

CS FOR HOUSE BILL NO. 408(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/8/06
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the standard of proof required to terminate parental rights in child-**
2 **in-need-of-aid proceedings; relating to the definition of 'child abuse or neglect'; relating**
3 **to disclosure of confidential or privileged information about certain children by the**
4 **Departments of Health and Social Services and Administration; relating to permanent**
5 **fund dividends paid to foster children and adopted children; amending Rule 18, Alaska**
6 **Child in Need of Aid Rules of Procedure; and providing for an effective date."**

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

8 * **Section 1.** AS 47.10.086(c) is amended to read:

9 (c) The court may determine that reasonable efforts of the type described in
10 (a) of this section are not required if the court has found by **clear and convincing** [A
11 PREPONDERANCE OF THE] evidence that

12 (1) the parent or guardian has subjected the child to circumstances that
13 pose a substantial risk to the child's health or safety; these circumstances include

1 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

2 (2) the parent or guardian has

3 (A) committed homicide under AS 11.41.100 - 11.41.130 of a
4 parent of the child or of a child;

5 (B) aided or abetted, attempted, conspired, or solicited under
6 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
7 paragraph;

8 (C) committed an assault that is a felony under AS 11.41.200 -
9 11.41.220 and results in serious physical injury to a child; or

10 (D) committed the conduct described in (A) - (C) of this
11 paragraph that violated a law or ordinance of another jurisdiction having
12 elements similar to an offense described in (A) - (C) of this paragraph;

13 (3) the parent or guardian has, during the 12 months preceding the
14 permanency hearing, failed to comply with a court order to participate in family
15 support services;

16 (4) the department has conducted a reasonably diligent search over a
17 time period of at least three months for an unidentified or absent parent and has failed
18 to identify and locate the parent;

19 (5) the parent or guardian is the sole caregiver of the child and the
20 parent or guardian has a mental illness or mental deficiency of such nature and
21 duration that, according to the statement of a psychologist or physician, the parent or
22 guardian will be incapable of caring for the child without placing the child at
23 substantial risk of physical or mental injury even if the department were to provide
24 family support services to the parent or guardian for 12 months;

25 (6) the parent or guardian has previously been convicted of a crime
26 involving a child in this state or in another jurisdiction and, after the conviction, the
27 child was returned to the custody of the parent or guardian and later removed because
28 of an additional substantiated report of physical or sexual abuse by the parent or
29 guardian;

30 (7) a child has suffered substantial physical harm as the result of
31 abusive or neglectful conduct by the parent or guardian or by a person known by the

1 parent or guardian and the parent or guardian knew or reasonably should have known
2 that the person was abusing the child;

3 (8) the parental rights of the parent have been terminated with respect
4 to another child because of child abuse or neglect, the parent has not remedied the
5 conditions or conduct that led to the termination of parental rights, and the parent has
6 demonstrated an inability to protect the child from substantial harm or the risk of
7 substantial harm;

8 (9) the child has been removed from the child's home on at least two
9 previous occasions, family support services were offered or provided to the parent or
10 guardian at those times, and the parent or guardian has demonstrated an inability to
11 protect the child from substantial harm or the risk of substantial harm; or

12 (10) the parent or guardian is incarcerated and is unavailable to care
13 for the child during a significant period of the child's minority, considering the child's
14 age and need for care by an adult.

15 * **Sec. 2.** AS 47.10.088(a) is amended to read:

16 (a) Except as provided in AS 47.10.080(o), the rights and responsibilities of
17 the parent regarding the child may be terminated for purposes of freeing a child for
18 adoption or other permanent placement if the court finds

19 [(1)] by clear and convincing evidence that

20 (1) [(A)] the child has been subjected to conduct or conditions
21 described in AS 47.10.011;

22 (2) [AND (B)] the parent

23 (A) [(i)] has not remedied the conduct or conditions in the
24 home that place the child at substantial risk of harm; or

25 (B) [(ii)] has failed, within a reasonable time, to remedy the
26 conduct or conditions in the home that place the child in substantial risk so that
27 returning the child to the parent would place the child at substantial risk of
28 physical or mental injury; and

29 (3) [(2) BY PREPONDERANCE OF THE EVIDENCE THAT] the
30 department has complied with the provisions of AS 47.10.086 concerning reasonable
31 efforts.

1 * **Sec. 3.** AS 47.10.088(b) is amended to read:

2 (b) In making a determination under **(a)(2)** [(a)(1)(B)] of this section, the court
3 may consider any fact relating to the best interests of the child, including

4 (1) the likelihood of returning the child to the parent within a
5 reasonable time based on the child's age or needs;

6 (2) the amount of effort by the parent to remedy the conduct or the
7 conditions in the home;

8 (3) the harm caused to the child;

9 (4) the likelihood that the harmful conduct will continue; and

10 (5) the history of conduct by or conditions created by the parent.

