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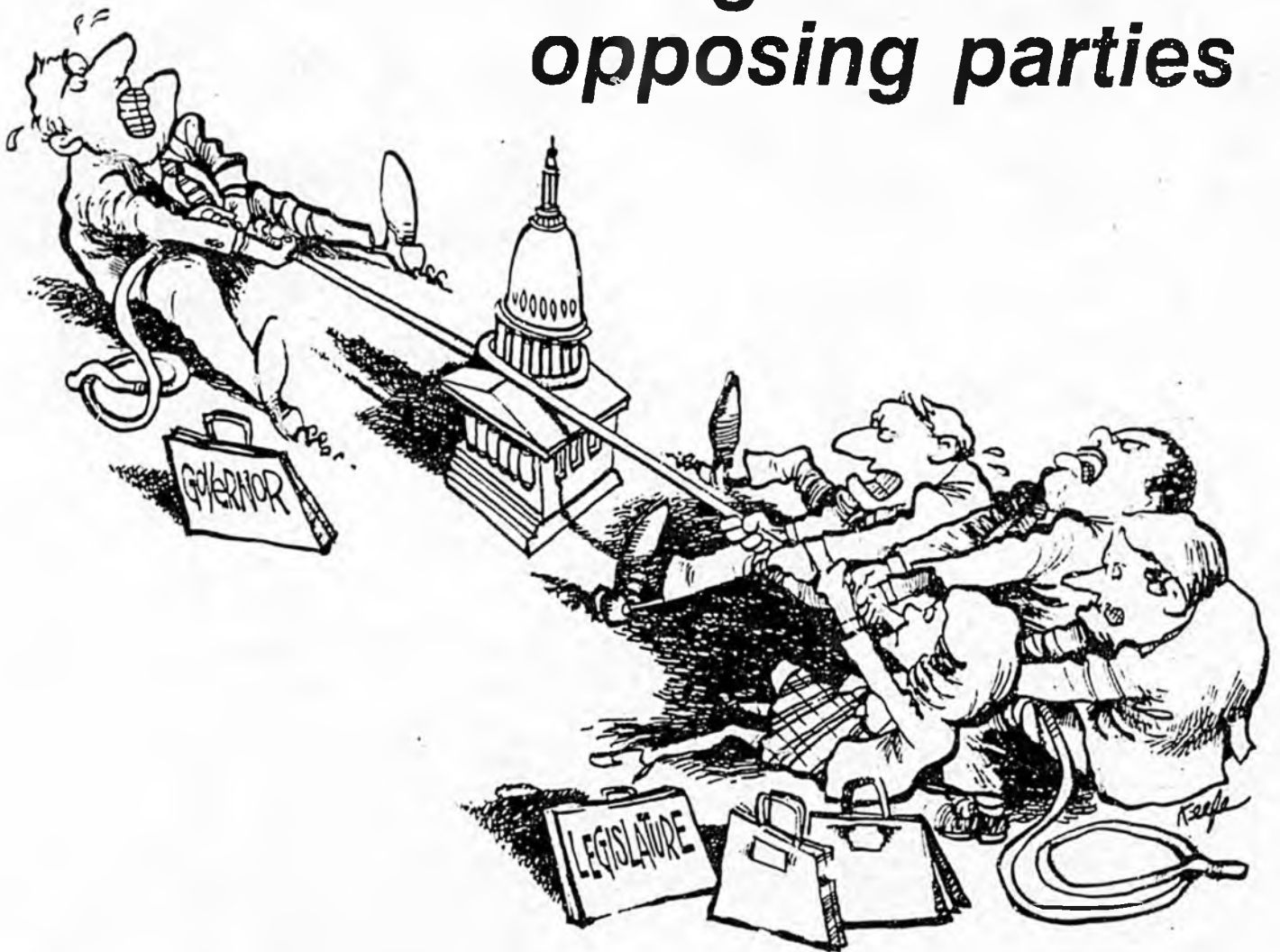
187

State Legislatures

National Conference of State Legislatures

May-June 1984

Powersplit: legislatures and governors of opposing parties



Adoption laws

Sentencing guidelines

Adoption: new ways to build families



Photo by Lauren Brill

*Dramatic changes in state adoption laws
have made commonplace combinations of parents
and children that were virtually impossible 10 years ago.*

Judy Heffner

When a boy of 14 is placed in the home of a 61-year-old bachelor — as happened recently in Vermont — it is fair to assume that something new and dramatic is happening to adoption.

In all likelihood, that adoption would not have taken place 10 years ago. It was made possible by the new climate that surrounds adoption, a climate reflected in these trends:

- A growing emphasis on adopting children with "special needs," including the mentally and physically handicapped;
- A greater willingness to place children with single parents and, in some cases, with couples living outside of marriage;
- The removal of racial and religious barriers to adoption; and
- The increasing number of families who are adopting their foster children, often with the aid of state subsidy payments.

Today adoption is a new kind of "family building," in the words of Ann Bolstead, a Montana social

worker. There is a scarcity of healthy infants, caused in part by changing attitudes toward birth control and the tendency of unwed mothers to keep their babies. There are adults who live in non-traditional family settings but still want to bring children into their lives. The result is new combinations of parents and children — and a wider sense of possibilities in adoption law and practice.

"We have seen a dramatic change in the kinds of adoptions that are taking place," said Nancy McConnell of the Child Welfare League of America, a service organization that helps set standards in adoption and foster care for nearly 400 member agencies. "Children under five are now considered easy to place," she said. The corollary is also true: Children once thought "unadoptable" are now possible to place. For states committed to adoption laws and policies that serve the "best interest of the child," these trends provide new opportunities — and a complex set of new problems.

The modern adoption process is a relatively recent concept in this country. Even adoption agencies are a fairly new phenomenon. The first state adoption laws took the form of "private" laws, which permitted a specific parent to adopt an individual child. In 1951, Massachusetts enacted the first law that made the adoption process open to everyone. The early laws, however, were "a far cry from the modern notion that the purpose of adoption is to serve the best interests of the child," write Susan and Elton Klibanoff in their book, *Let's Talk About Adoption*. "A commonly held view was that adopted children were 'the waifs of society, foundlings or children whose parents are depraved and worthless,'" they found.

By the time all 50 states had enacted adoption laws in 1931, the focus had shifted from a legal relationship based on rights of "ownership" to an emphasis on protecting

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the child. New laws established certain standards and policies, such as the investigation of prospective adoptive parents and regulations for terminating prior parental custody.

Today, adoption severs biological ties between the child and his or her birth parents. It establishes a completely new legal relationship between the adoptive parents and the adoptee. A new birth certificate is issued, using the adoptee's actual date and place of birth but substituting his or her adoptive name and the names of the adoptive parents in place of the birth parents. Oregon law, which is typical, states that once the adoption has been completed, the natural parents' legal relationship with the adoptee shall be the same as if he or she had not been born to them.

Two types of domestic adoption are possible between non-relatives in most states. In the first, *agency adoption*, a public or private child-placing agency licensed by the state acts as an intermediary between the birth mother and the adoptive parents.

The second type, an *independent* or *private adoption*, may be arranged directly by the birth mother or by an intermediary, such as a doctor, lawyer, or clergyman, if state law permits.

Price of a newborn

Eleven states prohibit independent adoption between non-relatives. The other 39 permit private adoptions under differing conditions and with varying restrictions.

A number of states that permit private adoptions have revised their laws in recent years to prevent abuses such as baby selling, which can drive the "price" of a healthy newborn as high as \$50,000. But many laws regarding the exchange of money are ambiguous. They vary from state to state. Some states have tried to clarify their laws to make them more difficult to circumvent.

One of the most ambitious attempts to cover the problems associated with independent adoptions occurred



Photo by Lauren Bill

in Iowa, where the adoption law underwent a comprehensive rewrite in 1975. It included provisions that (1) no placement can be made until the prospective adoptive parents have been investigated by the Department of Social Services or by an investigator selected by the department; (2) fees in conjunction with any placement must be usual, necessary, and commensurate with services rendered; (3) prospective parents must file full financial disclosure with the adoption petition, with criminal penalties imposed for violations; (4) it is illegal for the natural parent to receive a fee for having a baby; and (5) there must be close supervision at all stages of the adoption procedure.

At least three states that used to allow independent adoptions — Colorado, Massachusetts, and New Mexico — have outlawed them. One state that now prohibits independent adoptions, North Dakota, is studying the feasibility of legalizing it.

The South Carolina Children's Bureau, a public agency, has just begun charging a fee for placing healthy infants and pre-schoolers, in order to "compete" with independent adoptions. According to State Bureau Director Frank Lewis, South Carolina lost 35 prospective infant placements in 1982 because it could

not pay the young mothers' medical bills.

Whatever the type of adoption, prospective parents must meet minimum state requirements. Most states require that adoptive parents live in the state where they plan to adopt for a specific period of time, usually six months to one year. Although other states do not demand that parents be residents before petitioning, they do require that parents be present while the home study or investigation is in progress and until the adoption is completed — usually six months or one year.

In all states, adoption is for adults only. Many states also require that adoptive parents be at least 10 years older than the adoptee. Some, like Georgia, specify a minimum age for single adoptive parents; Georgia set it at 25.

Single-parent adoption has increased markedly and is now permitted in all 50 states. For some children, a single parent may even be preferred: "An older child who has been abused is sometimes not able to relate to two adults in a family and needs a period of healing," said Linda Dunn of the North American Council on Adoptable Children. Because of the shortage of healthy infants and the number of qualified couples waiting to adopt

(Continued on p. 19)

(Continued from p. 14)

them, more and more single parents are adopting "special needs" children. Vermont even allows adoptive placements with unmarried couples who have a proven, stable relationship (a practice that is not widespread). One of the couple simply adopts as a single parent.

Parental rights cut

Race and religion are also assuming less importance in adoptions. This process was hastened by a series of U.S. Supreme Court decisions that removed state-imposed barriers to interracial adoption. Although a handful of state laws may still mention race and religion as important factors to be considered in granting adoption, most states are moving toward discounting such considerations as the sole basis for granting or denying an adoption in favor of the child's welfare.

One important requirement that is universal in theory but highly controversial in practice is termination of parental rights, particularly those of the father. No adoption can be granted without the consent of one or both parents. And if the child is 12 or older, he or she must also consent to the adoption.

In granting an adoption, most states require court termination of parental rights, including those of the putative father. Once consent is given, it usually cannot be withdrawn without court approval unless the biological parents can prove it was obtained by fraud or coercion.

If a parent merely changes his or her mind, the case's outcome will depend upon state law. A majority of states give the court discretion in deciding whether parental consent may be revoked; some give the biological parent the absolute right to revoke consent; and a few make the consent irrevocable. The overriding factor in these decisions is what the judge deems to be the child's best interests. This was not always the case. Some of the laws on parental consent have changed in recent years because

of court decisions.

Until 1972, most adoption agencies were required to obtain a written release only from the child's biological mother. Then in 1972, the U.S. Supreme Court ruled in *Stanley vs. Illinois* that the unwed father's consent must be obtained before his biological child is placed in a permanent home — or, at least that he must be fully notified of a hearing on the termination of his rights.

As a result, states have passed laws to protect the father's rights. In some states, the courts and adoption agencies require that both parents agree to the release of their child. Others require only that the agency make a reasonable effort to find the illegitimate father, if known, and notify him that the biological mother is

releasing the child for adoption. If he does not respond after a specified time period (usually 30 to 60 days), the child is automatically released for adoption.

The courts, however, have yet to agree on precisely what voice unwed fathers have in releasing children for adoption. In 1978, the U.S. Supreme Court upheld a Georgia law that said the father's consent is not a requirement for adoption. In a more recent case decided in June 1983, the Court held that New York state did not violate the constitutional rights of an unwed father by not informing him of the pending adoption of his illegitimate child.

The Court has also agreed to review a case in which a father is challenging a Texas law that prevents him

Baby-selling ban sought

Among the 59 states that allow private adoptions, South Carolina is known as an easy place to find a child to adopt. Some newspapers even accept classified ads from people seeking children to adopt.

The state requires approval of adoptions at a family court hearing but does not require that any state agency be involved. The *New York Times* reports that in 1982, the last year for which state figures are available, 1,826 children were adopted in South Carolina, 450 of them by non-residents. Public and private adoption agencies placed only 390 of those children.

A bill introduced by South Carolina state Representative David H. Wilkins treats as a felony the request or acceptance of "any fee, compensation or any other thing of value as consideration for relinquishing the custody of a child for adoption." Medical expenses or fees for service, however, could be reimbursed.

Violation would incur a maximum sentence of 10 years in prison and \$10,000 in fines.

Wilkins said, "There was an instance about two months ago where a young mother sold or gave her 23-month-old daughter to another couple for \$3,500. She then changed her mind and attempted to get her child back. When the couple refused, she went to the chief of police [who] went to the county prosecutor, and he couldn't find any law he could prosecute under. The attorney general determined there was no such law; and for that reason we introduced a bill to make it a felony for anyone to be involved in selling children."

Toward the end of the South Carolina session, the bill was still in the House Judiciary Committee. However, Wilkins said, "I see no opposition to it, and if it doesn't get through both the House and Senate this year, we'll certainly get it through next year."

