

HOUSE BILL NO. 465

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CHENAULT

Introduced: 2/19/02

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to children alleged to be children in need of aid; relating to children in**
2 **the custody of the Department of Health and Social Services; and amending Rules 3(a),**
3 **7(b), 10(b)(1), 15(b), and 19, Alaska Child in Need of Aid Rules of Procedure."**

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

5 * **Section 1.** AS 47.10.030(b) is amended to read:

6 (b) In all cases under this chapter, the child, each parent, the tribe, foster
7 parent or other out-of-home care provider, guardian, and guardian ad litem of the child
8 and, subject to (d) and (e) of this section, each grandparent of the child shall be given
9 **10 calendar days'** [NOTICE ADEQUATE TO GIVE] actual **advance written** notice
10 of the proceedings and the possibility of termination of parental rights and
11 responsibilities, taking into account education and language differences that are known
12 or reasonably ascertainable by the petitioner or the department **except that, if the**
13 **child has been taken into emergency custody, the notice of the temporary custody**
14 **hearing must only be actual notice.** The notice of **a** [THE] hearing must contain all

1 names by which the child has been identified. Notice shall be given in the manner
 2 appropriate under rules of civil procedure for the service of process in a civil action
 3 under Alaska law or in any manner the court by order directs. Proof of the giving of
 4 the notice shall be filed with the court before the petition is heard. The court may also
 5 subpoena the parent of the child, or any other person whose testimony may be
 6 necessary at the hearing. A subpoena or other process may be served by a person
 7 authorized by law to make the service, and, where personal service cannot be made,
 8 the court may direct that service of process be in a manner appropriate under rules of
 9 civil procedure for the service of process in a civil action under Alaska law or in any
 10 manner the court directs.

11 * **Sec. 2.** AS 47.10.030(d) is amended to read:

12 (d) Except as provided in (e) of this section, the department shall give **10**
 13 **calendar days' actual** advance written notice of all court hearings in a child's case,
 14 **other than a temporary custody hearing held after emergency custody of a child,**
 15 to a grandparent of the child if (1) the grandparent has contacted the department,
 16 provided evidence acceptable to the department of being the child's grandparent,
 17 requested notice about the hearings in the child's case, and provided the department
 18 with a current mailing address; or (2) the department is aware that the child has a
 19 grandparent and the grandparent's mailing address is on file with the department. **If a**
 20 **child has been taken into emergency custody, the department shall attempt to**
 21 **give actual notice of the child's temporary custody hearing to a grandparent of**
 22 **the child who meets the requirements of (1) or (2) of this subsection.**

23 * **Sec. 3.** AS 47.10.070(a) is amended to read:

24 (a) The court may conduct the hearing on the petition in an informal manner.
 25 The court shall give notice of the hearing to the department, and it may send a
 26 representative to the hearing. The court shall also transmit a copy of the petition to the
 27 department. The department shall **give 10 calendar days' actual advance written**
 28 **[SEND]** notice of the hearing to the persons for whom notice is required under
 29 AS 47.10.030(b) and to each grandparent of the child entitled to notice under
 30 AS 47.10.030(d). The department and the persons to whom the department must send
 31 notice of the hearing are entitled to be heard at the hearing. However, the court may

1 limit the presence of the foster parent or other out-of-home care provider and of any
 2 grandparent of the child to the time during which the person's testimony is being given
 3 if it is (1) in the best interest of the child; or (2) necessary to protect the privacy
 4 interests of the parties and will not be detrimental to the child. The public shall be
 5 excluded from the hearing, but the court, in its discretion, may permit individuals to
 6 attend a hearing if their attendance is compatible with the best interests of the child.

7 * **Sec. 4.** AS 47.10.080(s) is amended to read:

8 (s) The department may transfer a child, in the child's best interests, from one
 9 placement setting to another, and the child, the child's parents or guardian, the child's
 10 foster parents or out-of-home caregiver, the child's guardian ad litem, the child's
 11 attorney, and the child's tribe are entitled to **10 calendar days' actual** advance **written**
 12 notice of a nonemergency transfer. A party opposed to the proposed transfer may
 13 request a hearing and must prove by clear and convincing evidence that the transfer
 14 would be contrary to the best interests of the child for the court to deny the transfer. A
 15 foster parent or out-of-home caregiver who requests a nonemergency change in
 16 placement of the child shall provide the department with reasonable advance notice of
 17 the requested change.

