

HB

53

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SS HB53
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child in need of RDU Legal and Advocacy Services
aid proceedings;... Component Public Defender Agency
 Sponsor Reps. Coghill, Ramras...
 Requester House HESS Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	139.0	139.0	139.0	139.0	139.0	139.0
Travel	6.1	6.1	6.1	6.1	6.1	6.1
Contractual	46.0	46.0	46.0	46.0	46.0	46.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	13.4	1.4	1.4	1.4	1.4	1.4
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	207.9	195.9	195.9	195.9	195.9	195.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	207.9	195.9	195.9	195.9	195.9	195.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	207.9	195.9	195.9	195.9	195.9	195.9

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time	2	2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 SS HB53 is an omnibus bill significantly changing the child protective statutes (CINA) and in some instances the adoption statutes. Many portions of the bill will have a fiscal impact on the operations of the Public Defender Agency and will be discussed specifically on the following page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 3/15/05 9:31 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/15/2005
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SS HB 53

ANALYSIS CONTINUATION

Fiscal Note Analysis for SS HB 53: (continued)

Sections 9, 10, portions of 13 and 15, 17, 18, 21, 22, 23, 24, 25, 26, 27, 32, 47, 48, 52 of this bill change statutes and court rules concerning confidentiality in child protective proceedings (CINA). CINA hearings will be presumptively open to the public, unless the court orders otherwise, based upon a motion to close it under certain circumstances enumerated in the bill. The Agency opens over 900 new child protective proceedings a year. It is anticipated that in at least half of the Agency's cases the attorney will be repeatedly moving to close hearings. This additional motion practice will also require service on a member of the public who has requested notice. It is further anticipated that disputes over interpretation and implementation of this legislation will occur. This increase in workload necessitates an increase in operating costs amounting to a half-time attorney position, factoring in support staff. The additional operating costs to address the increased workload are based on attorney and support staff hours in Anchorage, where the bulk of these cases are handled.

This bill, in sections 8, 11, 13, and 49-51, also provides a party to a Child in Need of Aid proceeding the right to demand a jury trial on a petition to terminate parental rights. Termination trials are currently conducted by the court. Not many CINA cases proceed to termination trial. A review by the court system of the number of cases statewide that proceed to termination revealed an estimate of 180 termination cases in FY04. Assuming that number for the future, it is estimated that in 50%, or 90 of these cases, a jury trial will be requested. Accepting this number of actual termination trials, the Public Defender Agency estimates that it is appointed in approximately 75% of these cases, or 68 cases. It is also estimated that it would add approximately 3 days of trial to each termination proceeding if it were tried by a jury as opposed to the court, because of the need for jury selection, opening and closing statements, and a more lengthy presentation of evidence, including live and expert witnesses, and jury instructions. If 68 of the Agency's termination trials are jury trials, and each one takes on average three extra trial days, it would result in 204 more trial days for our attorneys. That translates into one 3/4-time attorney IV position. Each attorney receives a salary based upon 37.5 hours a week, for a total of 1950 hours a year. 204 extra days of trial requires approximately 1530 hours, approximately 78% of a year's worth of attorney work. Therefore, we will need one additional 3/4-time attorney to handle this increased workload. Because the greatest number of CINA cases are handled by the Anchorage office, we would place the attorney in that location. The attorney costs include clerical support and one-time equipment costs in the first year.

Other provisions of the bill will have a fiscal impact on the Agency as well, but the extent of the impact cannot be predicted with any accuracy. In sections 12 and 15 it provides for family members to request and obtain a review hearing of denied visitation or a denied adoption request. It is unclear from the language in the bill whether these family members would be considered parties, and whether they would be entitled to the appointment of counsel, if indigent. In any case, additional review hearings requested by others than traditional parties to the case will result in a fiscal impact to the Agency, but the extent cannot be predicted.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SSHB53-LAW-T&WC;HS
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to child-in-need-of-aid
proceedings..." RDU CIVIL
Sponsor Representative Coghill Component Torts & Worker's Compensation &
House HESS Human Services
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4	2,024.4
Travel	5.1	5.1	5.1	5.1	5.1	5.1
Contractual	298.6	298.6	298.6	298.6	298.6	298.6
Supplies	31.6	31.6	31.6	31.6	31.6	31.6
Equipment	128.2	17.6	17.6	17.6	17.6	17.6
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	2,487.9	2,377.3	2,377.3	2,377.3	2,377.3	2,377.3

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	19	19	19	19	19	19
Part-time	3	3	3	3	3	3
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.10 (Children in Need of Aid). Passage of this legislation will impact the Department of Law in a number of ways.

1. Section 7 strengthens the rights of biological grandparents in a custody proceeding for a child in need of aid when one or both of the child's parents are dead and the child has been abandoned by a remaining parent. It is anticipated that a number of instances will arise where the State would take the position that granting custody to the child's biological grandparents is not in the child's best interest. We estimate that each existing CINA attorney would handle 2 such contested custody proceeding each year and that each would take about 3 days. Each paralegal would also handle 2 such contested hearings per year for one day. Total fiscal impact from the additional work load is \$76,671. Half of an

Prepared by: Kathryn Daughhete, Director Phone 465-3673
Division Administrative Services Division Date/Time 3/14/05 4:31 PM
Approved by: K. Daughhete for Scott N. Nordstrand, Acting Attorney General Date 3/14/2005
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

2. Section 8 conveys the right to demand a jury trial in a hearing on a petition to terminate parental rights. In the Department of Health and Social Services analysis of the bill, an estimate of 90 new jury trials would result if this section of the bill is passed. The Department of Law believes that this estimate may be low, as a case may turn into several trials when there are a number of children involved in the petition, and also a number of parents - a case may involve one mother but more than one father. Also, parents who would have otherwise relinquished parental rights may see a new chance with a jury rather than with a judge who may be familiar with their history as parents. Preparation for a jury trial, rather than a hearing, requires preparation of a much more detailed presentation. Consequently, we estimate each CINA attorney would need to handle about two of these cases per month at 3 days each and each paralegal would also handle two per month at 2 days each. Total fiscal impact from the additional workload is estimated at \$938,523 and includes funding for 5 new attorneys and a paralegal and 2 new Law Office Assistants.

3. Section 10 changes statutes that apply to confidentiality of child in need of aid matters. Longstanding policies, practices and procedures of every agency and branch of government involved in child welfare protection will be altered. As a result it is anticipated that disputes will arise over the interpretation and implementation of this legislation. The additional operating costs to resolve such disputes are estimated based on 400 additional attorney hours per year at a cost of \$49,696. Half of an attorney position is also requested in conjunction with the funding to allow the Department to add a part time attorney to handle the increased caseload.

4. Section 12 of the bill allows a parent, family member, or guardian who is denied visitation rights the right to request a review hearing thereby increasing the number of hearings attorneys must prepare for and attend. Sections 14 and 15 make a relative preference for adoption but adds three reasons why adoption may be denied to the relative. These sections will give rise to a number of contests and good cause findings. Taken together, these sections will cause an increase in the caseload that will add another 2 days of work to each CINA attorney's schedule and one day of work for each paralegal. This is a conservative estimate based on the assumption that some issues will be worked out early on in the placement process. We estimate that each attorney will experience an increased workload of just under one week a month. That will cost \$938,523 which will fund 5 additional attorneys, one paralegal, and two law office assistants.

5. Section 27 addresses immunity from liability but does not actually provide immunity, it provides that if you comply with the law, you are immune. The Department believes there will be lawsuits filed where a litigant disagrees with whether AS 47.10 was followed regarding one or more of its provisions.

6. Section 30 of the bill amends AS 47.10.960 and requires the adoption of regulations establishing a duty and standard of care for services to children and their families served under AS 47.10. Passage of this amendment will open the state to the argument that the mandatory provisions of the act could be the basis for statutory civil actions for damages. At present, if there are concerns about functions not being properly carried out in a Child in Need of Aid (CINA) case, children, parents, foster parents, and the department can and do bring those matters to the attention of the judge involved in the CINA matter. Parents are represented by counsel, and guardians ad litem are often appointed to advocate on behalf of the child's best interests. If any of the involved parties files an independent lawsuit for damages outside the CINA case, it will require substantial additional resources to respond and could complicate and impede conclusion of the CINA case.

As of March 2005, approximately 2,000 children were in state custody in out-of-home placement. If only 2 percent of those children, or their parents, chose to initiate tort litigation based on a perceived failure of the department to comply with a mandatory provision of AS 47.10, there would be 40 new cases a year. We estimate it would take a tort litigator 15-20 hours to gather and review the necessary factual information from the underlying CINA proceedings, and another 20-25 hours to litigate the threshold question of whether the plaintiff had a cognizable legal claim based on violation of a CINA statute. A conservative estimate of the time needed to defend these new cases would be 1,600 hours per year. If the court found a statutory damages claim to be viable, many more hours would be required to engage in discovery, depositions, and trial preparation. Full litigation of just one such case a year would be expected to take 100 hours of attorney time. These cases are usually very document intensive, and we anticipate 20-30 hours of paraprofessional time would be required and an average of \$1,500 for direct case costs including deposition and document production costs in each of the new cases.

2005 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

We estimate that at a minimum, the services of one and a half full-time equivalent attorney positions and one full-time equivalent paraprofessional would be required to defend the state from new tort claims filed as a result of the bill. \$60,000 is included for direct case costs. Total fiscal impact estimated from section 30 is \$484,386.

In addition to litigation stemming from CINA cases, we anticipate that this bill may spawn new tort litigation based on law enforcement's alleged failure to comply with statutory provisions regarding runaway and missing minors. AS 47.10.141 imposes many obligations on law enforcement agencies and peace officers to locate these minors and take them into protective custody. Without the language in current AS 47.10.960, a minor or parent may assert that these mandatory requirements create potential tort liability analogous to that found by the Alaska Supreme Court in *Busby v. Municipality of Anchorage*, 741 P.2d 235 (Alaska 1987). That case found that former AS 47.37.170(b) imposed a mandatory duty to take intoxicated persons into protective custody, the failure of which created potential tort liability. We cannot estimate how many such cases might be litigated, but note that the potential defendants to these claims would not be limited to state agencies or personnel.

7. The creation in statute of the Citizens' Review Panels for Permanency Planning is likely to result in additional regulation and legislation work as the Panel adopts policies and regulations that govern it and rely on resources within the State's CINA network to conduct its reviews and prepare its annual report to the Governor. Fiscal impacts arising from this new work are not determinable at this time. It is likely that any regulations work will need to be funded by the Department of Health and Social Services if it becomes a priority and there are not sufficient resources to take on regulations projects or legislative drafting when it is needed.

Position costs are based on the department's current cost allocation plan, and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 per position is included. Proportionate support position funding is included in the cost schedule at a rate of approximately one support position for every three professional positions. Position authorizations for support positions are required, however, and one FTE law office assistant position is included. This will be necessary if sections are passed that in and of themselves would not cause the need for an additional law office assistant, but taken as a whole, would.

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: _____
Bill Version: HB053SS-DHSS-OCS1-03-11-05

Revision Date/Time (Note if correction): _____
Title RELATING TO CHILD-IN-NEED-OF AID
MATTERS

() Publish Date: _____
Dept. Affected: Health & Social Services

Sponsor COGHILL
Requester HOUSE (HES)

RDU Children's Services
Component Foster Care Base Rate

Component No. 2236

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2
Miscellaneous						
TOTAL OPERATING	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	60.9	60.9	60.9	60.9	60.9	60.9
1003 GF Match	118.3	118.3	118.3	118.3	118.3	118.3
1004 GF	2,918.0	2,918.0	2,918.0	2,918.0	2,918.0	2,918.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2	3,097.2

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department Office of Children's Services budget are summarized below.

Sec.13 (u). Child Placement in Foster Homes Known as A Home Requesting Adoption.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner
Division Office of Children's Services
Approved by: Joel S. Gilbertson, Commissioner
Agency Department of Health and Social Services

Phone 465-3397
Date/Time 03/08/2005
Date 03/11/2005

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB053SS-DHSS-OCS1-03-11-05

ANALYSIS CONTINUATION

Sec 13 (u) Analysis Con't:

This subsection prohibits the Department from placing a child in a foster home requesting adoptions before 30 days after the date of the first permanency hearing, before the decision to terminate parental rights, and before the court approves placement. The results of this section would mean multiple placements, delayed permanency, and potential non-compliance with the Federal Review. The OCS estimates permanency could be delayed for a minimum of 4 months, resulting in extended foster care. On average, foster care payments exceed adoptions by \$224.00 monthly. There are approximately 200 adoptions per year. If this bill were to be enacted into law, Section 13 would increase costs to the Department by at least \$44.8.