State Adoption Law Provisions



Photo by Lauren Brill

	Independent Placement	Residency Requirement for Adopting Parents	Single Parent Adoption	Accepts Parental Consent of Parental Rights	Exclusively Court Termination of Parental Rights	Identifying Info. Available by Court Order Only	Mutual Consent Subsidy	Search and Consent Procedures	Partial or Complete Access to Records
ALABAMA	1	1	•	•	•	•	•	•	2
ALASKA	•	•	•	•	•	•	4	•	3
ARIZONA	•	•	•	•	•	•	5	•	
ARKANSAS	•	•	•	•	•	•	•	•	
CALIFORNIA	6	•	•	•	•	•	•	•	7
COLORADO	8	•	•	•	•	•	•	•	
CONNECTICUT	•	•	•	•	•	•	•	•	
DELAWARE	•	•	•	•	•	•	•	•	
FLORIDA	•	•	•	•	•	•	•	•	
GEORGIA	•	•	•	•	•	•	•	•	
HAWAII	•	•	•	•	•	•	•	•	7
IDAHO	•	•	•	•	•	•	•	•	
ILLINOIS	•	•	•	•	•	•	•	•	
INDIANA	•	•	•	•	•	•	•	•	
IOWA	•	•	•	•	•	•	•	•	
KANSAS	•	•	•	•	•	•	•	•	3
KENTUCKY	•	•	•	•	•	•	•	9	•
LOUISIANA	•	•	•	•	•	•	•	•	
MAINE	•	•	•	•	•	•	•	•	
MARYLAND	1	1	•	•	•	•	•	•	
MASSACHUSETTS	6	•	•	•	•	•	•	•	
MICHIGAN	6	•	•	•	•	•	•	•	7
MINNESOTA	6	•	•	•	•	•	•	•	
MISSISSIPPI	•	•	•	•	•	•	•	•	
MISSOURI	1	•	•	•	•	•	•	•	
MONTANA	•	•	•	•	•	•	•	•	
NEBRASKA	1	•	•	•	•	•	•	•	7
NEVADA	1	•	•	•	•	•	•	•	
NEW HAMPSHIRE	•	•	•	•	•	•	•	•	
NEW JERSEY	•	•	•	•	•	•	•	10	
NEW MEXICO	6	•	•	•	•	•	•	•	
NEW YORK	•	•	•	•	•	•	•	•	
NORTH CAROLINA	•	•	•	•	•	•	•	•	
NORTH DAKOTA	•	•	•	•	•	•	•	•	7
OHIO	•	•	•	•	•	•	•	•	
OKLAHOMA	•	•	•	•	•	•	•	10	11
OREGON	1	•	•	•	•	•	•	•	
PENNSYLVANIA	•	•	•	•	•	•	•	•	3
RHODE ISLAND	6	•	•	•	•	•	•	•	
SOUTH CAROLINA	•	•	•	•	•	12	•	•	
SOUTH DAKOTA	1	•	•	•	•	•	•	•	
TENNESSEE	1	1	•	•	•	•	•	•	9
TEXAS	1	•	•	•	•	•	•	•	
UTAH	•	•	•	•	•	•	•	•	
VERMONT	•	•	•	•	•	•	•	•	
VIRGINIA	8	8	•	•	•	•	•	•	
WASHINGTON	•	•	•	•	•	•	•	•	
WEST VIRGINIA	•	•	•	•	•	•	•	•	
WISCONSIN	6	•	•	•	•	•	•	•	
WYOMING	•	•	•	•	•	•	•	•	
TOTAL	46	39	29	50	26	47	30	15	14 10

Notes:

1. By biological parents only
2. With bio parent consent only
3. Original birth certificate only
4. Only available to state wards
5. Flexible subsidy
6. By bio parents w/relatives only
7. Only by consent of adoptee, birth parents, and/or adoptive parents
8. By bio parents only w/persons known to them
9. For pre-adoptive siblings only
10. For State Dept. placements only
11. Adoptive family has identifying information
12. In some cases

Source: Author survey and National Committee for Adoption

from stopping the adoptive placement of his illegitimate daughter. Texas law requires only that the child's mother consent to an adoption. This case is expected to be decided later this year.

The consequences of opposing state laws and attitudes can be extreme, as is dramatically illustrated in the "Baby Lenore" case.

Baby Lenore was born in a New York hospital to a 33-year-old unwed mother who consented to her adoption two weeks after the child's birth. A prestigious, private New York agency placed the child with prospective new parents, the DeMartinos.

Shortly after the placement, the birth mother changed her mind. The agency refused to return the child and never notified the DeMartinos of the mother's change of heart. After a long series of legal battles, the case reached the U.S. Supreme Court. It refused to overturn a decision of New York's highest court ordering the DeMartinos to return the child to its biological mother.

By now Baby Lenore had lived with the DeMartinos for 18 months. The family fled to Florida to escape the judgment of the New York court. Eventually they were allowed under Florida law to adopt the child and live there.

New York has since enacted a law stating that a biological mother's release for adoption of her child is irrevocable after 30 days. Other states also have reviewed their surrender provisions as a result of this case. Massachusetts, for example, now requires a uniform surrender document for all adoptions.

Courts intervene

Not all children who are adopted have been voluntarily relinquished by their parents. In cases where they have been abused, neglected, or abandoned, a court will sever the relationship without parental consent if it finds such action to be in the child's best interest. Often the children already have been removed

Federal programs encourage adoption

Although adoption is primarily a state responsibility, Congress has enacted several programs relating to adoption. Federal programs include:

The *Adoption Assistance Program*, established by the Adoption Assistance and Child Welfare Act of 1980, provides federal matching funds for payments to parents who adopt an AFDC or SSI-eligible child with special needs.

The *Adoption Opportunities Program*, established by Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, facilitates and encourages the adoption of children with special needs. Although the legislation did not establish an ongoing program, it did set five goals: (1) development of model state adoption legislation and procedures relating to adoptive placement of special needs children; (2) a study of independent (private) adoptions; (3) development and operation of a national adoption and foster care data-gathering system; (4) development and operation of a national adoption information exchange system, to be coordinated with similar state and regional systems; and (5) provision of training, technical assistance, and educational materials concerning the adoption of special needs children to states and public and private non-profit agencies.

An amendment to the *Internal Revenue Code* allows a tax deduction for special needs children. This amendment was written into the Economic Recovery and Tax Act of 1981. Under new code section 222, taxpayers of any income who adopt special needs children (as defined by state law) and who receive federal adoption assistance may deduct up to \$1,500 of adoption expenses.

Federal standards and funding for American Indian adoption and foster care are governed by the *Indian Child Welfare Act of 1978*. This law: (1) established minimum federal standards for removing Indian children from their families and placing these children in foster or adoptive homes that reflect the unique values of Indian culture; (2) returned jurisdiction over most Indian child welfare matters to the tribes; and (3) authorized funds for Indian groups to develop and operate child and family service programs, including systems for licensing and regulating Indian foster and adoptive homes.

The *Immigration and Nationality Act* governs the admission into the United States of foreign-born children for adoption purposes. Parents adopting foreign-born children also must comply with the adoption laws of the child's country and of their home state.

The *Child Welfare Services Program* provides matching funds to states for services that include adoption, foster care, and limited expenditures for foster care maintenance and state adoption subsidies.

The *Adolescent Family Life Program* funds local demonstration programs that provide services to teen-age parents and pregnant adolescents, including adoption counseling and referral services.

Social service block grants provide funds to states for a variety of social services, including adoption and foster care.

—Judy Heffner

from their homes or have been voluntarily placed in foster care by their parents. Although most states have laws permitting involuntary termination of parental rights in extreme circumstances, the courts are often reluctant to interfere with parental control. And according to Elizabeth Cole of the Child Welfare League of America, a child who has been in foster care for more than 19 months stands little chance of returning to his biological family.

As a result, nearly half a million of these children languish in foster care, sometimes until adolescence, although it is estimated that at least 120,000 could be adopted. "I've seen a lot of children who would love to be adopted and can't be," said South Carolina state Representative Parker Evatt, who is vice-chairman of the General Assembly's joint committee on children.

As the operator of a group home for juveniles, Evatt considers termination of parental rights to be "one of the major hurdles" facing the 3,000 children in foster care in South Carolina. "I've seen kids who've been in foster care a long time after being abused, and then they wind up



Photo by Lauren Brill

here, because the problem wasn't dealt with at the beginning," Evatt said.

Another problem he sees with the youngsters who pass through his home is the lack of permanency planning. Evatt believes that once a child in trouble is referred to the State Department of Youth Services, a plan should be established for him, perhaps leading eventually to adoption.

Missouri state Representative Kaye Steinmetz concurs. "Even though we have permanency planning, it is not always used properly," she said. Under Missouri law, all children placed in foster care must have a permanency plan. According to Steinmetz, however, this mandate does not always translate into action. "If there is a plan, it doesn't always include an adoption component, even if it is appropriate," she said. Steinmetz has asked the Missouri House speaker to establish a select interim committee that would hold statewide hearings on adoption, open records, and termination of parental rights.

Fortunately for the several hundred thousand children in foster care nationwide, the weight of state laws, court decisions, and social work practice has swung away from the adult's right to "ownership" to the child's right to continuous, stable, and permanent care.

Some states, like Maryland, have enacted laws terminating parental rights after a child has been in foster care for two years and a parent has made no effort to reunite. New York mandates a review after 24 months of foster care. Other states, like Illinois, are shifting the burden of proving fitness from the court to the biological parent. Still others — realizing that the final adoption of a foster child may take years because of custody questions and court backlog — have initiated foster/adopt or "legal risk" adoption programs. In these, the child is placed in a home on the assumption that he or she eventually will become free for adoption by the foster parents. A growing number of states, including Illinois, Maryland, Michigan, Montana, and Washington, are initiating

Consider adoption



You
can
make
the
difference

such programs.

Where children and their foster parents have established a relationship that could lead to permanent placement and adoption, many states are giving the foster parents preference once the child becomes legally free for adoption. This practice may contribute to more adoptions. Jacob Sprouse, executive director of the National Foster Parent Association, said that in states focusing on termination of parental rights after 24 months, there is a significant increase in the number of adoptions — and more than 70 percent of these are by foster parents.

Many children were once considered "unadoptable," but the number who fall into that category has diminished sharply in recent years. One reason is the growth of

state subsidy programs to encourage the adoption of so-called "special needs" children. After New York enacted the first such law in 1968, 44 states enacted adoption subsidy programs between 1969 and 1977. New York took the lead again in 1974 when its Legislature provided for subsidy payments to continue if a child is moved to another state or is adopted by residents of another state or Puerto Rico.

In most cases, subsidy payments are tied to the child's needs, rather than to the financial requirements of the adoptive parents. Most states fund medical care, monthly maintenance, "special services" (a catch-all category that might include extraordinary medical care, psychotherapy, or transportation to a special educational facility), and a one-time legal payment to complete

the adoption. Most subsidies continue until a child's 18th, and in some states, 21st birthday. Arranged prior to adoption, subsidies generally are linked to the state's foster care payment scale.

The existence of subsidy programs has helped increase the number of foster parent adoptions. That is good for the children, who gain a stable and continuing relationship; good for the parents, many of whom could not have afforded to adopt without the subsidies; and good for state budgets, because foster parent adoptions save money. Social workers in many states including Oregon and New York have documented the fact that subsidized adoption is far less expensive than long-term foster or institutional care, not to mention the human costs saved.

The Interstate Compact on the Placement of Children is another new development that has encouraged adoption of hard-to-place children and protected those placed across state lines. The compact is "the only tool states have to ensure that children placed across state lines are protected" according to Betsey Rosenberg of the American Public Welfare Association. To date, all but four states — Hawaii, Michigan, Nevada, and New Jersey — and the District of Columbia have signed the compact.

Under the compact's rules, a child cannot be brought into a receiving state until the sending state gives written notice of who the natural and prospective adoptive parents are, and the reason for interstate adoption. The receiving state's compact administrator must approve the child's transfer, but may do so only after the prospective parents have undergone a homestudy to determine their suitability as parents. In this way, children placed in another state are assured the same protection and services that would have been provided in their home state. The compact also defines the types of placements subject to the law and the procedures to be followed for interstate placements.

Future adoption reforms

Legislators, child welfare professionals, and the members of the "adoption triangle" — birth parents, adoptive parents, and adoptees — will continue to disagree on the nature and extent of needed reforms in adoption laws. Broad agreement exists, however, on a number of important issues:

- A procedure is needed to ensure that natural fathers assume responsibility for declaring paternity and that they take some responsibility before the child's birth. Consistency in notification and enforcement of relinquishment procedures for unwed fathers is also necessary.
- Better regulation of independent adoptions is essential, and should cover adequate counseling for the birth and adoptive parents; restrictions on the amount of money charged for legal and medical fees; who, if anyone may act as an intermediary; and reasonable availability of adequate medical information on the child, along with the opportunity to update that information periodically.
- Adoption subsidies should be strengthened and allowed to "travel" with the child, as is the case under New York law.
- Lawmakers responsible for making policy need to establish an ongoing dialogue with the judges responsible for carrying out that policy.
- Finally, states need to end "foster care drift." They need to get more children out of foster care and into permanent adoptive homes whenever possible.

On one point — the ultimate goal of the system — there is unanimous agreement. Claire Berman of the Child Welfare League expresses that goal simply. "to see no child judged unadoptable." —*Judy Heffner*

SENATE BILL NO. 187

"An Act relating to adoptions; and providing for an effective date."

Senate Bill No. 187 amends the Vital Statistics Act and the adoption statute relating to access to adoption records and consent procedures. AS 18.50 would be amended to include a new section which would provide the identity of a biological parent to an adopted person 18 years of age or older once written notice has been made by certified mail to the biological parent. It should be noted that as of the effective date of this legislation, the State Registrar would be attempting to contact a biological parent named on a birth certificate from 1967 or from prior years. On many of those original birth records no mailing address appears and often just a residence village is listed. A teen age mother in the 60's may now be married and using another name. The Department feels that after nearly two decades, the receipt rate of the certified mail will be very minimal.

The Department agrees that the non-identifying information listed under Sec. 18.50.510 (a) 1-8 will be meaningful and useful to adoptees and adoptive parents. Because the majority of placements are through private agencies and attorneys, some of the information is not likely to be available. Nevertheless, the effort will be made to obtain this information. For adoption petitions filed after January 1, 1986, the information will be provided to the court unless it is unavailable, which will be explained.

The Department of Health and Social Services supports passage of Senate Bill No. 187.

RECOMMENDED BY: Joan P. Brooks
JOAN P. BROOKS
STATE REGISTRAR
BUREAU OF VITAL STATISTICS

DATE: Feb. 28, 1985

RECOMMENDED BY: Patricia R. Alexander
PATRICIA R. ALEXANDER
DIRECTOR
DIVISION OF PLANNING

DATE: 3/4/85

APPROVED BY: John R. Pugh
JOHN R. PUGH
COMMISSIONER

DATE: 3/5/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 187
 Title: "An Act relating to adoption"
 Sponsor: Rodev, Fischer, et al.
 Requestor: _____
 Date of Request: 2/25/85

FISCAL DETAIL

Agency Affected: Health and Social Services
 Program Category Affected: Health
 BRU, Program or Subprogram(s) Affected: Vital Statistics

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING		-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Patricia R. Alexander, Director

Prepared By: Joan P. Brooks Phone: 465-3391
 Division: Planning/Vital Statistics Date: 2-28-85 3/4/85

Approved by Commissioner: John R. Payne Date: 3/5/85 JCL
 Agency: HEALTH + SOCIAL SERVICES

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agencies

Opening adoption records

By CECILIA KLEINKAUF

Throughout the winter and spring of 1980, the subject of "opening" adoption records in Alaska received a good deal of attention.

A public forum, sponsored by the League of Women Voters, the National Association of Social Workers and the Social Work Department at the University of Alaska generated much discussion and a series of resolutions supporting opening records for release of non-identifying information (i.e. — medical, racial data) and opening records for release of identifying information with the consent of the individual whose name is released. Legislation was also introduced in the 11th Alaska Legislature to amend the Alaska statutes to provide for open records but did not pass.

