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Referred: Judiciary

5-0151B

Original sponsors: Fischer and Sturgulewski

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 30 (HESS)

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 offenses."

8

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

9

\* Section 1. AS 25.23.030(b) is amended to read:

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(b) If the court finds in the interest of substantial justice,  
11 under AS 22.10.040, that the adoption proceeding [MATTER] should be  
12 heard in another judicial district, the court may transfer, stay or  
13 dismiss the proceeding in whole or in part on [ANY] conditions that  
14 are just.

15

\* Sec. 2. AS 25.23.030 is amended by adding a new subsection to read:

16

(c) Proceedings for the termination of parental rights on the  
17 grounds set out in AS 25.23.180(c)(3) shall be brought in the superior  
18 court for the district in which the child that is the subject of the  
19 action resides.

20

\* Sec. 3. AS 25.23.050(a) is amended to read:

21

(a) Consent to adoption is not required of

22

(1) for purposes of this section, a parent who has aban-  
23 doned a child for a period of at least [NOT LESS THAN] six months;

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

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(A) to communicate meaningfully with the child, or

28

(B) to provide for the care and support of the child

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as required by law or judicial decree;

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

3 (4) a parent who has relinquished the right to consent  
4 under AS 25.23.180;

5 (5) a parent whose parental rights have been terminated by  
6 order of the court under AS 25.23.180(c)(3) or AS 47.10.080(c)(3);

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

9 (7) a [ANY] parent of the person to be adopted, if the  
10 person is 19 or more years of age, and the court dispenses with the  
11 consent of the parent;

12 (8) a [ANY] guardian or custodian specified in AS 25.23.-  
13 040(a)(3) or (4) who has failed to respond in writing to a request for  
14 consent for a period of 60 days or who, after examination of the  
15 guardian's or custodian's written reasons for withholding consent, is  
16 found by the court to be withholding consent unreasonably; or

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

21 \* Sec. 4. AS 25.23.130 is amended by adding a new subsection to read:

22 (d) A decree terminating parental rights on the grounds set out  
23 in AS 25.23.180(c)(3) voids all legal relationships between the child  
24 and the biological parent so that the child is a stranger to the  
25 biological parent and to relatives of the biological parent for all  
26 purposes, including inheritance, unless the decree specifically pro-  
27 vides for the continuation of inheritance rights, and interpretation  
28 of documents executed before or after the termination of parental  
29 rights that do not include the child by name or by a description not

1 based on a parental or blood relationship.

2 \* Sec. 5. AS 25.23.140 is amended by adding a new subsection to read:

3 (c) Subject to the disposition of an appeal, one year after a  
4 decree is issued terminating parental rights on grounds set out in  
5 AS 25.23.180(c)(3), the order may not be challenged on any ground,  
6 including fraud, misrepresentation, failure to give notice, or lack of  
7 jurisdiction of the parties or of the subject matter.

8 \* Sec. 6. AS 25.23.150(b) is amended to read:

9 (b) The papers and records relating to an adoption or a termina-  
10 tion of parental rights under AS 25.23.180(c)(3) that are a part of  
11 the permanent record of a court are subject to inspection only upon  
12 consent of the court. The papers and records relating to an adoption  
13 or a termination of parental rights under AS 25.23.180(c)(3) on file  
14 with the department, an agency, or an individual are subject to  
15 inspection only with consent of all interested persons or by order of  
16 a court for good cause shown. Except as provided in this section,  
17 adoption records of the Bureau of Vital Statistics are subject to  
18 inspection under the provisions of AS 18.50.

19 \* Sec. 7. AS 25.23.150(c) is amended to read:

20 (c) Except as otherwise provided by law, or as authorized in  
21 writing by the adopted child, if 14 or more years of age, or by the  
22 adoptive parent, or upon order of the court for good cause shown, a  
23 person may not disclose the identity or address of [EITHER] an adop-  
24 tive parent, [OR] an adopted child, or a party to a proceeding for the  
25 termination of parental rights on grounds set out in AS 25.23.-  
26 180(c)(3).

27 \* Sec. 8. AS 25.23.150(d) is amended to read:

28 (d) The court may order the disclosure of a natural parent's  
29 identity or address only if

1 (1) the court makes an express finding that the disclosure  
2 is required because of a medical necessity or other extraordinary  
3 circumstance; and

4 (2) the natural parent unless the parent's parental rights  
5 have been terminated on grounds set out in AS 25.23.180(c)(3), the  
6 [ADOPTED] child, and the adoptive parents are afforded proper notice  
7 and a hearing; the court may waive the hearing and notice requirement  
8 if it finds there is a medical necessity that poses an immediate risk  
9 to life.

10 \* Sec. 9. AS 25.23.170 is amended to read:

11 Sec. 25.23.170. APPLICATIONS FOR BIRTH CERTIFICATES. Within 30  
12 days after an adoption decree becomes final, the clerk of the court  
13 shall, if requested by the adoptive parents, prepare an application  
14 for a birth certificate in the name of the adopted person. Upon  
15 issuing a decree terminating parental rights on grounds set out in  
16 AS 25.23.180(c)(3) the court may order the preparation of an applica-  
17 tion for a birth certificate in the name of the child without refer-  
18 ence to the parent whose parental rights have been terminated. The  
19 clerk of the court shall [AND] forward the application

20 (1) for a person born in the United States, to the appro-  
21 priate vital statistics office of the place, if known, where the  
22 adopted person was born and a copy of the decree to the department for  
23 statistical purposes; and

24 (2) for a person born outside the United States to the  
25 state registrar of vital statistics.

