

SENATE BILL NO. 134

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY SENATORS GARDNER, Begich

Introduced: 1/16/18

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the appointment of guardians ad litem; relating to petitions and
2 proceedings for termination of parental rights; and amending Rules 1 and 6, Alaska
3 Adoption Rules."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 25.23.030(c) is amended to read:

6 (c) Proceedings for the termination of parental rights on the grounds set out in
7 AS 25.23.180(c)(2) [AS 25.23.180(c)(3)] shall be brought in the superior court for the
8 district in which the child that is the subject of the action resides.

9 * **Sec. 2.** AS 25.23.050(a) is amended to read:

10 (a) Consent to adoption is not required of

11 (1) for purposes of this section, a parent who has abandoned a child for
12 a period of at least six months;

13 (2) a parent of a child in the custody of another, if the parent for a
14 period of at least one year has failed significantly without justifiable cause, including

1 but not limited to indigency,

2 (A) to communicate meaningfully with the child, or

3 (B) to provide for the care and support of the child as required
4 by law or judicial decree;

5 (3) the father of a minor if the father's consent is not required by
6 AS 25.23.040(a)(2);

7 (4) a parent who has relinquished the right to consent under
8 AS 25.23.180;

9 (5) a parent whose parental rights have been terminated by order of the
10 court under **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)] or AS 47.10.080(c)(3);

11 (6) a parent judicially declared incompetent or mentally defective if the
12 court dispenses with the parent's consent;

13 (7) a parent of the person to be adopted, if the person is 18 or more
14 years of age;

15 (8) a guardian or custodian specified in AS 25.23.040(a)(3) or (4) who
16 has failed to respond in writing to a request for consent for a period of 60 days or who,
17 after examination of the guardian's or custodian's written reasons for withholding
18 consent, is found by the court to be withholding consent unreasonably; or

19 (9) the spouse of the person to be adopted, if the requirement of
20 consent to the adoption is waived by the court by reason of prolonged unexplained
21 absence, unavailability, incapacity, or circumstances constituting an unreasonable
22 withholding of consent.

23 * **Sec. 3.** AS 25.23.125(b) is amended to read:

24 (b) The court may appoint a guardian ad litem or attorney, or both, under
25 AS 25.24.310 for a minor who is to be adopted **or for a minor whose parent is the**
26 **subject of a petition to terminate parental rights under AS 25.23.180(c).**

27 * **Sec. 4.** AS 25.23.130(d) is amended to read:

28 (d) Except as provided in (e) of this section, a decree terminating parental
29 rights on the grounds set out in **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)] voids all
30 legal relationships between the child and the biological parent so that the child is a
31 stranger to the biological parent and to relatives of the biological parent for all

purposes, including interpretation of documents executed before or after the termination of parental rights that do not include the child by name or by a description not based on a parental or blood relationship.

* **Sec. 5.** AS 25.23.130(e) is amended to read:

(e) Inheritance rights between a child and a biological parent are not voided by a decree terminating parental rights on the grounds set out in **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)] unless the decree specifically provides for the termination of inheritance rights.

* **Sec. 6.** AS 25.23.140(c) is amended to read:

(c) Subject to the disposition of an appeal, one year after a decree is issued terminating parental rights on grounds set out in **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)], the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

* **Sec. 7.** AS 25.23.150(b) is amended to read:

(b) The papers and records relating to an adoption or a termination of parental rights under **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)] that are a part of the permanent record of a court are subject to inspection only upon consent of the court. The papers and records relating to an adoption or a termination of parental rights under **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)] on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisions of AS 18.50.

* **Sec. 8.** AS 25.23.150(c) is amended to read:

(c) Except as otherwise provided by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of an adoptive parent, an adopted child, a child who is the subject of a proceeding under **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)], or a biological parent whose parental rights have been terminated on grounds set out in **AS 25.23.180(c)(2)** [AS 25.23.180(c)(3)].

1 * **Sec. 9.** AS 25.23.150(d) is amended to read:

2 (d) The court may order the disclosure of a natural parent's identity or address
3 only if

4 (1) the court makes an express finding that the disclosure is required
5 because of a medical necessity or other extraordinary circumstance; and

6 (2) the natural parent unless the parent's parental rights have been
7 terminated on grounds set out in AS 25.23.180(c)(2) [AS 25.23.180(c)(3)], the child,
8 and the adoptive parents are afforded proper notice and a hearing; the court may waive
9 the hearing and notice requirement if it finds there is a medical necessity that poses an
10 immediate risk to life.