Sec. 34.- Relative Placement

This section amends AS 47.14.100(e) which prohibits the department from placing a child in a foster home if a relative, family friend, or neighbor requests placement of the child and the home would be a safe environment.

The State cannot receive IV-E federal reimbursement for the care of a child that is not placed in a licensed home. If children are placed with relatives, the relatives may choose whether to be licensed as foster parents or not. Unlicensed friends or neighbors would not be eligible for payment through Title IV-E. Therefore, for those who choose not to license, the only payment option under this bill would be to authorize enough state general funds to cover lost federal revenue.

On any given day, the State has approximately 2,000 children in custody. Of the 2,000, approximately 8 percent may be in residential care; 13 percent placed with licensed relatives; and 18 percent with unlicensed relatives. This bill would allow those 18 percent of unlicensed relatives to begin receiving foster care rates funded by general funds. The OCS can assume that 75% of the unlicensed family placements would begin receiving foster care payments within the first year.

The remaining 61 percent of the children in custody could potentially be placed in unlicensed homes that would not qualify for federal reimbursement. Given little or no incentive to license, it can be assumed that 50 percent or more of the remaining placements will migrate to unlicensed homes and receive foster care payments through the general fund.

The cost for these children in unlicensed homes would be approximately \$7,725.0 million per year. Of that amount, approximately \$2,918.0 would have been reimbursable under Title IV-E and therefore, under this bill, would need to be funded by the State.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB053SS-DHSS-OCS2-03-11-05

Revision Date/Time (Note if correction): _____
Title RELATING TO CHILD-IN-NEED-OF AID MATTERS

() Publish Date: _____
Dept. Affected: Health & Social Services

Sponsor COGHILL
Requester HOUSE (HES)

RDU Children's Services
Component Front Line Social Workers

Component No. 2305

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	578.9	578.9	578.9	578.9	578.9	578.9
Travel	50.0	50.0	50.0	50.0	50.0	50.0
Contractual	50.0	50.0	50.0	50.0	50.0	50.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	678.9	678.9	678.9	678.9	678.9	678.9

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts	76.5	76.5	76.5	76.5	76.5	76.5
1003 GF Match	178.5	178.5	178.5	178.5	178.5	178.5
1004 GF	423.9	423.9	423.9	423.9	423.9	423.9
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	678.9	678.9	678.9	678.9	678.9	678.9

Estimate of any current year (FY2005) cost: _____
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department's Office of Children's Services budget are summarized below.

Sec. 8. Right to demand jury trial in certain cases. This section allows any party to a child in need of aid (CINA) case to demand a jury trial for a hearing held regarding a petition to terminate parental rights. The amendment retains the current definition of party, which is the child, the parents, the guardian, the guardian ad litem, the Department, an Indian custodian or Indian tribe that has intervened and any other person the court has determined may be a party to the case.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner
Division: Office of Children's Services
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone 465-3191
Date/Time 03/08/2005
Date 03/11/2005

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO HB053SS-DHSS-OCS2-03-11-05

ANALYSIS CONTINUATION

If this bill becomes law, based on the most current available data, we anticipate at a minimum, the possibility of 90 jury trials per year or 50 percent of the 180 termination proceedings reported by the Alaska Court System in FY 04. It is conservatively estimated that jury trials will add three days to court proceedings, and two additional days of preparation time for social workers. These additional days will be necessary for trial preparation, jury selection, jury education, jury deliberation and the changes in court practices and procedures that would occur with a jury trial. It is estimated that an additional 37.5 hours of staff time will be required for each jury trial. This additional time requirement will detract the time a social worker has to invest in caseload investigating reports of harm; emergency custody processes; efforts to locate relative placements or foster home placements; developing case plans; requesting assessments for mental health or substance abuse; arranging visitations; attending treatment team and permanency planning meetings; and other court appearances such as probable cause, disposition hearings, adjudication hearings and other court-ordered appearances. This list is not all inclusive, but represents a sampling of the mandatory duties and responsibilities of a child protective social worker. Being unavailable during jury trial will force social workers to perform the normal scope of duties for other cases outside usual business hours. The Office of Children Services estimates the additional time required to prepare and attend jury trials would result in \$205.0 of overtime expenditures each fiscal year. \$61.5 of these overtime costs would be eligible for IVE federal reimbursement and the remaining \$143.5 would be general fund match. This calculation is based on the average cost of a Social Worker II and III statewide and does not take into consideration regional differentials.

Termination trials generally require expert witness testimony. Most of the state's expert witnesses are located in the larger communities and may testify telephonically. A jury trial, however, necessitates witnesses testify in person adding to the cost of each trial. Because it is difficult to empanel impartial juries in many small communities, we anticipate a change of venue in a number of cases adding to the cost for all parties who must appear in person: social workers, parents, attorneys, witnesses, guardian ad litem. The OCS estimates associated increased travel and per diem costs for division staff and expert witnesses at \$50.0. These expert witness fee costs would be eligible for IVE federal reimbursement of about \$15.0 with the remaining \$35.0 in general fund match.

Most importantly, jury trials will also result in more delays for the children. Alaska's recent Federal Review assessed the state as poor in meeting deadlines for termination hearings. Timely petitions often result in delays in court scheduling, delaying permanency for children. Jury trials are even more difficult to schedule and will result in additional delays for permanency that could ultimately result in a disallowance of federal reimbursement for non-compliance.

FISCAL NOTE
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STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB053SS-DHSS-OCS2-03-11-05

ANALYSIS CONTINUATION

Sec.12. Right to Review Hearings

Section 12 provides that if a parent or family member of a child in state custody is denied visitation, the Department will inform the parent or family member as to the reason for the denial and their right to request a review hearing. The OCS believes there would be an increase in staff time required for hearing preparation and court time, but has no data upon which to base an estimate. Visitation denials are not tracked.

Sec. 15 (n). Blood Relative Denied Adoption May Request a Review Hearing.

Section 15 provides a person related to a child by blood who is denied a request for adoption, the right to a review hearing. The OCS believes there would be an increase in staff time required for hearing preparation and court time, but has no data upon which to base an estimate. Adoption denials are not tracked.

Sec. 16. Report of Prescription Drugs

Section 16 adds requirements whereby the Department must maintain information about the use of psychotropic or other mental health medication required by children in custody, and this information be reported to the Legislature annually. Even though OCS files do include medical records, the additional burden on already overworked OCS staff to collect and aggregate all detailed information from caregivers such as teachers, child care providers, and foster parents and write up a report on each child would require an additional psychiatric nurse in 4 regions. Social workers do not have the skills required to address these medical reports. The increased cost to the state is estimated to be \$373.9 in personal services costs plus an addition \$50.0 for travel, per diem, and administrative costs.

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: _____
Bill Version: HB053SS-DHSS-OCS3-03-11-05

Revision Date/Time (Note if correction): _____

() Publish Date: _____
Dept. Affected: Health & Social Services

Title RELATING TO CHILD-IN-NEED-OF AID
MATTERS

RDU Children's Services

Component Children's Services Management

Sponsor COGHILL

Requester HOUSE (HES)

Component No. 2666

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	85.1	85.1	85.1	85.1	85.1	85.1
Travel						
Contractual	60.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	145.1	85.1	85.1	85.1	85.1	85.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	41.7	41.7	41.7	41.7	41.7	41.7
1003 GF Match	43.4	43.4	43.4	43.4	43.4	43.4
1004 GF	60.0					
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	145.1	85.1	85.1	85.1	85.1	85.1

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSHB 53 is an omnibus bill that incorporates a number of changes to the Child-in-Need-of-Aid (CINA) statutes. Changes that may have fiscal impact on the Department's Office of Children's Services (OCS) budget are summarized below.

Sec. 9, 10, 19, 26 and Other. Confidentiality

Sections 9, 10, 19, 26 and various other SS HB 53 amendments and additions are not dissimilar to those included in SB 84 that allow public access to CINA proceedings and confidential information.

Prepared by: Tammy Sandoval, Acting Deputy Commissioner
Division: Office of Children's Services
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone 465-3191
Date/Time 03/08/2005
Date 03/11/2005

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB053SS-DHSS-OCS3-03-11-05

ANALYSIS CONTINUATION

Sec. 9, 10, 19, 26 and Other. Confidentiality - Analysis Con't

Should either bill become law, the Department anticipates the increase in public concern and requests for information will necessitate an additional position within the OCS to assist in the effort to respond in a timely manner. This position would be an Associate Coordinator, Range 18, under the current Program Coordinator for Community Relations at a cost of \$85.1 per fiscal year of which \$43.4 would be funded with general fund match.

Sec. 43. Notification of Status of Investigations

Section 43 requires the OCS notify each person who made a report of harm about the status of the investigation without disclosing confidential information. Because the OCS case management and provider payment system (ORCA) does not now capture all addresses and does not report on the required data, system changes at a one-time cost of approximately \$60.0 would be required. These reports are not federally mandated and therefore not eligible for federal match.

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REPRESENTATIVE JOHN COGHILL

FAMILY RIGHTS ACT

HB 53

Sponsor Statement.

My belief that children belong to their parents and that families should be preserved was why I ran for office the first time in 1998. To protect vulnerable children the government requires parents to raise their children by certain standards, and I believe government should be held to those high standards when they take children into their custody. Dealing with the Office of Children's Services should have good due process and should be transparent so that everyone involved knows what the rules are and what is required of them.

HB 53 is an omnibus bill that does many things. It creates a duty and standard of care for social workers who are making decisions for children in state custody. It makes the process transparent by making confidential information currently unavailable accessible to certain people, making court proceedings open to the public, and giving parents the right to a jury trial in proceedings to terminate their parental rights.

This legislation also strengthens the rights of grandparents, especially those who have already been instrumental in raising the child. Many times when parents run awry of OCS, grandparents get placement of the child. If parental rights are terminated, the grandparents should have preference for adoption. Other relatives or family friends should also be considered for placement before a child is placed with complete strangers. Grandparents also gain accessibility to information and hearings in CINA cases through this legislation.

An additional safeguard to transparency and due process is the re-establishment of state and local citizens review panels that will adopt policies and procedures by regulation, compile reports, report to the governor annually, and conduct hearings on complaints filed against OCS.

The bill encourages the use of Child Advocacy Centers (CAC) in areas they are available and requires audio recordings for all other interviews of children believed to have been sexually abused. This creates accountability in interviewing and protects the child from multiple interrogations.

This legislation goes a long way in protecting and preserving families in Alaska and making government accountable for its actions when children are in State custody.

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REPRESENTATIVE JOHN COGHILL

THE FAMILY RIGHTS ACT - CSSHB 53(HESS)

Sectional

Section 1. Amends Title 13, Article 2 "Guardians of Minors" to add as a qualification for the court to appoint a guardian if an adult family member applies for guardianship, unless the court finds that appointment would not be in the best interest of the child.¹

Sec. 2. Gives preference to an adult family member who has cared for a child for twelve consecutive months or more to adopt the child(ren) unless the court finds there is good cause not to grant the adoption.²

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 4. Intent language for the Family Rights Act.³

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It

¹ New language added to Version S. Eliminates language in Version S, Sec. 6(a) which amended Title 47.10 by creating a new subsection to address guardianship. The sponsor agrees that amending the guardianship laws is a more appropriate approach. AS 13.26.055 currently reads as follows:

"Sec. 13.26.055 Court appointment of guardian of minor; qualifications; priority of minor's nominee. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor."

² In this section and section 9 the phrase "including grandparents" was deleted. The definition of "adult family member" includes grandparents.

³ The Department of Law was wanting to delete language that recognized that parent's have inherent rights, promotes safety and protection of children and families, and brings fairness and equality to biological family members and children in the state. The bill's sponsor believes it is important for the legislature to set policy in the child protection arena and believes that language is an important element of the bill.

also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.⁴

Sec. 7. Right to a jury trial for the termination of parental rights. **Department of Law amended Version S to limit the right to a jury trial to AS 47.10.080(o) or AS 47.10.088.**⁵

Sec. 8. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 9. Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Grandparents, foster parents, or other out-of-home care providers may attend hearings otherwise closed to the public but may be limited in their participation in the hearing.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of an adult family member to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of an adult family member under Title 47.

