

SB

30

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 15, 1987

SUBJECT: Draft CSSB 30(Jud), relating to termination
of the parental rights of certain sexual
offenders

TO: Senator Jalmar Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

The draft CSSB 30(Jud) contains amendments adding sexual assault and sexual abuse of a minor in the fourth degree to the list of grounds on which parental rights may be terminated and providing for inheritance rights unless a court terminates inheritance rights.

The draft committee substitute does not address the issue of retrospective application of SB 30. At this time it is not clear to what extent the bill should apply retrospectively. The Department of Health and Social Services has requested that I contact Andy Harrington with Alaska Legal Services in Fairbanks for information on this issue. I will contact Mr. Harrington to obtain his suggestions. However the retrospective application of civil laws may be challenged by those persons whose rights are affected by the change in the law. It is possible that the courts may strike down the retrospective aspect of SB 30 if it adversely affects the constitutional rights of a person subject to the bill.

As soon as I receive the necessary information from Mr. Harrington and conduct preliminary legal research into retrospective application of civil laws, I will prepare the necessary amendment to achieve retroactivity or a memorandum discussing why retroactivity is not appropriate.

GU:mkz
m11/024

Enclosure

5-0151L
Utermohle
4/15/87

Original sponsors: Fischer and Sturgulewski

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 30 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE -- FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

21 (a) Consent to adoption is not required of

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

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

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

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

29 as required by law or judicial decree;

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

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

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

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

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

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

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

21 * Sec. 4. AS 25.23.130 is amended by adding new subsections to read:

22 (d) Except as provided in (e) of this section, a decree ter-
23 minating parental rights on the grounds set out in AS 25.23.180(c)(3)
24 voids all legal relationships between the child and the biological
25 parent so that the child is a stranger to the biological parent and to
26 relatives of the biological parent for all purposes, including inter-
27 pretation of documents executed before or after the termination of
28 parental rights that do not include the child by name or by a descrip-
29 tion not based on a parental or blood relationship.

1 (e) Inheritance rights between a child and a biological parent
2 are not voided by a decree terminating parental rights on the grounds
3 set out in AS 25.23.180(c)(3) unless the decree specifically provides
4 for the termination of inheritance rights.

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

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

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

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

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

23 (c) Except as otherwise provided by law, or as authorized in
24 writing by the adopted child, if 14 or more years of age, or by the
25 adoptive parent, or upon order of the court for good cause shown, a
26 person may not disclose the identity or address of [EITHER] an adop-
27 tive parent, [OR] an adopted child, or a party to a proceeding for the
28 termination of parental rights on grounds set out in AS 25.23.-
29 180(c)(3).

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

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

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

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

13 * Sec. 9. AS 25.23.170 is amended to read:

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

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

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

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

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

4 (1) on the grounds specified in AS 47.10.080(c)(3); [OR]

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

8 (3) on grounds that the child was conceived by an act
9 constituting sexual assault, sexual abuse of a minor, or incest under
10 the laws of this state or a comparable offense under the laws of the
11 state where the act occurred and that termination of the parental
12 rights of the biological parent is in the best interests of the child.

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

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

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

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

23 (3) an agency; or

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

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

27 (g) Notwithstanding the provisions of (b) of this section, a
28 relinquishment of parental rights with respect to a child, executed
29 under this section, may be withdrawn by the parent, and a decree of a

1 court terminating the parent and child relationship on grounds set out
2 in (c)(1) and (2) of [UNDEFK] this section may be vacated by the court
3 upon motion of the parent, if the child is not on placement for adop-
4 tion and the person having custody of the child consents in writing to
5 the withdrawal or vacation of the decree.

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

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

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

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

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

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

24 (10) "incest" means a sexual offense defined in AS 11.41.-
25 450;

26 (11) "sexual abuse of a minor" means a sexual offense de-
27 fined in AS 11.41.434, 11.41.436, 11.41.438, or 11.41.440;

28 (12) "sexual assault" means a sexual offense defined in
29 AS 11.41.410 or 11.41.420.

