

SENATE BILL NO. 84

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/05

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the confidentiality of investigations, court hearings, and public**
2 **agency records and information in child-in-need-of-aid matters and certain child**
3 **protection matters; relating to immunity regarding disclosure of information in child-in-**
4 **need-of-aid matters and certain child protection matters; amending Rules 3 and 22,**
5 **Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."**

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS AND INTENT. (a) The legislature finds that

10 (1) public knowledge of, access to, and oversight of the child protection
11 system in this state are important to the success of and public confidence in that system;

12 (2) records of the child protection system in this state historically have been
13 held strictly confidential and not accessible by the public;

1 (3) federal law, which provides substantial financing for the child protective
2 system in this state, has codified this historical preference for confidentiality of those records;

3 (4) greater access to records and other information about the child protection
4 system will allow the public to make more informed judgments about the performance of state
5 government agencies responsible for the protection of children in this state;

6 (5) a limited relaxation of the state confidentiality laws will provide important
7 information to the public while ensuring that the privacy rights of the children involved and
8 their families are not infringed; and

9 (6) several states have opened to the public court hearings regarding child
10 protection, without federal financial sanctions being imposed.

11 (b) It is the intent of the legislature that this Act is construed to allow wider access to
12 the public to hearings of and information about the child protection system

13 (1) without jeopardizing the receipt of federal money important to the
14 successful operation of that system; and

15 (2) consistent with respect for the important privacy rights of the children
16 involved, and their families, recognized in art. I, sec. 22, Constitution of the State of Alaska.

17 * **Sec. 2.** AS 47.10.070(a) is amended to read:

18 (a) The court may conduct the hearing on the petition in an informal manner.
19 The court shall give notice of the hearing to the department, and it may send a
20 representative to the hearing. The court shall also transmit a copy of the petition to the
21 department. The department shall send notice of the hearing to the persons for whom
22 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
23 to notice under AS 47.10.030(d). The department and the persons to whom the
24 department must send notice of the hearing are entitled to be heard at the hearing.

25 **Except as provided in (c) of this section, and unless prohibited by federal or state**
26 **statute or regulation, court order, or court rule, a hearing is open to the public**

27 [HOWEVER, THE COURT MAY LIMIT THE PRESENCE OF THE FOSTER
28 PARENT OR OTHER OUT-OF-HOME CARE PROVIDER AND OF ANY
29 GRANDPARENT OF THE CHILD TO THE TIME DURING WHICH THE
30 PERSON'S TESTIMONY IS BEING GIVEN IF IT IS (1) IN THE BEST INTEREST
31 OF THE CHILD; OR (2) NECESSARY TO PROTECT THE PRIVACY

1 INTERESTS OF THE PARTIES AND WILL NOT BE DETRIMENTAL TO THE
 2 CHILD. THE PUBLIC SHALL BE EXCLUDED FROM THE HEARING, BUT
 3 THE COURT, IN ITS DISCRETION, MAY PERMIT INDIVIDUALS TO ATTEND
 4 A HEARING IF THEIR ATTENDANCE IS COMPATIBLE WITH THE BEST
 5 INTERESTS OF THE CHILD].

6 * **Sec. 3.** AS 47.10.070 is amended by adding new subsections to read:

7 (c) Except as provided in (e) of this section, the following hearings in child-in-
 8 need-of-aid cases are closed to the public:

9 (1) the initial court hearing after the filing of a petition to commence
 10 the child-in-need-of-aid case;

11 (2) a hearing following the initial hearing in which a parent, child, or
 12 other party to the case is present but has not had an opportunity to obtain legal
 13 representation;

14 (3) a hearing, or a part of a hearing, for which the court issues a written
 15 order finding that allowing the hearing, or part of the hearing, to be open to the public
 16 would reasonably be expected to

17 (A) stigmatize or be emotionally damaging to a child;

18 (B) inhibit a child's testimony in that hearing;

19 (C) disclose matters otherwise required to be kept confidential
 20 by state or federal statute or regulation, court order, or court rule; or

21 (D) interfere with a criminal investigation or proceeding or a
 22 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
 23 on a request under this subparagraph, the court shall give notice and an
 24 opportunity to be heard to the state or a municipal agency that is assigned to
 25 the criminal investigation or to the prosecuting attorney.

26 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
 27 closed under (c) of this section, the court shall hear in camera any information offered
 28 regarding the location, or readily leading to the location, of a parent, child, or other
 29 party to the case who is a victim of domestic violence. Access to testimony heard in
 30 camera under this subsection is limited to the court and authorized court personnel.

