

CS FOR HOUSE BILL NO. 114(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/23/05

Referred: Health, Education and Social Services, Judiciary

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to proceedings regarding voluntary relinquishments and terminations
2 of a parent and child relationship; relating to eligibility for permanent fund dividends
3 for certain children in the custody of the state; relating to child-in-need-of-aid
4 proceedings, adoption proceedings, and juvenile delinquency proceedings; relating to
5 findings in permanency hearings in child-in-need-of-aid proceedings; amending Rules 9
6 and 13, Alaska Adoption Rules, Rules 17.2 and 18, Child in Need of Aid Rules of
7 Procedure, and Rules 14 and 15, Rules of Probate Procedure; and providing for an
8 effective date."

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

10 * **Section 1.** AS 13.26 is amended by adding a new section to read:

11 **Sec. 13.26.064. Guardianship after voluntary relinquishment; procedure.**

12 In addition to the applicable procedures under this chapter, a guardianship decree and

1 review of a guardianship decree are governed by the procedures established under
2 AS 25.23.180 and, for a child-in-need-of-aid, AS 47.10.089, pertaining to voluntary
3 relinquishment of parental rights and retaining of parental privileges in a guardianship
4 decree.

5 * **Sec. 2.** AS 25.23.180 is amended by adding new subsections to read:

6 (j) In a relinquishment of parental rights executed under (a) of this section, a
7 parent may retain privileges with respect to the child, including the ability to have
8 future contact, communication, and visitation with the child. A retained privilege
9 must be stated with specificity in writing, and, not less than 10 days after the
10 relinquishment is signed, the court may enter an order terminating parental rights if the
11 court finds that termination of parental rights under the terms of the agreement is in
12 the child's best interest. If a parent has retained one or more privileges, the court shall
13 incorporate the retained privileges into the termination order with a recommendation
14 that the retained privileges be incorporated in an adoption or legal guardianship
15 decree.

16 (k) A voluntary relinquishment may not be withdrawn and a termination order
17 may not be vacated on the ground that a retained privilege has been withheld from the
18 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
19 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
20 Procedure.

21 (l) After a termination order is entered, a person who has voluntarily
22 relinquished parental rights under this section may request a review hearing, upon a
23 showing of good cause, to seek enforcement or modification of or to vacate a privilege
24 retained in the termination order. The court may modify, enforce, or vacate the
25 retained privilege if the court finds, by clear and convincing evidence, that it is in the
26 best interest of the child to do so.

27 (m) After a termination order is entered and before the entry of an adoption or
28 legal guardianship decree, a prospective adoptive parent or a guardian of the child may
29 request, after providing notice as specified under this subsection, that the court decline
30 to incorporate a privilege retained in a termination order and recommended for
31 incorporation in an adoption or guardianship decree under (j) of this section. If the

1 person who has relinquished parental rights to the child who is the subject of the
 2 adoption or guardianship decree did not waive rights to notice of adoption under (b) of
 3 this section, the request made under this subsection may only be considered by the
 4 court after providing at least 20 days' notice by certified mail to the last known address
 5 of the person who has voluntarily relinquished parental rights to the child. The notice
 6 under this subsection must describe the request and explain that the recipient of the
 7 notice may submit a written statement under penalty of perjury to the court that the
 8 recipient either agrees with or opposes the request. The notice must also include the
 9 deadline for submitting the statement and the mailing address of the court. The court
 10 may decline to incorporate a retained privilege if the person who retained the privilege
 11 agrees with the request or if the court finds that it is in the child's best interest.

12 (n) After a termination order is entered and before the entry of an adoption
 13 decree, a person who voluntarily relinquished parental rights to a child under this
 14 section may request a review hearing, upon a showing of good cause, to vacate the
 15 termination order and reinstate parental rights relating to that child. A court shall
 16 vacate a termination order if the person shows, by clear and convincing evidence, that
 17 reinstatement of parental rights is in the best interest of the child and that the person is
 18 rehabilitated and capable of providing the care and guidance that will serve the moral,
 19 emotional, mental, and physical welfare of the child.

20 (o) A person who relinquished parental rights is entitled to the appointment of
 21 an attorney if a hearing is requested under (l), (m), or (n) of this section to the same
 22 extent as if the parent's rights had not been terminated in a child-in-need-of-aid
 23 proceeding.