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

2 (a) The office of public advocacy shall

3 (1) perform the duties of the public guardian under AS 13.-
4 26.360 - 13.26.410;

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

7 (3) provide guardian ad litem services to children in child
8 protection actions under AS 47.17.030(e) and to wards and respondents
9 in guardianship proceedings who will suffer financial hardship or
10 become dependent upon a government agency or a private person or
11 agency if the services are not provided at state expense under AS 13.-
12 26.112;

13 (4) provide legal representation in guardianship proceed-
14 ings to respondents who are financially unable to employ attorneys
15 under AS 13.26.106(b), to indigent parties in cases involving child
16 custody in which the opposing party is represented by counsel provided
17 by a public agency, [AND] to indigent parents or guardians of a minor
18 respondent in a commitment proceeding concerning the minor under AS
19 47.30.775, and to indigent respondents in cases involving the termina-
20 tion of parental rights on grounds set out in AS 25.23.180(c)(3);

21 (5) provide legal representation and guardian ad litem
22 services under AS 25.24.310; in cases arising under the Uniform Inter-
23 state Compact on Juveniles (AS 47.15); in cases involving petitions to
24 adopt a minor under AS 25.23.125(b) or petitions for the termination
25 of parental rights on grounds set out in AS 25.23.180(c)(3); in cases
26 involving petitions to remove the disabilities of a minor under AS
27 09.55.590; in children's proceedings under AS 47.10.050(a); and in
28 cases involving indigent persons who are entitled to representation
29 under AS 18.85.100 and who cannot be represented by the public

1 defender agency because of a conflict of interests.

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

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

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

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

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

13 (i) both parents,

14 (ii) the surviving parent, or

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

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

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

1 to supervise the child;

2 (D) the child having been, or being in imminent and
3 substantial danger of being, sexually abused either by the
4 child's parent, guardian, or custodian, or as a result of condi-
5 tions created by the child's parent, guardian, or custodian, or
6 by the failure of the parent, guardian, or custodian adequately
7 to supervise the child;

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

11 (F) the child having suffered substantial physical
12 abuse or neglect as a result of conditions created by the child's
13 parent, guardian, or custodian.
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STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Health & Soc Services	DIVISION Family & Youth Services	BILL NUMBER SB 30	SPONSOR Senator Paul Fisher
DEPARTMENT POSITION Qualified support (please see analysis below)			
PREPARED BY Myra Munson	DATE 3/13/87	COMMISSIONER'S SIGNATURE <i>Myra H. Munson</i>	DATE 3/13/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Law, Alaska Court System	CONSTITUENT GROUP(S) AFFECTED BY BILL Victims of incest, perpetrators of incest
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL
FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

In order to protect the child conceived as the result of sexual abuse of a minor or of incest, the court may terminate the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Department of Health and Social Services supports the objectives of SB 30. This bill would allow termination of the parental rights of a biological parent who conceives a child as a result of sexual abuse of a minor or incest. The department believes this objective can be better accomplished, however, by amendments to AS 25.23, which relates to adoptions. This is preferable to amending AS 47.17, which relates primarily to child abuse and neglect reporting.

AMENDMENTS PROPOSED

Please see attached memo from Alaska Legal Services attorney Andrew Harrington to Randall Burns, Special Assistant, Department of Health and Social Services.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

To: Randall Burns
From: Andy Harrington
Re: SB 30
Dated: 3/11/87 Wed

In response to your request, I am sending along suggestions for how the substance of SB 30 can be accomplished by amending existing statutes rather than creating a separate chapter of statutes.

This focuses on AS 25.23.180, which already contains several of the provisions regarding termination of parental rights. This is contained in the adoption chapter.

There are two substantive matters I'd like to bring to your attention: first, inserting the the private cause of action into AS 25.23.180 will make it possible for a private individual to terminate parental rights based on the child sexual abuse/incest ground; it will enable a private individual to terminate another's parental rights if that private individual can make the same showings the State makes in terminating parental rights in child-in-need cases. (It may be that private individuals can already do so; as far as I know, the State Supreme Court hasn't ruled on that.)