Sec. 10. Legal has added some cleanup language to this section, including replacing the word relative with "adult family member". They also amended the process to include provisions for a jury trial.

Sec. 11. Provides that the court shall make one additional finding in the permanency plan, that being that the department has made reasonable efforts to finalize the permanent plan. It is needed to satisfy federal requirements for foster care reimbursement.

⁴ Old Section 6 of the bill was deleted. Subsection (a) was moved to page 2 line 13; subsection (b) was deleted because it was addressed in the language in Section 15; subsection (c) was moved to Section 15.

⁵ AS 47.10.080, Judgments and order, and AS 47.10.088, Termination of parental rights and responsibilities, are the two termination provisions that parents would have the right to demand a jury trial.

Sec. 12. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial. **New language by Department of Law clarifies that a non-party adult family member would not qualify for publicly appointed legal counsel.**⁶

Sec. 13. ^ mends AS 47.10.80 (Judgments and Orders) to add three provisions:

- (t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.
- (u) Requires foster parents to provide regular visitation with family and to **encourage** foster parents to serve as mentors for facilitating family reunification.
- (v) It opens adjudication hearings to the public unless an exception in Section 10 applies.

Sec. 14. The section amends the residual rights section of Title 47. 10 to include language that defines "major medical treatment" to include "medication used to treat a diagnosed mental health disorder".⁷

Sec. 15. Provides that OCS cannot approve an adoption by a non-related party if a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

Sec. 16. This section sets out three reasons the department could deny the adoption of a child by a blood relative: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.⁸

⁶ The language in Version S clarified that interested persons are not entitled to a court-appointed attorney because they are not parties to the CINA case. The Department of Law preferred their language because we were creating a new legal phrase, "interested person" that could be confused with "interested party". The new language leaves less room for misinterpretation.

⁷ Version S had a new subsection requiring parental consent to administer psychotropic or other mental medication. The new language makes that right inclusive of residual rights already requiring permission for major medical treatment.

⁸ In Sections 16, 33, & 34 language referring to "a person related by blood" has been replaced with language consistent with the rest of the bill referring to "adult family members".

If an adult family member is denied adoption they are entitled to a review hearing and the hearing is open to the public, but the non-party adult family member is not entitled to publicly appointed legal counsel.

Sec. 17. Section 17 adds a new section to CINA statutes to provide for relinquishment of parental rights. The relinquishment must be in writing and signed by the parent. A copy of the relinquishment is given to the parent and the parent has 10 days to withdraw from the relinquishment.

It provides that parents can retain some privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

A voluntary relinquishment can be withdrawn under Rule 60(b) of Alaska Rules of Civil Procedure **Relief from Judgment or Order**-“Mistakes-Inadvertance-Excusable Neglect-Newly Discovered Evidence-Fraud”

It also provides that after termination and before entry of adoption a person who voluntarily relinquishes parental rights may request an hearing and show good cause to enforce or modify a privilege retained in the termination order **or** to vacate the termination order and reinstate parental rights. Such a parent would be entitled to a public attorney.

Sec. 18. Language clean up.

Sec. 19. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 20. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. TO obtain additional privileged information form Department of Health & Social Services or OPA or the public defender, a Disclosure of Information Release Form must be completed by a parent. Also attorney-client privileged would be protected.

Sec. 21. The Department of Law made some language change to this section from Version S.⁹ This section now provides that as long as the child is in state custody, disclosure to certain officials will stay in effect, unless a parent or legal guardian says it is not longer needed.

⁹ Version S amended the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested. This came about in a case when parents' rights were terminated but the paternal grandmother was still attempting to get assistance from a legislative office to gain custody of her granddaughter. The department could no longer disclose confidential information in the case.

Additionally, in this section, the department will now be required to notify a state official or employee of the opportunity to file a grievance.

Sec. 22. The section inserts mention of exceptions for Disclosure of agency records that are spelled out in Sections 26 & Section 27.¹⁰ **New language added to Version S, makes disclosure provisions inclusive of Court Rules.**

Sec. 23. Language clean up to replace "foster parents" with "a foster parent". Also disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.¹¹ **The department is added language to subsection (12) to extend the authority to establish a review panel to the governor and the legislature.**

Sec. 24. Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

Sec. 25. Clarifies that information made available to party with interest is confidential information. The regulatory language is deleted because it has been added to Section 27.

Sec. 26. The section directs OCS to work with law enforcement agencies in assisting schools, both public and private, in developing procedures for disclosure of confidential information to schools in an as expedited timeline as possible.

Sec. 27. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials, but additionally, when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child. The agencies allowed to disclose confidential information have been expanded to include not only Health and Social Services, but also the Department of Administration.¹²

¹⁰ Exceptions to confidentiality have been expanded in Section 27 to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

¹¹ Department of Law requested that "adult family member" language in this section be reverted back to the original phrase "relatives". Our legal department recommends that "relatives" be replaced with family members as this term is defined in the bill.

Also the Department of Law had recommended that "a guardian ad litem" appointed by the court be removed because they had access to the information. Our legal department said this section is what gives the the authority already to obtain the information and recommends we leave the language in.

¹² This change was made at the request of the Office of Public Advocacy and the Office of the Public Defender.

The department may withhold disclosure of child's name, picture or other information that would readily identify the child if it determines it is in the best interest of the child or other children in the household. The department can also withhold information if it would interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial.

This section acknowledges that the person receiving confidential information has a fiduciary responsibility to keep the information confidential.

Gives Department of Health & Social Services and the Department of Administration authority to promulgate regulations.

Sec. 28. New language to this section establishes in statute a grievance process but leaves the ability to set policies and procedures to the regulatory process.¹³

Sec. 29. Provides that there is no civil liability for timeline failures but there is a civil liability for gross negligence or reckless or intentional misconduct.¹⁴

Sec. 30. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 31. Defines "adult family members"¹⁵, "family members"¹⁶, and "near fatality"¹⁷ in CINA statutes.

Sec. 32. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 33. Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member and friend has an issue that is not in the best interest of the child. **Language was deleted that required parental approval of placement.**

¹³ This subjects the structuring of the grievance procedure to a public hearing and public scrutiny process.

¹⁴ Exception language for gross negligence or reckless or intentional misconduct was removed at the request of the Department of Law. Department of Law assured Representative Coghill that this is already the case through common law. In *Karen L. v. State of Alaska*, 953 P.2d 871, 874 (Alaska 1998) the court cited *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995) "stating that 'a plaintiff's right to recover emotional damages caused by mere negligence should be limited to those cases where the defendant owes the plaintiff a pre-existing duty.'" According to *Karen L.* there is a duty of care on the part of the State for the child in state custody and, therefore, there is common law that would create a civil liability in cases of not only gross negligence or reckless or intentional misconduct, but also "mere negligence".

¹⁵ A person who is 18 years of age or older and who is related to the child as the child's legal parent, grandparent, aunt, uncle, or sibling.

¹⁶ A person who any age or older and who is related to the child as the child's legal parent, grandparent, aunt, uncle, or sibling.

¹⁷ "Near fatality" in AS 47.14.990 is defined as "means physical injury or other harm, as certified by a physician, caused by an act or omission that created a substantial risk of death."

Provides guidelines for when a child cannot be placed with an adult family member: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

Each time in Section 33 where the word "relative" appears, "adult family member" replaces the word. **New language clarifies that a non-relative will still be required to be licensed as a foster home prior to any child being placed in their care.**

Further new language requested by the Department of Law provides that if placement is in the best interest of the child, parental objection can not prohibit the placement.¹⁸

Placement can also be denied if that placement would relocated the children to a home that would make visitation or reunification with the parents difficult.

Sec. 34. Provides that when a child is placed in a home other than a home of a relative, the department must fully disclose to the relative the nature of the placement.

Sec. 35. Creates a State Citizens Review Panel consisting of volunteers who are broadly representative of the state.

Sec. 36. Duties of the panel are to examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

Sec. 37. Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel. The department shall serve as staff to the panel.

Sec. 38. Instructs panel that they may not disclose to ANYONE records or other information containing personally identifying or other information made confidential under state or federal law about a child or witnesses involved in a case under review by the panel.

Sec. 39. Directs the panel to conduct public outreach and gather information on the department's current procedures and practices.

Sec. 40. Directs the department to prepare an annual report and provide it to the governor. It also requires the department to submit a written response to the report to the governor within six months of the date the report is submitted to the governor.

Sec. 41. Imposes a civil penalty for violating the confidentiality clauses for up to \$2,500 per violation.

¹⁸ If a parent objects to a placement, the Department can petition the court for approval of a placement.

- Sec. 42.** Creates immunity for state panel members and persons provided support to the panel.
- Sec. 43.** Defines "state panel" as the Citizen Review Panel and "near fatality" in Title 47.14, Juvenile Programs and Institutions by reference to AS 47.10.990.¹⁹
- Sec. 44.** Requires OCS to notify a person who has made a ROH with a status report within 20 days.
- Sec. 45.** Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.
- Sec. 46.** Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.
- Sec. 47.** Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include **grandparents** as being entitled to be heard at any hearings.
- Sec. 48.** Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.
- Sec. 49.** Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.
- Sec. 50.** Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.
- Sec. 51.** Language cleanup by legal services.
- Sec. 52.** Amends Rule 22(c) to allow for a child's name or picture to be used for a permanency plan after parental rights have been terminated.
- Sec. 53.** Accommodates Section 17 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.
- Sec. 54.** Amends Alaska Adoption Rule 9(g) to accommodate Section 17 of HB 53.
- Sec. 55.** An indirect amendment to Alaska Adoption Rule to accommodate Section 17.
- Sec. 56.** Court Rule change to accommodate Section 11.
- Sec. 57.** Amends Court Rule 18(d)(1) to change reference to Section 17.

¹⁹ "Near fatality" in AS 47.14.990 is defined as "means physical injury or other harm, as certified by a physician, caused by an act or omission that created a substantial risk of death."

Sec. 58. An indirect court rule²⁰ amendment to Court Rules 9 and 13 of Alaska Adoption Rules and Rule 18 of CINA for relinquishment of parental rights in Section 17.

Sec. 59. Describes the indirect rule changes for opening court hearings to the public, jury trials, protecting attorney-client privileges, and allowing disclosure of child's name and picture for permanency plan.

Sec. 60. This section outlines the sections of the bill, which can be and are adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

Sec. 61. Applicability language.

Sec. 62. Gives authority to Health & Social Services to adopt regulations to implement the changes to law made by HB 53.

Sec. 63. Revisor's instruction to change heading of AS 47.10.088 to "Involuntary termination of parental rights and responsibilities".

Sec. 64. The conditional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

Sec. 65. The open hearing provisions of this act become effective July 1, 2005.

Sec. 66. All other sections of the bill have an immediate effective date clause.

²⁰ Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

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REPRESENTATIVE JOHN COGHILL

THE FAMILY RIGHTS ACT - CSSHB 53(HESS)

Sectional

Section 1. Gives preference to an adult family member, including a grandparent, who has cared for a grandchild for two years or more to adopt the child(ren) unless the court finds that the grandparent is not fit to raise the child.

Sec. 2. Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 4. Language intent for the Family Rights Act.

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.

Sec. 7. Provides for adult family members, including grandparents, to petition for custody proceedings under AS 47.10.110 (appointment of guardian or custodian) to obtain custody of a child when the child is found to be a child in need of aid and one or both parents are dead or the child has been abandoned by the other parent; creates a presumption that the awarding custody to an adult family member is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the adult family member; and puts in statute provisions that adult family member will be contacted by written notice of the procedures to obtain custody and the adult family member will sign a receipt of the notice.

Sec. 8. Right to a jury trial for the termination of parental rights.

Sec. 9. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 10. Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of an adult family member to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a adult family member under Title 47.

Sec. 11. Legal has added some cleanup language to this section. They also amended the process to include provisions for a jury trial.

Sec. 12. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial.

Sec. 13. Amends AS 47.10.80 (Judgments and Orders) to add five provisions:

- (t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.
- (u) Requires foster parents to provide regular visitation with family and serve as mentors for facilitating family reunification.
- (v) It opens adjudication hearings to the public unless an exception in Section 10 applies.