In order to determine the opinions of the general public regarding adoption issues, the Social Work Department at the University of Alaska agreed to undertake a research survey of public opinion and make the results available to the legislature and the public at large.

Both KIMO-TV, Channel 13, and the Anchorage Daily News provided assistance by actually publicizing the short questionnaire, thus assuring participation by the general public.

The survey asked the following questions:

1) Whether respondents believed that non-identifying information should be available to adult adoptees without a court order.

2) Whether respondents believed that identifying information (names) should be accessible to adult adoptees, adoptive and biological parents —

a) Only with written consent of the person to be adopted;

b) Only with a court order and the written consent of the person to be adopted;

c) Only with a court order;

d) Not at all;

3) Whether adoptions should be done by a licensed adoption agency or the state — except for relative or step-parent adoptions.

One hundred forty-two (142) individuals responded to the brief questionnaire. Of this number — 19 were adopted persons, 37 were adoptive parents, 22 were biological parents of a child released for adoption, 18 were professional and 46 were classified "other." Composite breakdowns of their responses are as follows:

1) Those believing that non-identifying information should be available to adult adoptees without a court order —

Yes.....89 percent
No.....6 percent
Don't Know.....4 percent

2) Those believing that identifying information (names) should be accessible to adult adoptees, adoptive and biological parents —

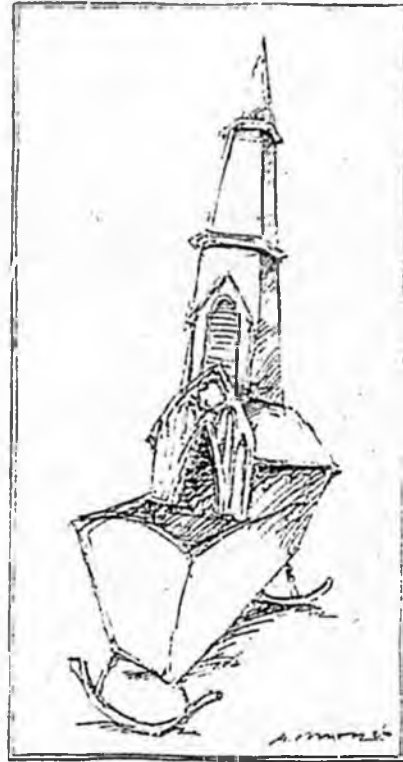
Written consent.....77 percent
Court order & written consent.....15 percent
Only with court order.....2 percent
Not at all.....4 percent
Don't know.....1 percent

3) Those believing that adoptions should be done by a licensed adoption agency or the state — (except for relative or stepparent adoptions)

Yes.....65 percent
No.....17 percent
Don't Know.....18 percent

Contrary to what might be expected, when the responses are broken down by adoptees, adoptive parents and biological parents, the support for open records remains strong within each discrete group.

Of those respondents who were ADOPTIVE PARENTS, 85 percent believed that access to identifying information should be granted with the consent of the person to be identified. Ninety-five percent believed adult adoptees should have access to non-identifying information without a court order. Fifty-one percent of



the adoptive parents believed adoptions should be done by a licensed agency or the state and 25 percent disagreed. Fourteen percent weren't sure.

Of those respondents who were the BIOLOGICAL PARENT of a child released for adoption, 32 percent believed that access to identifying information should be granted with the written consent of the person to be identified. Ninety-one percent believed adult adoptees should have access to non-identifying information without a court order. Forty-five percent of the biological parents believed adoptions should be done by a licensed agency or the state. Forty-one percent weren't sure and 14 percent disagreed.

Of the respondents who were ADOPTED, 81 percent believed that access to identifying information should be provided with the written consent of the person to be identified. Ninety-five percent believed that access to non-identifying information should be possible without a court order, and 34 percent believed adoptions should be done by a licensed agency or the state. Eleven percent disagreed and five percent weren't sure.

Of the remaining respondents, 80 percent believed that written consent should be required for the release of identifying information, 87 percent believed that access to non-identifying information should be possible without court order and 74 percent believed a licensed agency or the state should do the adoptions.

Survey results such as these give clear indicators of changing social attitudes about adoption and about "secret" adoptive records.

It is obvious that the majority of respondents in this survey believe that Alaska should "open" adoptive records. It remains to be seen whether the 12th Alaska Legislature will agree.

Cecilia "Pudge" Kleinkauf is a faculty member of the University of Alaska, Anchorage with the Department of Social Work. She was recently a candidate for the state Legislature.

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

3/27/85

Date: 24 April 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 187

"An Act relating to adoption; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 187 (HESS) same title
 new title
- and recommends no pass
- AND attaches a "Letter of Intent" New Fiscal Note
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

David W. Thompson

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] no rec

[Signature]
CHAIRMAN

[Signature]

HOUSE
COMMITTEE REPORT

Date referred: 1/13/86
(Returned to HESS from Fin)

FURTHER REFERRALS: FINANCE

DATE: Jan 14, 1985

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered SB 187

"An Act relating to adoption; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS SB 187 (zd HESS) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature] co-chair
 Chairman
[Handwritten signature]
 Co-Chair

Offered: 1/17/86
Referred: Judiciary and
Finance

Original sponsors: Rodey, P.Fischer,
Sturgulewski and Kerttula

1 IN THE SENATE

BY THE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 187 (2d HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption; and providing for an
7 effective date."

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

9 * Section 1. AS 13.11.045 is amended to read:

10 Sec. 13.11.045. MEANING OF "CHILD" AND RELATED TERMS. If, for
11 purposes of intestate succession, a relationship of parent and child
12 must be established to determine succession by, through, or from a
13 person,

14 (1) an adopted person is the child of an adopting parent
15 and not of the natural parents unless the decree of adoption
16 specifically provides for the continuation of inheritance rights
17 [EXCEPT THAT ADOPTION OF A CHILD BY THE SPOUSE OF A NATURAL PARENT HAS
18 NO EFFECT ON THE RELATIONSHIP BETWEEN THE CHILD AND EITHER NATURAL
19 PARENT];

20 (2) in cases not covered by (1) of this section, a person
21 born out of wedlock is a child of the mother; that person is also a
22 child of the father, if:

23 (A) the natural parents participated in a marriage
24 ceremony before or after the birth of the child, even though the
25 attempted marriage is void; or

26 (B) the paternity is established by an adjudication
27 before the death of the father or is established thereafter by
28 clear and convincing proof, except that the paternity established
29 under this subparagraph is ineffective to qualify the father or

1 the father's kindred to inherit from or through the child unless
2 the father has openly treated the child as the father's, and has
3 not refused to support the child.

4 * Sec. 2. AS 18.50.220(b) is amended to read:

5 (b) When a new certificate of birth is established, the actual
6 place and date of birth shall be shown. The new certificate shall be
7 substituted for the original certificate of birth, and

8 (1) thereafter, the original certificate and the evidence
9 of adoption or legitimation are not subject to inspection except upon
10 order of the superior court under AS 25.23.150; however, the state
11 registrar [OR AS PROVIDED BY REGULATION; HOWEVER, THE REGULATION]
12 shall allow inspection by an agent of the state or federal government
13 acting in the performance of the agent's [HIS] official duties;

14 (2) upon receipt of a report that an adoption has been
15 vacated, the original certificate of birth shall be restored to its
16 place in the files and the new certificate and evidence are not sub-
17 ject to inspection except upon order of a superior court.

18 * Sec. 3. AS 18.50.370 is amended by adding new paragraphs to read:

19 (14) "adoptive parent" means a person who has adopted another
20 person under AS 25.23;

21 (15) "biological parent" means a parent named on the origi-
22 nal certificate of birth of an adopted person;

23 (16) "child adoption agency" means a child adoption agency
24 licensed under AS 47.35.100;

25 (17) "commissioner" means the commissioner of health and
26 social services;

27 (18) "medical history" includes information relating to a
28 person's medical conditions and treatment, immunization records, and
29 other medical information about the person that could be important to

1 the health care of the adopted person.

2 * Sec. 4. AS 18.50 is amended by adding new sections to read:

3 ARTICLE 6. ACCESS TO ADOPTION INFORMATION.

4 Sec. 18.50.500. ACCESS TO ADOPTION INFORMATION. (a) Except as
5 provided in (b) of this section, upon receiving a request by an adopt-
6 ed person 18 years of age or older for the identity of a biological
7 parent of the person, the state registrar shall provide the person
8 with an uncertified copy of the person's original birth certificate,
9 and any change in the parent's name or address attached to the certif-
10 icate, if

11 (1) the biological parent's consent to disclosure is on
12 file with the state registrar; or

13 (2) a written objection to disclosure is not received from
14 the biological parent within 90 days after the state registrar sends a
15 notice of the request to the biological parent at the parent's most
16 current address contained in the state registrar's adoption records;
17 the notice shall be sent by certified mail, return receipt requested,
18 deliverable to the addressee only.

19 (b) The state registrar may not disclose the name and address of
20 a biological parent, except as required by the court under AS 25.23.-
21 150, if a written objection to disclosure under (a) of this section is
22 received from the biological parent

23 (1) when the adopted person is 17 years of age or older; or

24 (2) within 90 days after the date notice is mailed under
25 (a) of this section.

26 (c) If one biological parent agrees to disclosure, but the other
27 biological parent objects, the state registrar shall remove the name
28 of the objecting parent before providing the birth certificate to the
29 adopted person under (a) of this section.

1 (d) An adopted person 18 years of age or older or a biological
2 parent may submit to the state registrar a notice of change of name or
3 address. The state registrar shall attach the information to the
4 original birth certificate of the person or of the adopted child of
5 the biological parent. The state registrar shall disclose to a bio-
6 logical parent, upon request, the most current name and address of the
7 parent's child that appear in the state registrar's adoption files.

8 Sec. 18.50.510. DESCRIPTIVE INFORMATION REGARDING BIOLOGICAL
9 PARENTS. (a) The state registrar shall, at the request of an adop-
10 tive parent or of an adopted person 18 years of age or older, release
11 the following information regarding a biological parent named on the
12 original birth certificate of the adopted person if available from the
13 registrar's adoption records:

14 (1) the age of the biological parent on the day the adopted
15 person was born;

16 (2) the heritage of the biological parent, to include:

17 (A) national origin;

18 (B) ethnic background; and

19 (C) tribal membership;

20 (3) the medical history of the biological parent and of
21 blood relatives of the biological parent;

22 (4) the number of years of school completed by the biologi-
23 cal parent by the day the adopted person was born;

24 (5) a physical description of the biological parent on the
25 day the adopted person was born, including height, weight, and color
26 of hair, eyes and skin;

27 (6) the existence of other children of the biological
28 parent;

29 (7) whether the biological parent was alive at the time of

1 adoption;

2 (8) the religion of the biological parent; and

3 (9) other information provided by the biological parent for
4 disclosure to the child.

5 (b) Information released under (a) of this section shall be on a
6 standard form prepared by the commissioner. The information may not
7 include the name of a biological parent or other information not
8 listed in (a) of this section.

9 * Sec. 5. AS 25.23.060(a) is amended to read:

10 (a) The required consent to adoption shall be executed at any
11 time after the birth of the child in the presence of the court or in
12 the presence of a person authorized to take acknowledgments. The
13 consent is not valid unless

14 (1) the consent form states that the person consenting to
15 the adoption has the right to withdraw that consent as provided in
16 AS 25.23.010(b); and

17 (2) the person consenting to the adoption acknowledges
18 receipt of a copy of the consent form.

19 * Sec. 6. AS 25.23.060 is amended by adding a new subsection to read:

20 (c) A consent executed under this section is effective as a
21 power of attorney under AS 13.26.020. Unless the consent form pro-
22 vides otherwise, and regardless of whether the form names or iden-
23 tifies the adoptive parent, the consent delegates to the adoptive
24 parent all powers that may be delegated under AS 13.26.020. The power
25 of attorney takes effect when the child is delivered to the adoptive
26 parent, and remains in effect as long as the consent is in effect; but
27 the power of attorney is not effective beyond one year, unless the
28 court extends it for good cause. The power of attorney does not
29 terminate on the death or disability of the person executing the

1 consent, unless the consent form so states.

2 * Sec. 7. AS 25.23.070(b) is amended to read:

3 (b) A consent to adoption may be withdrawn before the entry of a
4 decree of adoption, within 10 days after the consent is given, by
5 delivering written notice to the person obtaining the consent, or
6 after the 10-day period, if the court finds, after notice and oppor-
7 tunity to be heard is afforded to petitioner, the person seeking the
8 withdrawal, and the agency placing a child for adoption, that the
9 withdrawal is in the best interest of the person to be adopted and the
10 court orders the withdrawal.

11 * Sec. 8. AS 25.23.080(c) is amended to read:

12 (c) A certified copy of the birth certificate or verification of
13 the birth record of the person to be adopted, if available, the infor-
14 mation specified in AS 25.23.185(a), if available, and the required
15 consents, relinquishments, and termination orders shall be filed with
16 the clerk.

17 * Sec. 9. AS 25.23.100(a) is amended to read:

18 (a) After the filing of a petition to adopt a minor, the court
19 shall fix a time and place for hearing the petition. At least 20 days
20 before the date of hearing, the petitioner shall give notice of the
21 filing of the petition and of the time and place of hearing [SHALL BE
22 GIVEN BY THE PETITIONER] to (1) the department, unless the adoption is
23 by a stepparent of the child; (2) any agency or person whose consent
24 to the adoption is required by this chapter, but who has not consent-
25 ed; and (3) a person whose consent is dispensed with upon any ground
26 mentioned in AS 25.23.050(a)(1), (2), (3), (6), (7), (8) and (9), but
27 who has not consented. The notice to the department shall be accom-
28 panied by a copy of the petition. [IN THIS SUBSECTION, "STEPARENT"
29 MEANS THE SPOUSE OF A NATURAL PARENT OF THE CHILD RESIDING IN THE SAME

1 HOUSEHOLD.!

2 * Sec. 10. AS 25.23.100(b) is amended to read:

3 (b) Notice to persons specified in AS 25.23.050 shall include a
4 statement of the grounds under which consent to the adoption is not
5 required. Notice given under this section shall be adequate to give
6 actual notice of the proceedings, taking into account education and
7 language differences which are known or reasonably ascertainable by
8 the petitioner or the department. The notice of hearing shall contain
9 all names by which the minor has been identified and shall state in
10 summary form the effect of a decree of adoption. Notice shall be
11 given in the manner appropriate under rules of civil procedure for the
12 service of process in a civil action in this state or in any manner
13 the court by order directs. Notice by publication may not be given
14 unless, for compelling reasons, the court orders it to be given under
15 the procedure established in Rule 4 of the Alaska Rules of Civil
16 Procedure. Proof of the giving of the notice shall be filed with the
17 court before the petition is heard, subject to the time limitations in
18 (c) of this section.