Second, I noted that, in the draft of the bill I received, parental rights can be terminated based on violations of Sexual Abuse of a Child in the First, Second, and Fourth Degrees, but not in the Third (AS 11.41.434, 11.41.436, 11.41.440, but not 11.41.438). I assume this was an oversight. Sexual Abuse of a Minor in the Fourth Degree is an A Misdemeanor, committed by offenders under sixteen against children at least three years younger; Sexual Abuse of a Minor in the Third Degree is a C felony, committed by offenders over sixteen against children at least three years younger. I'm assuming the bill was meant to include SAM 3d and exclude SAM 4th, and have drafted my suggestion accordingly.

I've tried to underline new material and bracket old material being eliminated, but I don't guarantee the accuracy of that.

After the proposed changes, I've listed the sections of the current bill and how that provision is incorporated.

AS 25.23.030: Jurisdiction and venue.

(a) Proceedings for adoption shall be brought in the superior court for the district in which, at the time of filing or granting the petition, the petitioner or the person to be adopted resides or is in military service, or in which the agency having the care, custody or control of the minor is located. Proceedings for non-adoptive termination of parental rights shall be brought in the superior court in which the minor child resides.

(b) [same as original] : :

(c) For jurisdictional purposes, a proceeding under this chapter is a child custody proceeding subject to the Uniform Child Custody Jurisdiction Act, AS 25.30.020.

AS 25.23.050: Persons as to whom consent and notice not required.

(a) Consent to adoption is not required of

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

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

(6) [same as original]

(7) [same as original]

(8) [same as original]

(9) [same as original]

(b) [same as original]

AS 25.23.140: Appeal and Validation of [Adoption] Decree

(a) [same as original]

(b) [same as original]

(c) Subject to the disposition of an appeal, upon the expiration of one year after a decree of non-adoptive termination of parental rights is issued, the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

AS 25.23.150: Confidential nature of hearings and records in adoption and non-adoptive termination proceedings.

(a) [same as original]

(b) All papers and records pertaining to [an adoption] proceedings under this chapter that are a part of the permanent record of a court of are subject to inspection only upon consent of the court. The papers and records relating to [an adoption] such proceedings on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisions of AS 18.50.

(c) Except as authorized by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of [either] an

adoptive parent or an adopted child or any party to an adoption or non-adoptive termination case.

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

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

(2) the natural parent, the [adopted] child, the child's other natural parent (unless that parent's rights have been terminated), and the adoptive parents are afforded proper notice and a hearing; the court may waive the hearing and notice requirement if it finds there is a medical necessity that poses an immediate risk to life.

AS 25.23.170: Applications for birth certificates.

Within 30 days after an adoption decree becomes final, the clerk of court shall, if requested by the adoptive parents, prepare an application for a birth certificate in the name of the adopted person. Upon a non-adoptive termination of parental rights under section 180 of this chapter, the court may order the preparation of an application for a birth certificate in the name of the child without reference to the parent whose rights have been terminated. Such applications shall be forwarded

(1) [same as original]

(2) [same as original]

AS 25.23.180: Relinquishment and termination of parent and child relationships.

(a) [same as original]

(b) [same as original]

(c) The relationship of parent a child may be terminated by a court order issued in connection with an adoption proceeding under this chapter, an independent proceeding under this section, or a proceeding under AS 47.10 on any of the following grounds:

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

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

(3) on the grounds that (a) the child was conceived by an act constituting sexual abuse of a minor or incest under the laws of this state, or by a comparable offense under the laws of the jurisdiction where the act occurred; and (b) termination of the parental rights of the biological parent is in the best interests of the child.