31 (e) The grandparents of the child and the foster parents or other out-of-home

1 care provider may attend hearings that are otherwise closed to the public under (c) of
 2 this section. However, the court shall limit the presence of these persons in a hearing
 3 closed to the public to the time during which the person's testimony is being given if
 4 the court determines that such a limitation is necessary under (c)(3) of this section. In
 5 this subsection, "out-of-home care provider" means an agency or person, other than
 6 the child's legal parents, with whom a child who is in the custody of the state under
 7 AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency
 8 or person" includes a foster parent, a relative other than a parent, a person who has
 9 petitioned for adoption of the child, and a residential child care facility.

10 (f) Notwithstanding any other provision of this chapter, a person attending a
 11 hearing open to the public may not disclose a name, picture, or other information that
 12 would readily lead to the identification of a child who is the subject of the child-in-
 13 need-of-aid case. At the beginning of the hearing, the court shall issue an order
 14 specifying the restrictions necessary to comply with this subsection. If a person
 15 violates the order, the court may impose any appropriate sanction, including contempt
 16 and closure of any further hearings in the case to the person.

17 * **Sec. 4.** AS 47.10.080 is amended by adding a new subsection to read:

18 (t) A hearing conducted under this section is open to the public unless an
 19 exception provided in AS 47.10.070(c) applies to make the hearing closed to the
 20 public or unless prohibited by federal or state statute or regulation.

21 * **Sec. 5.** AS 47.10.088 is amended by adding a new subsection to read:

22 (l) A trial or hearing conducted under this section is open to the public unless
 23 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
 24 to the public.

25 * **Sec. 6.** AS 47.10.090(c) is amended to read:

26 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
 27 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
 28 18th birthday, within 30 days after [OF] the date on which the court releases
 29 jurisdiction over the child [MINOR], the court shall order all the court's official
 30 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
 31 person may not use these sealed records unless authorized by order of [FOR ANY

1 PURPOSE EXCEPT THAT] the court **upon a finding of** [MAY ORDER THEIR
2 USE FOR] good cause [SHOWN].

3 * **Sec. 7.** AS 47.10.090(d) is amended to read:

4 (d) **Except as provided in AS 47.10.070 and 47.10.080(t), the** [THE] name
5 or picture of a **child** [MINOR] under the jurisdiction of the court may not be made
6 public in connection with the **child's** [MINOR'S] status as a child in need of aid unless
7 authorized by order of the court **or unless to implement the permanency plan for a**
8 **child after all parental rights of custody have been terminated. This subsection**
9 **does not prohibit the release of aggregate information for statistical or other**
10 **informational purposes if the identify of any particular person is not revealed by**
11 **the release.**

12 * **Sec. 8.** AS 47.10.093(a) is amended to read:

13 (a) Except as specified in AS 47.10.092 and **in (b) - (g) and (k) - (n)** [(b) -
14 (g)] of this section, all information and social records pertaining to a **child** [MINOR]
15 who is subject to this chapter or AS 47.17 prepared by or in the possession of a
16 federal, state, or municipal agency or employee in the discharge of the agency's or
17 employee's official duty are privileged and may not be disclosed directly or indirectly
18 to anyone without a court order.

19 * **Sec. 9.** AS 47.10.093(b) is amended to read:

20 (b) A state or municipal agency or employee shall disclose appropriate
21 **confidential** information regarding a case to

22 (1) a guardian ad litem appointed by the court;

23 (2) a person or an agency requested by the department or the child's
24 legal custodian to provide consultation or services for a child who is subject to the
25 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
26 the consultation or services;

27 (3) **a** foster **parent** [PARENTS] or **relative** [RELATIVES] with
28 whom the child is placed by the department as [MAY BE] necessary to enable the
29 foster **parent** [PARENTS] or **relative** [RELATIVES] to provide appropriate care **to**
30 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
31 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and

1 property of family members and visitors of the foster **parent** [PARENTS] or **relative**
2 [RELATIVES];

3 (4) **a school official** [OFFICIALS] as [MAY BE] necessary to enable
4 the school to provide appropriate counseling and support services to **a** [THE] child
5 who is the subject of the case, to protect the safety of the child [WHO IS THE
6 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

7 (5) a governmental agency as [MAY BE] necessary to obtain that
8 agency's assistance for the department in its investigation or to obtain physical custody
9 of a child;

10 (6) a law enforcement agency of this state or another jurisdiction as
11 [MAY BE] necessary for the protection of any child or for actions by that agency to
12 protect the public safety;

13 (7) **a member** [MEMBERS] of a multidisciplinary child protection
14 team created under AS 47.14.300 as [MAY BE] necessary for the performance of **the**
15 **member's** [THEIR] duties;

16 (8) the state medical examiner under AS 12.65 as [MAY BE]
17 necessary for the performance of the duties of the state medical examiner;