19 * Sec. 11. AS 25.23 is amended by adding a new section to read:

20 Sec. 25.23.125. INTERESTS OF MINOR TO BE ADOPTED. (a) If the
21 person to be adopted is a minor under the age of 10 and the person is
22 of sufficient age and intelligence to state desires concerning the
23 adoption, the court shall consider the person's desires.

24 (b) The court may appoint a guardian ad litem or attorney under
25 AS 25.24.310 for a minor who is to be adopted.

26 (c) The court may issue a protective order or other order that
27 is in the best interest of a minor who is to be adopted.

28 * Sec. 12. AS 25.23.130(a) is amended to read:

29 (a) A final decree of adoption, whether issued by a court of

1 this state or of any other state, has the following effect as to
2 matters within the jurisdiction or before a court of this state:

3 (1) except with respect to a spouse of the petitioner and
4 relatives of the spouse, to relieve the natural parents of the adopted
5 person of all parental rights and responsibilities, and, except as
6 provided in (c) of this section, to terminate all legal relationships
7 between the adopted person and the natural parents and other relatives
8 of the adopted person, so that the adopted person thereafter is a
9 stranger to the former relatives for all purposes including inheri-
10 tance, unless the decree of adoption specifically provides for contin-
11 uation of inheritance rights, and the interpretation or construction
12 of documents, statutes, and instruments, whether executed before or
13 after the adoption is decreed, which do not expressly include the
14 person by name or by some designation not based on a parent and child
15 or blood relationship; and

16 (2) to create the relationship of parent and child between
17 petitioner and the adopted person, as if the adopted person were a
18 blood descendant of the petitioner, for all purposes including inheri-
19 tance and applicability of statutes, documents, and instruments,
20 whether executed before or after the adoption is decreed, which do not
21 expressly exclude an adopted person from their operation or effect.

22 * Sec. 13. AS 25.23.130 is amended by adding a new subsection to read:

23 (c) Nothing in this chapter prohibits an adoption that allows
24 visitation between the adopted person and that person's natural
25 parents or other relatives.

26 * Sec. 14. AS 25.23.150(b) is repealed and reenacted to read:

27 (b) The papers and records relating to an adoption that are a
28 part of the permanent record of a court are subject to inspection only
29 upon consent of the court. The papers and records relating to an

1 adoption on file with the department, an agency, or an individual are
2 subject to inspection only with consent of all interested persons or
3 by order of a court for good cause shown. Except as provided in this
4 section, adoption records of the Bureau of Vital Statistics are sub-
5 ject to inspection under the provisions of AS 18.50.

6 * Sec. 15. AS 25.23.150(c) is amended to read:

7 (c) Except as otherwise provided by law, or as authorized in
8 writing by the adopted child, if 14 or more years of age, or by the
9 adoptive parent, or upon order of the court for good cause shown [IN
10 EXCEPTIONAL CASES], a [NO] person may not [IS REQUIRED TO] disclose
11 the [NAME OR] identity or address of either an adoptive parent or an
12 adopted child.

13 * Sec. 16. AS 25.23.150 is amended by adding a new subsection to read:

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

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

19 (2) the natural parent, the adopted child, and the adoptive
20 parents are afforded proper notice and a hearing.

21 * Sec. 17. AS 25.23 is amended by adding a new section to read:

22 Sec. 25.23.173. INDIAN CHILD ADOPTION REPORTS. After entering a
23 final decree or order in an Indian child adoptive placement, the court
24 shall send to the Secretary of the Interior a copy of the decree or
25 order and other information required by 25 U.S.C. 1951 (sec. 301(a) of
26 the Indian Child Welfare Act of 1978).

27 * Sec. 18. AS 25.23 is amended by adding a new section to read:

28 Sec. 25.23.185. RECORDS AND INFORMATION. (a) At the time a
29 petition for adoption is filed with the court, the agency or

1 25.3.240 [AS 25.23.190 - 25.23.240].

2 * Sec 20. AS 25.23.240 is amended by adding a new paragraph to read:

3 (9) "stepparent" means the spouse of a natural parent of
4 the child residing in the same household.

5 * Sec. 21. AS 44.21.410(a) is amended to read:

6 (a) The office of public advocacy shall

7 (1) perform the duties of the public guardian under AS
8 13.26.360 - 13.26.410;

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

11 (3) provide guardian ad litem services to children in child
12 protection actions under AS 47.17.030(e) and to wards and respondents
13 in guardianship proceedings who will suffer financial hardship or
14 become dependent upon a government agency or a private person or
15 agency if the services are not provided at state expense under AS
16 13.26.112;

17 (4) provide legal representation in guardianship proceed-
18 ings to respondents who are financially unable to employ attorneys
19 under AS 13.26.106(b), to indigent parties in cases involving child
20 custody in which the opposing party is represented by counsel provided
21 by a public agency, and to indigent parents or guardians of a minor
22 respondent in a commitment proceeding concerning the minor under
23 AS 47.30.775;

24 (5) provide legal representation and guardian ad litem
25 services under AS 25.24.310; in cases arising under the Uniform Inter-
26 state Compact on Juveniles (AS 47.15); in cases involving petitions to
27 adopt a minor under AS 25.23.125(b) [AS 25.23.100(j)]; in cases in-
28 volving petitions to remove the disabilities of a minor under AS 09.-
29 55.590; in children's proceedings under AS 47.10.050(a); and in cases

1 involving indigent persons who are entitled to representation under
2 AS 18.35.100 and who cannot be represented by the public defender
3 agency because of a conflict of interests.

4 * Sec. 22. AS 25.23.100(j) is repealed.

5 * Sec. 23. The amendments to AS 25.23.130 made by secs. 13 and 14 of
6 this Act are retroactive with regard to

7 (1) an adoption decree in which the superior court granted
8 visitation rights to a natural parent or other relative of the adopted
9 person; and

10 (2) an adoption decree entered on or after January 1, 1984, in
11 which the superior court denied a request that a natural parent or other
12 relative of the adopted person be granted visitation rights, if the request
13 was made in the pleadings and the adopted person is under 18 years of age;
14 a party to an adoption under this paragraph may petition the court for
15 reconsideration of the denial of visitation rights.

16 * Sec. 24. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1985

SUBJECT: Comparison of SB 187 and HB 2
TO: Senator Pat Rodey
FROM: George W. Edwards *GWE*
Legislative Counsel

This is in response to your request for an analysis of whether SB 187 contains all the substantive provisions of HB 2.

HB 2

Sec. 18.50.500 language is incorporated within SB 187 sec. 18.50.500 and sec. 18.50.510.

Sec. 18.50.510(a) language is incorporated within SB 187 sec. 18.50.520 and sec. 25.23.185.

Sec. 18.50.510(b) language is not directly incorporated into SB 187. The record maintenance requirement of HB 2 may be unnecessary in SB 187 as the latter requires that agencies submit critical information to the state registrar through the court at the time of an adoption.

Sec. 18.50.520 definitions are all contained within SB 187 sec. 18.50.530 except the definition of "medical history." SB 187 uses the term "health history" and leaves it undefined as a phrase of common understanding.

Section 2 language is incorporated within SB 187 section 4.

Section 3 language is incorporated within SB 187 section 7.

Section 4 language is identical to that within SB 187 section 8.

With the exception of the language referred to from sec. 18.50.510(b), SB 187 incorporates all of HB 2.

GWE:ojb
J13/060

Senate Health, Education and Social Services Committee
Senator Bettye Fahrenkamp, Chair
Senate Bill 187 - Adoption Records
March 21, 1985

Section Analysis
Alaska Chapter, National Association of Social Workers

- Section 1 -Provides that a court order is required for inspection of adoption records and deletes the State Registrar's authority to adopt regulations with respect to such inspection. (It is currently the practice of the State Registrar to release original birth certificates by regulation.)
- Section 2 -Provides for access to adoption information and requires the State Registrar to notify biological parents by certified mail (addressee only) of a request for identifying information made by adult adoptees.
- Permits release of identifying information to adult adoptee unless State Registrar has received a written objection to the release from the biological parent within 90 days.
 - Requires the State Registrar to attach to the original birth certificate the name and address of the adoptee and/or the biological parent if they request it and then enables release of the name and address of the adoptee to the biological parent and the biological parent to the adoptee.
 - Permits the release of eight items of non-identifying information to adoptive parents and/or adoptees 18 years of age or older on request.
 - Requires that the State shall provide the non-identifying information on a standard form which may not include name or other identifying information.
 - Requires that the Department of Health and Social Services attempt to obtain the eight non-identifying information items upon request.
 - Provides definitions
- Section 3 -Amends A.S. 25.23.060 to provide that consent to adoption forms must state the person's right to withdraw the consent and also that a copy of the consent form be provided to the person.
- Section 4 -Includes the eight non-identifying information items as information which must be filed with the court clerk under A.S. 25.23.080(c).
- Section 5 -Clarifies access to adoption records under A.S. 25.23.150.
- Section 6 -Prohibits the disclosure of the name of either an adoptee or a biological parent.

Senate HESS
Senate Bill 187
March 21, 1985
Section Analysis
page 2

- Section 7
- Requires persons or agencies placing children for adoption to obtain for the State Registrar, the eight items of non-identifying information and a statement that the biological parent is aware of the release of information procedures. Provides that the State Registrar must attach current information on biological parents and adoptees to the original birth certificate at any time.
 - Requires that the biological parent sign a statement that they have received a copy of the provisions which describe the notification procedures under A.S. 18.50.510 and that they are aware that they and the adoptee (upon reaching adulthood) can attach their name and address to the original birth certificate for release to the other at any time.
 - Requires that the non-identifying information shall be attached to the original birth certificate upon entry of an adoption decree.

Cecilia Kleinkauf, Lobbyist
Alaska Chapter, National Association of Social Workers

WAYNE ANTHONY ROSS
THOMAS S. GINGRAS
CHERIC. JACOBUS
ALLEN M. BAILEY
DONALD J. MILLER, OF COUNSEL

LAW OFFICES OF
ROSS & GINGRAS
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1007 W. THIRD AVENUE, SUITE 304
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-5307

January 9, 1986

Representative Max Gruenberg
1024 W. Sixth, Suite 200D
Anchorage, AK 99501

Representative Max Gruenberg
Pouch V
Juneau, AK 99811

ATTN: Edward H. Hein

RE: Draft HCS SB187
Changes to Adoption Code

Dear Max:

I have recently had the opportunity to review the changes to the adoption code that you have drafted. While I agree with most of the changes, there is one section which has been added which causes me some serious concern. That section is section 4 which would add a new section, AS 25.23.005. This particular section, I believe, will create many problems for those of us who practice in the adoption area. I am not sure what the intent of this particular section is; however, it was my understanding that you wished to insure that the court recognized that adoption is a favorable procedure. Basically, I see two problems with this particular section.

The most important problem that I see is created by the second sentence which appears to give standing to all kinds of individuals in an adoption proceeding. All of us in the adoption practice have seen the devastating effect of community involvement in adoptions in Indian adoptions and the way this particular section is worded, I believe that it would create the same sort of problems in regular adoptions. This appears to give grandparents, sisters, brothers, live-in mates and, as one member of our law firm put it, even pimps an interest in the adoption procedure. I am sure that that is not what you intended to do. As you know, lawyers can be very creative and take what legislators think is very clear and create nightmares.

If you really did intend to open it up so that grandparents, etc., would have an interest in any adoption proceeding, I must protest loudly. There seems to be a growing mood in this country to recognize grandparents' rights, as well as the rights of other people, and I for one am very much opposed to this move. The only individuals who should really be involved in a decision on adoption should be the natural parents. It is difficult enough to get children adopted when there are recalcitrant parents who, although they do not want the child adopted, still refuse to take parental responsibilities seriously, without opening it up to more individuals.

Max, I come from a family where there are eight adopt children. I very much believe in adoption as a viable alternative for those children whose parents are not accepting the responsibilities of parenthood. The adoption laws have taken such great leaps forward in the last ten years, I would hate to see them take any steps backward by opening up the adoption process to people who are not the natural parents. While I have feelings for those people, such as grandparents, I am more concerned about the children. All one has to do is read the reports in our case law of children whose parents had abandoned them for years but who refused to sign consent forms to understand what I am talking about. Therefore, at the very least, I believe that this sentence should be stricken from any bill that is passed by the legislature.

At the very least, I believe that every attorney who is involved in the adoption practice, should receive a copy of this bill so that they may comment on it.

I also have some problems with the first sentence in that particular provision. I am not sure what you intend to accomplish by that provision. I am not even sure what it means. To me, it seems to open up pandora's box. It would appear to allow a court to impose additional burdens on adoptive parents. At the very least, I believe it is unnecessary.

Other than that, your bill appears to be very good and I wholly support it. Please consider my comments.

Very truly yours,

ROSS & GINGRAS, P.C.

Cheri
CHERI C. JACOBUS
Attorney at Law

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 16, 1986

SUBJECT: Sectional analysis of HCS SB187 (2d HESS))
1/16/86 (draft)

TO: Representative Max Gruenberg

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 provides that, for purposes of intestate succession, an adopted child inherits from the adoptive parents instead of the natural parents, unless the adoption decree specifically provides for continuation of inheritance rights through the natural parents. This eliminates a conflict between the adoption chapter and the intestate inheritance provisions.

Sec. 2 supplies the correct statutory reference for court ordered inspections of original birth certificates and other evidence of adoption or legitimation held by the bureau of vital statistics, and clarifies that the state registrar, not the regulations, must allow inspection by government agents.

Sec. 3 adds definitions to the vital statistics chapter, AS 18.50.

Sec. 4 establishes procedures and restrictions for release of information by the bureau of vital statistics to an adopted person regarding the person's biological parents. Proposed AS 18.50.500 would allow adopted persons 18 or older to ask the bureau to disclose the identity of the person's biological parents. The information may be disclosed only if the biological parent consents or, within 90 days, fails to object. A biological parent who files a written objection to disclosure of the parent's name and address before the adopted child turns 17 years of age must renew the objection on or after the child's 17th birthday in order to prevent disclosure that might be requested by the child. A biological parent may object or consent only to

disclosure of his or her own name and address. If either parent objects, that parent's name will be deleted from the copy of the original birth certificate given to the adopted child. Adopted children 18 and older, as well as biological parents, may submit notices of changes of name and address to the bureau for attachment to the child's original birth certificate.