Sec. 14. Provides that OCS cannot approve an adoption by a non-related party if a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

Sec. 15. This section sets out three reasons the department could deny the adoption of a child by a blood relative: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.

If a relative is denied adoption they are entitled to a review hearing and that hearing is open to the public.

Sec. 16. Requires the Department obtain permission from the parents of a child to administer psychotropic or other mental health medication to a child in state custody.

Sec. 17. Language cleanup by the legislative legal.

Sec. 18. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 19. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. This is an expansion from parental disclosure.

Sec. 20. This section amends the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested.

The department will now be required to notify a state official or employee of the opportunity to file a grievance.

Sec. 21. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials. Exceptions to confidentiality have been expanded to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

Sec. 22. Disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.

Sec. 23. Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

Sec. 24. Clarifies that information made available to party with interest is confidential information. The regulatory language is deleted because it has been added to Section 26.

Sec. 25. Cleanup language by legislative legal and clarifying information is confidential.

Sec. 26. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials, but additionally, when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department may withhold disclosure of child's name, picture or other information that would readily identify the child if it determines it is in the best interest of the child or other children in the household. The department can also withhold information if it would interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial.

This section acknowledges that the person receiving confidential information has a fiduciary responsibility to keep the information confidential.

Gives department authority to promulgate regulations.

Sec. 27. Provides that disclosure or nondisclosure is not cause for civil liability.

Sec. 28. Sets in statutory law a grievance procedure in CINA cases. Grievances must be submitted in writing and must be reviewed by a supervisor within three working days. If the supervisor determines there could be a legitimate complaint a meeting is set within 10 days between the complainant, the supervisor, and the staff member who is the subject of the complaint.

An individual can file more than one grievance. The section also provides that a grievance can further be filed with the review panel.

Sec. 29. Creates a duty and standard of care, but clarifies the intent of AS 47.10.960 when passed in HB 375 in 1998 that failure to meet timelines does not constitute grounds for civil liability.

Sec. 30. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 31. Defines "adult family members" and "near fatality" in CINA statutes.

Sec. 32. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 33. Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member and friend has an issue that is not in the best interest of the child.

Provides guidelines for when a child cannot be placed with a family member: (1) placement could result in physical or mental injury; (2) perpetrator in a substantiated report of abuse under child protection laws; (3) a household member is under arrest for, is charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense.

Sec. 34. Provides that when a child is placed in a home other than a home of a relative, the department must fully disclose to the relative the nature of the placement.

Sec. 35. Creates a State Citizens Review Panel consisting of volunteers who are broadly representative of the state.

Sec. 36. Duties of the panel are to examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

Sec. 37. Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel. The department shall serve as staff to the panel.

Sec. 38. Instructs panel that they may not disclose to ANYONE records or other information containing personally identifying or other information made confidential under state or federal law about a child or witnesses involved in a case under review by the panel.

Sec. 39. Directs the panel to conduct public outreach and gather information on the department's current procedures and practices.

Sec. 40. Directs the department to prepare an annual report and provide it to the governor. It also requires the department to submit a written response to the report to the governor within six months of the date the report is submitted to the governor.

Sec. 41. Imposes a civil penalty for violating the confidentiality clauses for up to \$2,500 per violation.

Sec. 42. Creates an immunity for state panel members and persons provided support to the panel.

- Sec. 43.** Defines "state panel" and "near fatality" in Title 47.14, Juvenile Programs and Institutions
- Sec. 44.** Requires OCS to notify a person who has made a ROH with a status report within 20 days.
- Sec. 45.** Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.
- Sec. 46.** Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.
- Sec. 47.** Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.
- Sec. 48.** Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.
- Sec. 49.** Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.
- Sec. 50.** Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.
- Sec. 51.** Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.
- Sec. 52.** Language cleanup by legal services.
- Sec. 53.** Adds a new subsection to Rule 22 that allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed. This implements Section 18 of the HB 53.
- Sec. 54.** Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.
- Sec. 55.** Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.
- Sec. 56.** An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

Sec. 57. An indirect court rule¹ amendment to open custody petition hearings, adjudication hearings, and termination hearings to the public except in certain circumstances.

There is also an indirect court rule amendment in Section 8 and Section 11 providing for a jury trial in a termination hearing.

Rule 22 has an indirect court rule amendment by allowing for the disclosure of confidential information on a child, including a child's name or picture under certain circumstances.

Sec. 58. This section outlines the sections of the bill, which can be and are adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

Sec. 59. Applicability language.

Sec. 60. Gives authority to Health & Social Services to adopt regulations to implement the changes to law made by HB 53.

Sec. 61. Requires the governor to review the changes made in HB 53 that deal with opening meetings to the public and being able to disclose some information and submit a report to the public and the legislature outlining the success or failure of the change and making suggestions for changes.

Sec. 62. The conditional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

Sec. 63. Gives the department 180 days after the enactment of the bill to adopt a duty and standard of care.

Sec. 64. The open hearing provisions of this act become effective July 1, 2005.

Sec. 65. All other sections of the bill have an immediate effective date clause.

¹ Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

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REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 8, 2005
To: Jean Mischel, Legal Counsel
From: Rynniva Moss, Legislative Aide *RW Moss*
Re: CSSSHB 53(STA) Version C

OCS just came over to talk to us about the federal government telling them that HB 14 and Sections 23 and 26 of CSSSHB 53(STA) Version C. I am attaching the federal language (Sec. 471. [42 U.S.C. 671] (a).

This affects HB 14 more than HB 53 but I am not convinced the feds or OCS are reading the statute right. The language that is confusing to me is on line 10: "and the safeguards so provided shall prohibit disclosure, to any committee or legislative body other than an agency referred to in clause (D)". (D) refers to audit by a government agency which would include the Ombudsman's Office or I presume Legislative Budget and Audit. Committee or legislative body is a group; not a single legislator with a fiduciary responsibility to his or her constituent.

Sections 23 and 26 of HB 53 would permit disclosure of confidential information to people other than the parent. Under existing law, AS 47.10.903(b), we already do that.

Could you review this cite and see if the feds are correct in stating that we cannot adopt HB 14, Section 23, and portions of Section 26 without risking Title IV(B) & (E) funding, which is approximately \$29 million?

Gibbens, Joanne

From: Gibbens, Joanne
Sent: Tuesday, April 05, 2005 10:55 AM
To: Jan Rutherfordale (E-mail)
Subject: FW: IV-E Confidentiality Requirements

Importance: High

-----Original Message-----

From: Bergvall, Gudrun E.
Sent: Monday, April 04, 2005 11:02 AM
To: Gibbens, Joanne
Subject: IV-E Confidentiality Requirements

I have attached the IV-E confidentiality statute and regulations, the Child Welfare Policy Manual IV-E section on confidentiality, and 45 CFR 205.50 and the CAPTA confidentiality statute which is referenced in the Policy Manual. In addition, I have attached the Child Welfare Policy Manual CAPTA section on confidentiality, since it says in the IV-E section of the Policy Manual that if the IV-E confidentiality requirements are in conflict with the CAPTA confidentiality requirements, then the CAPTA requirements would prevail :

State Plan for Foster Care and Adoption Assistance

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

TITLE 45--PUBLIC WELFARE CHAPTER XIII--OFFICE OF HUMAN DEVELOPMENT SERVICES,
DEPARTMENT OF HEALTH AND HUMAN SERVICES PART 1355--GENERAL--Table of Contents .

Sec. 1355.21 State plan requirements for titles IV-E and IV-B. (a) The State plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

Child Welfare Policy Manual

April 04, 2005

8.4E TITLE IV-E, General Title IV-E Requirements, Confidentiality

1. Question: Under title IV-E, what information can be released? In particular, what information is child welfare information when a child is placed as a result of a juvenile offense?

Answer: The issue of confidentiality is not focussed around the specific nature of the information, but rather the source of the information. No information that is gained from the child welfare agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i). If the court gains information regarding a juvenile from the child welfare agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply. Other parties would abide by their own confidentiality restrictions.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the child welfare agency, the information is safeguarded under the provisions of Section 471(a)(8). If the psychologist's relationship to the child does not involve the child welfare agency, then Section 471(a)(8) does not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

2. Question: Who can release information? In particular, can parties other than the State title IV-E agency (such as the court) release information?

Answer: The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in State violation of the State Plan requirements for Foster Care and Adoption.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

3. Question: Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-E confidentiality requirements?

Answer: No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in the State's violation of the State plan requirements under title IV-E. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in Section 471(a)(8) of the Social Security Act and 45 CFR 205.50 would not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

4. Question: Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

Answer: Section 471(a)(8) of the Social Security Act requires a State Plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the foster care and adoption assistance programs. It also indicates that a State Plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the State Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except

that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E foster care and adoption assistance programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the foster care and adoption assistance programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the foster care and adoption assistance programs is expressly provided for under section 471 (a)(6). That section requires that a State Plan, in order to qualify for FFP for foster care and adoption assistance, provide that the appropriate State agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the State Agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

- **Source/Date:** ACYF-PA-85-02 (12/19/85)
- **Legal and Related References:** Social Security Act - section 471 (a)(6) and (8); H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

5. Question: What are the title IV-E confidentiality requirements?

Answer: Title IV-E of the Social Security Act requires that States provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E foster care and adoption assistance. In addition, in accordance with 45 CFR 1355.30 (p)(3), records maintained under title IV-E of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs.

To the extent that the records of the title IV-E agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); ACYF-CB-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.30; Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

6. Question: Will States compromise compliance with title IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(v) and (vi) of CAPTA?

Answer: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under title IV-E are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(A)(vi), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Where the CAPTA provision is permissive (such as in sections 106 (b)(2)(A)(v)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106; 45 CFR 205.50

7. Question: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-E. Do the confidentiality provisions in title IV-E restrict the information that can be discussed in open court?

Answer: Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under title IV-E and to assure that confidential information is not disclosed to unauthorized recipients. While, under title IV-E, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information. The confidentiality requirements of title IV-E do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information concerning a child who is receiving title IV-E foster care or adoption assistance, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provisions is a State plan compliance issue under title IV-E.

- **Source/Date:** ACYF-CB-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50; 45 CFR 1355.21 (a)

42 U.S.C. 5106a

(b)(2) COORDINATION.--A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this title, including--

(A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes--

....

(v) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this Act shall only be made available to--

individuals who are the subject of the report;

Federal, State, or local government entities, or any agent of such entities, having a need for

such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

child abuse citizen review panels;

child fatality review panels;

a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and

other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

TITLE 45--PUBLIC WELFARE CHAPTER II--OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES PART 205--GENERAL ADMINISTRATION--PUBLIC ASSISTANCE PROGRAMS--
Table of Contents

Sec. 205.50 Safeguarding information for the financial assistance programs. (a) State plan requirements. A State plan for financial assistance under title IV-A of the Social Security Act, must provide that: (1) Pursuant to State statute which imposes legal sanctions: (i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with: (A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI (AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients. (B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs. (C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. (D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97-34, the Economic Recovery Tax Act of 1981. (E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity. (F) The administration of a State unemployment compensation program. (G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened. [[Page 30]] (ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients: (iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited. (iv) Publication of lists or names of applicants and recipients will be prohibited. Exception. In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes. (v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that: (A) The recipient is a fugitive felon (as defined by the State); (B) The location or apprehension of such felon is within the law officer's official duties; and (C) The request is made in the proper

exercise of those duties. (2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement: (i) Types of information to be safeguarded include but are not limited to: (A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section); (B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to Sec. 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies; (C) Agency evaluation of information about a particular individual; (D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual. (ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs. (iii) Except in the case of information requested pursuant to Secs. 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately. (iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information. (v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source. (3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions [[Page 31]] imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed. (ii) All information obtained pursuant to the income and eligibility verification requirements at Secs. 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means. (iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under Secs. 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information. (4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103-31. Under this requirement: (i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, alien registration notices, and partisan voting information. (ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information; (iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency. (iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA. (b) Voluntary voter registration activities. For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed. (c) State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam. A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i)(D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that: (1) They are public officials as defined by State or Federal law of general applicability; and (2) The information to be disclosed and used is required in connection with their official duties. [45 FR 56684, Aug. 25, 1980, as amended]

at 47 FR 46506, Oct. 19, 1982; 49 FR 35599, Sept. 10, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 54 FR 42243, Oct. 13, 1989; 57 FR 30157, July 8, 1992; 58 FR 49220, Sept. 22, 1993; 59 FR 26142, May 19, 1994; 61 FR 58143, Nov. 13, 1996]

Child Welfare Policy Manual

April 04, 2005

2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

1. Question: What are the CAPTA confidentiality requirements?

Answer: The CAPTA Amendments of 1996 require that States preserve the confidentiality of all reports and records on child abuse and neglect in order to protect the privacy rights of the child and the child's parents or guardians, except in certain limited circumstances. CAPTA prohibits disclosure of confidential child abuse and neglect information to persons or entities outside those enumerated in the statute. Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect.

