

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

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HOUSE BILL NO. 414

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

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A BILL

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For an Act entitled: "An Act relating to notification of adoption of
Indian children; changing Alaska Supreme Court
Adoption Rule 10(e); and providing for an effective
date."

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

11 * Section 1. AS 25.23.060 is amended by adding new subsections to read:

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(d) In the case of an Indian child the representative of the
person or agency assuming custody of the child shall send notice of
the execution of the consent to adoption to the Indian child's tribe
within 10 days after the consent is executed.

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(e) In adoptions involving an Indian child, if a consenting
parent evidences a desire for anonymity, the notice to the Indian
child's tribe must use only initials to identify the parties. The
notice must also state in summary form the effect of a decree of
adoption.

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21 * Sec. 2. AS 25.23.100(a) is amended to read:

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(a) After the filing of a petition to adopt a minor, the court
shall fix a time and place for hearing the petition. At least 20 days
before the date of hearing, the petitioner shall give notice of the
filing of the petition and of the time and place of hearing to (1) the
department, unless the adoption is by a stepparent of the child; (2)
any agency or person whose consent to the adoption is required by this
chapter, but who has not consented; and (3) a person whose consent is
dispensed with upon any ground mentioned in AS 25.23.050(a)(1), (2),

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1 (3), (6), (7), (8), and (9), but who has not consented. At least 10
2 days before the date of hearing in any adoption involving an Indian
3 child, the petitioner shall give notice of the filing of the petition
4 and of the time and place of hearing on the petition to the Indian
5 child's tribe. The notice to the department shall be accompanied by a
6 copy of the petition.

7 * Sec. 3. AS 25.23.100(b) is amended to read:

8 (b) Notice to persons specified in AS 25.23.050 shall include a
9 statement of the grounds under which consent to the adoption is not
10 required. Notice given under this section is [SHALL BE] adequate to
11 give actual notice of the proceedings, taking into account education
12 and language differences that [WHICH] are known or reasonably ascer-
13 tainable by the petitioner or the department. Except as provided in
14 (k) of this section, the [THE] notice of hearing shall contain all
15 names by which the minor has been identified and shall state in summar
16 form the effect of a decree of adoption. Notice shall be given in the
17 manner appropriate under rules of civil procedure for the service of
18 process in a civil action in this state or in any manner the court by
19 order directs. Notice by publication may not be given unless, for
20 compelling reasons, the court orders it to be given under the proce-
21 dure established in Rule 4 of the Alaska Rules of Civil Procedure.
22 Proof of the giving of the notice shall be filed with the court before
23 the petition is heard, subject to the time limitations in (e) of this
24 section.

25 * Sec. 4. AS 25.23.100 is amended by adding a new subsection to read:

26 (k) In adoptions involving an Indian child, if a consenting
27 parent evidences a desire for anonymity, the notice to the Indian
28 child's tribe must use only initials to identify the parties. The
29 notice must also state in summary form the effect of a decree of

1 adoption.

2 * Sec. 5. AS 25.23.180 is amended to read:

3 Sec. 25.23.180. RELINQUISHMENT AND TERMINATION OF PARENT AND
4 CHILD RELATIONSHIPS. (a) The rights of a parent with reference to a
5 child, including parental right to control the child or to withhold
6 consent to an adoption, may be relinquished and the relationship of
7 parent and child terminated in or before an adoption proceeding as
8 provided in this section.

9 (b) All rights of a parent with reference to a child, including
10 the right to receive notice of a hearing on a petition for adoption,
11 may be relinquished and the relationship of parent and child terminat-
12 ed by a writing, signed by the parent, regardless of the age of the
13 parent, a copy of which shall be given to the parent,

14 (1) in the presence of a representative of an agency taking
15 custody of the child, whether the agency is within or outside of the
16 state or in the presence and with the approval of a court within or
17 outside of this state in which the minor was present or in which the
18 parent resided at the time it was signed, which relinquishment may be
19 withdrawn within 10 days after it is signed or the child is born,
20 whichever is later; and the relinquishment is invalid unless it states
21 that the parent has this right of withdrawal; or

22 (2) in any other situation if the petitioner has had custo-
23 dy of the minor for two years, but only if notice of the adoption
24 proceeding has been given to the parent and the court finds, after
25 considering the circumstances of the relinquishment and the long
26 continued custody by the petitioner, that the best interest of the
27 child requires the granting of adoption.

28 (c) If the relinquishment involves an Indian child, the agency
29 taking custody of the child shall give notice of the relinquishment to

1 the Indian child's tribe within 10 days after the taking of the relin-
2 quishment. The termination of parental rights based on the relin-
3 quishment may not take place earlier than 10 days after the tribe's
4 receipt of notice.

5 (d) If the relinquishment involves an Indian child and the
6 relinquishing parents evidence a desire for anonymity, the notice to
7 the Indian child's tribe must use only initials to identify the
8 parties. The notice must also state in summary form the effect of the
9 relinquishment and order terminating parental rights.

