

Introduced: 1/19/87
Referred: Health, Education and
Social Services and
Judiciary

5-0151A

1 IN THE SENATE BY FISCHER

2 SENATE BILL NO. 30

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to termination of parental rights of
7 perpetrators of certain sexual offences."

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

9 * Section 1. AS 47.17 is amended by adding new sections to read:

10 ARTICLE 2. TERMINATION OF PARENTAL RIGHTS

11 OF PERPETRATORS OF CERTAIN SEXUAL OFFENCES.

12 Sec. 47.17.180. PURPOSE. In order to protect the child con-
13 ceived as the result of sexual abuse of a minor or of incest, the
14 court may terminate the parental rights of the perpetrator to the
15 child when the termination is in the best interests of the child.

16 Sec. 47.17.190. WHO MAY FILE PETITION. A petition to terminate
17 the parental rights of a perpetrator of sexual abuse of a minor or of
18 incest may be filed in the superior court by the

19 (1) mother, personal representative, or guardian of the
20 child;

21 (2) parent, personal representative, or guardian of the
22 mother of the child, if the mother is dead, is a minor, or is incompe-
23 tent;

24 (3) biological father or alleged biological father of the
25 child;

26 (4) parent, personal representative, or guardian of the
27 biological father or alleged biological father, if the biological
28 father or alleged biological father is dead, is a minor, or is incom-
29 petent.

1 Sec. 47.17.200. NOTICE. (a) The mother of the child, the
2 biological father or the alleged biological father of the child, the
3 guardian of the child, the person having legal custody of the child,
4 and, in the discretion of the court, a person appointed to represent a
5 party shall receive notice of the hearing on the petition and oppor-
6 tunity to be heard in accordance with the Alaska Rules of Civil Proce-
7 dure for service of process.

8 (b) If the biological father of the child has not been named or
9 alleged in the petition or the birth certificate of the child, the
10 court shall inquire as to information that may aid in identification
11 of the biological father. The court shall inquire of the mother as to
12 the identity of the biological father unless the court finds that
13 there is just cause to protect the mother or the child from disclo-
14 sure.

15 (c) If no person has been named or alleged as the biological
16 father, or if the biological father or alleged biological father
17 cannot be served with notice because the location of the biological
18 father or alleged biological father is unknown, the court shall deter-
19 mine whether publication or public posting of the proceeding is likely
20 to provide adequate notice to the biological father, and if so, shall
21 order publication or public posting at times and places and in the
22 manner appropriate under the circumstances. The notice may not in-
23 clude the name of the mother without the written consent of the
24 mother.

25 (d) The court may order blood tests of the parties to determine
26 the biological father and may equitably assess the cost of the tests
27 among the parties.

28 (e) If at the hearing the court finds that a necessary party to
29 the proceeding has not received timely notice of the petition and the

1 hearing in accordance with (a) or (c) of this section, the court may
2 perpetuate testimony of the witnesses present at the hearing and then
3 continue the hearing until a time when the defect of notice is cured.

4 Sec. 47.17.210. TERMINATION OF PARENTAL RIGHTS. (a) The court
5 shall terminate the parental rights of a biological parent of a child,
6 if the court finds by clear and convincing evidence that the

7 (1) biological parent has received timely notice of the
8 hearing, has waived notice and appearance at the hearing, or has
9 relinquished parental rights under AS 47.17.240, or that publication
10 of notice in accordance with AS 47.17.220 has been accomplished;

11 (2) child was conceived by an act constituting sexual abuse
12 of a minor or incest in this state or a comparable offense in the
13 jurisdiction where the act occurred; and

14 (3) termination of the parental rights of the biological
15 parent is in the best interests of the child.

16 (b) Upon termination of parental rights of a biological parent
17 the court may order the preparation of an application for a birth
18 certificate in the name of the child without reference to the biologi-
19 cal parent and delivery of the application for a person born

20 (1) in the United States, to the appropriate vital statis-
21 tics office of the place, if known, where the child was born; and

22 (2) outside the United States to the state registrar of
23 vital statistics.