Proposed AS 18.50.510 requires the bureau of vital statistics to provide to an adopted person 18 or older who requests the information, descriptive, historical, and medical information about the person's biological parents if the information is available from the bureau's adoption records.

Sec. 5 provides that a consent form for an adoption must include a statement of the right to withdraw consent and an acknowledgement that the consenter received a copy of the form.

Sec. 6 incorporates into the consent to an adoption a power of attorney giving the adoptive parents powers regarding the child's care, custody, property, etc., unless specifically limited in the consent form. The power of attorney is good for one year, or longer if the court approves for good cause. The court's extension beyond one year is not contained in AS 13.26.020. The power of attorney would not expire on the death or disability of the consenter, unless the consent form said so. C.f., AS 13.26.325 - 13.26.330.

Sec. 7 clarifies when the 10-day period for automatic withdrawal of consent to an adoption begins to run.

Sec. 8 is a cross-reference to AS 25.23.185(a), which is added in sec. 18 of the bill.

Sec. 9 deletes the definition of "stepparent," which is transferred to the definitions section, AS 25.23.240 by sec. 20 of the bill. Sec. 9 also changes the second sentence of AS 25.23.100(a) from the passive voice to the active voice.

Sec. 10 authorizes the court in an adoption proceeding to order notice by publication of an adoption hearing. This is intended to assist in notifying persons entitled to notice by law, but who cannot otherwise be found.

Sec. 11 requires the court in an adoption proceeding to consider the wishes of a minor under 10 who is to be adopted, if the minor is of "sufficient age and intelligence to state desires concerning the adoption." The authority of the court to appoint a guardian ad litem or attorney for a minor who is to be adopted is transferred here from AS 25.23.100(j), which is then repealed in sec. 22 of the bill. Also, the court is authorized by sec. 11 to issue protective orders and other orders that are in the best interest of a minor who is to be adopted.

Sec. 12 provides that an "open adoption," allowing visitation by natural parents or relatives, is an exception to the requirement that an adoption decree terminates all legal relationships between an adopted person and the natural parents and relatives. (See sec. 13 comments.)

Sec. 13 makes clear that "open adoption," as there defined, is not prohibited. This change is intended to resolve confusion on this question caused by the language of AS 25.23.130(a)(1), which says that the effect of an adoption is "to terminate all legal relationships between the adopted person and the natural parents and other relatives of the adopted person, so that the adopted person thereafter is a stranger to the former relatives for all purposes" This change has the effect of reversing the Alaska Supreme Court's holding in the case of In re W.E.G. and J.R.G., Op. No. 2998 (Dec. 6, 1985).

Sec. 14 makes clear that court adoption records may be inspected only with the court's consent; adoption records held by the Department of Health and Social Services, an adoption agency, or individuals may be inspected only with the consent of all interested persons or by court order; and that, excepted as provided here, adoption records held by the Bureau of Vital Statistics may be inspected only in accordance with AS 18.50.

Sec. 15 adds to AS 25.23.150(c) an exception for disclosures of the name or identity of adoptive parents and adopted children under proposed AS 18.50.500 - 18.50.510, and other provisions of law related to disclosure of adoption records that might be in conflict with this subsection if the exception were not inserted.

Sec. 16 allows a court to disclose a natural parent's identity and address only for a medical emergency or other

extraordinary circumstance and with due process protections for the adopted child, the natural parents and the adoptive parents.

Sec. 17 incorporates into state law the federal requirement of reporting Indian child adoptions to the Secretary of the Interior under provisions of the Indian Child Welfare Act.

Sec. 18 specifies information that must be filed with the court with the petition for adoption and that must be transmitted by the court clerk to the state registrar of vital statistics. This is the information needed for the operation of AS 18.50.500 - 18.50.510. This section also requires private adoption agencies to maintain records containing this same information, and to transfer its records to the commissioner of health and social services if the agency discontinues adoption placements.

Sec. 19 corrects a statutory reference in existing law to provide for the addition of a new statute added by sec. 18 of the bill.

Sec. 20 adds a definition of "stepparent" for purposes of the adoption chapter, AS 25.23. See comments under sec. 9 of this sectional analysis.

Sec. 21 corrects a statutory reference necessitated by the repeal and transfer of AS 25.23.100(j). See comments under sec. 11 of this sectional analysis.

Sec. 22 repeals AS 25.23.100(j). See comments under sec. 11 of this sectional analysis.

Sec. 23 applies the open adoption provisions of this bill retroactively to certain adoption decrees that were entered before the effective date of the act and that involved visitation rights by a natural parent or relative of the adoptive child. The section also establishes a procedure for requesting a court to reconsider a denial of such visitation rights in adoption decrees entered on or after January 1, 1984.

Sec. 24 provides for an immediate effective date.

the bureau may be opened by the State Registrar for inspection by an agent of the state or federal government acting in the performance of official duties. A report filed with the bureau for the adoption of a person born outside of Alaska shall be forwarded by the bureau to the appropriate registration authority in the state of birth. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.210
AS 20.10.130

7 AAC 05.680. EVIDENCE OF LEGITIMATION. All evidence or proof that any person born out of wedlock in Alaska has subsequently been legitimated in accordance with the statutes shall be filed with the bureau as soon as possible after such legitimation. Such evidence or proof, as well as any court adjudications, shall be submitted on the forms prescribed and furnished by the bureau, or in such manner as may be determined by the State Registrar in cooperation with the Alaska Court System. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 25.20.050

7 AAC 05.690. REGISTRATION. The clerk of court shall be responsible for forwarding to the bureau a certified copy of any such adjudication, along with any related information requested by the State Registrar; and the parents, either or both, shall be responsible for furnishing the required proof in other cases; both in accordance with the instructions of the State Registrar in cooperation with the Alaska Court System. Such evidence, proof, or adjudication shall be noted on, and filed with, the corresponding original certificate of birth; however, copies of such proof shall not be forwarded to the custodian of the corresponding local record, nor shall it be made available to the general public. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 25.20.050

ARTICLE 3. SPECIAL PROCEDURES

Section

- 700. New certificate of birth
- 710. Request
- 720. Form of certificate
- 730. Filing of certificate
- 740. Procedure on adoption

- 750. New original certificate
- 760. Sealing of copies
- 770. Permitted disclosure
- 780. Delayed registration
- 790. Definitions
- 800. Forms and proof
- 805. Acceptability of belated certificate
- 810. Delayed certificate
- 815. Form and procedure
- 820. Acceptable evidence
- 825. Requirement of independence
- 830. Filing
- 835. Notification of applicant
- 840. Delayed death certificate
- 845. Furnishing of copy
- 850. Effect of court order
- 855. Form and hearing
- 860. Filing procedure
- 865. Presumptive death
- 870. Filing of certificate
- 875. Corrections and amendments
- 880. Definitions
- 885. Method of correction
- 890. Authority for correction
- 895. Style of correction
- 900. Change of name
- 905. Court order controls
- 910. Notice of changes
- 915. Burden of proof
- 920. Confidentiality of records
- 925. Limited disclosure
- 930. Government agents
- 935. Procedure
- 940. Short-form certificate
- 945. Limitation on copying
- 950. Research information
- 955. Duty of employees
- 960. Certified copies
- 965. Evidentiary value
- 970. Limitation on copying
- 975. Fees
- 980. Record-keeping duty
- 985. Reports and information
- 990. Preservation of evidence

7 AAC 05.700. NEW CERTIFICATE OF BIRTH. The bureau shall establish a new certificate of birth, upon proper request that such certificate be made, for persons born in

Alaska, upon adoption or legitimation and the submission of the required documents and other necessary information as required by the State Registrar; provided that such new certificate of birth shall not be established in cases of adoption if such negative request be received from the court decreeing the adoption, the person himself if of legal age, or from the adoptive parents. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.710. REQUEST. Proper request for a new certificate shall be considered a written and signed request: in the case of adoption, from the adoptive parents, or from the adopted person if of legal age; and in the case of legitimation, from one of the parents, or from the legitimated person if of legal age. The form and type of request acceptable shall be determined by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.720. FORM OF CERTIFICATE. The new birth certificate shall be prepared upon the same type of form, and look as much like a regular birth certificate as possible. Nothing on it shall state or refer to the fact that it is a new certificate. The actual date and place of birth shall be shown, and any question of legitimacy shall be answered in the affirmative. The name on the birth certificate shall be as ordered in the decree, if so specified; otherwise as requested by the parents. The name of the attendant or other person signing the original certificate shall be copied on the new certificate. The personal particulars shall reflect as much as possible the new situation of adoption or legitimation, and these and any other items shall be completed as specified by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.730 FILING OF CERTIFICATE. When the new certificate of birth has been established, it shall be substituted in place of the original certificate. All references to the original certificate shall be removed or deleted from the regular indexes, and from any other source to which the public might have access. The original

certificate, any attachments thereto, and all correspondence, decrees, adjudications, or other reference to the adoption or legitimation shall be sealed away from any inspection except upon order of a superior court; provided that the State Registrar may open all or part of such sealed file for inspection by the person whose record it is, if of legal age; by an agent of the state or federal government acting in the performance of official duties; or for any necessary administrative purpose within the bureau. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.740. PROCEDURE ON ADOPTION. Upon receipt of a report that an adoption has been vacated, the original certificate of birth shall be restored to its place in the files; and the new certificate together with all evidence and related material shall be sealed away from inspection except upon order of a superior court, or for administrative inspection by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.750. NEW ORIGINAL CERTIFICATE. If no certificate of birth is on file for the person for whom a new certificate is to be established, an original certificate must be prepared and registered in accordance with the provision of the Vital Statistics Act, these regulations, and the instructions of the State Registrar before a new certificate of birth may be established. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.760. SEALING OF COPIES. When a new certificate of birth is established in the bureau, the State Registrar shall direct that any local copies of the original record in the custody of local recorders be sealed away from inspection except upon order of a superior court or demand of the State Registrar. Upon the vacation of any adoption, the State Registrar shall direct the proper disposition of any pertinent local records. The State Registrar may supply a copy of the new certificate to the same local recorder to substitute in place of the

original copy. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.770. PERMITTED DISCLOSURE. After the establishment of a new certificate of birth in accordance with these provisions, such new certificate shall be the official certificate of birth of the person concerned. A verification or certified copy of part or all of such new certificate may be made by the bureau and by any local custodian of a copy of such new certificate, subject to the provisions on disclosure of records; and when properly issued and certified, shall be prima facie evidence of the date and place of birth of the person therein named. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.780. DELAYED REGISTRATION. When the birth of a person born in Alaska, heretofore or hereafter, has not been registered, a certificate may be filed in accordance with the Vital Statistics Act, these regulations, and instructions issued thereunder. Its acceptance for registration shall be determined by the evidentiary and other requirements established hereunder. The establishment of such procedure, or the acceptance for registration of a certificate thereunder, does not relieve anyone from any responsibility he had for filing such certificate within a specified time. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.790. DEFINITIONS. As used herein

(1) "belated" birth certificate means one filed after the time prescribed for filing but within one year from the date of birth;

(2) "delayed" birth certificate means one filed one year or more after the date of birth; and

(3) "application for registration" means the filing of a satisfactory certificate form, signed, acknowledged, and completed to the extent required of the applicant, in accordance with the instructions of the State Registrar, with the

proper local registrar or with the bureau as may be required. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.800. FORMS AND PROOF. The belated or delayed certificate forms shall be those prescribed and furnished by the bureau, and the evidentiary or other information required shall be submitted on such forms or in such manner as shall be determined by the State Registrar. Original documents may be submitted to the bureau at the owner's risk; they may be copied, abstracted, or otherwise included in the substantiating evidence, but shall be returned to the owner if so requested. The required proof or evidence needed to substantiate a delayed certificate shall be the responsibility of the person concerned, and the burden of proof shall rest with such person. Fees for registering a delayed certificate and any charges for obtaining substantiating evidence shall be as prescribed by the State Registrar, and shall be paid to the bureau by the applicant before such certificate may be registered. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.805. ACCEPTABILITY OF BELATED CERTIFICATE. A belated birth certificate shall be the regular certificate of live birth form, and shall be filed with the local registrar of the registration district within which the birth occurred. To be acceptable the form must be completed fully and accurately, and signed by the physician or other person who attended the birth; or in the absence or unavailability of such person, by one of the parents; or otherwise in accordance with the instructions of the State Registrar. The State Registrar may require additional evidence of the facts of birth before accepting the registration in cases where he deems this necessary. Such belated certificate shall be recorded and transmitted in the same manner as regular certificates of birth. No fee shall be charged for the registration of belated birth certificates. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.15.180

7 AAC 05.810. DELAYED CERTIFICATE. A delayed birth certificate for a person less than 12 years of age at the time of application for registration, as defined herein, may be filed

MEMORANDUM

TO: House HESS Committee members
FROM: Nancy Bennett, Committee staff
DATE: January 15, 1986
RE: Today's agenda

We have two bills scheduled for today's hearing, HB 240 relating to overtaking and passing school buses, and SB 187 relating to adoption. The committee conducted a teleconferenced hearing on HB 240 in December, receiving unanimous support for the draft CS currently before you from the Department of Education, bus drivers and school bus contractors. SB 187, relating to adoption information, was heard in the HESS Committee last session, and has been returned from Finance to consider amendments offered by Representative Gruenberg.

HB 240

The HESS CS adds a new subsection (e) on page 2, providing that a vehicle owner or the operator of a leased vehicle may be punished by a \$100 civil penalty if the vehicle is operated in violation of this section (passing a stopped school bus). In addition, references to a court appearance for violations of subsections (a) and (b) have been deleted, but included in the proposed letter of intent at the request of the Court System.

CSSB 187

New sections of the draft HESS CS are: sections 1, 2, 5, 7, 8, 10, 11, 12, 13, 17, 18, 20, 21 and 22. Language relating to adoption information has been redrafted by LAA legal to clarify language with no substantive change except for the elimination of 18.50.520 (page 4 of Judiciary CS).

A M E N D M E N T

Offered in the Conference Committee

TO: CCSSE 187

Page 3, lines 16 - 24, delete all material and insert:

"(1) the biological parent has not requested notice under (b) of this section;

(2) the biological parent has requested notice under (b) of this section, but the state registrar has not received the biological parent's written objection to disclosure within 90 days after sending the notice; or

(3) the state registrar has evidence, satisfactory to the state registrar, that the biological parent is dead.

