or harm to the child.

Sec. 25. AS 47.10.142(e)

This section is amended to direct the court to also determine at the temporary custody hearing whether (1) by a preponderance of the evidence, removal of the child is necessary to prevent imminent physical damage or harm to the child, or (2) by clear and convincing evidence, including the testimony of a qualified expert witness who is not employed by the department, the child would likely suffer serious physical or emotional damage if left in the child's home.

If the Court finds that probable cause exists for believing that the child is a child in need of aid and that a sufficient showing has been made under either (1) or (2) of this subsection, it shall order the child committed to the department for temporary placement outside the home of the child's parent or guardian. If the court finds that probable cause does not exist for believing the child is a child in need of aid, but that a sufficient showing has not been made under (1) or (2) of their subsection the court shall order the child to be either committed to the custody of the department with temporary placement to be in the child's home or returned to the custody of the child's parent or guardian.

Sec. 26. AS 47.10.142(f)

This section is amended for house-keeping purposes to parallel the more stringent standards as in ICWA.

The provision, except as provided in (i) of this section, limits the temporary placement under this section to 30 days.

Sec. 27. AS 47.10.142(h)

This section is amended to change the timeline for court review of the placement plan and actual placement of the child under AS 47.10.080 (I) to occur within 30 days, as opposed to 12 months, after a child is committed to the department.

Sec. 28. AS 47.10.142

This section is amended by adding a new paragraph to read: The court may only order a child committed to for temporary placement under (e) and (f) of this section for more than 30 days if the court determines by clear and convincing evidence, including the testimony of a qualified expert witness who is not employed by the department, that custody of the child by the child's parent or guardian is likely to result in imminent physical damage or harm to the child or that extraordinary circumstances exist.

Sec. 29. AS 47.10.990

This section is amended by adding a new paragraphs to define “active effort,” “emotional damage,” and “remedial services and rehabilitative programs”.

Sec. 30. AS 47.14.100(r) is amended to read:

This section is amended to parallel the more stringent efforts as in ICWA.

Sec. 31. AS 47.17.290(3)

This section is amended to parallel the more stringent definition of “child abuse or neglect”.

Sec. 32. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 6(a), Alaska Child in Need of Aid Rules of Procedure; amends the “Emergency Custody Without Court Order” standards to parallel the ICWA standards.

Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 6(b)(2), Alaska Child in Need of Aid Rules of Procedure; amends the “Form, Contents of Motion” standards for removal of a child to parallel the ICWA standards.

Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 6(b)(2), Alaska Child in Need of Aid Rules of Procedure, is amended to read: (3) Order; amends the standards for emergency orders of removal of a child to parallel ICWA standards.

Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 10(c)(2), Alaska Child in Need of Aid Rules of Procedure; amends the standards for removal of a child to parallel the ICWA standards.

Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 10(c)(3), Alaska Child in Need of Aid Rules of Procedure; amends the standards for removal of a child to parallel the ICWA standards.

Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 10(e)(2), Alaska Child in Need of Aid Rules of Procedure; amends that standards for the return of the child to the child's home to parallel ICWA standards.

Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 10.1(a)(1), Alaska Child in Need of Aid Rules of Procedure; amends Findings to parallel ICWA standards.

Sec. 39. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 15(f)(2), Alaska Child in Need of Aid Rules of Procedure; amends the inquiry and findings required by CINA Rule 10.1 to parallel ICWA standards.

Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 17(c), Alaska Child in Need of Aid Rules of Procedure; amends the Requirements for Disposition to parallel ICWA standards.

Sec. 41. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 17(d)(2), Alaska Child in Need of Aid Rules of Procedure; amends the standards the court uses to approve the removal of the child from the child's home to parallel ICWA standards.

Sec. 42. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.1(b), Alaska Child in Need of Aid Rules of Procedure, amends the standard used by the court in determining if a continuation of active efforts is not in the best interest of the child by paralleling them to the ICWA standard.

Sec. 43. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.1(d)(3), Alaska Child in Need of Aid Rules of Procedure; amends the standard to determine the Child's Best Interests to parallel the ICWA standard.

Sec. 44. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(a), Alaska Child in Need of Aid Rules of Procedure; amends the standards for Purpose and Timing of the Hearing for a child in need of aid to parallel ICWA standards.

Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(e), Alaska Child in Need of Aid Rules of Procedure; amends the standards used by the court for making written findings to parallel ICWA standards.

Sec. 46. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of Aid Rules of Procedure; amends the standards used to apply additional findings to parallel ICWA standards.

Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 17(3), Alaska Child in Need of Aid Rules of Procedure; amends the standard applied to petition or proxy for adoption or legal guardianship of a child under AS 47.10.111

Sec. 48. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 18(c), Alaska Child in Need of Aid Rules of Procedure; amends the standard applied to Burden of Proof to parallel ICWA standards.

Sec. 49. The uncodified law of the State of Alaska is amended by adding a new section:

DIRECT COURT RULE AMENDMENT. Rule 19.1(c), Alaska Child in Need of Aid Rules of Procedure; amends the standard applied for Disposition Order, pursuant to AS 47.10.100(a) to parallel ICWA standards.

Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section:

REPEAL OF COURT RULES. Rule 17.1(a), 17.1(c), and 17.1(d)(2), Alaska Child in Need of Aid Rules of Procedure, are repealed.

Sec. 51. AS 47.10.086(c), 47.10.086(g), 47.10.088(e), 47.10.990(11), 47.10.990(21), 47.10.990(27) and 47.10.990(30) are repealed.

Sec. 52. The uncodified law of the State of Alaska is amended by adding a new section:

TWO-THIRDS VOTE NOT REQUIRED. Because the provisions of Rules 6(a), 6(b)(2) and (3), 10(c)(2) and (3), 10(e)(2), 10.1, 15(f)(2), 17(c), 17(d)(2), 17.1(a), 17.1(b), 17.1(c), 17.1(d)(2) and (3), 17.2(a), 17.3 and 18(c), Alaska Child in Need of Aid Rules of Procedure, that are affected by the provisions of this Act were adopted under the Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of the State of Alaska, secs. 32 - 45, 48, and 50 of this Act take effect even if secs. 32 - 45, 47, 48, and 50 of this Act do not receive the two-thirds majority vote normally applicable to changing court rules under art. IV, sec. 15, Constitution of the State of Alaska.

Sec. 53. The uncodified law of the State of Alaska is amended by adding a new section:

APPLICABILITY. This Act applies to child-in-need-of-aid petitions filed or pending on or after the effective date of this Act.

Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section:

CONDITIONAL EFFECT. AS 47.10.080(l), as amended by sec. 9 of this Act, AS 47.10.081(b), as amended by sec. 12 of this Act, and AS 47.10.142(d), as amended by sec. 24 of this Act take effect only if secs. 9, 12, and 24 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