24 (c) The court may order the disclosure of the identity and
25 address of a biological parent whose parental rights are terminated
26 under this section only if the

27 (1) court makes an express finding that the disclosure is
28 required because of a medical necessity or other extraordinary circum-
29 stances; and

1 (2) biological parent, the child, and the child's guardian,
2 if the child is a minor, are afforded proper notice and hearing; the
3 court may waive the hearing and notice requirement if it finds that
4 there is a medical necessity that poses an immediate risk to life.

5 Sec. 47.17.220. EFFECT OF ORDER. An order terminating parental
6 rights under AS 47.17.180 - 47.17.310

7 (1) voids all legal relationships between the child and the
8 biological parent so that the child is a stranger to the biological
9 parent; and

10 (2) is a determination that parental rights never attached
11 between the child and the biological parent.

12 Sec. 47.17.230. CONFIDENTIALITY OF PROCEEDING. (a) All hear-
13 ings held in proceedings under AS 47.17.180 - 47.17.310 shall be held
14 in closed court without admittance of persons other than essential
15 officers of the court, the parties, their witnesses, counsel, and
16 representatives of the agencies present to perform their official
17 duties.

18 (b) The papers and records relating to a proceeding under
19 AS 47.17.180 - 47.17.310 are part of the permanent record of the court
20 and are subject to inspection only upon consent of the court.

21 Sec. 47.17.240. RELINQUISHMENT OF PARENTAL RIGHTS. The parental
22 rights of a biological parent of a child who is the subject of a
23 petition filed under AS 47.17.180 - 47.17.310 may be relinquished in
24 the presence of the court or in the presence of a person authorized to
25 take acknowledgments. The relinquishment is not valid unless the
26 relinquishment form states that the person relinquishing parental
27 rights has the right to withdraw within 10 days after the form is
28 signed and unless the person relinquishing parental rights acknowl-
29 edges receipt of a copy of the relinquishment form. The person

1 relinquishing parental rights shall state in the relinquishment form
2 whether that person is a member of an Indian tribe, so that the court
3 may determine whether the provisions of 25 U.S.C. 1901 - 1963 (Indian
4 Child Welfare Act of 1978) apply.

5 Sec. 47.17.250. PROCEEDINGS CONCERNING AN INDIAN CHILD. Not-
6 withstanding AS 47.17.180 - 47.17.310, the court shall make its find-
7 ings of fact and conclusions of law in a manner consistent with the
8 procedural requirements of 25 U.S.C. 1901 - 1963 (Indian Child Welfare
9 Act of 1978), if the court finds that the petition concerns an Indian
10 child, as defined in 25 U.S.C. 1903.

11 Sec. 47.17.260. FINALITY OF ORDER. Six months after an order
12 terminating parental rights is final, the order may not be challenged
13 on any ground, including fraud, misrepresentation, failure to give
14 notice, or lack of jurisdiction of the parties or of the subject
15 matter.

16 Sec. 47.17.270. APPOINTMENT OF ATTORNEY. The respondent to a
17 petition filed under AS 47.17.180 - 47.17.310 is entitled to represen-
18 tation by an attorney in the proceedings. If the respondent is finan-
19 cially unable to employ an attorney, the court shall appoint the
20 office of public advocacy (AS 44.21.400) to represent the respondent
21 in the proceedings.

22 Sec. 47.17.280. ATTORNEY FEES AND COSTS. The court may allow
23 reasonable attorney fees and costs to the prevailing party in a con-
24 tested proceeding arising under AS 47.17.180 - 47.17.310 in accordance
25 with the Alaska Rules of Civil Procedure.

26 Sec. 47.17.290. RIGHTS OF VICTIMS PRESERVED. Proceedings under
27 AS 47.17.180 - 47.17.310 do not affect the right of a victim of sexual
28 abuse or of incest to obtain legal and equitable civil remedies for
29 all injuries and damages arising out of the perpetrator's conduct.

1 Sec. 47.17.300. JURISDICTION. For the purposes of establishing
2 the jurisdiction of the court, a proceeding under AS 47.17.180 -
3 47.17.310 is a child custody proceeding subject to AS 25.30.

4 Sec. 47.17.310. DEFINITIONS. In AS 47.17.180 - 47.17.310

5 (1) "child" means the person alleged to have been conceived
6 as the result of sexual abuse of a minor or of incest and who is the
7 subject of a petition to terminate parental rights under AS 47.17.-
8 180 - 47.17.310;

9 (2) "court" means the superior court;

10 (3) "incest" means a sexual offense defined in AS 11.41.-
11 450;

12 (4) "sexual abuse of a minor" means a sexual offense
13 defined in AS 11.41.434, 11.41.436, or 11.41.440.