10 (e) The relationship of parent and child may be terminated by a
11 court order issued in connection with a proceeding under this chapter
12 or a proceeding under AS 47.10:

13 (1) on the grounds specified in AS 47.10.080(c)(3);

14 (2) on the grounds that a parent who does not have custody
15 is unreasonably withholding consent to adoption, contrary to the best
16 interest of the minor child; or

17 (3) on grounds that the parent committed an act constitut-
18 ing sexual assault or sexual abuse of a minor under the laws of this
19 state or a comparable offense under the laws of the state where the
20 act occurred that resulted in conception of the child and that ter-
21 mination of the parental rights of the biological parent is in the
22 best interests of the child.

23 (f) [(d)] For the purpose of an adoption proceeding under this
24 chapter, a decree issued by a court of competent jurisdiction in this
25 or another state terminating all rights of a parent with reference to
26 a child or the relationship of parent and child dispenses with the
27 required

28 (1) consent by that parent to an adoption of that child;

29 and

1 (2) notice of a proceeding to that parent unless otherwise
2 required by this section.

3 (g) [(e)] A petition for termination of the relationship of
4 parent and child made in connection with an adoption proceeding or in
5 an independent proceeding for the termination of parental rights on
6 grounds set out in (e)(3) [(c)(3)] of this section may be made by

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

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

12 (3) an agency; or

13 (4) another person having a legitimate interest in the
14 matter.

15 (h) [(f)] Before the petition is heard, notice of the hearing on
16 the petition and opportunity to be heard shall be given the parents of
17 the child, the guardian of the person of the child, the person having
18 legal custody of the child, and, in the discretion of the court, a
19 person appointed to represent any party.

20 (i) [(g)] Notwithstanding the provisions of (b) of this section,
21 a relinquishment of parental rights with respect to a child, executed
22 under this section, may be withdrawn by the parent, and a decree of a
23 court terminating the parent and child relationship on grounds set out
24 in (e)(1) [(c)(1)] and (2) of this section may be vacated by the court
25 upon motion of the parent, if the child is not on placement for
26 adoption and the person having custody of the child consents in
27 writing to the withdrawal or vacation of the decree.

28 (j) [(h)] The respondent to a petition filed for the termination
29 of parental rights on grounds set out in (e)(3) [(c)(3)] of this

1 section is entitled to representation in the proceedings by an attorney.
2 ney. If the respondent is financially unable to employ an attorney,
3 the court shall appoint the office of public advocacy to represent the
4 respondent in the proceedings.

5 (k) [(i)] Proceedings for the termination of parental rights on
6 the grounds set out in (e)(3) [(c)(3)] of this section do not affect
7 the rights of a victim of sexual abuse of a minor or incest to obtain
8 legal and equitable civil remedies for all injuries and damages arising
9 out of the perpetrator's conduct.

10 * Sec. 6. AS 25.23.240 is amended by adding new paragraphs to read:

11 (12) "Indian child" means an unmarried person who is under
12 the age of 18 and who is either (A) a member of an Indian tribe, or
13 (B) is eligible for membership in an Indian tribe and is the biological
14 child of a member of an Indian tribe;

15 (13) "Indian child's tribe" means (A) the Indian tribe in
16 which an Indian child is a member or is eligible for membership, or
17 (B), in the case of an Indian child who is a member of or eligible for
18 membership in more than one tribe, the Indian tribe with which the
19 Indian child has the more significant contacts;

20 (14) "Indian tribe" has the same meaning as in the Indian
21 Child Welfare Act, at 25 U.S.C. 1903(8).

22 * Sec. 7. Alaska Supreme Court Adoption Rule 10(e) is amended to read:

23 (e) NOTICE TO INDIAN TRIBE. In an adoption or relinquishment
24 proceeding involving an Indian child, notice must be given to the
25 child's tribe at the time of the petition or, if the child's tribe is
26 not known at this time, reasonably promptly after the tribe has been
27 determined. If the relinquishing or consenting parent evidences a
28 desire for anonymity, the notice and petition sent to the tribe must
29 use only initials for the parties until the tribe moves to intervene

1 [HOWEVER, NOTICE IS NOT REQUIRED IF PARENTAL RIGHTS ARE TO BE VOLUN-
2 TARILY TERMINATED AND THE PARENT FILES A STATEMENT THAT THE TRIBE HAS
3 NOT BEEN SERVED WITH NOTICE IN ORDER TO PROTECT THE PRIVACY OF THE
4 PARENT]. The notice[,IF REQUIRED,] must be by personal service or
5 certified or registered mail, with proof of service dated no later
6 than 10 days before the adoption hearing and, if applicable, also 10
7 days before the entry of the decree of termination. The notice[, IF
8 REQUIRED,] must be sent with a copy of the petition and must contain:

9 (1) a statement that the Indian child's tribe has a right
10 to intervene in the proceeding;

11 (2) a statement of the right of the tribe to request twenty
12 additional days to prepare for the proceedings;

13 (3) the mailing address and telephone number of the court;

14 (4) a statement that the tribe may have a right to petition
15 the court to transfer the proceedings to a tribal court authorized to
16 exercise jurisdiction under federal law; and

17 (5) a statement that since adoption proceedings are usually
18 conducted on a confidential basis, tribal officials shall keep the
19 information contained in the notice confidential.

20 * Sec. 8. APPLICABILITY. This Act establishes procedural requirements
21 applicable to all consents given, relinquishments taken, and petitions for
22 adoption filed on or after the effective date of this Act.

23 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).