(d) An order terminating parental rights issued by a court of competent jurisdiction in this or any other state voids all legal relationships between the child and the biological parent so that the child is a stranger to the biological parent, and to the relatives of the biological parent, for all purposes including but not limited to, inheritance, unless the decree specifically provides for continuation of inheritance rights; and including the interpretation or construction of documents, statutes, and instruments, whether executed before or after the termination is

decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship; and including dispensing with the required

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

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

(e) A petition for termination of the relationship of parent and child, whether or not made in connection with an adoption proceeding, may be made by

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

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) any other person having a legitimate interest in the matter.

(f) [same as original]

(g) [same as original]

(h) Proceedings under this section are to be governed, where applicable, by the provision of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

(i) The respondent to a petition filed for adoption or non-adoptive termination of parental rights is entitled to representation by an attorney in the proceedings. If the respondent is financially unable to employ an attorney, the court shall appoint the Office of Public Advocacy to represent the respondent.

(j) Proceedings under this section do not affect the right of a victim of sexual abuse or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

AS 25.23.240 Definitions.

In this chapter, unless the context otherwise requires,

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

(5) "court" means the superior court of this state, and, when the context requires, the court of any other state empowered to grant petitions for adoption or terminate parental rights:

(6) [same as original]

(7) [same as original]

(8) "incest" means a sexual offense defined in AS 11.41.450:

(9) "sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.436, or 11.41.438:

(10) [renumbered subsection 8 of original]

(11) [renumbered subsection 9 of original]

AS 44.21.410 Powers and Duties of Public Advocacy Office.

(a) The office of public advocacy shall

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, to indigent respondents who are financially unable to employ attorneys in non-adoptive termination cases under AS 25.23.180, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for non-adoptive termination of parental rights under AS 25.23.180; in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

The following list points out where the provision of the former bill are dealt with in the above version.

AS 47.17.180: can probably be eliminated, as the purpose of the statute seems self-evident.

AS 47.17.190: 25.23.180(e) lists the people who can bring the action and seems broad enough to include the people listed.

AS 47.17.200: AS 25.23.180(f) requires notice.

AS 47.17.210: the new grounds can be listed in an addition to AS 25.23.180(c).

AS 47.17.220: 25.23.180(d) specifies the effect of a termination decree.

AS 47.17.230: AS 25.23.150 provides for confidentiality; a small amendment can specify that this applies to non-adoptive termination cases.

AS 47.17.240: 25.23.180(a) covers relinquishments.

AS 47.17.250: A sentence added to section 180 can specify that ICWA controls where applicable.

AS 47.17.260: The finality provision can be inserted into AS 25.23.140 which deals with finality of adoptions.

AS 47.17.270: The availability of an appointed attorney can be added as a subsection to 25.23.180.

AS 47.17.280: The ability to get costs and fees need not be stated as Rule 82 would apply.

AS 47.17.290: The preservation of other victims' rights can be added as a subsection to AS 25.23.180.

AS 47.17.300: Since this clarifies that the UCCJA applies, it would be better to add this as a separate provision applicable to adoptions as well as non-adoptive terminations. I'd put it in AS 25.23.030 and re-label that section "jurisdiction and venue."

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : SB 30
Publish Date : _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to termination
of parental rights ..."

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Senator Fischer
Requestor: Senator Fischer

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 5, 1987
 Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 5, 1987
 Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 30

SENATE BILL 30

This bill amends AS 47.17 by adding new sections that provide for the termination of parental rights of perpetrators of certain sexual offenses. Upon petition to the superior court, the court would be empowered to terminate the parental rights of a perpetrator to a child conceived as the result of sexual abuse of a minor or of incest, when termination is in the best interests of the child. Petition could be made by certain private party family members of the child, and this process would not involve the state, except that the Office of Public Advocate would represent indigent respondents. Consequently, this bill will not have a fiscal impact on the Department of Law. The department does note that it would probably not be able to assist petitioners, where they lack the means to petition the court, because of the severity of the department's current and projected budget constraints.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 30

Publish Date: _____

Revision Date: _____

Agency Affected: Administration

Title: "An Act relating to termination of parental rights..."