24 * **Sec. 3.** AS 43.23.005(f) is amended to read:

25 (f) **The** [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
 26 commissioner may waive the requirement of (a)(4) of this section for an individual
 27 absent from the state

28 **(1) in a time of national military emergency** under military orders
 29 while serving in the armed forces of the United States, or for the spouse and
 30 dependents of that individual; **or**

31 **(2) while in the custody of the Department of Health and Social**

1 **Services in accordance with a court order under AS 47.10 or AS 47.12 and placed**
 2 **outside of the state by the Department of Health and Social Services for purposes**
 3 **of medical or behavioral treatment.**

4 * **Sec. 4.** AS 47.10.020(a) is amended to read:

5 (a) Whenever circumstances subject a child to the jurisdiction of the court
 6 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
 7 to make a preliminary inquiry and report for the information of the court to determine
 8 whether the best interests of the child require that further action be taken. **The court**
 9 **shall make the appointment on its own motion or at the request of a person or**
 10 **agency having knowledge of the child's circumstances.** If, under this subsection,
 11 the court appoints a person or agency to make a preliminary inquiry and to report to it,
 12 **or if the department is conducting an investigation of a report of child abuse or**
 13 **neglect, the court may issue any orders necessary to aid the person, the agency,**
 14 **or the department in its investigation or in making the preliminary inquiry and**
 15 **report. Upon** [THEN, UPON THE] receipt of the report **under this subsection,** the
 16 court may

17 (1) close the matter without a court hearing;

18 (2) determine whether the best interests of the child require that further
 19 action be taken; or

20 (3) authorize the person or agency having knowledge of the facts of the
 21 case to file with the court a petition setting out the facts.

22 * **Sec. 5.** AS 47.10.020 is amended by adding a new subsection to read:

23 (e) Nothing in this section requires the department to obtain authorization
 24 from the court before

25 (1) conducting an investigation of a report of child abuse or neglect; or

26 (2) filing a petition.

27 * **Sec. 6.** AS 47.10.080(*l*) is amended to read:

28 (*l*) Within 12 months after the date a child enters foster care as calculated
 29 under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and
 30 permanent plan developed in the hearing are governed by the following provisions:

31 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of

1 this section are also entitled to be heard at the hearing held under this subsection;

2 (2) when establishing the permanent plan for the child, the court shall
3 make appropriate written findings, including findings related to whether

4 (A) and when the child should be returned to the parent or
5 guardian;

6 (B) the child should be placed for adoption or legal
7 guardianship and whether a petition for termination of parental rights should be
8 filed by the department; and

9 (C) the child should be placed in another planned, permanent
10 living arrangement and what steps are necessary to achieve the new
11 arrangement;

12 (3) if the court is unable to make a finding required under (2) of this
13 subsection, the court shall hold another hearing within a reasonable period of time;

14 (4) in addition to the findings required by (2) of this subsection, the
15 court shall also make appropriate written findings related to

16 (A) whether the department has made the reasonable efforts
17 required under AS 47.10.086 to offer appropriate family support services to
18 remedy the parent's or guardian's conduct or conditions in the home that made
19 the child a child in need of aid under this chapter;

20 (B) whether the parent or guardian has made substantial
21 progress to remedy the parent's or guardian's conduct or conditions in the home
22 that made the child a child in need of aid under this chapter; [AND]

23 (C) if the permanent plan is for the child to remain in out-of-
24 home-care, whether the child's out-of-home placement continues to be
25 appropriate and in the best interests of the child; **and**

26 **(D) whether the department has made reasonable efforts to**
27 **finalize the permanent plan for the child;**

28 (5) the court shall hold a hearing to review the permanent plan at least
29 annually until successful implementation of the plan; if the plan approved by the court
30 changes after the hearing, the department shall promptly apply to the court for another
31 permanency hearing, and the court shall conduct the hearing within 30 days after

1 application by the department.

2 * **Sec. 7.** AS 47.10 is amended by adding a new section to read:

3 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
 4 **responsibilities.** (a) When a child is committed to the custody of the department
 5 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a
 6 parent with respect to the child, including parental rights to control the child, to
 7 withhold consent to an adoption, or to receive notice of a hearing on a petition for
 8 adoption, may be voluntarily relinquished to the department and the relationship of
 9 parent and child terminated in a proceeding as provided under this section.

10 (b) A voluntary relinquishment must be in writing and signed by a parent,
 11 regardless of the age of the parent, in the presence of a representative of the
 12 department or in the presence of a court of competent jurisdiction with the knowledge
 13 and approval of the department. A copy of the signed relinquishment shall be given to
 14 the parent.

15 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
 16 signed. The relinquishment is invalid unless the relinquishment contains the right of
 17 withdrawal as specified under this subsection.

18 (d) A parent may retain privileges with respect to the child, including the
 19 ability to have future contact, communication, and visitation with the child in a
 20 voluntary relinquishment executed under this section. A retained privilege must be in
 21 writing and stated with specificity.

22 (e) Not less than 10 days after a voluntary relinquishment is signed, the court
 23 shall enter an order terminating parental rights if the court determines that termination
 24 of parental rights under the terms of the relinquishment is in the child's best interest.
 25 If a parent has retained one or more privileges under (d) of this section, the court shall
 26 incorporate the retained privileges in the termination order with a recommendation
 27 that the retained privileges be incorporated in an adoption or legal guardianship
 28 decree.

