

**CS FOR SENATE BILL NO. 84(HES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/14/05

Referred: Judiciary, Finance

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

**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 the families of those children are not infringed; and

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

11 (b) It is the intent of the legislature that this Act be 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 the families of those children, recognized in art. I, sec. 22, Constitution of the  
17 State of Alaska.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday  
 28 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]  
 29 18th birthday, within 30 days after [OF] the date on which the court releases  
 30 jurisdiction over the child [MINOR], the court shall order all the court's official  
 31 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A

1 person may not use these sealed records **unless authorized by order of** [FOR ANY  
2 PURPOSE EXCEPT THAT] the court **upon a finding of** [MAY ORDER THEIR  
3 USE FOR] good cause [SHOWN].

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

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

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

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

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

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

24 (1) [A GUARDIAN AD LITEM APPOINTED BY THE COURT;

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

29 **(2) a** [(3)] foster **parent** [PARENTS] or **relative** [RELATIVES] with  
30 whom the child is placed by the department as [MAY BE] necessary to enable the  
31 foster **parent** [PARENTS] or **relative** [RELATIVES] to provide appropriate care **to**

1 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of  
 2 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and  
 3 property of family members and visitors of the foster **parent** [PARENTS] or **relative**  
 4 [RELATIVES];

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

9 **(4)** [(5)] a governmental agency as [MAY BE] necessary to obtain that  
 10 agency's assistance for the department in its investigation or to obtain physical custody  
 11 of a child;

12 **(5)** [(6)] a law enforcement agency of this state or another jurisdiction  
 13 as [MAY BE] necessary for the protection of any child or for actions by that agency to  
 14 protect the public safety;

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

18 **(7)** [(8)] the state medical examiner under AS 12.65 as [MAY BE]  
 19 necessary for the performance of the duties of the state medical examiner;

20 **(8)** [(9)] a person who has made a report of harm as required by  
 21 AS 47.17.020 to inform the person that the investigation was completed and of action  
 22 taken to protect the child who was the subject of the report; [AND]

23 **(9)** [(10)] the child support services agency established in  
 24 AS 25.27.010 as [MAY BE] necessary to establish and collect child support for a child  
 25 who is a child in need of aid under this chapter;

26 **(10) a caregiver of a child or an entity responsible for ensuring the**  
 27 **safety of children as necessary to protect the safety of a child; and**

28 **(11) a review panel established by the department, the governor,**  
 29 **or the legislature for the purpose of reviewing the actions taken by the**  
 30 **department in a specific case.**

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

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

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

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

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

11 (g) The department and affected law enforcement agencies shall work with  
 12 school districts and private schools to develop procedures for the disclosure of  
 13 **confidential** information to **a** school **official** [OFFICIALS] under **(b)(3)** [(b)(4)] of  
 14 this section. The procedures must provide a method for informing the principal or the  
 15 principal's designee of the school **that** the student attends as soon as it is reasonably  
 16 practicable.

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

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

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

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

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

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

31 (1) may withhold disclosure of the child's name, picture, or other

1 information that would readily lead to the identification of the child if the department  
 2 determines that the disclosure would be contrary to the best interests of the child, the  
 3 child's siblings, or other children in the child's household; or

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

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

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

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

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

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

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

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

24 DIRECT COURT RULE AMENDMENT. Rule 3(c), Alaska Child in Need of  
 25 Aid Rules of Procedure, is amended to read:

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

1        **limitation is necessary under the circumstances listed in (f)(2)(C) of this rule** [IT  
 2        IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO  
 3        PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE  
 4        DETRIMENTAL TO THE CHILD].

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

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

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

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

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

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

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

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

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

31                      (4) If the court closes a hearing to the public under (2)(C) of this

1 paragraph, the court shall close only the portions of the hearing necessary to prevent  
 2 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,  
 3 is open to the public, the court shall hear in camera any information offered regarding  
 4 the location, or readily leading to the location, of a parent, child, or other party to the  
 5 case who is a victim of domestic violence. Access to testimony heard in camera under  
 6 this subparagraph is limited to the court and authorized court personnel.

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

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

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

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

27 (C) whatever notice is practicable under the circumstances has  
 28 occurred.

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

31 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need

1 of Aid Rules of Procedure, is amended to read:

2 (c) **Child's Name or Picture.** The name or picture of a child who is the  
 3 subject of a CINA proceeding may not be made available to the public unless  
 4 authorized by court order accompanied by a written statement reciting the  
 5 circumstances which support such authorization, or unless to implement the  
 6 permanency plan for the child after all parental rights of custody have been  
 7 terminated.

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

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

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

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

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

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

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

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

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

- 1 Constitution of the State of Alaska.
- 2 \* **Sec. 23.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).
- 3 \* **Sec. 24.** Except as provided in sec. 23 of this Act, this Act takes effect July 1, 2005.