BRU: Office of Public Advocacy

Sponsor: Fischer

Components: _____

Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate

Phone: 274-1684

Division: Office of Public Advocacy

Date: 2/22/87

Approved by Commissioner: Garrey Peska

Date: 2/10/87

Agency: Department of Administration

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

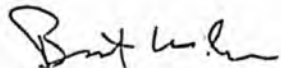
POSITION PAPER
SB30

"An Act relating to termination of parental
rights to perpetrators of certain sexual offenses"

This Bill allows the parental rights of a perpetrator of sexual abuse to be terminated if necessary to protect the best interests of the child.

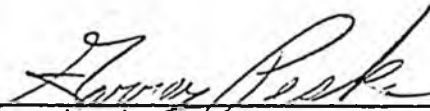
The Bill is unlikely to generate an increase in the number of Child In Need of Aid actions because such cases are almost always the subject of such proceedings under current law. However, the Bill does mandate the appointment of an attorney from the Office of Public Advocacy where current law mandates that such appointments be from the Alaska Public Defender Agency. Because OPA now almost invariably acts as guardian ad litem for the child victim, the appointment of OPA will necessitate costly contracts with private attorneys to provide this representation.

The Office of Public Advocacy supports this legislation but opposes the provisions mandating OPA appointment to represent alleged perpetrators as unnecessarily costly.



Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87
Date



Commissioner Garrey Peska
Department of Administration

2/14/87
Date

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1987

SUBJECT: Section-by-section analysis of SB 30, An Act
Relating to Termination of Parental Rights of
Perpetrators of Certain Sexual Offenses

TO: Senator Paul Fischer

FROM: George Utermohle *GU*
Legislative Counsel

The following is the section-by-section analysis of SB 30,
requested by Jack Sanderson of your staff.

A sectional analysis or summary of a bill should not be con-
sidered an authoritative interpretation of a bill, and the
bill itself is the best statement of its contents.

Section 1. Section 1 of the bill adds a new article to
AS 47.17 providing for the termination of parental rights of
certain sexual offenders.

Sec. 47.17.180 states the purpose of the article.

Sec. 47.17.190 lists who may file a petition to terminate
the parental rights of a perpetrator of sexual abuse of a
minor or of incest to the child conceived as a consequence
of the sexual offense.

Sec. 47.17.200 sets out who must receive notice of the
action to terminate parental rights.

The biological mother of the child, the biological or
alleged biological father, and the guardian or custodian of
the child must receive notice of the petition.

If the biological father of the child is unknown or not
disclosed, the court must inquire of the biological mother
as to information about the biological father unless the
court finds that disclosure is harmful to the mother or
child.

The court shall decide what notice should be given to
unknown, undisclosed, or unlocated biological fathers.

The court may order blood tests to determine the biological father of the child and assess the costs on the parties to the petition.

If the court finds that notice given to a party to the action to terminate parental rights was not adequate the court may continue the hearing until the defect of notice is cured.

Sec. 47.17.210 sets out the powers of the court to terminate parental rights of a sexual offender.

The court shall terminate the parental rights of a biological parent of a child if the court finds by clear and convincing evidence that (1) required notice has been given or the person has relinquished parental rights, (2) the child was conceived by an act constituting sexual abuse of a minor or incest, and (3) the termination of parental rights is in the best interests of the child.

The court may order preparation of a new birth certificate for the child if the court terminates the parental rights of the biological father.

The court may order disclosure of the name of the biological parent only if disclosure is necessary for medical or extraordinary circumstances and the parties are given notice. Notice is not required if there is a medical emergency.

Sec. 47.17.220 states the legal effect of a termination of parental rights under these provisions. The order terminating parental rights voids all legal relationships between the biological parent and child and is a determination that parental rights never attached between the child and biological parent.

Sec. 47.17.230 provides that proceedings under these provisions are closed to non-essential persons and that court records are closed.