11 * **Sec. 10.** AS 25.23.170 is amended to read:

12 **Sec. 25.23.170. Applications for birth certificates.** Within 30 days after an
13 adoption decree becomes final, the clerk of the court shall, if requested by the adoptive
14 parents, prepare an application for a birth certificate in the name of the adopted
15 person. Upon issuing a decree terminating parental rights on grounds set out in
16 AS 25.23.180(c)(2) [AS 25.23.180(c)(3)] the court may order the preparation of an
17 application for a birth certificate in the name of the child without reference to the
18 parent whose parental rights have been terminated. The clerk of the court shall
19 forward the application

20 (1) for a person born in the United States, to the appropriate vital
21 statistics office of the place, if known, where the adopted person was born and a copy
22 of the decree to the department for statistical purposes; and

23 (2) for a person born outside the United States to the state registrar of
24 vital statistics.

25 * **Sec. 11.** AS 25.23.180(c) is amended to read:

26 (c) The relationship of parent and child may be terminated by a court order
27 issued in connection with a proceeding

28 (1) under this chapter or a proceeding under AS 47.10 on the grounds

29 (A) [(1)] specified in AS 47.10.080(o) or 47.10.088; or

30 (B) [(2)] that a parent who does not have custody is
31 unreasonably withholding consent to adoption, contrary to the best interest of

1 the minor child;

2 **(2) under this chapter, a proceeding under AS 47.10, or an**
 3 **independent proceeding issued on the grounds** [OR (3)] that the parent committed
 4 an act constituting sexual assault, [OR] sexual abuse of a minor, **or incest** under the
 5 laws of this state, or a comparable offense under the laws of the state where the act
 6 occurred, that resulted in conception of the child and that termination of the parental
 7 rights of the biological parent is in the best interests of the child.

8 * **Sec. 12.** AS 25.23.180(e) is amended to read:

9 (e) A petition for termination of the relationship of parent and child made in
 10 connection with an adoption proceeding or in an independent proceeding for the
 11 termination of parental rights on grounds set out in **(c)(2)** [(c)(3)] of this section may
 12 be made by

13 (1) either parent if termination of the relationship is sought with
 14 respect to the other parent;

15 (2) the petitioner for adoption, the guardian of the person, the legal
 16 custodian of the child, or the individual standing in parental relationship to the child;

17 (3) an agency; or

18 (4) another person having a legitimate interest in the matter.

19 * **Sec. 13.** AS 25.23.180(g) is amended to read:

20 (g) Notwithstanding the provisions of (b) of this section, a relinquishment of
 21 parental rights with respect to a child, executed under this section, may be withdrawn
 22 by the parent, and a decree of a court terminating the parent and child relationship on
 23 grounds set out in (c)(1) [AND (2)] of this section may be vacated by the court upon
 24 motion of the parent, if the child is not on placement for adoption and the person
 25 having custody of the child consents in writing to the withdrawal or vacation of the
 26 decree.

27 * **Sec. 14.** AS 25.23.180(h) is amended to read:

28 (h) The respondent to a petition filed for the termination of parental rights on
 29 grounds set out in **(c)(2)** [(c)(3)] of this section is entitled to representation in the
 30 proceedings by an attorney. If the respondent is financially unable to employ an
 31 attorney, the court shall appoint the office of public advocacy to represent the

respondent in the proceedings.

* **Sec. 15.** AS 25.23.180(i) is amended to read:

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(2) [(c)(3)] of this section do not affect the rights of a victim of sexual assault, 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.

* **Sec. 16.** AS 25.23.180 is amended by adding a new subsection to read:

(o) A petition for termination of parental rights under (c)(2) of this section may be filed to initiate an independent proceeding not connected to a petition for adoption or a proceeding under AS 47.10.

* **Sec. 17.** 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 13.26.700 - 13.26.750;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.291;

(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 13.26.041;

(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 13.26.226(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;

(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

1 termination of parental rights under AS 25.23.180(c)(2) [ON GROUNDS SET OUT
 2 IN AS 25.23.180(c)(3)]; in cases involving petitions to remove the disabilities of a
 3 minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
 4 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
 5 protective orders on behalf of a minor; and in cases involving indigent persons who
 6 are entitled to representation under AS 18.85.100 and who cannot be represented by
 7 the public defender agency because of a conflict of interests;

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

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

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

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

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

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

27 * **Sec. 18.** The uncoded law of the State of Alaska is amended by adding a new section to
 28 read:

29 INDIRECT COURT RULE AMENDMENTS. AS 25.23.180(c), as amended by sec.
 30 11 of this Act, and AS 25.23.180(o), enacted by sec. 16 of this Act, have the effect of
 31 amending Rules 1(b) and 6(c), Alaska Adoption Rules, by clarifying that a petition for

- 1 involuntary termination of parental rights may be filed in a proceeding that is independent
- 2 from an adoption or a proceeding under AS 47.10 and by restructuring AS 25.23.180(c),
- 3 which eliminates AS 25.23.180(c)(3).