11 * **Sec. 4.** AS 47.10.092 is amended by adding a new subsection to read:

12 (f) Each department shall respond to a request made by an official identified
13 under (a) of this section within five working days after receiving the request, or by a
14 later date specified in the request, by providing access to all or part of the information
15 requested or by providing the specific citation to a federal or state law that prohibits
16 disclosure of all or part of the information requested.

17 * **Sec. 5.** AS 47.10.093(i) is amended to read:

18 (i) The commissioner of health and social services or the commissioner's
19 designee or the commissioner of administration or the commissioner's designee, as
20 appropriate, may disclose to the public, upon request, confidential information, as set
21 out in (j) of this section, when

22 (1) the parent or guardian of a child who is the subject of **one or more**
23 **reports** [A REPORT] of harm under AS 47.17 has made a public disclosure
24 concerning the department's involvement with the family;

25 (2) the alleged perpetrator named in **one or more reports** [A
26 REPORT] of harm under AS 47.17 has been charged with a crime concerning the
27 alleged abuse or neglect; or

28 (3) **abuse or neglect** [A REPORT OF HARM UNDER AS 47.17] has
29 resulted in the fatality or near fatality of **a** [THAT] child **who is the subject of one or**
30 **more reports of harm under AS 47.17.**

31 * **Sec. 6.** AS 47.10.093(j) is amended to read:

1 (j) The type of information that may be publicly disclosed under (i) of this
 2 section is information related to the determination, if any, made by the department
 3 regarding the nature and validity of any [A] report of harm under AS 47.17
 4 pertaining to a child in the family and the department's activities arising from the
 5 department's investigation of such a [THE] report. The commissioner or the
 6 commissioner's designee

7 (1) shall withhold disclosure of the child's name, picture, or other
 8 information that would readily lead to the identification of the child if the department
 9 determines that the disclosure would be contrary to the best interests of the child, the
 10 child's siblings, or other children in the child's household; or

11 (2) after consultation with a prosecuting attorney, shall withhold
 12 disclosure of information that would reasonably be expected to interfere with a
 13 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
 14 criminal proceeding.

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

16 **Sec. 47.10.115. Permanent fund dividend.** (a) The department shall annually
 17 apply for a permanent fund dividend and retain in trust under AS 43.23.015(e) for the
 18 benefit of the child the dividend and accrued interest on the dividend if the child is in
 19 the custody of the department when the application is due.

20 (b) The department may not distribute the proceeds of a trust under this
 21 section unless

22 (1) the child has reached 18 years of age and is no longer in the
 23 custody of the department;

24 (2) the child has been adopted and one year has elapsed since the
 25 adoption;

26 (3) the child is no longer in the custody of the department and the child
 27 has not been adopted; or

28 (4) ordered by the court in the best interest of the child.

29 (c) Notwithstanding (b)(1) - (3) of this section, the department may not
 30 distribute the proceeds of a trust under this section if the payment would be made to a
 31 guardian of a child who had been in the custody of the department immediately before

1 the establishment of the guardianship, unless the guardianship was established under
2 AS 13.26.090 - 13.26.155.

3 * **Sec. 8.** AS 47.17.290(2) is amended to read:

4 (2) "child abuse or neglect" means the physical injury or neglect,
5 mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the
6 age of 18 by a person under circumstances that indicate that the child's health or
7 welfare is harmed or threatened thereby; **"child abuse or neglect" includes an act or**
8 **omission described in this paragraph that results in a determination, at delivery,**
9 **by a health care provider that a child has been adversely affected by, or is**
10 **withdrawing from exposure to, a controlled substance or alcohol;** in this
11 paragraph,

12 (A) **"controlled substance" has the meaning given in**
13 **AS 11.71.900, but does not include a substance lawfully taken under a**
14 **prescription from a health care professional;**

15 (B) "mental injury" means an injury to the emotional well-
16 being, or intellectual or psychological capacity of a child, as evidenced by an
17 observable and substantial impairment in the child's ability to function;

18 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 INDIRECT COURT RULE AMENDMENT. Sections 1 - 3 of this Act have the effect
21 of amending Rule 18, Alaska Child in Need of Aid Rules of Procedure, relating to the
22 termination of parental rights proceedings by increasing the standard of proof concerning
23 some elements from proof by a preponderance of the evidence to proof by clear and
24 convincing evidence.

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

27 APPLICABILITY OF SECS. 1 - 3 OF THIS ACT. Sections 1 - 3 of this Act apply to
28 a child-in-need-of-aid proceeding that is pending before the court, that is on appeal to the
29 court, or for which the time for appeal to the court has not yet passed on or after the effective
30 date of this Act.

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

1 read:

2 CONDITIONAL EFFECT. Sections 1 - 3 of this Act take effect only if sec. 9 of this
3 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
4 Constitution of the State of Alaska.

5 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).