

CS FOR SENATE BILL NO. 83(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/28/05
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the retaining of certain privileges of a parent in a relinquishment**
2 **and termination of a parent and child relationship proceeding; relating to eligibility for**
3 **permanent fund dividends for certain children in the custody of the state; relating to**
4 **child-in-need-of-aid proceedings and juvenile delinquency proceedings; relating to**
5 **findings in permanency hearings in child-in-need-of-aid proceedings; amending Rule**
6 **17.2, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective**
7 **date."**

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

9 * **Section 1.** AS 25.23.180 is amended by adding a new subsection to read:

10 (j) In a relinquishment of parental rights executed under (a) of this section, a
11 parent may retain privileges with respect to the child, including the ability to have
12 future contact, communication, and visitation with the child. A retained privilege
13 must be stated with specificity in the writing, and, if a termination order is entered

1 following the relinquishment, the court shall incorporate a retained privilege into the
 2 termination order. A relinquishment may not be withdrawn or invalidated, nor may a
 3 termination order be vacated, on the grounds that a retained privilege has been
 4 withheld from the relinquishing parent or that the relinquishing parent has been
 5 unable, for any reason, to act upon a retained privilege.

6 * **Sec. 2.** AS 43.23.005(f) is amended to read:

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

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

13 **(2) while in the custody of the Department of Health and Social**
 14 **Services in accordance with a court order under AS 47.10 or AS 47.12 and placed**
 15 **outside of the state by the Department of Health and Social Services for purposes**
 16 **of medical or behavioral treatment.**

17 * **Sec. 3.** AS 47.10.020(a) is amended to read:

18 (a) Whenever circumstances subject a child to the jurisdiction of the court
 19 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
 20 to make a preliminary inquiry and report for the information of the court to determine
 21 whether the best interests of the child require that further action be taken. **The court**
 22 **shall make the appointment on its own motion or at the request of a person or**
 23 **agency having knowledge of the child's circumstances.** If, under this subsection,
 24 the court appoints a person or agency to make a preliminary inquiry and to report to it,
 25 **or if the department is conducting an investigation of a report of child abuse or**
 26 **neglect, the court may issue any orders necessary to aid the person, the agency,**
 27 **or the department in its investigation or in making the preliminary inquiry and**
 28 **report. Upon** [THEN, UPON THE] receipt of the report **under this subsection,** the
 29 court may

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

31 (2) determine whether the best interests of the child require that further

1 action be taken; or

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

4 * **Sec. 4.** AS 47.10.020 is amended by adding a new subsection to read:

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

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

8 (2) filing a petition.

9 * **Sec. 5.** AS 47.10.080(*l*) is amended to read:

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

13 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of
14 this section are also entitled to be heard at the hearing held under this subsection;

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

17 (A) and when the child should be returned to the parent or
18 guardian;

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

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

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

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

29 (A) whether the department has made the reasonable efforts
30 required under AS 47.10.086 to offer appropriate family support services to
31 remedy the parent's or guardian's conduct or conditions in the home that made

1 the child a child in need of aid under this chapter;

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

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

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

10 (5) the court shall hold a hearing to review the permanent plan at least
11 annually until successful implementation of the plan; if the plan approved by the court
12 changes after the hearing, the department shall promptly apply to the court for another
13 permanency hearing, and the court shall conduct the hearing within 30 days after
14 application by the department.

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

16 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
17 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
18 parent, guardian, or custodian of a child cannot be located after a reasonable search for
19 the parent, guardian, or custodian has been conducted by the department, the court
20 may conclude that the testimony of a qualified expert witness would support a finding
21 that continued custody of the child by the absent parent, guardian, or custodian is
22 likely to result in serious emotional or physical damage to the child.

23 * **Sec. 7.** AS 47.10.990(16) is amended to read:

24 (16) "mental health professional" has the meaning given in
25 AS 47.30.915, **except that, if the child is placed in another state by the**
26 **department, "mental health professional" also includes a professional listed in**
27 **the definition of "mental health professional" in AS 47.30.915 who is not licensed**
28 **to practice by a board of this state but is licensed by a corresponding licensing**
29 **authority to practice in the state in which the child is placed;**

30 * **Sec. 8.** AS 47.12.990(10) is amended to read:

31 (10) "mental health professional" has the meaning given in

1 AS 47.30.915, except that, if the minor is placed in another state by the
 2 department, "mental health professional" also includes a professional listed in
 3 the definition of "mental health professional" in AS 47.30.915 who is not licensed
 4 to practice by a board of this state but is licensed by a corresponding licensing
 5 authority to practice in the state in which the minor is placed;

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

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

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

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

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

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

22 (4) whether the Department has made reasonable efforts to finalize
 23 the permanent plan for the child.

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

26 CONDITIONAL EFFECT. Section 5 of this Act takes effect only if sec. 9 of this Act
 27 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
 28 of the State of Alaska.

29 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).