18 * **Sec. 5.** AS 47.10.120(a) is amended to read:

19 (a) When a child in need of aid is committed under this chapter, the court
 20 shall, after giving the parent a reasonable opportunity to be heard, adjudge that the
 21 parent pay to the department in a manner that the court directs a sum to cover in full or
 22 in part the maintenance and care of the child. The support obligation shall be
 23 calculated under Rule 90.3(i) of the Alaska Rules of Civil Procedure.
 24 **Notwithstanding AS 47.07.020, to the extent that a child and the child's health**
 25 **care costs are eligible for coverage through the Indian Health Service or another**
 26 **entity or under the private health insurance of the child's parent, foster parent,**
 27 **or other legal guardian, the department may not use state or federal money to**
 28 **pay for the health care costs of a child who is in the department's custody under**
 29 **this chapter.**

30 * **Sec. 6.** AS 47.10 is amended by adding a new section to article 4 to read:

31 **Sec. 47.10.900. Misrepresentation prohibited.** An employee of the

1 department may not knowingly misrepresent a fact relating to a case under this
 2 chapter, including a fact about the child or the child's family, to another state
 3 employee. Violation of this section is a misdemeanor, punishable by a fine of up to
 4 \$1,000 and 30 days imprisonment for each violation. For purposes of this section,
 5 each fact that is knowingly misrepresented and each occasion on which a fact is
 6 knowingly misrepresented is a separate violation. In this section, "knowingly" has the
 7 meaning given in AS 11.81.900.

8 * **Sec. 7.** AS 47.14.100(b) is amended to read:

9 (b) **Subject to the other provisions of this subsection, the** [THE] department
 10 may pay the costs of maintenance that are necessary to assure adequate care of the
 11 child, and may accept funds from the federal government that are granted to assist in
 12 carrying out the purposes of this chapter, or that are paid under contract entered into
 13 with a federal department or agency. A child under the care of the department may
 14 not be placed in a family home or institution that does not maintain adequate standards
 15 of care. **Notwithstanding AS 47.07.020 and other provisions of this subsection, to**
 16 **the extent that a child and the child's health care costs are eligible for coverage**
 17 **through the Indian Health Service or another entity or under the private health**
 18 **insurance of the child's parent, foster parent, or other legal guardian, the**
 19 **department may not use state or federal money to pay for the health care costs of**
 20 **a child who is in the department's custody under AS 47.10.**

21 * **Sec. 8.** AS 47.14.100(e) is amended to read:

22 (e) **Subject to the other provisions of this subsection, a** [A] child may not
 23 be placed in a foster home or in the care of an agency or institution providing care for
 24 children if a relative by blood or marriage requests placement of the child in the
 25 relative's home. **If a child is placed in a foster home or in the care of an agency or**
 26 **institution providing care for children, the department shall, within 30 days after**
 27 **the placement, begin using all reasonable means available to the department to**
 28 **locate the child's relatives by blood or marriage in order to ascertain if a relative**
 29 **is willing to care for the child. The department shall continue attempts to locate**
 30 **the child's relatives until the department has exhausted all reasonable means**
 31 **available, including voter registration records, motor vehicle registration records,**

1 **and other data bases and information available to the department from other**
 2 **state agencies. If, after the child is placed in a foster home or with an agency or**
 3 **institution for the care of children, a relative is found who requests placement of**
 4 **the child in the relative's home, the department shall promptly place the child**
 5 **with the relative. Notwithstanding other provisions of this subsection, however**
 6 [HOWEVER], the department may **refuse to place the child with a relative**, retain
 7 custody of the child, and provide for [ITS] placement in the same manner as for other
 8 children if the department

9 (1) makes a determination, supported by clear and convincing
 10 evidence, that placement of the child with the relative will result in physical or mental
 11 injury; in making that determination, poverty, including inadequate or crowded
 12 housing, on the part of the blood relative, is not considered prima facie evidence that
 13 physical or emotional damage to the child will occur; this determination may be
 14 appealed to the superior court to hear the matter de novo;

15 (2) determines that a member of the relative's household who is 12
 16 years of age or older was the perpetrator in a substantiated report of abuse under
 17 AS 47.17; or

18 (3) determines that a member of the relative's household who is 12
 19 years of age or older is under arrest for, charged with, has been convicted of, or has
 20 been found not guilty by reason of insanity of, a serious offense; notwithstanding this
 21 paragraph, the department may place or continue the placement of a child at the
 22 relative's home if the relative demonstrates to the satisfaction of the department that
 23 conduct described in this paragraph occurred at least five years before the intended
 24 placement and the conduct

25 (A) did not involve a victim who was under 18 years of age at
 26 the time of the conduct;

27 (B) was not a crime of domestic violence as defined in
 28 AS 18.66.990; and

29 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
 30 a law or ordinance of another jurisdiction having similar elements.