26 \* Sec. 10. AS 25.23.180(c) is amended to read:

27 (c) The relationship of parent and child may be terminated by a  
28 court order issued in connection with a [AN ADOPTION] proceeding under  
29 this chapter or a proceeding under AS 47.10:

- 1 (1) on the grounds specified in AS 47.10.080(c)(3); [OR]  
2 (2) on the grounds that a parent who does not have custody  
3 is unreasonably withholding consent to adoption, contrary to the best  
4 interest of the minor child; or  
5 (3) on grounds that the child was conceived by an act  
6 constituting sexual abuse of a minor or incest under the laws of this  
7 state or a comparable offense under the laws of the state where the  
8 act occurred and that termination of the parental rights of the bio-  
9 logical parent is in the best interests of the child.

10 \* Sec. 11. AS 25.23.180(e) is amended to read:

11 (e) A petition for termination of the relationship of parent and  
12 child made in connection with an adoption proceeding or in an inde-  
13 pendent proceeding for the termination of parental rights on grounds  
14 set out in (c)(3) of this section may be made by

15 (1) either parent if termination of the relationship is  
16 sought with respect to the other parent;

17 (2) the petitioner for adoption, the guardian of the per-  
18 son, the legal custodian of the child, or the individual standing in  
19 parental relationship to the child;

20 (3) an agency; or

21 (4) another [ANY OTHER] person having a legitimate interest  
22 in the matter.

23 \* Sec. 12. AS 25.23.180(g) is amended to read:

24 (g) Notwithstanding the provisions of (b) of this section, a  
25 relinquishment of parental rights with respect to a child, executed  
26 under this section, may be withdrawn by the parent, and a decree of a  
27 court terminating the parent and child relationship on grounds set out  
28 in (c)(1) and (2) of [UNDER] this section may be vacated by the court  
29 upon motion of the parent, if the child is not on placement for

1 adoption and the person having custody of the child consents in writ-  
2 ing to the withdrawal or vacation of the decree.

3 \* Sec. 13. AS 25.23.180 is amended by adding new subsections to read:

4 (h) The respondent to a petition filed for the termination of  
5 parental rights on grounds set out in (c)(3) of this section is enti-  
6 tled to representation in the proceedings by an attorney. If the  
7 respondent is financially unable to employ an attorney, the court  
8 shall appoint the office of public advocacy to represent the respon-  
9 dent in the proceedings.

10 (i) Proceedings for the termination of parental rights on the  
11 grounds set out in (c)(3) of this section do not affect the rights of  
12 a victim of sexual abuse of a minor or incest to obtain legal and  
13 equitable civil remedies for all injuries and damages arising out of  
14 the perpetrator's conduct.

15 \* Sec. 14. AS 25.23.240(5) is amended to read:

16 (5) "court" means the superior court of this state, and,  
17 when the context requires, the court of another [ANY OTHER] state  
18 empowered to grant petitions for adoption or to terminate parental  
19 rights;

20 \* Sec. 15. AS 25.23.240 is amended by adding new paragraphs to read:

21 (10) "incest" means a sexual offense defined in AS 11.41.-  
22 450;

23 (11) "sexual abuse of a minor" means a sexual offense  
24 defined in AS 11.41.434, 11.41.436, or 11.41.438.

25 \* Sec. 16. AS 44.21.410(a) is amended to read:

26 (a) The office of public advocacy shall

27 (1) perform the duties of the public guardian under AS 13.-  
28 26.360 - 13.26.410;

29 (2) provide visitors and experts in guardianship

1 proceedings under AS 13.26.131;

2 (3) provide guardian ad litem services to children in child  
3 protection actions under AS 47.17.030(e) and to wards and respondents  
4 in guardianship proceedings who will suffer financial hardship or  
5 become dependent upon a government agency or a private person or  
6 agency if the services are not provided at state expense under AS 13.-  
7 26.112;

8 (4) provide legal representation in guardianship proceed-  
9 ings to respondents who are financially unable to employ attorneys  
10 under AS 13.26.106(b), to indigent parties in cases involving child  
11 custody in which the opposing party is represented by counsel provided  
12 by a public agency, [AND] to indigent parents or guardians of a minor  
13 respondent in a commitment proceeding concerning the minor under AS  
14 47.30.775, and to indigent respondents in cases involving the termina-  
15 tion of parental rights on grounds set out in AS 25.23.180(c)(3);

16 (5) provide legal representation and guardian ad litem  
17 services under AS 25.24.310; in cases arising under the Uniform Inter-  
18 state Compact on Juveniles (AS 47.15); in cases involving petitions to  
19 adopt a minor under AS 25.23.125(b) or petitions for the termination  
20 of parental rights on grounds set out in AS 25.23.180(c)(3); in cases  
21 involving petitions to remove the disabilities of a minor under AS  
22 09.55.590; in children's proceedings under AS 47.10.050(a); and in  
23 cases involving indigent persons who are entitled to representation  
24 under AS 18.85.100 and who cannot be represented by the public defend-  
25 er agency because of a conflict of interests.

26 \* Sec. 17. AS 47.10.010(a) is amended to read:

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

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

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

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

8 (i) both parents,

9 (ii) the surviving parent, or

10 (iii) one parent if the other parent's rights and  
11 responsibilities have been terminated under AS 25.23.180(c)  
12 or AS 47.10.080 or voluntarily relinquished;

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

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

26 (D) the child having been, or being in imminent and  
27 substantial danger of being, sexually abused either by the  
28 child's parent, guardian, or custodian, or as a result of condi-  
29 tions created by the child's parent, guardian, or custodian, or

1 by the failure of the parent, guardian, or custodian adequately  
2 to supervise the child;

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

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