The only exception to the restrictions on disclosure of otherwise confidential child abuse and neglect information is in cases of child abuse or neglect that result in the death or near death of a child. In such cases, CAPTA requires public disclosure of the findings and information about the case.

- **Source/Date:** ACYF-NCCAN-PIQ-98-01 (6/29/98)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

2. Question: Would legislation which protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions in section 106 (b)(2)(v) of CAPTA?

Answer: No. The CAPTA Amendments of 1996 require that States preserve the confidentiality of all records in order to protect the rights of the child and the child's parents or guardians, except in certain circumstances. The statute specifies the persons to whom and circumstances in which disclosure of CPS records can be made. In addition, it allows States to release CPS records to entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State interest.

The CAPTA language strikes a delicate balance between protecting the privacy rights of individuals and the release of CPS records when there is a legitimate State purpose for the disclosure. In creating this balance, it is clear that the Congress did not intend that all records be made public.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

3. Question: Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

(Updated 02/03/2005)

Answer: Yes. Under the CAPTA amendments, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent"; or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan

programs for abused and neglected children and develop future policy directions.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4. Question: The confidentiality provision at section 106 (b)(2)(A)(v) of CAPTA requires that States have a State law or operate a Statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records except in certain circumstances. The statutory language states that such records, "shall only be made available to" a specified list of persons and entities. Under the CAPTA Amendments of 1996 are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (v)?

Answer: No. The language prohibits State disclosure of confidential child abuse and neglect information to persons or entities outside the enumerated categories, and permits, rather than requires, such disclosure to those included in the specified categories.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

5. Question: Is there a prohibition against redisclosure of confidential child abuse and neglect information?

(Updated 02/03/2005)

Answer: Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6. Question: Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(v) and (vi) of CAPTA?

(Updated 02/03/2005)

Answer: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(A)(vi), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Whereas the CAPTA provision is permissive (such as in sections 106 (b)(2)(A)(v)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97) (updated 2/3/05)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

7. Question: Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

(Updated 02/03/2005)

Answer: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

- **Source/Date:** ACYF-CB-PI-98-01 (1/7/98) (updated 2/3/05)
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106106 (b)(2)(A)(x) and (c)

ALASKA STATE HOUSE OF REPRESENTATIVES



Contact:

Interim Address:

**3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271**

Session

**(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204**

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 16, 2005
To: Jean Mischel, Legal Counsel
From: Rynniva Moss, Legislative Aide *RW Moss*
Re: HB 53 version L

I forgot in my memo to address the need for a definition for "family member" as referred to in Section 12.

The definition should be made on page 19 and I would assume it would be the same as adult family member except they would be of any age.

Thanks for all your hard work. This is a tremendous amounts of work we are asking of you but you are doing a yeoman's job.

ALASKA STATE HOUSE OF REPRESENTATIVES



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REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 16, 2005

To: Jean Mischel, Legal Counsel

From: Rynnieva Moss, Legislative Aide *RW Moss*

Re: CSSH B 53() Version

Page 1, line 6:

Delete:

"to the retention of certain privileges of a parent in a"

Insert:

"proceedings regarding voluntary"

Page 1, line 2:

Delete:

"proceeding"

Page 2, line 9, following "Adoption Rules":

Insert: ", and Rules 17.2 and 18, Alaska Child in Need of Aid Rules"

Page 2, line 22, through page 3, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 8, line 29:

Insert new bill section:

(l) Within 12 months after the date a child enters foster care as calculated under AS 47.10.088 (f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following provisions:

(1) the persons entitled to be heard under AS 47.10.070 or under (f) of this section are also entitled to be heard at the hearing held under this subsection;

(2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether

(A) and when the child should be returned to the parent or guardian;

(B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department; and

(C) the child should be placed in another planned, permanent living arrangement and what steps are necessary to achieve the new arrangement;

(3) if the court is unable to make a finding required under (2) of this subsection, the court shall hold another hearing within a reasonable period of time;

(4) in addition to the findings required by (2) of this subsection, the court shall also make appropriate written findings related to

(A) whether the department has made the reasonable efforts required under AS 47.10.086 to offer appropriate family support services to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter; and

(C) if the permanent plan is for the child to remain in out-of-home-care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(D) whether the department has made reasonable efforts to finalize the permanent plan for the child;

(5) the court shall hold a hearing to review the permanent plan at least annually until successful implementation of the plan; if the plan approved by the court changes after the hearing, the department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the department.

Page 4, line 27:

Delete: "and"

Insert: "or"

Page 4, line 24:

After the word "petition"

Insert: "pursuant to AS 47.10.110"

Page 9, lines 11 & 12:

Delete: "party"

Insert: "person"¹

Page 9, lines 17 & 18:

Delete: "the parent can show, by a preponderance of the evidence, that"

Page 9, lines 23:

After the word "and", insert:

"encourage foster parents"

Page 9, line 13:²

After the word "member"

Insert: Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 9, line 28:

New subsection to AS 47.10.084:

(d) When a child is in the custody of the department and the child is prescribed a psychotropic or other mental health medication, the department shall consider this a major medical treatment and obtain the consent of the child's parent or legal guardian before administering the medication.³

¹ Department of Law wants to make sure it is clear that a family member has a right to have a hearing on denial of information, placement, or participation in a adjudication hearing, that right does not make them a party to the CINA custody case.

² You can wordsmith this to your liking.

³ There might be a simpler way to add psychotropic or other mental health medication as a major medical treatment in subsection (c).

Page 11, line 13:

Delete the first "a"

Insert: "An interested person"

Page 11, line 18:⁴

After the word "hearing."

Insert: "Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 11, line 24:

Insert new bill section to read:

"Sec. 47.10.089. Voluntary relinquishment of parental rights and responsibilities.

(a) The rights of a parent with reference to a child, including parental right to control the child, to withhold consent to an adoption, or to receive notice of a hearing on a petition for adoption, may be relinquished to the department and the relationship of parent and child terminated in a proceeding as provided in this section.

(b) A relinquishment must be in writing, signed by a parent, regardless of the age of the parent, in the presence of a representative of the department or in the presence of a court of competent jurisdiction with the knowledge and approval of the department. A copy of the signed relinquishment shall be given to the parent.

(c) A relinquishment may be withdrawn within 10 days after it is signed. The relinquishment is invalid unless it states that the parent has the right of withdrawal under this subsection.

(d) In a relinquishment of parental rights executed under this section, a parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child. A retained privilege must be in writing and state with specificity.

(e) Not sooner than 10 days after a relinquishment is signed, the court shall enter an order terminating parental rights if the court determines that termination of parental rights under the terms of relinquishment is in the child's best interests. If a parent has retained any privileges under (d) of this section, the court shall incorporate the retained privileges into the termination order with a recommendation that they be incorporated into an adoption or legal guardianship decree.

⁴ You can wordsmith this to your liking.

(f) A relinquishment may not be withdrawn and a termination order may not be vacated on the ground that a retained privilege has been withheld if the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act upon a retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil Procedure.

(g) After a termination order is entered, but before the entry of an adoption or legal guardianship decree, a party or a parent who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of a privilege retained in the termination order. The court may modify or enforce the retained privilege if it is in the best interests of the child to do so.

(h) After a termination order is entered, but before the entry of adoption or legal guardianship decree, a parent who voluntarily relinquished parental rights to a child under this section may request a review hearing, upon a showing of good cause, to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the parent shows by clear and convincing evidence that reinstatement of parental rights is in the best interests of the child and that the parent is rehabilitated and capable of providing the care and guidance that will serve the moral, emotional, mental, and physical welfare of the child.

(i) A parent seeking a review under (g) or (h) of this section is entitled to the appointment of an attorney to the same extent as if the parent's rights had not been terminated."

Renumber the following sections accordingly.

Page 12, line 25:

Delete: "department"

Insert: "Department of Health & Social Services and the Department of Administration"

Page 12, lines 28 & 29:

Delete: "an adult family member"

Re-insert: "parent"

Page 12, line 30:

Language to be added to clarify the information disclosed in the subsection does not include anything that would violate the attorney-client privilege.

Page 16, lines 16 - 19:

Delete all language and insert:

"Sec. 47.10.094. Immunity from liability. (a) A person may not bring an action for damages against the state, the commissioner, or the commissioner's designee based upon improper disclosure of, or failure to disclose, information under AS 47.10.093(k).

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct."

Page 17, line 24:

Delete "ombudsman for a panel review"

Insert:

"review panel"

Page 17 - page 18:

Delete:

"ombudsman"

Insert:

"review panel"

Delete ombudsman and insert "review panel" and

Page 19, lines 1 - 8:

Delete all language.

Insert:

"Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title does not constitute a basis for civil liability for damages. This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct."

Page 19, line 18:

Delete: "biological or adoptive"

Insert: "legal"

Page 19, Section 33:

The Department of Law wants to add language to this section that would allow for a placement of the child even when the parents object. They feel this section allows parents to veto placement.

Also, the department says there is a problem with subsection (f) in that once a child is placed with a relative or friend, they might become a foster home, or when placement is made the relative or friend would already be a foster home.

Page 22, line 13:

After the word "governor"

Insert: "the legislature,"

Page 24, line 24 through Page 25, line 1.

Delete all language.

Page 29, line 3:

Insert a new bill section:

"*Sec. ____ The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules is amended to read:

(g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child may withdraw a consent or relinquishment by notifying in writing the court, or the person or agency obtaining the consent or relinquishment, within 10 days of the birth or signing of the consent or relinquishment whichever is later. Notification is timely if received or postmarked on or before the last day of this time period. The parent may move the court to permit withdrawal of the consent or relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent or AS 25.23.180(g) or AS 47.10.089(h) for relinquishment.”

Renumber the following bill sections accordingly.

Page 29, line 8, following “AS 25.23.180”:

Insert: “or AS 47.10.089”

Page 29, line 10:

Delete: “AS 25.23.180, whether”

Page 29, line 11:

Delete: “AS 25.23.180”

Insert: “AS 47.10.089”

Page 29, line 22:

Insert new bill sections to read:

“Sec. ____ . The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of Aid Rules, is amended to read:

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

(1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);

(2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid; {AND}

(3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(4) whether the Department has made reasonable efforts to finalize the permanent plan for the child.

*Sec. _____. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in Need of Aid Rules, is amended to read:

(d) Relinquishment.

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. sec. 1913(c)."

Page 29, line 24:

Delete: "AS 25.23.180(j)," added by sec. 2"

Insert: "(a) AS 47.10.089(d), added by sec. ____"

Insert new subsections:

"(b) AS 47.10.089(g) and (h), added by sec. ____ of this Act, amend Rule 13, Alaska Adoption Rules, by authorizing a review hearing for a voluntary relinquishment before the entry of an adoption decree.

(c) AS 47.10.089, added by sec. ___ of this Act, amends Rules 18(d)(1), Alaska Child in Need of Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of the relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing before the entry of an adoption or legal guardianship decree.

(d) AS 47.10.089, added by sec. ___ of this Act, amends Rule 18, Alaska Child in Need of Aid Rules, by authorizing a review hearing for a termination before entry of an

(e) adoption or legal guardianship decree.

*Sec. ___ The uncoded law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 47.10.088 from "Sec. 47.10.088. Termination of parental rights and responsibilities" to "Sec. 47.10.088. Involuntary termination of parental rights and responsibilities."

Renumber the following bill sections accordingly.

Page 31, lines 12-14:

Delete all language.