29 (f) A voluntary relinquishment may not be withdrawn and a termination order
 30 may not be vacated on the ground that a retained privilege has been withheld from the
 31 relinquishing parent or that the relinquishing parent has been unable, for any reason, to

1 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
2 Procedure.

3 (g) After a termination order is entered, a person who has voluntarily
4 relinquished parental rights under this section may request a review hearing, upon a
5 showing of good cause, to seek enforcement or modification of or to vacate a privilege
6 retained in the termination order. The court may modify, enforce, or vacate the
7 retained privilege if the court finds, by clear and convincing evidence, that it is in the
8 best interest of the child to do so.

9 (h) After a termination order is entered and before the entry of an adoption or
10 legal guardianship decree, a person who voluntarily relinquished parental rights to a
11 child under this section may request a review hearing, upon a showing of good cause,
12 to vacate the termination order and reinstate parental rights relating to that child. A
13 court shall vacate a termination order if the person shows, by clear and convincing
14 evidence, that reinstatement of parental rights is in the best interest of the child and
15 that the person is rehabilitated and capable of providing the care and guidance that will
16 serve the moral, emotional, mental, and physical welfare of the child.

17 (i) A person who relinquished parental rights is entitled to the appointment of
18 an attorney if a hearing is requested under (g), (h), or (j) of this section to the same
19 extent as if the parent's rights had not been terminated in a child-in-need-of-aid
20 proceeding.

21 (j) After a termination order is entered and before the entry of an adoption or
22 legal guardianship decree, a prospective adoptive parent or a guardian of the child may
23 request, after providing notice as specified under this subsection, that the court decline
24 to incorporate a privilege retained in a termination order and recommended for
25 incorporation in an adoption or guardianship decree under (e) of this section. If the
26 person who has relinquished parental rights to the child who is the subject of the
27 adoption or guardianship decree did not waive rights to notice of adoption under (a) of
28 this section, the request made under this subsection may only be considered by the
29 court after providing at least 20 days' notice by certified mail to the last known address
30 of the person who has voluntarily relinquished parental rights to the child. The notice
31 under this subsection must describe the request and explain that the recipient of the

1 notice may submit a written statement under penalty of perjury to the court that the
 2 recipient either agrees with or opposes the request. The notice must also include the
 3 deadline for submitting the statement and the mailing address of the court. The court
 4 may decline to incorporate a retained privilege if the person who retained the privilege
 5 agrees with the request or if the court finds that it is in the child's best interest.

6 * **Sec. 8.** AS 47.10.990(16) is amended to read:

7 (16) "mental health professional" has the meaning given in
 8 AS 47.30.915, except that, if the child is placed in another state by the
 9 department, "mental health professional" also includes a professional listed in
 10 the definition of "mental health professional" in AS 47.30.915 who is not licensed
 11 to practice by a board of this state but is licensed by a corresponding licensing
 12 authority to practice in the state in which the child is placed;

13 * **Sec. 9.** AS 47.12.990(10) is amended to read:

14 (10) "mental health professional" has the meaning given in
 15 AS 47.30.915, except that, if the minor is placed in another state by the
 16 department, "mental health professional" also includes a professional listed in
 17 the definition of "mental health professional" in AS 47.30.915 who is not licensed
 18 to practice by a board of this state but is licensed by a corresponding licensing
 19 authority to practice in the state in which the minor is placed;

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 9(a), Alaska Adoption Rules,
 23 is amended to read:

24 (a) **Form.** A consent or relinquishment must be in writing and must include:

25 (1) notice of the person's right to withdraw the consent or
 26 relinquishment as provided by paragraphs (g) and (h) of this rule;

27 (2) the address and telephone number of the court in which the
 28 adoption or relinquishment proceeding has or is expected to be filed;

29 (3) a statement of the right to counsel as stated in Rule 8;

30 (4) a statement concerning whether or not any visitation rights or
 31 other parental privileges are sought to be retained after the adoption;

1 (5) if a consent, the information required in AS 25.23.060; and

2 (6) if signed by a parent, a statement of whether the parent is a minor.

3 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules,
6 is amended to read:

7 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.**

8 The parent of a non-Indian child may withdraw a consent or relinquishment by
9 notifying in writing the court, or the person or agency obtaining the consent or
10 relinquishment, within 10 days of the birth or signing of the consent or
11 relinquishment, whichever is later. Notification is timely if received or postmarked on
12 or before the last day of this time period. The parent may move the court to permit
13 withdrawal of the consent or relinquishment after the 10 day period pursuant to
14 AS 25.23.070 for a consent or AS 25.23.180(g) **or AS 47.10.089(h)** for a
15 relinquishment.

