

**CS FOR HOUSE BILL NO. 339(HES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/19/96

Referred: State Affairs, Judiciary

Sponsor(s): REPRESENTATIVES ROKEBERG, Mulder, Robinson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to children-in-need-of-aid proceedings, including proceedings to  
2 terminate parental rights of incarcerated parents; and providing for an effective  
3 date."

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

5 \* **Section 1. PURPOSE.** (a) The purpose of sec. 2 of this Act is to clarify statutes to  
6 expressly recognize the Department of Health and Social Service's long-standing interpretation  
7 of AS 47.10.010(a)(2)(A) that a parent cannot effectively care for a child unless the parent is  
8 both willing and able to care for that child. Section 2 of this Act is expressly intended to  
9 overrule the decision by the Alaska Supreme Court in In re S.A. and D.A. (Op. No. 4314,  
10 January 26, 1996).

11 (b) The purpose of sec. 3 of this Act is to respond to the Alaska Supreme Court's  
12 invitation in A.M. v. State of Alaska, 891 P.2d 815 (Alaska 1995) and Nada A. v. State of  
13 Alaska, 660 P.2d 436 (Alaska 1983) to create a statutory basis for making incarceration a factor  
14 that can be considered in termination proceedings concerning children in need of aid.

1 \* **Sec. 2.** AS 47.10.010(a) is amended to read:

2 (a) Proceedings relating to a minor under 18 years of age residing or found in  
3 the state are governed by this chapter, except as otherwise provided in this chapter, when  
4 the court finds the minor

5 (1) to be a delinquent minor as a result of violating a criminal law of the  
6 state or a municipality of the state; or

7 (2) to be a child in need of aid as a result of

8 (A) the child being habitually absent from home or refusing to  
9 accept available care, or having no parent, guardian, custodian, or relative  
10 [CARING OR] willing **and able** to provide care, including physical abandonment  
11 by

12 (i) both parents,

13 (ii) the surviving parent, or

14 (iii) one parent if the other parent's rights and  
15 responsibilities have been terminated under AS 25.23.180(c) or  
16 AS 47.10.080 or voluntarily relinquished;

17 (B) the child being in need of medical treatment to cure, alleviate,  
18 or prevent substantial physical harm, or in need of treatment for mental harm as  
19 evidenced by failure to thrive, severe anxiety, depression, withdrawal, or  
20 untoward aggressive behavior or hostility toward others, and the child's parent,  
21 guardian, or custodian has knowingly failed to provide the treatment;

22 (C) the child having suffered substantial physical harm or if there  
23 is an imminent and substantial risk that the child will suffer such harm as a result  
24 of the actions done by or conditions created by the child's parent, guardian, or  
25 custodian or the failure of the parent, guardian, or custodian adequately to  
26 supervise the child;

27 (D) the child having been, or being in imminent and substantial  
28 danger of being, sexually abused either by the child's parent, guardian, or  
29 custodian, or as a result of conditions created by the child's parent, guardian, or  
30 custodian, or by the failure of the parent, guardian, or custodian adequately to  
31 supervise the child;

32 (E) the child committing delinquent acts as a result of pressure,

1 guidance, or approval from the child's parents, guardian, or custodian;

2 (F) the child having suffered substantial physical abuse or neglect  
3 as a result of conditions created by the child's parent, guardian, or custodian.

4 \* **Sec. 3.** AS 47.10.080(c) is amended to read:

5 (c) If the court finds that the minor is a child in need of aid, it shall

6 (1) order the minor committed to the department for placement in an  
7 appropriate setting for a period of time not to exceed two years or in any event past the  
8 date the minor becomes 19 years of age, except that the department may petition for and  
9 the court may grant in a hearing (A) two-year extensions of commitment that do not  
10 extend beyond the minor's 19th birthday if the extension is in the best interests of the  
11 minor and the public; and (B) an additional one-year period of supervision past age 19  
12 if the continued supervision is in the best interests of the person and the person consents  
13 to it; the department may transfer the minor, in the minor's best interests, from one  
14 placement setting to another, and the minor, the minor's parents or guardian, and the  
15 minor's attorney are entitled to reasonable notice of the transfer;

16 (2) order the minor released to the minor's parents, guardian, or some  
17 other suitable person, and, in appropriate cases, order the parents, guardian, or other  
18 person to provide medical or other care and treatment; if the court releases the minor,  
19 it shall direct the department to supervise the care and treatment given to the minor, but  
20 the court may dispense with the department's supervision if the court finds that the adult  
21 to whom the minor is released will adequately care for the minor without supervision;  
22 the department's supervision may not exceed two years or in any event extend past the  
23 date the minor reaches age 19, except that the department may petition for and the court  
24 may grant in a hearing

25 (A) two-year extensions of supervision that do not extend beyond  
26 the minor's 19th birthday if the extension is in the best interests of the minor and  
27 the public; and

28 (B) an additional one-year period of supervision past age 19 if the  
29 continued supervision is in the best interests of the person and the person  
30 consents to it; or

31 (3) by order, upon a showing in the adjudication by clear and convincing  
32 evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of

1 parental conduct **or incarceration**, and upon a showing in the disposition by clear and  
2 convincing evidence that the parental conduct **or the period of incarceration** is likely  
3 to continue to exist **sufficiently long to seriously damage the parent and child**  
4 **relationship or to cause serious emotional or physical harm to the child** if there is  
5 no termination of parental rights, terminate parental rights and responsibilities of one or  
6 both parents and commit the child to the department or to a legally appointed guardian  
7 of the person of the child, and the department or guardian shall report annually to the  
8 court on efforts being made to find a permanent placement for the child.

9 \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).