14 * Sec. 2. AS 25.23.050(a) is amended to read:

15 (a) Consent to adoption is not required of

16 (1) for purposes of this section, a parent who has aban-
17 doned a child for not less than six months;

18 (2) a parent of a child in the custody of another, if the
19 parent for a period of at least one year has failed significantly
20 without justifiable cause, including but not limited to indigency,

21 (A) to communicate meaningfully with the child, or

22 (B) to provide for the care and support of the child
23 as required by law or judicial decree;

24 (3) the father of a minor if the father's consent is not
25 required by AS 25.23.040(a)(2);

26 (4) a parent who has relinquished the right to consent
27 under AS 25.23.180 or AS 47.17.240;

28 (5) a parent whose parental rights have been terminated by
29 order of the court under AS 47.10.080(c)(3) or AS 47.17.210;

1 (6) a parent judicially declared incompetent or mentally
2 defective if the court dispenses with the parent's consent;

3 (7) any parent of the person to be adopted, if the person
4 is 19 or more years of age, and the court dispenses with the consent
5 of the parent;

6 (8) any guardian or custodian specified in AS 25.23.-
7 040(a)(3) or (4) who has failed to respond in writing to a request for
8 consent for a period of 60 days or who, after examination of the
9 guardian's or custodian's written reasons for withholding consent, is
10 found by the court to be withholding consent unreasonably; or

11 (9) the spouse of the person to be adopted, if the require-
12 ment of consent to the adoption is waived by the court by reason of
13 prolonged unexplained absence, unavailability, incapacity, or circum-
14 stances constituting an unreasonable withholding of consent.

15 * Sec. 3. AS 44.21.410(a) is amended to read:

16 (a) The office of public advocacy shall

17 (1) perform the duties of the public guardian under AS 13.-
18 26.360 - 13.26.410;

19 (2) provide visitors and experts in guardianship proceed-
20 ings under AS 13.26.131;

21 (3) provide guardian ad litem services to children in child
22 protection actions under AS 47.17.030(e) and to wards and respondents
23 in guardianship proceedings who will suffer financial hardship or
24 become dependant upon a government agency or a private person or
25 agency if the services are not provided at state expense under AS 13.-
26 26.112;

27 (4) provide legal representation in guardianship proceed-
28 ings to respondents who are financially unable to employ attorneys
29 under AS 13.26.106(b), to indigent parties in cases involving child

1 custody in which the opposing party is represented by counsel provided
2 by a public agency, [AND] to indigent parents or guardians of a minor
3 respondent in a commitment proceeding concerning the minor under
4 AS 47.30.775, and to indigent respondents in cases involving the
5 termination of parental rights under AS 47.17.210;

6 (5) provide legal representation and guardian ad litem
7 services under AS 25.24.310; in cases arising under the Uniform Inter-
8 state Compact on Juveniles (AS 47.15); in cases involving petitions to
9 adopt a minor under AS 25.23.125(b); in cases involving petitions to
10 remove the disabilities of a minor under AS 09.55.590; in children's
11 proceedings under AS 47.10.050(a); and in cases involving indigent
12 persons who are entitled to representation under AS 18.85.100 and who
13 cannot be represented by the public defender agency because of a
14 conflict of interests.

15 * Sec. 4. AS 47.10.010(a) is amended to read:

16 (a) Proceedings relating to a minor under 18 years of age resid-
17 ing or found in the state are governed by this chapter, except as
18 otherwise provided in this chapter, when the court finds the minor

19 (1) to be a delinquent minor as a result of violating a
20 criminal law of the state or a municipality of the state; or

21 (2) to be a child in need of aid as a result of

22 (A) the child being habitually absent from home or
23 refusing to accept available care, or having no parent, guardian,
24 custodian, or relative caring or willing to provide care, includ-
25 ing physical abandonment by

26 (i) both parents,

27 (ii) the surviving parent, or

28 (iii) one parent if the other parent's rights and
29 responsibilities have been terminated under AS 47.10.080 or

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AS 47.17.210, or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child;

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.