

HOUSE BILL NO. 326

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 2/16/22

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the right to a jury trial in cases involving termination of parental**
2 **rights; and amending Rules 18(b), 18(e), and 18(g), Alaska Child in Need of Aid Rules of**
3 **Procedure."**

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

5 * **Section 1.** AS 25.23.180(f) is amended to read:

6 (f) Before the petition is heard, notice of the hearing on the petition and
7 opportunity to be heard shall be given the parents of the child, the guardian of the
8 person of the child, the person having legal custody of the child, and, in the discretion
9 of the court, a person appointed to represent any party. **The parent shall be given**
10 **notice of the right to a jury trial on the petition, and the opportunity to waive**
11 **that right.**

12 * **Sec. 2.** AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.007. Right to jury trial in certain cases.** A parent is entitled to a
14 jury trial for a hearing under this chapter on a petition to terminate parental rights; a

parent may waive this right. If a hearing to adjudicate whether a child is a child in need of aid is consolidated with a termination hearing, the right to trial by jury under this section applies only to whether parental rights should be terminated after the court has adjudicated that the child is a child in need of aid. In this section, "parent" has the meaning given in Rule 2, Alaska Child in Need of Aid Rules of Procedure.

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

(a) Except as provided in AS 47.10.080(o), the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court, or, in a jury trial, the jury, finds by clear and convincing evidence that

(1) the child has been subjected to conduct or conditions described in AS 47.10.011;

(2) the parent

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

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

(3) the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

* **Sec. 4.** AS 47.10.088(b) is amended to read:

(b) In making a determination under (a)(2) of this section, the court, or, in a jury trial, the jury, may consider any fact relating to the best interests of the child, including

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

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

(3) the harm caused to the child;

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

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

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

(c) In a proceeding under this chapter involving termination of the parental right of a parent, the court, or, in a jury trial, the jury, shall consider the best interests of the child.

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

DIRECT COURT RULE AMENDMENT. Rule 18(b), Alaska Child in Need of Aid Rules of Procedure, is amended to read:

(b) **Purpose of Hearing.** The termination hearing is a disposition hearing to the court or a jury on the question of whether the parental rights to an adjudicated child in need of aid should be terminated. Upon a showing of good cause and with adequate notice to the parties, an adjudication hearing and a termination hearing may be consolidated.

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

DIRECT COURT RULE AMENDMENT. Rule 18(e), Alaska Child in Need of Aid Rules of Procedure, is amended to read:

(e) **Trial.** A trial on the petition to terminate parental rights shall be held within six months after the date on which the petition to terminate parental rights is filed, unless the court finds that good cause is shown for a continuance. When determining whether to grant a continuance for good cause, the court shall take into consideration the age of the child and the potential adverse effect that the delay may have on the child. The court shall make written findings when granting a continuance. A parent has the right to a jury trial for a hearing on a petition to terminate parental rights; a parent may waive this right.

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

DIRECT COURT RULE AMENDMENT. Rule 18(g), Alaska Child in Need of Aid Rules of Procedure, is amended to read:

(g) **Judgment.** The court shall make findings of fact for matters tried to the

1 **court** and **shall** enter an order within 90 days after the last day of trial on the petition
 2 to terminate parental rights. The court shall commit the child to the custody of the
 3 Department if parental rights are terminated.

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

6 APPLICABILITY. This Act applies to trials on petitions to terminate parental rights
 7 that are filed on or after the effective date of this Act.

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

10 TWO-THIRDS VOTE NOT REQUIRED. Sections 6 - 8 of this Act take effect
 11 without needing to meet the two-thirds vote requirement normally applicable to changing
 12 court rules under art. IV, sec. 15, Constitution of the State of Alaska because

13 (1) the provisions of Rule 18(b), 18(e), and 18(g), Alaska Child in Need of
 14 Aid Rules of Procedure, that are affected by the provisions of this Act were adopted under the
 15 Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of
 16 the State of Alaska;

17 (2) AS 47.10.007, enacted by sec. 2 of this Act, establishes a substantive right,
 18 and the changes made in secs. 3 - 8 of this Act are technical changes necessary to give effect
 19 to the substantive right established in AS 47.10.007, enacted by sec. 2 of this Act.