Page 32, line 5:

Insert new material:

"(f) Rule 9(g), Alaska Adoption Rules, amended by sec. ___ of this Act, takes effect only if sec. ___ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

Renumber "sec. ___" language and subsection lettering in CONDITIONAL EFFECT clauses.

Page 32, line 8:

“(h) Section __ of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as amended by sec. 12 of this Act, take effect only if sec. __ of this Act receives two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

- (i) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. __ of this Act, takes effect only if sec. __ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. __, Constitution of the State of Alaska.

Page 32, line 8:

Delete: “(g) AS 25.23.180(j) added by sec. 2”

Insert: “(j) AS 47.10.089, added by sec. __”

Renumber “sec. 56”

24-LS0251\L
Mischel
3/14/05

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly, McGuire, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to child-in-need-of-aid proceedings; amending the construction of
 2 statutes pertaining to children in need of aid; relating to a duty and standard of care for
 3 services to children and families, to the confidentiality of investigations, court hearings,
 4 and public agency records and information in child-in-need-of-aid matters and certain
 5 child protection matters, to immunity regarding disclosure of information in child-in-
 6 need-of-aid matters and certain child protection matters, to the retention of certain
 7 privileges of a parent in a relinquishment and termination of a parent and child
 8 relationship proceeding, to eligibility for permanent fund dividends for certain children
 9 in the custody of the state, and to juvenile delinquency proceedings and placements;
 10 establishing a right to a trial by jury in termination of parental rights proceedings;
 11 reestablishing and relating to a state citizens' review panel; amending the duty to
 12 disclose information pertaining to a child in need of aid; authorizing additional family

1 members to consent to disclosure of confidential or privileged information about
2 children and families involved with children services within the Department of Health
3 and Social Services to officials for review or use in official capacities; relating to reports
4 of harm and to adoptions and foster care; mandating consent for the medication of
5 children in state custody; prescribing the rights of family members related to child-in-
6 need-of-aid cases and establishing a familial priority for adoption in certain child-in-
7 need-of-aid cases; modifying adoption and placement procedures in certain child-in-
8 need-of-aid cases; amending treatment service requirements for parents involved in
9 child-in-need-of-aid proceedings; amending Rules 9 and 13, Alaska Adoption Rules;
10 amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of Procedure; and
11 providing for an effective date."

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

13 * Section 1. AS 25.23 is amended by adding a new section to read:

14 **Sec. 25.23.127. Adult family member preference to adopt.**

15 Notwithstanding a child's stated preference under AS 25.23.125 and 25.23.040(a)(5),
16 an adult family member, including a grandparent, who has had physical custody of a
17 child for at least two consecutive years when the parental rights to the child have been
18 terminated under AS 47.10.080(c)(3) shall be permitted to adopt the child before any
19 other person upon the filing of a petition by the adult family member under
20 AS 25.23.080 unless the court finds that the adult family member is not fit to raise the
21 child. In this section, "adult family member" has the meaning given in AS 47.10.990.

22 * Sec. 2. AS 25.23.180 is amended by adding a new subsection to read:

23 (j) In a relinquishment of parental rights executed under (a) of this section, a
24 parent may retain privileges with respect to the child, including the ability to have
25 future contact, communication, and visitation with the child. A retained privilege
26 must be stated with specificity in writing, and, if a termination order is entered
27 following the relinquishment, the court shall incorporate a retained privilege into the

1 termination order. A relinquishment may not be withdrawn or invalidated, and a
2 termination order may not be vacated, on the ground that a retained privilege has
3 been withheld from the relinquishing parent or that the relinquishing parent has been
4 unable, for any reason, to act upon a retained privilege.

5 * Sec. 3. AS 43.23.005(f) is amended to read:

6 (f) **The** [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
7 commissioner may waive the requirement of (a)(4) of this section for an individual
8 absent from the state

9 (1) in a time of national military emergency under military orders
10 while serving in the armed forces of the United States, or for the spouse and
11 dependents of that individual; or

12 (2) while in the custody of the Department of Health and Social
13 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed
14 outside of the state by the Department of Health and Social Services for purposes
15 of medical or behavioral treatment.

16 * Sec. 4. AS 47.10.005 is amended to read:

17 **Sec. 47.10.005. Construction.** The provisions of this chapter shall be
18 liberally construed to

19 (1) achieve the end that a child coming within the jurisdiction of the
20 court under this chapter may receive the care, guidance, treatment, and control that
21 will promote the child's welfare and the parents' participation in the upbringing of
22 the child;

23 (2) recognize that a parent possesses inherent individual rights to
24 direct and control the education and upbringing of the parent's child;

25 (3) promote and protect the safety, welfare, health, and good of
26 children, grandparents, and family members living in the state;

27 (4) benefit future generations; and

28 (5) bring fairness and equality to biological family members and
29 children in the state.

30 * Sec. 5. AS 47.10.020(a) is amended to read:

31 (a) Whenever circumstances subject a child to the jurisdiction of the court

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under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the best interests of the child require that further action be taken. The court shall make the appointment on its own motion or at the request of a person or agency having knowledge of the child's circumstances. If, under this subsection, the court appoints a person or agency to make a preliminary inquiry and to report to it, or if the department is conducting an investigation of a report of child abuse or neglect, the court may issue any orders necessary to aid the person, the agency, or the department in its investigation or in making the preliminary inquiry and report. Upon [THEN, UPON THE] receipt of the report under this subsection, the court may

- (1) close the matter without a court hearing;
- (2) determine whether the best interests of the child require that further action be taken; or
- (3) authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts.

* Sec. 6. AS 47.10.020 is amended by adding a new subsection to read:

(e) Nothing in this section requires the department to obtain authorization from the court before

- (1) conducting an investigation of a report of child abuse or neglect; or
- (2) filing a petition.

* Sec. 7. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.025. Adult family member's rights. (a) An adult family member, including a grandparent, of a child who has been adjudicated a child in need of aid under this chapter may initiate special proceedings by filing a petition to obtain custody of the child if

- (1) one or both of the child's parents are dead; and
- (2) the child has been abandoned by a remaining parent.

(b) In a proceeding initiated under (a) of this section, the court shall presume that awarding custody to an adult family member, including a grandparent, is in the best interest of the child. A presumption under this subsection may be overcome by

1 evidence of abuse, neglect, or other harm to the child attributable to the adult family
2 member.

3 (c) The department shall attempt to locate all living adult family members of a
4 child and to investigate the adult family member's ability to care for the child before
5 placing the child or approving an adoption of the child under this chapter. The
6 department shall provide written notice to all identified adult family members of their
7 rights under this chapter and of the procedures necessary to gain custody of the child.
8 The adult family members shall sign a receipt of the notice and, if the adult family
9 member is competent, state that the adult family member understands the adult family
10 member's right to initiate proceedings to gain custody of the child and either intends or
11 declines to proceed.

12 * **Sec. 8.** AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.065. Right to demand jury trial in certain cases.** A party has the
14 right to demand a jury trial for a hearing under this chapter on a petition to terminate
15 parental rights. If a hearing to adjudicate whether a child is a child in need of aid
16 under AS 47.10.011 is consolidated with a hearing on a petition to terminate parental
17 rights, the right to a jury trial under this section applies only to the issue of whether
18 parental rights should be terminated after the court enters a finding under
19 AS 47.10.080(a). In this section, "party" has the meaning given in Rule 2, Alaska
20 Child in Need of Aid Rules of Procedure.

21 * **Sec. 9.** AS 47.10.070(a) is amended to read:

22 (a) The court may conduct the hearing on the petition in an informal manner.
23 The court shall give notice of the hearing to the department, and it may send a
24 representative to the hearing. The court shall also transmit a copy of the petition to the
25 department. The department shall send notice of the hearing to the persons for whom
26 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
27 to notice under AS 47.10.030(d). The department and the persons to whom the
28 department must send notice of the hearing are entitled to be heard at the hearing.
29 **Except as provided in (c) of this section, and unless prohibited by federal or state**
30 **law, court order, or court rule, a hearing is open to the public** [HOWEVER, THE
31 COURT MAY LIMIT THE PRESENCE OF THE FOSTER PARENT OR OTHER

1 OUT-OF-HOME CARE PROVIDER AND OF ANY GRANDPARENT OF THE
2 CHILD TO THE TIME DURING WHICH THE PERSON'S TESTIMONY IS BEING
3 GIVEN IF IT IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2)
4 NECESSARY TO PROTECT THE PRIVACY INTERESTS OF THE PARTIES
5 AND WILL NOT BE DETRIMENTAL TO THE CHILD. THE PUBLIC SHALL BE
6 EXCLUDED FROM THE HEARING, BUT THE COURT, IN ITS DISCRETION,
7 MAY PERMIT INDIVIDUALS TO ATTEND A HEARING IF THEIR
8 ATTENDANCE IS COMPATIBLE WITH THE BEST INTERESTS OF THE
9 CHILD].

10 * **Sec. 10.** AS 47.10.070 is amended by adding new subsections to read:

11 (c) Except as provided in (e) of this section, the following hearings in child-in-
12 need-of-aid cases are closed to the public:

13 (1) the initial court hearing after the filing of a petition to commence
14 the child-in-need-of-aid case;

15 (2) a hearing following the initial hearing in which a parent, child, or
16 other party to the case is present but has not had an opportunity to obtain legal
17 representation;

18 (3) a hearing, or a part of a hearing, for which the court issues a written
19 order finding that allowing the hearing, or part of the hearing, to be open to the public
20 would reasonably be expected to

21 (A) stigmatize or be emotionally damaging to a child;

22 (B) inhibit a child's testimony in that hearing;

23 (C) disclose matters otherwise required to be kept confidential
24 by state or federal statute or regulation, court order, or court rule; or

25 (D) interfere with a criminal investigation or proceeding or a
26 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
27 on a request under this subparagraph, the court shall give notice and an
28 opportunity to be heard to the state or a municipal agency that is assigned to
29 the criminal investigation or to the prosecuting attorney.

30 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
31 closed under (c) of this section, the court shall hear in camera any information offered

1 regarding the location, or readily leading to the location, of a parent, child, or other
2 party to the case who is a victim of domestic violence. Access to testimony heard in
3 camera under this subsection is limited to the court and authorized court personnel.

4 (e) The grandparents of the child and the foster parents or other out-of-home
5 care provider may attend hearings that are otherwise closed to the public under (c) of
6 this section. However, the court shall limit the presence of these persons in a hearing
7 closed to the public to the time during which the person's testimony is being given if
8 the court determines that the limitation is necessary under (c)(3) of this section. In this
9 subsection, "out-of-home care provider" means an agency or person, other than the
10 child's legal parents, with whom a child who is in the custody of the state under
11 AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency
12 or person" includes a foster parent, an adult family member other than a parent, a
13 person who has petitioned for adoption of the child, and a residential child care
14 facility.

15 (f) Notwithstanding any other provision of this chapter, a person attending a
16 hearing open to the public may not disclose a name, picture, or other information that
17 would readily lead to the identification of a child who is the subject of the child-in-
18 need-of-aid case. At the beginning of the hearing, the court shall issue an order
19 specifying the restrictions necessary to comply with this subsection. If a person
20 violates the order, the court may impose any appropriate sanction, including contempt
21 and closure of any further hearings in the case to the person.

22 (g) Nothing contained in this section limits the rights of adult family members,
23 including grandparents, under this title.

24 * Sec. 11. AS 47.10.080(c) is amended to read:

25 (c) If the court finds that the child is a child in need of aid, the court shall

26 (1) order the child committed to the department for placement in an
27 appropriate setting for a period of time not to exceed two years or in any event not to
28 extend past the date the child becomes 19 years of age, except that the department or
29 the child's guardian ad litem may petition for and the court may grant in a hearing

30 (A) one-year extensions of commitment that do not extend
31 beyond the child's 19th birthday if the extension is in the best interests of the

1 child; and

2 (B) an additional one-year period of state custody past [AGE]
3 19 years of age if the continued state custody is in the best interests of the
4 person and the person consents to it;

5 (2) order the child released to a parent, adult family member
6 [RELATIVE], or guardian of the child or to another suitable person, and, in
7 appropriate cases, order the parent, adult family member [RELATIVE], guardian, or
8 other person to provide medical or other care and treatment; if the court releases the
9 child, it shall direct the department to supervise the care and treatment given to the
10 child, but the court may dispense with the department's supervision if the court finds
11 that the adult to whom the child is released will adequately care for the child without
12 supervision; the department's supervision may not exceed two years or in any event
13 extend past the date the child reaches [AGE] 19 years of age, except that the
14 department or the child's guardian ad litem may petition for and the court may grant in
15 a hearing

16 (A) one-year extensions of supervision that do not extend
17 beyond the child's 19th birthday if the extensions are in the best interests of the
18 child; and

19 (B) an additional one-year period of supervision past age 19 if
20 the continued supervision is in the best interests of the person and the person
21 consents to it; or

22 (3) unless a jury trial has been requested by a party, order, under
23 the grounds specified in (o) of this section or AS 47.10.088, the termination of
24 parental rights and responsibilities of one or both parents and commit the child to the
25 custody of the department, and the department shall report quarterly to the court on
26 efforts being made to find a permanent placement for the child; if a jury trial has
27 been requested by a party, the court shall conduct a jury trial on the termination
28 of parental rights under this section.