(b) The state registrar upon request shall provide to a biological parent a form containing the text of this section and AS 18.50.510 and a statement, to be signed by the biological parent, indicating the biological parent's desires regarding notification of an adopted child's request for, and the disclosure of, information under (a) of this section. The form must contain at least the following information and appear substantially as follows:

INSTRUCTIONS TO STATE REGISTRAR OF VITAL STATISTICS REGARDING
DISCLOSURE OF INFORMATION TO AN ADOPTED CHILD

If my biological child, when 18 years of age or older, requests a copy of the child's original birth certificate, or my name and address, these are my instruc-

tions:

- [] 1. Send notice of the request by certified mail, deliverable to me only, at my last known address. If you do not receive my written objection within 90 days after you have sent the notice, then provide the information requested by the child.
- [] 2. Do not send me notice of the request, but provide the information requested by the child.

My current name and address:

(Signature of biological parent)

(Please print or type)

(Date)

(c) A biological parent may at any time obtain from, and submit to, the state registrar a new instruction form described under (b) of this section."

Reletter remaining subsections of AS 18.50.500 accordingly.

Page 4, line 2, following "." insert:

"Notice may not be sent unless requested by the biological parent under (b) of this section. Notice may not be sent if the biological parent, in response to a previous notice of a request from the same adopted person, has filed a written objection to disclosure and has not renewed the request for notice."

Page 10, line 29:

Delete: "whether the parent consents to"

Insert: "the parent's desires regarding notification of the adopted child's request for, and the"

Page 11, line 1:

After "of" insert ",,"

After "AS 18.50.500" delete the remainder of the sentence.

Page 11, line 6:

Delete "statement" and insert "statements"

Page 13, after line 5, insert a new bill section to read:

"* Sec. 24. The state registrar of vital statistics shall prepare forms required under AS 18.50.500, added by sec. 4 of this Act, in advance of the effective date of sec. 4 of this Act. Notwithstanding AS 18.50.500(a)(1), during the first 90 days after sec. 4 of this Act takes effect the state registrar of vital statistics may not provide information under AS 18.50.500 because a biological parent has not requested notice under AS 18.50.500(6)."

Renumber remaining bill section accordingly.

Page 13, line 6:

Delete "This Act takes" and insert "Sections 1 - 3, 5 - 17, and 19 - 24 of this Act take"

Hein
1/13/86 ✓✓

Original sponsors: Rodey, P.Fischer,
Sturgulewski and Kerttula

1 IN THE SENATE

BY THE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 187 (2d HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption; and providing for an
7 effective date."

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

9 * Section 1. AS 13.11.045 is amended to read:

10 Sec. 13.11.045. MEANING OF "CHILD" AND RELATED TERMS. If, for
11 purposes of intestate succession, a relationship of parent and child
12 must be established to determine succession by, through, or from a
13 person,

14 (1) an adopted person is the child of an adopting parent
15 and not of the natural parents unless the decree of adoption
16 specifically provides for the continuation of inheritance rights
17 [EXCEPT THAT ADOPTION OF A CHILD BY THE SPOUSE OF A NATURAL PARENT HAS
18 NO EFFECT ON THE RELATIONSHIP BETWEEN THE CHILD AND EITHER NATURAL
19 PARENT];

20 (2) in cases not covered by (1) of this section, a person
21 born out of wedlock is a child of the mother; that person is also a
22 child of the father, if:

23 (A) the natural parents participated in a marriage
24 ceremony before or after the birth of the child, even though the
25 attempted marriage is void; or

26 (B) the paternity is established by an adjudication
27 before the death of the father or is established thereafter by
28 clear and convincing proof, except that the paternity established
29 under this subparagraph is ineffective to qualify the father or

1 the father's kindred to inherit from or through the child unless
2 the father has openly treated the child as the father's, and has
3 not refused to support the child.

4 * Sec. 2. AS 18.50.220(b) is amended to read:

5 (b) When a new certificate of birth is established, the actual
6 place and date of birth shall be shown. The new certificate shall be
7 substituted for the original certificate of birth, and

8 (1) thereafter, the original certificate and the evidence
9 of adoption or legitimation are not subject to inspection except upon
10 order of the superior court under AS 25.23.150; however, the state
11 registrar [OR AS PROVIDED BY REGULATION; HOWEVER, THE REGULATION]
12 shall allow inspection by an agent of the state or federal government
13 acting in the performance of the agent's [HIS] official duties;

14 (2) upon receipt of a report that an adoption has been
15 vacated, the original certificate of birth shall be restored to its
16 place in the files and the new certificate and evidence are not sub-
17 ject to inspection except upon order of a superior court.

18 * Sec. 3. AS 18.50.370 is amended by adding new paragraphs to read:

19 (14) "adoptive parent" means a person who has adopted another
20 person under AS 25.23;

21 (15) "biological parent" means a parent named on the original
22 certificate of birth of an adopted person;

23 (16) "child adoption agency" means a child adoption agency
24 licensed under AS 47.35.100;

25 (17) "commissioner" means the commissioner of health and
26 social services;

27 (18) "medical history" includes information relating to a
28 person's medical conditions and treatment, immunization records, and
29 other medical information about the person that could be important to

1 the health care of the adopted person.

2 * Sec. 4. AS 18.50 is amended by adding new sections to read:

3 ARTICLE 6. ACCESS TO ADOPTION INFORMATION.

4 Sec. 18.50.500. ACCESS TO ADOPTION INFORMATION. (a) Except as
5 provided in (b) of this section, upon receiving a request by an adopt-
6 ed person 18 years of age or older for the identity of a biological
7 parent of the person, the state registrar shall provide the person
8 with an uncertified copy of the person's original birth certificate,
9 and any change in the parent's name or address attached to the certif-
10 icate, if

11 (1) the biological parent's consent to disclosure is on
12 file with the state registrar; or

13 (2) a written objection to disclosure is not received from
14 the biological parent within 90 days after the state registrar sends a
15 notice of the request to the biological parent at the parent's most
16 current address contained in the state registrar's adoption records;
17 the notice shall be sent by certified mail, return receipt requested,
18 deliverable to the addressee only.

19 (b) The state registrar may not disclose the name and address of
20 a biological parent, except as required by the court under AS 25.23.-
21 150, if a written objection to disclosure under (a) of this section is
22 received from the biological parent

23 (1) when the adopted person is 17 years of age or older; or

24 (2) within 90 days after the date notice is mailed under
25 (a) of this section.

26 (c) If one biological parent agrees to disclosure, but the other
27 biological parent objects, the state registrar shall remove the name
28 of the objecting parent before providing the birth certificate to the
29 adopted person under (a) of this section.

1 (d) An adopted person 18 years of age or older or a biological
2 parent may submit to the state registrar a notice of change of name or
3 address. The state registrar shall attach the information to the
4 original birth certificate of the person or of the adopted child of
5 the biological parent. The state registrar shall disclose to a bio-
6 logical parent, upon request, the most current name and address of the
7 parent's child that appear in the state registrar's adoption files.

8 Sec. 18.50.510. DESCRIPTIVE INFORMATION REGARDING BIOLOGICAL
9 PARENTS. (a) The state registrar shall, at the request of an adop-
10 tive parent or of an adopted person 18 years of age or older, release
11 the following information regarding a biological parent named on the
12 original birth certificate of the adopted person if available from the
13 registrar's adoption records:

14 (1) the age of the biological parent on the day the adopted
15 person was born;

16 (2) the heritage of the biological parent, to include:

17 (A) national origin;

18 (B) ethnic background; and

19 (C) tribal membership;

20 (3) the medical history of the biological parent and of
21 blood relatives of the biological parent;

22 (4) the number of years of school completed by the biologi-
23 cal parent by the day the adopted person was born;

24 (5) a physical description of the biological parent on the
25 day the adopted person was born, including height, weight, and color
26 of hair, eyes and skin;

27 (6) the existence of other children of the biological
28 parent;

29 (7) whether the biological parent was alive at the time of

1 adoption;

2 (8) the religion of the biological parent; and

3 (9) other information provided by the biological parent for
4 disclosure to the child.

5 (b) Information released under (a) of this section shall be on a
6 standard form prepared by the commissioner. The information may not
7 include the name of a biological parent or other information not
8 listed in (a) of this section.

9 * Sec. 5. AS 25.23 is amended by adding a new section to read:

10 Sec. 25.23.005. CONSTRUCTION OF CHAPTER; RIGHTS OF PERSONS
11 AFFECTED BY ADOPTION. This chapter shall be liberally construed to
12 the end that the best interests of adopted persons are promoted. Due
13 regard shall be given to the rights of all persons affected by an
14 adoption.

15 * Sec. 6. AS 25.23.060(a) is amended to read:

16 (a) The required consent to adoption shall be executed at any
17 time after the birth of the child in the presence of the court or in
18 the presence of a person authorized to take acknowledgments. The
19 consent is not valid unless

20 (1) the consent form states that the person consenting to
21 the adoption has the right to withdraw that consent as provided in
22 AS 25.23.070(b); and

23 (2) the person consenting to the adoption acknowledges
24 receipt of a copy of the consent form.

25 * Sec. 7. AS 25.23.060 is amended by adding a new subsection to read:

26 (c) A consent executed under this section is effective as a
27 power of attorney under AS 13.26.020. Unless the consent form pro-
28 vides otherwise, and regardless of whether the form names or iden-
29 tifies the adoptive parent, the consent delegates to the adoptive

parent all powers that may be delegated under AS 13.26.020. The power of attorney takes effect when the child is delivered to the adoptive parent, and remains in effect as long as the consent is in effect; but the power of attorney is not effective beyond one year, unless the court extends it for good cause. The power of attorney does not terminate on the death or disability of the person executing the consent, unless the consent form so states.

* Sec. 8. AS 25.23.070(b) is amended to read:

(b) A consent to adoption may be withdrawn before the entry of a decree of adoption, within 10 days after the consent is given, by delivering written notice to the person obtaining the consent, or after the 10-day period, if the court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the person to be adopted and the court orders the withdrawal.

* Sec. 9. AS 25.23.080(c) is amended to read:

(c) A certified copy of the birth certificate or verification of the birth record of the person to be adopted, if available, the information specified in AS 25.23.185(a), if available, and the required consents, relinquishments, and termination orders shall be filed with the clerk.

* Sec. 10. AS 25.23.100(a) is amended to read:

(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 [SHALL BE GIVEN BY THE PETITIONER] to (1) the department, unless the adoption is by a stepparent of the child; (2) any agency or person whose consent

1 to the adoption is required by this chapter, but who has not consent-
 2 ed; and (3) a person whose consent is dispensed with upon any ground
 3 mentioned in AS 25.23.050(a)(1), (2), (3), (6), (7), (8) and (9), but
 4 who has not consented. The notice to the department shall be accom-
 5 panied by a copy of the petition. [IN THIS SUBSECTION, "STEPPARENT"
 6 MEANS THE SPOUSE OF A NATURAL PARENT OF THE CHILD RESIDING IN THE SAME
 7 HOUSEHOLD.]

8 * Sec. 11. AS 25.23.100(b) is amended to read:

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

25 * Sec. 12. AS 25.23 is amended by adding a new section to read:

26 Sec. 25.23.125. INTERESTS OF MINOR TO BE ADOPTED. (a) If the
 27 person to be adopted is a minor under the age of 10 and the person is
 28 of sufficient age and intelligence to state desires concerning the
 29 adoption, the court shall consider the person's desires.

1 (b) The court may appoint a guardian ad litem or attorney under
2 AS 25.24.310 for a minor who is to be adopted.

3 (c) The court may issue a protective order or other order that
4 is in the best interest of a minor who is to be adopted.

5 * Sec. 13. AS 25.23.130(a) is amended to read:

6 (a) A final decree of adoption, whether issued by a court of
7 this state or of any other state, has the following effect as to
8 matters within the jurisdiction or before a court of this state:

9 (1) except with respect to a spouse of the petitioner and
10 relatives of the spouse, to relieve the natural parents of the adopted
11 person of all parental rights and responsibilities, and, except as
12 provided in (c) of this section, to terminate all legal relationships
13 between the adopted person and the natural parents and other relatives
14 of the adopted person, so that the adopted person thereafter is a
15 stranger to the former relatives for all purposes including inheri-
16 tance, unless the decree of adoption specifically provides for contin-
17 uation of inheritance rights, and the interpretation or construction
18 of documents, statutes, and instruments, whether executed before or
19 after the adoption is decreed, which do not expressly include the
20 person by name or by some designation not based on a parent and child
21 or blood relationship; and

22 (2) to create the relationship of parent and child between
23 petitioner and the adopted person, as if the adopted person were a
24 legitimate blood descendant of the petitioner, for all purposes in-
25 cluding inheritance and applicability of statutes, documents, and
26 instruments, whether executed before or after the adoption is decreed,
27 which do not expressly exclude an adopted person from their operation
28 or effect.

29 * Sec. 14. AS 25.23.130 is amended by adding a new subsection to read:

1 (c) Nothing in this chapter prohibits an open adoption. In this
2 subsection, "open adoption" means an adoption that allows visitation
3 between the adopted person and that person's natural parents or other
4 relatives.

5 * Sec. 15. AS 25.23.150(b) is repealed and reenacted to read:

6 (b) The papers and records relating to an adoption that are a
7 part of the permanent record of a court are subject to inspection only
8 upon consent of the court. The papers and records relating to an
9 adoption on file with the department, an agency, or an individual are
10 subject to inspection only with consent of all interested persons or
11 by order of a court for good cause shown. Except as provided in this
12 section, adoption records of the Bureau of Vital Statistics are sub-
13 ject to inspection under the provisions of AS 18.50.

14 * Sec. 16. AS 25.23.150(c) is amended to read:

15 (c) Except as otherwise provided by law, or as authorized in
16 writing by the adopted child, if 14 or more years of age, or by the
17 adoptive parent, or upon order of the court for good cause shown [IN
18 EXCEPTIONAL CASES], a [NO] person may not [IS REQUIRED TO] disclose
19 the [NAME OR] identity or address of either an adoptive parent or an
20 adopted child.

21 * Sec. 17. AS 25.23.150 is amended by adding a new subsection to read:

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

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

27 (2) the natural parent, the adopted child, and the adoptive
28 parents are afforded proper notice and a hearing.

29 * Sec. 18. AS 25.23 is amended by adding a new section to read:

1 Sec. 25.23.173. INDIAN CHILD ADOPTION REPORTS. After entering a
2 final decree or order in an Indian child adoptive placement, the court
3 shall send to the Secretary of the Interior a copy of the decree or
4 order and other information required by 25 U.S.C. 1951 (sec. 301(a) of
5 the Indian Child Welfare Act of 1978).