18 (9) a person who has made a report of harm as required by
19 AS 47.17.020 to inform the person that the investigation was completed and of action
20 taken to protect the child who was the subject of the report; [AND]

21 (10) the child support services agency established in AS 25.27.010 as
22 [MAY BE] necessary to establish and collect child support for a child who is a child in
23 need of aid under this chapter;

24 **(11) a caregiver of a child or an entity responsible for ensuring the**
25 **safety of children as necessary to protect the safety of a child; and**

26 **(12) a review panel established by the department for the purpose**
27 **of reviewing the actions taken by the department in a specific case.**

28 * **Sec. 10.** AS 47.10.093(c) is repealed and reenacted to read:

29 (c) A state or municipal law enforcement agency shall disclose information
30 regarding a case that is needed by the person or agency charged with making a
31 preliminary investigation for the information of the court under AS 47.10.020.

1 * **Sec. 11.** AS 47.10.093(f) is amended to read:

2 (f) The department may release to a person with a legitimate interest
3 **confidential** information relating to minors not subject to the jurisdiction of the court
4 under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT REGULATIONS
5 GOVERNING THE RELEASE OF INFORMATION AND IDENTIFYING A
6 SUFFICIENT LEGITIMATE INTEREST.]

7 * **Sec. 12.** AS 47.10.093(g) is amended to read:

8 (g) The department and affected law enforcement agencies shall work with
9 school districts and private schools to develop procedures for the disclosure of
10 **confidential** information to **a** school **official** [OFFICIALS] under (b)(4) of this
11 section. The procedures must provide a method for informing the principal or the
12 principal's designee of the school **that** the student attends as soon as it is reasonably
13 practicable.

14 * **Sec. 13.** AS 47.10.093 is amended by adding new subsections to read:

15 (k) The department may disclose to the public, upon request, confidential
16 information, as set out in (l) of this section, when

17 (1) the parent or guardian of a child who is the subject of a report of
18 harm under AS 47.17 has made a public disclosure concerning the department's
19 involvement with the family;

20 (2) the alleged perpetrator named in a report of harm under AS 47.17
21 has been charged with a crime concerning the alleged abuse or neglect; or

22 (3) a report of harm under AS 47.17 has resulted in the fatality or near
23 fatality of that child.

24 (l) The type of information that may be publicly disclosed under (k) of this
25 section is information related to the determination, if any, made by the department
26 regarding the validity of a report of harm under AS 47.17 of the child and the
27 department's activities arising from the department's investigation of the report. The
28 department

29 (1) may withhold disclosure of the child's name, picture, or other
30 information that would readily lead to the identification of the child if the department
31 determines that such a disclosure would be contrary to the best interests of the child,

1 the child's siblings, or other children in the child's household; or

2 (2) after consultation with a prosecuting attorney, may withhold
3 disclosure of information that would reasonably be expected to interfere with a
4 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
5 criminal proceeding.

6 (m) Except for a disclosure made under (k) of this section, a person to whom
7 disclosure is made under this section may not disclose confidential information about
8 the child or the child's family to a person not authorized to receive it.

9 (n) The department may adopt regulations to implement and interpret its
10 duties under this section, including regulations governing the release of confidential
11 information and identifying a sufficient legitimate interest under (f) of this section.

12 * **Sec. 14.** AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.094. Immunity from liability.** A person may not bring an action
14 for damages against the state, a municipality, or state or municipal agencies, officers,
15 employees, or agents based on the disclosure or nondisclosure of information in
16 accordance with this chapter.

17 * **Sec. 15.** AS 47.10.990 is amended by adding a new paragraph to read:

18 (28) "near fatality" means physical injury or other harm, as certified by
19 a physician, caused by an act or omission that created a substantial risk of death.

20 * **Sec. 16.** 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(c), Alaska Child in Need of
23 Aid Rules of Procedure, is amended to read:

24 (c) **Presence of Grandparent or Foster Parent.** A **grandparent of a child**
25 **and the** foster parent or other out-of-home care provider **are** [IS] entitled to be heard
26 at any hearing at which the person is present. However, the court may limit the
27 presence of **these persons in a hearing that has been closed to the public under**
28 **subparagraph (f)(2) of this rule** [THE FOSTER PARENT OR CARE PROVIDER]
29 to the time during which the person's testimony is being given if **the court determines**
30 **that such a limitation is necessary under the circumstances listed in**
31 **subparagraph (f)(2)(C) of this rule** [IT IS (1) IN THE BEST INTEREST OF THE

1 CHILD; OR (2) NECESSARY TO PROTECT THE PRIVACY INTERESTS OF
2 THE PARTIES AND WILL NOT BE DETRIMENTAL TO THE CHILD].

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

5 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
6 Aid Rules of Procedure, is repealed and reenacted to read:

7 (f) **General Public Access to Hearings.**

8 (1) Except as provided in (2) of this paragraph, and unless prohibited
9 by federal or state statute or regulation, court order, or other court rule, hearings are
10 open to the public.