29 * Sec. 12. AS 47.10.080(p) is amended to read:

30 (p) If a child is removed from the parental home, the department shall provide
31 reasonable visitation between the child and the child's parents, guardian, and family.

1 When determining what constitutes reasonable visitation with a family member, the
2 department shall consider the nature and quality of the relationship that existed
3 between the child and the family member before the child was committed to the
4 custody of the department. The court may require the department to file a visitation
5 plan with the court. The department may deny visitation to the parents, guardian, or
6 family members if there is clear and convincing evidence that visits are not in the
7 child's best interests. **If the department denies visitation to a parent or family**
8 **member of a child, the department shall inform the parent or family member of a**
9 **reason for the denial and of the parent's or family member's right to request a**
10 **review hearing as an interested party.** A parent, **family member,** or guardian who
11 is denied visitation may request a review hearing **as an interested party.** **In this**
12 **section, "interested party" means a person who has the right to request a hearing**
13 **on a departmental decision involving visitation by a family member.**

14 * Sec. 13. AS 47.10.080 is amended by adding new subsections to read:

15 (t) The court or a jury, if a jury trial is requested, may not terminate parental
16 rights solely on the basis that the parent did not complete treatment required of the
17 parent by the department for reunification with the child if the parent can show, by a
18 preponderance of the evidence, that the treatment required was unavailable to the
19 parent and the department did not provide the treatment.

20 (u) For a child who is placed in foster care, when the department finds that it
21 is in the best interest of a child and that the foster family will not be placed in undue
22 risk of harm, the department shall require foster parents to provide regular
23 opportunities for visitation with the child by the parents of the child and to serve as
24 mentors for facilitating family reunification.

25 (v) A hearing conducted under this section is open to the public unless an
26 exception provided in AS 47.10.070(c) applies to make the hearing closed to the
27 public or unless prohibited by federal or state statute or regulation.

28 * Sec. 14. AS 47.10.088(i) is amended to read:

29 (i) The department shall concurrently identify, recruit, process, and approve a
30 qualified person or family for an adoption whenever a petition to terminate a parent's
31 rights to a child is filed. **The department may not approve an adoption by a**

1 person or family who is not related to the child by blood if an adult family
2 member of the child requests that the department approve the adult family
3 member for the adoption unless the adoption by the child's adult family member
4 is not in the child's best interest, is prohibited under (l) of this section, or is
5 otherwise contrary to federal or state law. If the court issues an order to terminate
6 under (j) of this section, the department shall report within 30 days on the efforts being
7 made to recruit a permanent placement for the child if a permanent placement was not
8 approved at the time of the trial under (j) of this section. The report must document
9 recruitment efforts made for the child.

10 * Sec. 15. AS 47.10.088 is amended by adding new subsections to read:

11 (l) The department may not approve an adoption by a person related to the
12 child by blood if the department

13 (1) makes a determination, supported by clear and convincing
14 evidence, that adoption of the child by the adult family member will result in physical
15 or mental injury to the child; in making that determination, poverty, including
16 inadequate or crowded housing, on the part of the person related to the child by blood
17 is not considered prima facie evidence that physical or mental injury to the child will
18 occur;

19 (2) determines that a member of the adult family member's household
20 who is 12 years of age or older was the perpetrator in a substantiated report of abuse
21 under AS 47.17; or

22 (3) determines that a member of the adult family member's household
23 who is 12 years of age or older is under arrest for, is charged with, has been convicted
24 of, or has been found not guilty by reason of insanity of, a serious offense;
25 notwithstanding this paragraph, the department may approve an adoption by the adult
26 family member if the adult family member demonstrates to the satisfaction of the
27 department that conduct described in this paragraph occurred at least five years before
28 the intended adoption and the conduct

29 (A) did not involve a victim who was under 18 years of age at
30 the time of the conduct;

31 (B) was not a crime of domestic violence as defined in

1 AS 18.66.990; and

2 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
3 a law or ordinance of another jurisdiction having similar elements.

4 (m) For the purpose of determining whether the home of an adult family
5 member meets the requirements for adoption of the child, the department shall conduct
6 a criminal background check from state and national criminal justice information
7 available under AS 12.62. The department may conduct a fingerprint background
8 check on any member of the adult family member's household who is 12 years of age
9 or older when the adult family member requests adoption of the child. For the
10 purposes of obtaining criminal justice information under this subsection, the
11 department is a criminal justice agency conducting a criminal justice activity under
12 AS 12.62.

13 (n) A person related to a child by blood who is denied a request for an
14 adoption under (i) of this section may request a review hearing by the court. If the
15 department denies a request by a person related to a child by blood to adopt a child
16 under (i) of this section, the department shall inform the adult family member of the
17 reason for the denial and of the adult family member's right to request a review
18 hearing.

19 (o) A trial or hearing conducted under this section is open to the public unless
20 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
21 to the public. The court shall uphold the department's decision under this section if the
22 court finds, by clear and convincing evidence that the decision is in the best interest of
23 the child and otherwise complies with the requirements of this section.

24 * **Sec. 16.** AS 47.10 is amended by adding a new section to read:

25 **Sec. 47.10.089. Administration of prescription drugs.** When a child is in
26 the custody of the department under AS 47.10.084 and the child is prescribed a
27 psychotropic or other mental health medication, the department shall obtain the
28 consent of the child's parent or legal guardian before administering the medication.

29 * **Sec. 17.** AS 47.10.090(c) is amended to read:

30 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
31 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]

1 18th birthday, within 30 days after [OF] the date on which the court releases
2 jurisdiction over the child [MINOR], the court shall order all the court's official
3 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
4 person may not use these sealed records unless authorized by order of [FOR ANY
5 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
6 USE FOR] good cause [SHOWN].

7 * Sec. 18. AS 47.10.090(d) is amended to read:

8 (d) Except as provided in AS 47.10.070, 47.10.080(v), and 47.10.093, the
9 [THE] name or picture of a child [MINOR] under the jurisdiction of the court may not
10 be made public in connection with the child's [MINOR'S] status as a child in need of
11 aid unless authorized by order of the court or unless to implement the permanency
12 plan for a child after all parental rights of custody have been terminated. This
13 subsection does not prohibit the release of aggregate information for statistical or
14 other informational purposes if the identity of any particular person is not
15 revealed by the release.

16 * Sec. 19. AS 47.10.092(a) is amended to read:

17 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member
18 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005
19 - 47.10.142 may disclose confidential or privileged information about the child or the
20 child's family, including information that has been lawfully obtained from agency or
21 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
22 appointed under AS 24.55, the attorney general, and the commissioner
23 [COMMISSIONERS] of health and social services, administration, or public safety, or
24 an employee of these persons, for review or use in their official capacities. The
25 department shall disclose additional confidential or privileged information and make
26 copies of documents available for inspection about the child or the child's family to
27 these state officials or employees for review or use in their official capacities upon
28 request of the official or employee and submission of satisfactory evidence that an
29 adult family member [A PARENT] or legal guardian of the child has requested the
30 state official's assistance in the case as part of the official's duties. A person to whom
31 disclosure is made under this section may not disclose confidential or privileged

1 information about the child or the child's family to a person not authorized to receive
2 it.

3 * **Sec. 20.** AS 47.10.092 is amended by adding new subsections to read:

4 (d) The duty imposed on the department under (a) of this section to disclose
5 information to and make copies of documents available for inspection by state
6 officials and employees upon proof that a parent has requested the assistance of the
7 state official or employee with respect to a child's case does not lapse when the
8 parent's parental rights have been terminated with respect to the child. However, the
9 duty does lapse after termination of the parent's parental rights if another parent or
10 legal guardian of the child subsequently files a notice with the department that the
11 assistance of the state official or employee is no longer requested.

12 (e) The department shall notify an official identified under (a) of this section
13 of the opportunity to file a grievance under AS 47.10.098 - 47.10.099 when the
14 official is denied access to all or part of a requested record

15 * **Sec. 21.** AS 47.10.093(a) is amended to read:

16 (a) Except as specified in AS 47.10.092 and in (b) - (g) and (k) - (n) [(b) -
17 (g)] of this section, all information and social records pertaining to a child [MINOR]
18 who is subject to this chapter or AS 47.17 prepared by or in the possession of a
19 federal, state, or municipal agency or employee in the discharge of the agency's or
20 employee's official duty are privileged and may not be disclosed directly or indirectly
21 to anyone without a court order.

22 * **Sec. 22.** AS 47.10.093(b) is amended to read:

23 (b) A state or municipal agency or employee shall disclose appropriate
24 confidential information regarding a case to

25 (1) a guardian ad litem appointed by the court;

26 (2) a person or an agency requested by the department or the child's
27 legal custodian to provide consultation or services for a child who is subject to the
28 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
29 the consultation or services;

30 (3) a foster parent [PARENTS] or adult family member
31 [RELATIVES] with whom the child is placed by the department as [MAY BE]

1 necessary to enable the foster parent [PARENTS] or adult family member
2 [RELATIVES] to provide appropriate care to [FOR] the child [WHO IS THE
3 SUBJECT OF THE CASE], to protect the safety of the child [WHO IS THE
4 SUBJECT OF THE CASE], and to protect the safety and property of family members
5 and visitors of the foster parent [PARENTS] or adult family member
6 [RELATIVES];

7 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable
8 the school to provide appropriate counseling and support services to a [THE] child
9 who is the subject of the case, to protect the safety of the child [WHO IS THE
10 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

11 (5) a governmental agency as [MAY BE] necessary to obtain that
12 agency's assistance for the department in its investigation or to obtain physical custody
13 of a child;

14 (6) a law enforcement agency of this state or another jurisdiction as
15 [MAY BE] necessary for the protection of any child or for actions by that agency to
16 protect the public safety;

17 (7) a member [MEMBERS] of a multidisciplinary child protection
18 team created under AS 47.14.300 as [MAY BE] necessary for the performance of the
19 member's [THEIR] duties;

20 (8) the state medical examiner under AS 12.65 as [MAY BE]
21 necessary for the performance of the duties of the state medical examiner;

22 (9) a person who has made a report of harm as required by
23 AS 47.17.020 to inform the person that the investigation was completed and of action
24 taken to protect the child who was the subject of the report; [AND]

25 (10) the child support services agency established in AS 25.27.010 as
26 [MAY BE] necessary to establish and collect child support for a child who is a child in
27 need of aid under this chapter;

28 (11) a caregiver of a child or an entity responsible for ensuring the
29 safety of children as necessary to protect the safety of a child; and

30 (12) a review panel established by the department for the purpose
31 of reviewing the actions taken by the department in a specific case.

1 * **Sec. 23.** AS 47.10.093(c) is repealed and reenacted to read:

2 (c) A state or municipal law enforcement agency shall disclose information
3 regarding a case that is needed by the person or agency charged with making a
4 preliminary investigation for the information of the court under AS 47.10.020.

5 * **Sec. 24.** AS 47.10.093(f) is amended to read:

6 (f) The department may release to a person with a legitimate interest
7 confidential information relating to children [MINORS] not subject to the
8 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT
9 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
10 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

11 * **Sec. 25.** AS 47.10.093(g) is amended to read:

12 (g) The department and affected law enforcement agencies shall work with
13 school districts and private schools to develop procedures for the disclosure of
14 confidential information to a school official [OFFICIALS] under (b)(4) of this
15 section. The procedures must provide a method for informing the principal or the
16 principal's designee of the school that the student attends as soon as it is reasonably
17 practicable.