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

18 DIRECT COURT RULE AMENDMENT. Rule 13(a), Alaska Adoption
19 Rules, is amended to read:

20 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
21 entered after a voluntary relinquishment pursuant to AS 25.23.180 **or AS 47.10.089.**
22 The court shall enter findings of fact which must include a statement concerning
23 whether visitation rights are being allowed under AS 25.23.130(c) **or other privileges**
24 **are being retained under AS 25.23.180 or AS 47.10.089,** and whether the time limit
25 for withdrawal of the relinquishment has elapsed. If the relinquishment was signed in
26 the presence of the court, findings also must be entered as to whether the parent
27 understood the consequences of the relinquishment, and whether the relinquishment
28 was voluntarily signed.

29 In the case of a voluntary relinquishment of parental rights to an Indian child,
30 the court shall make additional findings concerning whether any notice required by
31 Rule 10(e) was timely given; whether the relinquishment was voluntary and in

1 compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's
2 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
3 cause exists for deviation from the placement preference.

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

6 DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need
7 of Aid Rules, is amended to read:

8 (f) **Additional Findings.** In addition to the findings required under paragraph
9 (e), the court shall also make written findings related to

10 (1) whether the Department has made reasonable efforts required
11 under AS 47.10.086 or, in the case of an Indian child, whether the Department has
12 made active efforts to provide remedial services and rehabilitative programs as
13 required by 25 U.S.C. Sec. 1912(d);

14 (2) whether the parent or guardian has made substantial progress to
15 remedy the parent's or guardian's conduct or conditions in the home that made the
16 child a child in need of aid; [AND]

17 (3) if the permanent plan is for the child to remain in out-of-home care,
18 whether the child's out-of-home placement continues to be appropriate and in the best
19 interests of the child; **and**

20 **(4) whether the Department has made reasonable efforts to finalize**
21 **the permanent plan for the child.**

22 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in
25 Need of Aid Rules, is amended to read:

26 (d) **Relinquishment.**

27 (1) Notwithstanding other provisions of this rule, the court may
28 terminate parental rights after a voluntary relinquishment pursuant to **AS 47.10.089**
29 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
30 requirements set forth in 25 U.S.C. § 1913(c).

31 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INDIRECT COURT RULE AMENDMENT. (a) AS 13.26.064, added by sec. 1 of
3 this Act, amends Rules 14 and 15, Rules of Probate Procedure, by providing that retained
4 privileges be set out in the guardianship decree and by providing additional procedures related
5 to a voluntary relinquishment of parental rights.

6 (b) AS 25.23.180(j) - (o) and AS 47.10.089, added by secs. 2 and 7 of this Act, amend
7 Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set out in the
8 relinquishment form and order and by providing additional procedures related to the
9 relinquishment.

10 (c) AS 25.23.180(k) - (o) and AS 47.10.089(g), (h), and (j), added by secs. 2 and 7 of
11 this Act, amend Rule 13, Alaska Adoption Rules, by authorizing review hearings for
12 voluntary relinquishments.

13 (d) AS 47.10.089, added by sec. 7 of this Act, amends Rule 18(d)(1), Alaska Child in
14 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
15 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
16 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

17 (e) AS 47.10.089, added by sec. 7 of this Act, amends Rule 18, Alaska Child in Need
18 of Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or
19 legal guardianship decree.

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

22 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
23 heading of AS 47.10.088 from "Termination of parental rights and responsibilities" to
24 "Involuntary termination of parental rights and responsibilities."

25 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 CONDITIONAL EFFECT. (a) Rule 9(a), Alaska Adoption Rules, as amended by
28 sec. 10 of this Act, takes effect only if sec. 10 of this Act receives the two-thirds majority vote
29 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 11 of this Act, takes effect
31 only if sec. 11 of this Act receives the two-thirds majority vote of each house required by art.

1 IV, sec. 15, Constitution of the State of Alaska.

2 (c) Rule 13(a), Alaska Adoption Rules, as amended by sec. 12 of this Act, takes effect
3 only if sec. 12 of this Act receives the two-thirds majority vote of each house required by art.

4 IV, sec. 15, Constitution of the State of Alaska.

5 (d) Section 5 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
6 amended by sec. 13 of this Act, take effect only if sec. 13 of this Act receives the two-thirds
7 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

8 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 14 of this
9 Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house
10 required by art. IV, sec. 15, Constitution of the State of Alaska.

11 (f) AS 13.26.064, added by sec. 1 of this Act, AS 25.23.180(j) - (o), added by sec. 2
12 of this Act, and AS 47.10.089, added by sec. 7 of this Act, take effect only if sec. 15 of this
13 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
14 Constitution of the State of Alaska.

15 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).