11 (2) The following hearings are closed to the public:

12 (A) the initial court hearing after the filing of a petition that
13 begins the child-in-need-of-aid case;

14 (B) a hearing following the initial hearing in which a parent,
15 child, or other party to the case is present but has not had an opportunity to
16 obtain legal representation;

17 (C) a hearing, or a part of a hearing, for which the court issues
18 a written order finding that allowing the hearing, or part of the hearing, to be
19 open to the public would reasonably be expected to stigmatize or be
20 emotionally damaging to a child; inhibit a child's testimony in the hearing;
21 disclose matters otherwise required to be kept confidential by state or federal
22 statute or regulation, court order, or court rule; or interfere with a criminal
23 investigation or proceeding or a criminal defendant's right to a fair trial in a
24 criminal proceeding.

25 (3) Before ruling on a request under (2)(C) of this paragraph
26 concerning potential interference with a criminal investigation or proceeding, the court
27 shall give notice and an opportunity to be heard to the state or a municipal agency that
28 is assigned to the criminal investigation or to the prosecuting attorney.

29 (4) If the court closes a hearing to the public under (2)(C) of this
30 paragraph, the court shall only close the portions of the hearing necessary to prevent
31 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,

1 is open to the public, the court shall hear in camera any information offered regarding
 2 the location, or readily leading to the location, of a parent, child, or other party to the
 3 case who is a victim of domestic violence. Access to testimony heard in camera under
 4 this subparagraph is limited to the court and authorized court personnel.

5 (5) Notwithstanding any other provision of this rule, the court shall
 6 issue an order to prohibit all persons in a hearing open to the public from disclosing to
 7 any person a name, picture, or other information that would readily lead to the
 8 identification of a child who is the subject of the proceeding. If a person violates the
 9 order, the court may impose any appropriate sanction, including contempt and closure
 10 of any further hearings in the proceeding to the person.

11 (6) A party to the proceeding may move the court to close to the public
 12 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
 13 paragraph. A member of the public may request in writing to be served with a motion
 14 filed under this subparagraph. If such a request has been filed in advance of the filing
 15 of the motion, the party filing the motion must also serve the member of the public
 16 who requested notice under this subparagraph. The court may waive the service
 17 required under this subparagraph to a member of the public if a motion to close the
 18 hearing, or part of the hearing, is made under this subparagraph immediately before or
 19 during the hearing and the court finds that

20 (A) the need for closure was not reasonably foreseeable
 21 sufficiently in advance of the hearing to allow for notice;

22 (B) there is good cause not to delay the hearing in order to
 23 achieve notice, taking into consideration the age of the child and the potential
 24 adverse effect that a delay could have on the child; and

25 (C) whatever notice is practicable under the circumstances has
 26 occurred.

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

29 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
 30 of Aid Rules of Procedure, is amended to read:

31 (c) **Child's Name or Picture.** The name or picture of a child who is the

1 subject of a CINA proceeding may not be made available to the public unless
 2 authorized by court order accompanied by a written statement reciting the
 3 circumstances which support such authorization, **or unless to implement the**
 4 **permanency plan for the child after all parental rights of custody have been**
 5 **terminated.**

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

8 APPLICABILITY. (a) This Act applies to all proceedings and hearings conducted on
 9 or after the effective date of secs. 1 - 18 of this Act.

10 (b) This Act applies to all information, records, and files created on or after the
 11 effective date of secs. 1 -18 of this Act; however, if a file contains information and records
 12 that were created before the effective date of secs. 1 - 18 of this Act, that information and
 13 those records retain the confidentiality status that they had under the law on the day before the
 14 effective date of secs. 1 - 18 of this Act.

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

17 TRANSITION: REGULATIONS. The Department of Health and Social Services
 18 may immediately proceed to adopt regulations necessary to implement the changes made by
 19 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
 20 before the effective date of the statutory changes.

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

23 REPORT. By December 1, 2006, the governor shall issue a report, including any
 24 recommendations for statutory changes, to the public and the legislature on the
 25 implementation of this Act.

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

28 CONDITIONAL EFFECT. Sections 2 - 7 of this Act take effect only if secs. 16 - 18
 29 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,
 30 Constitution of the State of Alaska.

31 * **Sec. 23.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).

1 * **Sec. 24.** Except as provided in sec. 23 of this Act, this Act takes effect July 1, 2005.