6 * Sec. 19. AS 25.23 is amended by adding a new section to read:

7 Sec. 25.23.185. RECORDS AND INFORMATION. (a) At the time a
8 petition for adoption is filed with the court, the agency or individu-
9 al placing the person for adoption, or the petitioner, shall file with
10 the court, for release to the state registrar of vital statistics, the
11 following information, or an explanation of its unavailability, on
12 forms provided by the department:

13 (1) the address of each parent named on the original birth
14 certificate;

15 (2) background information required under AS 18.50.510;

16 (3) a statement signed by each parent named on the original
17 birth certificate acknowledging receipt of a copy of AS 18.50.500 -
18 18.50.510 and an understanding of those provisions; and

19 (4) a statement signed by each parent named on the original
20 birth certificate that indicates whether the parent consents to dis-
21 closure of the parent's identity under AS 18.50.500 and acknowledges
22 that a refusal to consent becomes effective under AS 18.50.500 only if
23 reaffirmed after the adopted person has reached 17 years of age.

24 (b) Upon entry of a decree of adoption, the clerk of the court
25 shall transmit to the Bureau of Vital Statistics the statement and the
26 information provided under (a) of this section. The bureau shall
27 attach the statement and information to the original birth certificate
28 of the adopted person.

29 (c) A child adoption agency licensed under AS 47.35.100 shall

1 maintain records of the information required to be furnished to the
2 court under this section or under regulations of the commissioner
3 implementing this section. If a child adoption agency ceases to place
4 persons for adoption, it shall transfer its records to the commission-
5 er.

6 * Sec. 20. AS 25.23.230 is amended to read:

7 Sec. 25.23.230. REGULATIONS. The department shall adopt regu-
8 lations necessary to implement the provisions of AS 25.23.185 - 25.-
9 23.240 [AS 25.23.190 - 25.23.240].

10 * Sec. 21. AS 25.23.240 is amended by adding a new paragraph to read:

11 (9) "stepparent" means the spouse of a natural parent of
12 the child residing in the same household.

13 * Sec. 22. AS 44.21.410(a) is amended to read:

14 (a) The office of public advocacy shall

15 (1) perform the duties of the public guardian under AS
16 13.26.360 - 13.26.410;

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

19 (3) provide guardian ad litem services to children in child
20 protection actions under AS 47.17.030(e) and to wards and respondents
21 in guardianship proceedings who will suffer financial hardship or
22 become dependent upon a government agency or a private person or
23 agency if the services are not provided at state expense under AS
24 13.26.112;

25 (4) provide legal representation in guardianship proceed-
26 ings to respondents who are financially unable to employ attorneys
27 under AS 13.26.106(b), to indigent parties in cases involving child
28 custody in which the opposing party is represented by counsel provided
29 by a public agency, and to indigent parents or guardians of a minor

1 respondent in a commitment proceeding concerning the minor under
2 AS 47.30.775;

3 (5) provide legal representation and guardian ad litem
4 services under AS 25.24.310; in cases arising under the Uniform Inter-
5 state Compact on Juveniles (AS 47.15); in cases involving petitions to
6 adopt a minor under AS 25.23.125(b) [AS 25.23.100(j)]; in cases in-
7 volving petitions to remove the disabilities of a minor under AS 09.-
8 55.590; in children's proceedings under AS 47.10.050(a); and in cases
9 involving indigent persons who are entitled to representation under
10 AS 18.05.100 and who cannot be represented by the public defender
11 agency because of a conflict of interests.

12 * Sec. 23. AS 25.23.100(j) is repealed.

13 * Sec. 24. The amendments to AS 25.23.130 made by secs. 13 and 14 of
14 this Act are retroactive with regard to

15 (1) an adoption decree in which the superior court granted
16 visitation rights to a natural parent or other relative of the adopted
17 person; and

18 (2) an adoption decree entered on or after January 1, 1984, in
19 which the superior court denied a request that a natural parent or other
20 relative of the adopted person be granted visitation rights, if the request
21 was made in the pleadings and the adopted person is under 18 years of age;
22 a party to an adoption under this paragraph may petition the court for
23 reconsideration of the denial of visitation rights.

24 * Sec. 25. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH & STATE CAPITOL
JUNEAU ALASKA 998
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 14, 1986

SUBJECT: Sectional analysis of HCS SB187 (2d HESS)
1/13/86 (draft)

TO: Representative Max Gruenberg

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 provides that, for purposes of intestate succession, an adopted child inherits from the adoptive parents instead of the natural parents, unless the adoption decree specifically provides for continuation of inheritance rights through the natural parents. This eliminates a conflict between the adoption chapter and the intestate inheritance provisions.

Sec. 2 supplies the correct statutory reference for court ordered inspections of original birth certificates and other evidence of adoption or legitimation held by the bureau of vital statistics, and clarifies that the state registrar, not the regulations, must allow inspection by government agents.

Sec. 3 adds definitions to the vital statistics chapter, AS 18.50.

Sec. 4 establishes procedures and restrictions for release of information by the bureau of vital statistics to an adopted person regarding the person's biological parents. Proposed AS 18.50.500 would allow adopted persons 18 or older to ask the bureau to disclose the identity of the person's biological parents. The information may be disclosed only if the biological parent consents or, within 90 days, fails to object. A biological parent who files a written objection to disclosure of the parent's name and address before the adopted child turns 17 years of age must renew the objection on or after the child's 17th birthday in order to prevent disclosure that might be requested by the child. A biological parent may object or consent only to

disclosure of his or her own name and address. If either parent objects, that parent's name will be deleted from the copy of the original birth certificate given to the adopted child. Adopted children 18 and older, as well as biological parents, may submit notices of changes of name and address to the bureau for attachment to the child's original birth certificate.

Proposed AS 18.50.510 requires the bureau of vital statistics to provide to an adopted person 18 or older who requests the information, descriptive, historical, and medical information about the person's biological parents if the information is available from the bureau's adoption records.

Sec. 5 provides for a liberal construction of the adoption chapter, AS 25.23, to promote the best interests of adoptees. The language comes from a New Jersey statute and is adopted verbatim in order to pick up that state's judicial interpretations of the language.

Sec. 6 provides that a consent form for an adoption must include a statement of the right to withdraw consent and an acknowledgement that the consenter received a copy of the form.

Sec. 7 incorporates into the consent to an adoption a power of attorney giving the adoptive parents powers regarding the child's care, custody, property, etc., unless specifically limited in the consent form. The power of attorney is good for one year, or longer if the court approves for good cause. The court's extension beyond one year is not contained in AS 13.26.020. The power of attorney would not expire on the death or disability of the consenter, unless the consent form said so. C.f., AS 13.26.325 - 13.26.330.

Sec. 8 clarifies when the 10-day period for automatic withdrawal of consent to an adoption begins to run.

Sec. 9 is a cross-reference to AS 25.23.185(i), which is added in sec. 19 of the bill.

Sec. 10 deletes the definition of "stepparent," which is transferred to the definitions section, AS 25.23.240 by sec. 21 of the bill. Sec. 10 also changes the second sentence of AS 25.23.100(a) from the passive voice to the active voice.

Sec. 11 authorizes the court in an adoption proceeding to order notice by publication of an adoption hearing. This is intended to assist in notifying persons entitled to notice by law, but who cannot otherwise be found.

Sec. 12 requires the court in an adoption proceeding to consider the wishes of a minor under 10 who is to be adopted, if the minor is of "sufficient age and intelligence to state desires concerning the adoption." The authority of the court to appoint a guardian ad litem or attorney for a minor who is to be adopted is transferred here from AS 25.23.100(j), which is then repealed in sec. 23 of the bill. Also, the court is authorized by sec. 12 to issue protective orders and other orders that are in the best interest of a minor who is to be adopted.

Sec. 13 provides that an "open adoption," allowing visitation by natural parents or relatives, is an exception to the requirement that an adoption decree terminates all legal relationships between an adopted person and the natural parents and relatives. (See sec. 14 comments.)

Sec. 14 makes clear that "open adoption," as there defined, is not prohibited. This change is intended to resolve confusion on this question caused by the language of AS 25.23.130(a)(1), which says that the effect of an adoption is "to terminate all legal relationships between the adopted person and the natural parents and other relatives of the adopted person, so that the adopted person thereafter is a stranger to the former relatives for all purposes" This change has the effect of reversing the Alaska Supreme Court's holding in the case of In re W.E.G. and J.R.G., Op. No. 2998 (Dec. 6, 1985).

Sec. 15 makes clear that court adoption records may be inspected only with the court's consent; adoption records held by the Department of Health and Social Services, an adoption agency, or individuals may be inspected only with the consent of all interested persons or by court order; and that, excepted as provided here, adoption records held by the Bureau of Vital Statistics may be inspected only in accordance with AS 18.50.

Sec. 16 adds to AS 25.23.150(c) an exception for disclosures of the name or identity of adoptive parents and adopted children under proposed AS 18.50.500 - 18.50.510, and other provisions of law related to disclosure of adoption records that might be in conflict with this subsection if the exception were not inserted.

Sec. 17 allows a court to disclose a natural parent's identity and address only for a medical emergency or other extraordinary circumstance and with due process protections for the adopted child, the natural parents and the adoptive parents.

Sec. 18 incorporates into state law the federal requirement of reporting Indian child adoptions to the Secretary of the Interior under provisions of the Indian Child Welfare Act.

Sec. 19 specifies information that must be filed with the court with the petition for adoption and that must be transmitted by the court clerk to the state registrar of vital statistics. This is the information needed for the operation of AS 18.50.500 - 18.50.510. This section also requires private adoption agencies to maintain records containing this same information, and to transfer its records to the commissioner of health and social services if the agency discontinues adoption placements.

Sec. 20 corrects a statutory reference in existing law to provide for the addition of a new statute added by sec. 19 of the bill.

Sec. 21 adds a definition of "stepparent" for purposes of the adoption chapter, AS 25.23. See comments under sec. 10 of this sectional analysis.

Sec. 22 corrects a statutory reference necessitated by the repeal and transfer of AS 25.23.100(j). See comments under sec. 12 of this sectional analysis.

Sec. 23 repeals AS 25.23.100(j). See comments under sec. 12 of this sectional analysis.

Sec. 24 applies the open adoption provisions of this bill retroactively to certain adoption decrees that were entered before the effective date of the act and that involved visitation rights by a natural parent or relative of the adoptive child. The section also establishes a procedure for requesting a court to reconsider a denial of such visitation rights in adoption decrees entered on or after January 1, 1984.

Sec. 25 provides for an immediate effective date.



OFFICIAL BUSINESS

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

POUCH V
JUNEAU, AK 99811
465-3759

January 15, 1986

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

LETTER OF INTENT

HCSSB 187 (2D HESS) - AN ACT RELATING TO
ADOPTION; AND PROVIDING FOR AN EFFECTIVE DATE.

1. Section 5 of the bill is identical to New Jersey Annotated Code 9:3-37 and is similar to California Civil Code Section 232.5. It makes the adopted person's best interests legally relevant at all stages of the adoption hearing, while giving due regard to the rights of the other parties. Under present law, the child's best interests may not be considered in determining whether to dispense with the natural parent's consent. D.L.J. v. W.D.R., 635 P.2d 834, 838 (Alaska 1981), S.M.K. and A.M.K. v. R.G.G., 702 P.2d 620, 623, n.6 (Alaska 1985). The intent of the section is not to abrogate the parental rights doctrine, but to focus the court's attention on the detriment to the child, rather than simply the unfitness of the parent. Adoption of D.S.C., 93 Cal.App.14, 23-24, 155 Cal.R.406, 410-11 (1979).
2. It is not the intent of the bill to prohibit common law adoptions. See Caljsta Corp. v. Mann, 564 P.2d 53 (Alaska 1977), "C." St. Fooland v. Estate of Renner, 596 P.2d 1170 (Alaska 1979).
3. This supercedes and replaces this committee's letter of intent of April 26, 1985. See 1985 House Journal at 1096.

Max F. Gruenberg, Jr.
Co-Chairman

Niilo Koponen
Co-Chairman

Original sponsors: Rodey, P.Fischer,
Sturgulewski and Kerttula

1 IN THE SENATE

BY THE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 187 (2d HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption; and providing for an
7 effective date."

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

9 * Section 1. AS 13.11.045 is amended to read:

10 Sec. 13.11.045. MEANING OF "CHILD" AND RELATED TERMS. If, for
11 purposes of intestate succession, a relationship of parent and child
12 must be established to determine succession by, through, or from a
13 person,

14 (1) an adopted person is the child of an adopting parent
15 and not of the natural parents unless the decree of adoption
16 specifically provides for the continuation of inheritance rights
17 [EXCEPT THAT ADOPTION OF A CHILD BY THE SPOUSE OF A NATURAL PARENT HAS
18 NO EFFECT ON THE RELATIONSHIP BETWEEN THE CHILD AND EITHER NATURAL
19 PARENT];

20 (2) in cases not covered by (1) of this section, a person
21 born out of wedlock is a child of the mother; that person is also a
22 child of the father, if:

23 (A) the natural parents participated in a marriage
24 ceremony before or after the birth of the child, even though the
25 attempted marriage is void; or

26 (B) the paternity is established by an adjudication
27 before the death of the father or is established thereafter by
28 clear and convincing proof, except that the paternity established
29 under this subparagraph is ineffective to qualify the father or

1 the father's kindred to inherit from or through the child unless
2 the father has openly treated the child as the father's, and has
3 not refused to support the child.

4 * Sec. 2. AS 18.50.220(b) is amended to read:

5 (b) When a new certificate of birth is established, the actual
6 place and date of birth shall be shown. The new certificate shall be
7 substituted for the original certificate of birth, and

8 (1) thereafter, the original certificate and the evidence
9 of adoption or legitimation are not subject to inspection except upon
10 order of the superior court under AS 25.23.150; however, the state
11 registrar [OR AS PROVIDED BY REGULATION; HOWEVER, THE REGULATION]
12 shall allow inspection by an agent of the state or federal government
13 acting in the performance of the agent's [HIS] official duties;

14 (2) upon receipt of a report that an adoption has been
15 vacated, the original certificate of birth shall be restored to its
16 place in the files and the new certificate and evidence are not sub-
17 ject to inspection except upon order of a superior court.

18 * Sec. 3. AS 18.50.370 is amended by adding new paragraphs to read:

19 (14) "adoptive parent" means a person who has adopted another
20 person under AS 25.23;

21 (15) "biological parent" means a parent named on the origi-
22 nal certificate of birth of an adopted person;

23 (16) "child adoption agency" means a child adoption agency
24 licensed under AS 47.35.100;

25 (17) "commissioner" means the commissioner of health and
26 social services;

27 (18) "medical history" includes information relating to a
28 person's medical conditions and treatment, immunization records, and
29 other medical information about the person that could be important to

1 the health care of the adopted person.