31 * **Sec. 9.** AS 47.14.240(f) is amended to read:

1 (f) During a review under (a) of this section, a local review panel shall

2 (1) **determine whether the department has complied with**
 3 **AS 47.14.100(e) and evaluate whether continued efforts should be made by the**
 4 **department to locate the child's relatives under AS 47.14.100(e);**

5 (2) determine whether the child has a case plan designed to achieve
 6 placement in the least restrictive, most family-like setting available in close proximity
 7 to the home of the child's parents that is consistent with the best interests and special
 8 needs and circumstances of the child;

9 (3) [(2)] evaluate the continuing necessity and appropriateness of the
 10 child's placement, the extent of the compliance with the child's case plan, and the
 11 extent of progress that has been made toward mitigating the causes that necessitated
 12 placement away from the child's parents;

13 (4) [(3)] ascertain the date by which it is likely the child may be
 14 returned to the home or placed for adoption or legal guardianship;

15 (5) [(4)] determine whether there has been compliance with applicable
 16 provisions of 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act) and other applicable
 17 state and federal laws; and

18 (6) [(5)] determine whether there has been compliance with court
 19 review requirements of AS 47.10.080(f) and (l) and 47.10.142(h).

20 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 3(a), Alaska Child in Need of Aid
 23 Rules of Procedure, is amended to read:

24 (a) **Notice.** **Actual written notice** [NOTICE] of each hearing, **other than a**
 25 **temporary custody hearing held under CINA Rule 10(a)(1)(A),** must be given to
 26 all parties and any foster parent or other out-of-home care provider **at least 10**
 27 **calendar days** [WITHIN A REASONABLE TIME] before the hearing. Service on
 28 the child may be accomplished by serving the child's guardian ad litem, attorney, or
 29 social worker. Notice to a foster parent or out-of-home care provider must be
 30 provided by the Department.

31 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 DIRECT COURT RULE AMENDMENT. Rule 7(b), Alaska Child in Need of Aid
3 Rules of Procedure, is amended to read:

4 (b) **Notice of Hearing.** **If the child has been taken into emergency custody,**
5 **the** [THE] Department shall provide a copy of the petition, as well as actual notice of
6 the time and place of the initial hearing and of the parties' right to counsel, to the
7 parents, guardian, and Indian custodian if these parties can be found after diligent
8 efforts. In addition, **if the child has been taken into emergency custody,** actual
9 notice of the proceedings must be given to any foster parent or other out-of-home care
10 provider within a reasonable time before the hearing. If an Indian child is taken into
11 emergency custody, the Department shall **also** make reasonable efforts to ascertain
12 and provide actual notice to the child's tribe before the temporary custody hearing. **If**
13 **the child has not been taken into emergency custody, each notice required under**
14 **this subsection must be 10 calendar days' actual advance written notice.**

15 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 DIRECT COURT RULE AMENDMENT. Rule 15(b), Alaska Child in Need of Aid
18 Rules of Procedure, is amended to read:

19 (b) **Notice.** The Department must provide **actual written** notice of the
20 adjudication hearing to the persons specified in CINA Rule 7(b) **at least 10 calendar**
21 **days** [WITHIN A REASONABLE TIME] prior to the hearing. In cases involving an
22 Indian child, notice of the hearing must be received at least ten days before the hearing
23 pursuant to CINA Rule 7(e)(1). Upon request, the court shall postpone the hearing to
24 ensure that the Indian child's parents, Indian custodian or tribe have had thirty days
25 from receipt of the notice to prepare for the hearing.

26 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 COURT RULE AMENDMENTS. (a) Sections 1 - 4 of this Act indirectly amend
29 Rules 3(a), 7(b), 10(b)(1), 15(b), and 19, Alaska Child in Need of Aid Rules of Procedure, by
30 specifying that 10 calendar days of actual written notice must be given to certain persons
31 before most hearings under the Child in Need of Aid Rules of Procedure.

1 (b) Sections 10 - 12 of this Act directly amend Rules 3(a), 7(b), and 15(b), Alaska
2 Child in Need of Aid Rules of Procedure.

3 (c) Sections 1 - 4 and 10 - 12 of this Act take effect only if this section receives the
4 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
5 Alaska.