Sec. 47.17.240 provides the circumstances under which a biological parent may relinquish parental rights under these provisions.

Sec. 47.17.250 provides for the modification of the procedures in these provisions to comply with the requirements of the Indian Child Welfare Act of 1978. The most significant requirements of the Act include notice to the tribe to which the child is related and proof of facts beyond a reasonable doubt. An "Indian child" is defined as an unmarried person

under 18 years old who is either a member of an Indian tribe or is eligible for membership in a tribe and is a biological child of a member of a tribe.

Sec. 47.17.260 provides that an order terminating parental rights is final and not appealable after six months.

Sec. 47.17.270 provides that the respondent to a petition to terminate parental rights is entitled to representation by an attorney. The court may appoint an attorney to represent the respondent if the respondent cannot afford an attorney.

Sec. 47.17.280 provides that the court may award reasonable attorney fees and costs to a prevailing party.

Sec. 47.17.290 provides that an order terminating parental rights under these provisions does not affect the right of a victim of sexual abuse or of incest to recover civil damages for injuries and costs arising out of the conduct of a perpetrator of sexual abuse or incest.

Sec. 47.17.300 provides that a proceeding to terminate parental rights under these provisions is a child custody proceeding subject to AS 25.30.

Sec. 47.17.310 defines "child", "court", "incest", and "sexual abuse of a minor."

Section 2. Section 2 of the bill amends AS 25.23.050(a) to include references to AS 47.17.210 and 47.17.240.

Section 3. Section 3 of the bill amends AS 44.21.410(a) to allow the office of public advocacy to represent indigent respondents in proceedings to terminate parental rights under this bill.

Section 4. Section 4 of the bill amends AS 47.10.010(a), relating to a "child in need of aid," to include a reference to AS 47.17.210.

GU:mkr
m9/049

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

State Senate

To: Senator Jay Kerttula, Chairman &
Members Senate Judiciary Committee

From: Senator Paul Fischer *P.F.*

Subject: SB 30, Terminating the Parental Rights of Sex Offenders

Date: April 14, 1987

SB 30, would terminate the parental rights of sexual offenders. This issue was brought to my attention by the courts and concerned parents. It's preposterous to assume that a rapist, child molester or sibling will be acting in the best interest of the child that they accidentally brought into this world. Even if they are, I don't believe they deserve the right to be called a "parent" under these circumstances. For these reasons, I introduced SB 30.

The HESS Committee Substitute for this bill amends current statutes to bring about the same objective as the original bill instead of creating new sections of law. This approach was brought to our attention by the Department of Health and Social Services and is supported by them. The heart and essence of the bill is found in section 10, page 5, lines 5 through 9. All other sections serve to implement this new language.



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Health & Social Services	DIVISION Family & Youth Services	BILL NUMBER SB 30	SPONSOR Senator Paul Fischer
DEPARTMENT POSITION Recommend Support			
PREPARED BY Randall P. Burns	DATE 3/25/87	COMMISSIONER'S SIGNATURE <i>Margaret M. Murrison</i>	DATE 3/25/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Law - Civil and Criminal Divisions Alaska Court System	CONSTITUENT GROUP(S) AFFECTED BY BILL Victims of incest or the sexually abused minors
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
In order to protect the child conceived as the result of sexual abuse of a minor or of incest, the court may terminate the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

ANALYSIS OF BILL/PROGRAM EFFECTS
The Department of Health and Social Services supports SB.30. This bill would allow the relationship of parent and child to be terminated on grounds that the child was conceived by an act constituting sexual abuse of a minor or incest, when the termination of the parental rights of the biological parent would be in the best interest of the child. The bill sets out that consent to adoption is not required when parental rights have been terminated by order of the court under AS 25.23.180(c) (3). Sec. 180(c) (3) is a new section providing for termination of parental rights when the child was conceived as a result of sexual abuse or incest.

The committee substitute responds well to the Department's earlier concerns and we are in full support of the legislation as it is now drafted.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.