2 * Sec. 4. AS 18.50 is amended by adding new sections to read:

3 ARTICLE 6. ACCESS TO ADOPTION INFORMATION.

4 Sec. 18.50.500. ACCESS TO ADOPTION INFORMATION. (a) Except as
5 provided in (b) of this section, upon receiving a request by an adopt-
6 ed person 18 years of age or older for the identity of a biological
7 parent of the person, the state registrar shall provide the person
8 with an uncertified copy of the person's original birth certificate,
9 and any change in the parent's name or address attached to the certifi-
10 cate, if

11 (1) the biological parent's consent to disclosure is on
12 file with the state registrar; or

13 (2) a written objection to disclosure is not received from
14 the biological parent within 90 days after the state registrar sends a
15 notice of the request to the biological parent at the parent's most
16 current address contained in the state registrar's adoption records;
17 the notice shall be sent by certified mail, return receipt requested,
18 deliverable to the addressee only.

19 (b) The state registrar may not disclose the name and address of
20 a biological parent, except as required by the court under AS 25.23.-
21 150, if a written objection to disclosure under (a) of this section is
22 received from the biological parent

23 (1) when the adopted person is 17 years of age or older; or

24 (2) within 90 days after the date notice is mailed under
25 (a) of this section.

26 (c) If one biological parent agrees to disclosure, but the other
27 biological parent objects, the state registrar shall remove the name
28 of the objecting parent before providing the birth certificate to the
29 adopted person under (a) of this section.

1 (d) An adopted person 18 years of age or older or a biological
2 parent may submit to the state registrar a notice of change of name or
3 address. The state registrar shall attach the information to the
4 original birth certificate of the person or of the adopted child of
5 the biological parent. The state registrar shall disclose to a bio-
6 logical parent, upon request, the most current name and address of the
7 parent's child that appear in the state registrar's adoption files.

8 Sec. 18.50.510. DESCRIPTIVE INFORMATION REGARDING BIOLOGICAL
9 PARENTS. (a) The state registrar shall, at the request of an adop-
10 tive parent or of an adopted person 18 years of age or older, release
11 the following information regarding a biological parent named on the
12 original birth certificate of the adopted person if available from the
13 registrar's adoption records:

14 (1) the age of the biological parent on the day the adopted
15 person was born;

16 (2) the heritage of the biological parent, to include:

17 (A) national origin;

18 (B) ethnic background; and

19 (C) tribal membership;

20 (3) the medical history of the biological parent and of
21 blood relatives of the biological parent;

22 (4) the number of years of school completed by the biologi-
23 cal parent by the day the adopted person was born;

24 (5) a physical description of the biological parent on the
25 day the adopted person was born, including height, weight, and color
26 of hair, eyes and skin;

27 (6) the existence of other children of the biological
28 parent;

29 (7) whether the biological parent was alive at the time of

1 adoption;

2 (8) the religion of the biological parent; and

3 (9) other information provided by the biological parent for
4 disclosure to the child.

5 (b) Information released under (a) of this section shall be on a
6 standard form prepared by the commissioner. The information may not
7 include the name of a biological parent or other information not
8 listed in (a) of this section.

9 * Sec. 5. AS 25.23.060(a) is amended to read:

10 (a) The required consent to adoption shall be executed at any
11 time after the birth of the child in the presence of the court or in
12 the presence of a person authorized to take acknowledgments. The
13 consent is not valid unless

14 (1) the consent form states that the person consenting to
15 the adoption has the right to withdraw that consent as provided in
16 AS 25.23.070(b); and

17 (2) the person consenting to the adoption acknowledges
18 receipt of a copy of the consent form.

19 * Sec. 6. AS 25.23.060 is amended by adding a new subsection to read:

20 (c) A consent executed under this section is effective as a
21 power of attorney under AS 13.26.020. Unless the consent form pro-
22 vides otherwise, and regardless of whether the form names or iden-
23 tifies the adoptive parent, the consent delegates to the adoptive
24 parent all powers that may be delegated under AS 13.26.020. The power
25 of attorney takes effect when the child is delivered to the adoptive
26 parent, and remains in effect as long as the consent is in effect; but
27 the power of attorney is not effective beyond one year, unless the
28 court extends it for good cause. The power of attorney does not
29 terminate on the death or disability of the person executing the

1 consent, unless the consent form so states.

2 * Sec. 7. AS 25.23.070(b) is amended to read:

3 (b) A consent to adoption may be withdrawn before the entry of a
4 decree of adoption, within 10 days after the consent is given, by
5 delivering written notice to the person obtaining the consent, or
6 after the 10-day period, if the court finds, after notice and oppor-
7 tunity to be heard is afforded to petitioner, the person seeking the
8 withdrawal, and the agency placing a child for adoption, that the
9 withdrawal is in the best interest of the person to be adopted and the
10 court orders the withdrawal.

11 * Sec. 8. AS 25.23.080(c) is amended to read:

12 (c) A certified copy of the birth certificate or verification of
13 the birth record of the person to be adopted, if available, the infor-
14 mation specified in AS 25.23.185(a), if available, and the required
15 consents, relinquishments, and termination orders shall be filed with
16 the clerk.

17 * Sec. 9. AS 25.23.100(a) is amended to read:

18 (a) After the filing of a petition to adopt a minor, the court
19 shall fix a time and place for hearing the petition. At least 20 days
20 before the date of hearing, the petitioner shall give notice of the
21 filing of the petition and of the time and place of hearing [SHALL BE
22 GIVEN BY THE PETITIONER] to (1) the department, unless the adoption is
23 by a stepparent of the child; (2) any agency or person whose consent
24 to the adoption is required by this chapter, but who has not consent-
25 ed; and (3) a person whose consent is dispensed with upon any ground
26 mentioned in AS 25.23.050(a)(1), (2), (3), (6), (7), (8) and (9), but
27 who has not consented. The notice to the department shall be accom-
28 panied by a copy of the petition. [IN THIS SUBSECTION, "STEPPARENT"
29 MEANS THE SPOUSE OF A NATURAL PARENT OF THE CHILD RESIDING IN THE SAME

1 HOUSEHOLD.]

2 * Sec. 10. AS 25.23.100(b) is amended to read:

3 (b) Notice to persons specified in AS 25.23.050 shall include a
4 statement of the grounds under which consent to the adoption is not
5 required. Notice given under this section shall be adequate to give
6 actual notice of the proceedings, taking into account education and
7 language differences which are known or reasonably ascertainable by
8 the petitioner or the department. The notice of hearing shall contain
9 all names by which the minor has been identified and shall state in
10 summary form the effect of a decree of adoption. Notice shall be
11 given in the manner appropriate under rules of civil procedure for the
12 service of process in a civil action in this state or in any manner
13 the court by order directs. Notice by publication may not be given
14 unless, for compelling reasons, the court orders it to be given under
15 the procedure established in Rule 4 of the Alaska Rules of Civil
16 Procedure. Proof of the giving of the notice shall be filed with the
17 court before the petition is heard, subject to the time limitations in
18 (e) of this section.

19 * Sec. 11. AS 25.23 is amended by adding a new section to read:

20 Sec. 25.23.125. INTERESTS OF MINOR TO BE ADOPTED. (a) If the
21 person to be adopted is a minor under the age of 10 and the person is
22 of sufficient age and intelligence to state desires concerning the
23 adoption, the court shall consider the person's desires.

24 (b) The court may appoint a guardian ad litem or attorney under
25 AS 25.24.310 for a minor who is to be adopted.

26 (c) The court may issue a protective order or other order that
27 is in the best interest of a minor who is to be adopted.

28 * Sec. 12. AS 25.23.130(a) is amended to read:

29 (a) A final decree of adoption, whether issued by a court of

1 this state or of any other state, has the following effect as to
2 matters within the jurisdiction or before a court of this state:

3 (1) except with respect to a spouse of the petitioner and
4 relatives of the spouse, to relieve the natural parents of the adopted
5 person of all parental rights and responsibilities, and, except as
6 provided in (c) of this section, to terminate all legal relationships
7 between the adopted person and the natural parents and other relatives
8 of the adopted person, so that the adopted person thereafter is a
9 stranger to the former relatives for all purposes including inheri-
10 tance, unless the decree of adoption specifically provides for contin-
11 uation of inheritance rights, and the interpretation or construction
12 of documents, statutes, and instruments, whether executed before or
13 after the adoption is decreed, which do not expressly include the
14 person by name or by some designation not based on a parent and child
15 or blood relationship; and

16 (2) to create the relationship of parent and child between
17 petitioner and the adopted person, as if the adopted person were a
18 blood descendant of the petitioner, for all purposes including inheri-
19 tance and applicability of statutes, documents, and instruments,
20 whether executed before or after the adoption is decreed, which do not
21 expressly exclude an adopted person from their operation or effect.

22 * Sec. 13. AS 25.23.130 is amended by adding a new subsection to read:

23 (c) Nothing in this chapter prohibits an adoption that allows
24 visitation between the adopted person and that person's natural
25 parents or other relatives.

26 * Sec. 14. AS 25.23.150(b) is repealed and reenacted to read:

27 (b) The papers and records relating to an adoption that are a
28 part of the permanent record of a court are subject to inspection only
29 upon consent of the court. The papers and records relating to an

1 adoption on file with the department, an agency, or an individual are
2 subject to inspection only with consent of all interested persons or
3 by order of a court for good cause shown. Except as provided in this
4 section, adoption records of the Bureau of Vital Statistics are sub-
5 ject to inspection under the provisions of AS 18.50.

6 * Sec. 15. AS 25.23.150(c) is amended to read:

7 (c) Except as otherwise provided by law, or as authorized in
8 writing by the adopted child, if 14 or more years of age, or by the
9 adoptive parent, or upon order of the court for good cause shown [IN
10 EXCEPTIONAL CASES], a [NO] person may not [IS REQUIRED TO] disclose
11 the [NAME OR] identity or address of either an adoptive parent or an
12 adopted child.

13 * Sec. 16. AS 25.23.150 is amended by adding a new subsection to read:

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

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

19 (2) the natural parent, the adopted child, and the adoptive
20 parents are afforded proper notice and a hearing.

21 * Sec. 17. AS 25.23 is amended by adding a new section to read:

22 Sec. 25.23.173. INDIAN CHILD ADOPTION REPORTS. After entering a
23 final decree or order in an Indian child adoptive placement, the court
24 shall send to the Secretary of the Interior a copy of the decree or
25 order and other information required by 25 U.S.C. 1951 (sec. 301(a) of
26 the Indian Child Welfare Act of 1978).

27 * Sec. 18. AS 25.23 is amended by adding a new section to read:

28 Sec. 25.23.185. RECORDS AND INFORMATION. (a) At the time a
29 petition for adoption is filed with the court, the agency or

1 individual placing the person for adoption, or the petitioner, shall
2 file with the court, for release to the state registrar of vital
3 statistics, the following information, or an explanation of its
4 unavailability, on forms provided by the department:

5 (1) the address of each parent named on the original birth
6 certificate;

7 (2) background information required under AS 18.50.510;

8 (3) a statement signed by each parent named on the original
9 birth certificate acknowledging receipt of a copy of AS 18.50.500 -
10 18.50.510 and an understanding of those provisions; and

11 (4) a statement signed by each parent named on the original
12 birth certificate that indicates whether the parent consents to dis-
13 closure of the parent's identity under AS 18.50.500 and acknowledges
14 that a refusal to consent becomes effective under AS 18.50.500 only if
15 reaffirmed after the adopted person has reached 17 years of age.

16 (b) Upon entry of a decree of adoption, the clerk of the court
17 shall transmit to the Bureau of Vital Statistics the statement and the
18 information provided under (a) of this section. The bureau shall
19 attach the statement and information to the original birth certificate
20 of the adopted person.

21 (c) A child adoption agency licensed under AS 47.35.100 shall
22 maintain records of the information required to be furnished to the
23 court under this section or under regulations of the commissioner
24 implementing this section. If a child adoption agency ceases to place
25 persons for adoption, it shall transfer its records to the commission-
26 er.

27 * Sec. 19. AS 25.23.230 is amended to read:

28 Sec. 25.23.230. REGULATIONS. The department shall adopt regu-
29 lations necessary to implement the provisions of AS 25.23.185 -

1 25.23.240 [AS 25.23.190 - 25.23.240].

2 * Sec. 20. AS 25.23.240 is amended by adding a new paragraph to read:

3 (9) "stepparent" means the spouse of a natural parent of
4 the child residing in the same household.

5 * Sec. 21. AS 44.21.410(a) is amended to read:

6 (a) The office of public advocacy shall

7 (1) perform the duties of the public guardian under AS
8 13.26.360 - 13.26.410;

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

11 (3) provide guardian ad litem services to children in child
12 protection actions under AS 47.17.030(e) and to wards and respondents
13 in guardianship proceedings who will suffer financial hardship or
14 become dependent upon a government agency or a private person or
15 agency if the services are not provided at state expense under AS
16 13.26.112;

17 (4) provide legal representation in guardianship proceed-
18 ings to respondents who are financially unable to employ attorneys
19 under AS 13.26.106(b), to indigent parties in cases involving child
20 custody in which the opposing party is represented by counsel provided
21 by a public agency, and to indigent parents or guardians of a minor
22 respondent in a commitment proceeding concerning the minor under
23 AS 47.30.775;

24 (5) provide legal representation and guardian ad litem
25 services under AS 25.24.310; in cases arising under the Uniform Inter-
26 state Compact on Juveniles (AS 47.15); in cases involving petitions to
27 adopt a minor under AS 25.23.125(b) [AS 25.23.100(j)]; in cases in-
28 volving petitions to remove the disabilities of a minor under AS 09.-
29 55.590; in children's proceedings under AS 47.10.050(a); and in cases

1 involving indigent persons who are entitled to representation under
2 AS 18.85.100 and who cannot be represented by the public defender
3 agency because of a conflict of interests.

4 * Sec. 22. AS 25.23.100(j) is repealed.

5 * Sec. 23. The amendments to AS 25.23.130 made by secs. 13 and 14 of
6 this Act are retroactive with regard to

7 (1) an adoption decree in which the superior court granted
8 visitation rights to a natural parent or other relative of the adopted
9 person; and

10 (2) an adoption decree entered on or after January 1, 1984, in
11 which the superior court denied a request that a natural parent or other
12 relative of the adopted person be granted visitation rights, if the request
13 was made in the pleadings and the adopted person is under 18 years of age;
14 a party to an adoption under this paragraph may petition the court for
15 reconsideration of the denial of visitation rights.

16 * Sec. 24. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).