

SENATE CS FOR CS FOR HOUSE BILL NO. 408(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/24/06

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 and for**
2 **placement of a child in child-in-need-of-aid proceedings; relating to a healing arts**
3 **practitioner's duty to report a child adversely affected by or withdrawing from exposure**
4 **to a controlled substance or alcohol; relating to disclosure of confidential or privileged**
5 **information about certain children by the Departments of Health and Social Services**
6 **and Administration; relating to permanent fund dividends paid to foster children and**
7 **adopted children; relating to child abuse or neglect investigations and training;**
8 **amending Rule 18, Alaska Child in Need of Aid Rules of Procedure; and providing for**
9 **an effective date."**

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

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

12 (c) The court may determine that reasonable efforts of the type described in

1 (a) of this section are not required if the court has found by **clear and convincing** [A
2 PREPONDERANCE OF THE] evidence that

3 (1) the parent or guardian has subjected the child to circumstances that
4 pose a substantial risk to the child's health or safety; these circumstances include
5 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

6 (2) the parent or guardian has

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

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

12 (C) committed an assault that is a felony under AS 11.41.200 -
13 11.41.220 and results in serious physical injury to a child; or

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

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

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

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

29 (6) the parent or guardian has previously been convicted of a crime
30 involving a child in this state or in another jurisdiction and, after the conviction, the
31 child was returned to the custody of the parent or guardian and later removed because

1 of an additional substantiated report of physical or sexual abuse by the parent or
2 guardian;

3 (7) a child has suffered substantial physical harm as the result of
4 abusive or neglectful conduct by the parent or guardian or by a person known by the
5 parent or guardian and the parent or guardian knew or reasonably should have known
6 that the person was abusing the child;

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

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

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

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

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

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

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

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

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

29 (B) [(ii)] has failed, within a reasonable time, to remedy the
30 conduct or conditions in the home that place the child in substantial risk so that
31 returning the child to the parent would place the child at substantial risk of

1 physical or mental injury; and

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

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

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

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

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

12 (3) the harm caused to the child;

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

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

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

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

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

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

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

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

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

4 * **Sec. 6.** AS 47.10.093(j) is repealed and reenacted to read:

5 (j) The department may publicly disclose information pertaining to a child or
 6 an alleged perpetrator named in a report of harm described under (i) of this section, or
 7 pertaining to a household member of the child or the alleged perpetrator, if the
 8 information relates to a determination, if any, made by the department regarding the
 9 nature and validity of a report of harm under AS 47.17 or to the department's activities
 10 arising from the department's investigation of the report. The commissioner or the
 11 commissioner's designee

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

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

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

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

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

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

29 (2) the child has been adopted and one year has elapsed since the
 30 adoption;

31 (3) the child is no longer in the custody of the department and the child

1 has been reunited with the child's parents; or

2 (4) ordered to do so by the court in the best interest of the child.

3 (c) Notwithstanding (b)(1) - (3) of this section, the department may not
4 distribute the proceeds of a trust under this section if the payment would be made to a
5 guardian of a child who had been in the custody of the department immediately before
6 the establishment of the guardianship, unless the guardianship was established under
7 AS 13.26.090 - 13.26.155.

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

9 (e) When a child is removed from a parent's home, the department shall place
10 the child, in the absence of **clear and convincing evidence** [A SHOWING] of good
11 cause to the contrary,

12 (1) in the least restrictive setting that most closely approximates a
13 family and that meets the child's special needs, if any;

14 (2) within reasonable proximity to the child's home, taking into
15 account any special needs of the child and the preferences of the child or parent;

16 (3) with, in the following order of preference,

17 (A) an adult family member;

18 (B) a family friend who meets the foster care licensing
19 requirements established by the department;

20 (C) a licensed foster home that is not an adult family member
21 or family friend;

22 (D) an institution for children that has a program suitable to
23 meet the child's needs.

24 * **Sec. 9.** AS 47.17 is amended by adding a new section to read:

25 **Sec. 47.17.024. Duties of practitioners of the healing arts.** (a) A practitioner
26 of the healing arts involved in the delivery or care of an infant who the practitioner
27 determines has been adversely affected by, or is withdrawing from exposure to, a
28 controlled substance or alcohol shall immediately notify the nearest office of the
29 department of the infant's condition.

30 (b) In this section,

31 (1) "controlled substance" has the meaning given in AS 11.71.900, but

1 does not include a substance lawfully taken under a prescription from a health care
2 provider who is authorized to prescribe the substance;

3 (2) "infant" means a child who is less than 12 months of age.

4 * **Sec. 10.** AS 47.17.033 is amended by adding new subsections to read:

5 (j) The training required under (c) of this section must address the
6 constitutional and statutory rights of children and families that apply throughout the
7 investigation and department intervention. The training must inform department
8 representatives of the applicable legal duties to protect the rights and safety of a child
9 and the child's family.

10 (k) During a joint investigation by the department and a law enforcement
11 agency, the department shall coordinate an investigation of child abuse or neglect with
12 the law enforcement agency to ensure that the possibility of a criminal charge is not
13 compromised.

14 (l) Unless a law enforcement official prohibits or restricts notification under
15 (k) of this section, at the time of initial contact with a person alleged to have
16 committed child abuse or neglect, the department shall notify the person of the
17 specific complaint or allegation made against the person, except that the identity of the
18 complainant may not be revealed.

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

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

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

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

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

3 CONDITIONAL EFFECT. Sections 1 - 3 of this Act take effect only if sec. 11 of this
4 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
5 Constitution of the State of Alaska.

6 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).