18 * **Sec. 26.** AS 47.10.093 is amended by adding new subsections to read:

19 (k) The department may disclose to the public, upon request, confidential
20 information, as set out in (l) of this section, when

21 (1) the parent or guardian of a child who is the subject of a report of
22 harm under AS 47.17 has made a public disclosure concerning the department's
23 involvement with the family;

24 (2) the alleged perpetrator named in a report of harm under AS 47.17
25 has been charged with a crime concerning the alleged abuse or neglect; or

26 (3) a report of harm under AS 47.17 has resulted in the fatality or near
27 fatality of that child.

28 (l) The type of information that may be publicly disclosed under (k) of this
29 section is information related to the determination, if any, made by the department
30 regarding the validity of a report of harm under AS 47.17 and the department's
31 activities arising from the department's investigation of the report. The department

1 (1) may withhold disclosure of the child's name, picture, or other
2 information that would readily lead to the identification of the child if the department
3 determines that the disclosure would be contrary to the best interests of the child, the
4 child's siblings, or other children in the child's household; or

5 (2) after consultation with a prosecuting attorney, may withhold
6 disclosure of information that would reasonably be expected to interfere with a
7 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
8 criminal proceeding.

9 (m) Except for a disclosure made under (k) of this section, a person to whom
10 disclosure is made under this section may not disclose confidential information about
11 the child or the child's family to a person not authorized to receive it.

12 (n) The department may adopt regulations to implement and interpret its
13 duties under this section, including regulations governing the release of confidential
14 information and identifying a sufficient legitimate interest under (f) of this section.

15 * **Sec. 27.** AS 47.10 is amended by adding a new section to read:

16 **Sec. 47.10.094. Immunity from liability.** A person may not bring an action
17 for damages against the state, a municipality, or state or municipal agencies, officers,
18 employees, or agents based on the disclosure or nondisclosure of information in
19 accordance with this chapter.

20 * **Sec. 28.** AS 47.10. is amended by adding new sections to read:

21 **Sec. 47.10.098. Grievance procedure.** (a) An individual may file a
22 grievance with the department for a complaint involving the disclosure of records
23 under this chapter if the complaint is based on

24 (1) the application of a department policy or procedure;

25 (2) compliance with this chapter or a regulation adopted under this
26 chapter; or

27 (3) an act or failure to act by the department.

28 (b) An aggrieved individual shall submit a written complaint, on a form
29 provided by the department, to the supervisor of the person whose action is being
30 grieved stating the specific concern, the name of the department staff member
31 involved, and the desired relief sought. The supervisor shall provide a copy of the

1 grievance procedure to the aggrieved individual. The grievance procedure must
2 include

3 (1) review of the grievance by the supervisor within three working
4 days after receipt of the grievance to determine

5 (A) the nature of the complaint; and

6 (B) whether the action or inaction of the department falls
7 within the grounds established under (a) of this section;

8 (2) if the supervisor determines that the grievance falls within the
9 grounds established under (a) of this section, contacting the aggrieved individual to
10 schedule an informal meeting, within 10 days after the supervisor's decision, with the
11 supervisor, the aggrieved individual, and the department staff member identified in the
12 grievance in order to attempt to informally resolve the grievance;

13 (3) if the supervisor determines that the grievance does not fall within
14 the grounds established under (a) of this section, notifying the aggrieved individual of
15 the inapplicability of the grievance procedure and closing the file;

16 (4) the availability of more than one informal meeting if it is in the best
17 interest of the parties to the grievance;

18 (5) written recommendations of the supervisor and filing of a summary
19 of the informal meetings within five working days after the conclusion of the informal
20 meetings; a copy of the recommendations and summary must be sent to the aggrieved
21 individual; and

22 (6) opportunity for review under AS 47.10.099.

23 **Sec. 47.10.099. Review panel for grievances.** (a) An aggrieved individual
24 may file a request with the ombudsman for a panel review of the recommendations of
25 the supervisor of the person whose action is being grieved under AS 47.10.098.

26 (b) A review panel shall be appointed by the ombudsman within 21 working
27 days after receiving a request for a panel review. The panel must consist of a regional
28 administrator from the department or the administrator's designee, a social worker, and
29 a private citizen who has expertise in the area of the administration of human services.
30 The panel members shall serve without compensation.

31 (c) A review panel appointed under this section shall meet at least one time.

1 either in person or telephonically, to conduct a fact-finding meeting at which the
2 aggrieved party and the department staff member involved in the grievance may
3 appear. The panel may rely on outside information gathered to resolve the grievance
4 as well as information received at the meeting. If the department staff member
5 involved in the grievance is unable to attend the meeting, a written explanation of the
6 staff member's absence shall be provided to the panel before the meeting.

7 (d) Following the fact-finding meeting held under (c) of this section, the
8 review panel shall convene telephonically or in person to deliberate and resolve the
9 grievance.

10 (e) Within 10 working days after the meeting held under (d) of this section,
11 the review panel shall issue written findings and a resolution. The panel shall send a
12 copy of the findings and resolution to the aggrieved party, the ombudsman, and to the
13 department staff member named in the grievance.

14 (f) The aggrieved party may appeal the findings and resolution to the
15 ombudsman within 15 days after receipt of the findings and resolution. Failure to
16 appeal to the ombudsman shall be considered a final resolution, and the file shall be
17 closed.

18 (g) Within 30 days after receipt of an appeal to the ombudsman, the
19 ombudsman shall issue a written decision to accept or reject the findings and
20 resolution of the review panel.

21 (h) The information reviewed by the review panel shall be made part of a
22 confidential record, and information containing identifying information of recipients
23 of department services, along with all other information made confidential by state or
24 federal law, may not be discussed publicly by any person involved in the grievance.

25 (i) The ombudsman shall prepare a report of a grievance that contains a
26 summary of the complaint, the review or evaluation process used, and the outcome of
27 the review or evaluation, including any recommendations made as a result of the
28 review. Before the report is disclosed, the ombudsman shall modify a report prepared
29 or produced under this subsection to exclude all personal identifying information of a
30 child, the child's family, and witnesses.

31 * Sec. 29. AS 47.10.960 is amended to read:

1 Sec. 47.10.960. Duty and standard of care [NOT] created. The
2 department shall adopt regulations establishing [NOTHING IN THIS TITLE
3 CREATES] a duty and [OR] standard of care for services to children and their
4 families being served under this chapter [AS 47.10]. The regulations must be
5 consistent in all relevant respects with the code of professional ethics and the
6 standards of practice for social workers adopted by the Board of Social Work
7 Examiners under AS 08.95. Failure to comply with a timeline established under
8 this chapter may not result in a claim for civil liability for damages.

9 * Sec. 30. AS 47.10.990(16) is amended to read:

10 (16) "mental health professional" has the meaning given in
11 AS 47.30.915, except that, if the child is placed in another state by the
12 department, "mental health professional" also includes a professional listed in
13 the definition of "mental health professional" in AS 47.30.915 who is not licensed
14 to practice by a board of this state but is licensed by a corresponding licensing
15 authority to practice in the state in which the child is placed;

16 * Sec. 31. AS 47.10.990 is amended by adding new paragraphs to read:

17 (28) "adult family member" means a person who is 18 years of age or
18 older and who is related to the child as the child's biological or adoptive parent,
19 grandparent, aunt, uncle, or sibling;

20 (29) "near fatality" means physical injury or other harm, as certified by
21 a physician, caused by an act or omission that created a substantial risk of death.

22 * Sec. 32. AS 47.12.990(10) is amended to read:

23 (10) "mental health professional" has the meaning given in
24 AS 47.30.915, except that, if the minor is placed in another state by the
25 department, "mental health professional" also includes a professional listed in
26 the definition of "mental health professional" in AS 47.30.915 who is not licensed
27 to practice by a board of this state but is licensed by a corresponding licensing
28 authority to practice in the state in which the minor is placed;

29 * Sec. 33. AS 47.14.100(e) is amended to read:

30 (e) A child may not be placed in a foster home or in the care of an agency or
31 institution providing care for children if a relative by blood or marriage or a family

1 friend requests placement of the child in the [RELATIVE'S] home of the relative, or
2 family friend, and the parent or guardian of the child agrees to the placement.

3 However, the department may retain custody of the child and provide for its placement
4 in the same manner as for other children if the department

5 (1) makes a determination, supported by clear and convincing
6 evidence, that placement of the child with the relative or family friend will result in
7 physical or mental injury; in making that determination, poverty, including inadequate
8 or crowded housing, on the part of the [BLOOD] relative or family friend, is not
9 considered prima facie evidence that physical or emotional damage to the child will
10 occur; this determination may be appealed to the superior court to hear the matter de
11 novo;

12 (2) determines that a member of the relative's or family friend's
13 household who is 12 years of age or older was the perpetrator in a substantiated report
14 of abuse under AS 47.17; or

15 (3) determines that a member of the relative's or family friend's
16 household who is 12 years of age or older is under arrest for, charged with, has been
17 convicted of, or has been found not guilty by reason of insanity of, a serious offense;
18 notwithstanding this paragraph, the department may place or continue the placement
19 of a child at the relative's or family friend's home if the relative or family friend
20 demonstrates to the satisfaction of the department that conduct described in this
21 paragraph occurred at least five years before the intended placement and the conduct

22 (A) did not involve a victim who was under 18 years of age at
23 the time of the conduct;

24 (B) was not a crime of domestic violence as defined in
25 AS 18.66.990; and

26 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
27 a law or ordinance of another jurisdiction having similar elements.

28 * Sec. 34. AS 47.14.100(f) is amended to read:

29 (f) If a blood relative of the child specified under (e) of this section exists and
30 agrees that the child should be placed elsewhere, before placement elsewhere, the
31 department shall fully communicate the nature of the placement proceedings to the

1 relative. Communication under this subsection shall be made in the relative's native
2 language, if necessary. [NOTHING IN THIS SUBSECTION OR IN (e) OF THIS
3 SECTION APPLIES TO CHILD PLACEMENT FOR ADOPTIVE PURPOSES.]

4 * **Sec. 35.** AS 47.14 is amended by adding a new section to article 3 to read:

5 **Sec. 47.14.205. State Citizen Review Panel.** (a) There is established within
6 the department a Citizen Review Panel. The panel shall be composed of volunteer
7 members who are broadly representative of the state, including members who have
8 expertise in the prevention and treatment of child abuse and neglect.

9 (b) The panel shall meet not less than once every three months. Meetings may
10 take place telephonically and shall be closed to the public.

11 * **Sec. 36.** AS 47.14 is amended by adding a new section to article 3 to read:

12 **Sec. 47.14.215. Duties of the state panel.** (a) The state panel shall evaluate
13 the extent to which the department is effectively discharging its child protection
14 responsibilities under

15 (1) the state plan submitted to the United States Department of Health
16 and Human Services under 42 U.S.C. 5106a(b);

17 (2) child protection standards under federal and state laws; and

18 (3) any other criteria that the panel considers important to ensuring the
19 protection of children, including the level and efficiency of coordination of foster care
20 and adoption programs in the state and a review of child fatalities and near fatalities.

21 (b) In carrying out the responsibilities under (a) of this section, the state panel
22 shall examine the policies, procedures, and practices of the department, and, where
23 appropriate, evaluate specific cases of child abuse or neglect.

24 (c) The commissioner shall, by regulation, establish policies and procedures
25 necessary to carrying out the duties of the state panel under this section.

26 * **Sec. 37.** AS 47.14 is amended by adding a new section to article 3 read:

27 **Sec. 47.14.225. Cooperation with state panel.** (a) The department shall
28 provide the panel access to information on child abuse or neglect cases that is
29 necessary for the panel to carry out its duties under AS 47.14.215.

30 (b) The department shall serve as staff to the state panel as requested by the
31 panel members.

1 * **Sec. 38.** AS 47.14 is amended by adding a new section to article 3 to read:

2 **Sec. 47.14.235. Confidentiality.** The members and staff of the state panel
3 may not disclose to any person, including a government agency or official, records or
4 other information containing personally identifying or other information made
5 confidential under state or federal law about a child or a witnesses involved in a case
6 under review by the panel.

7 * **Sec. 39.** AS 47.14 is amended by adding a new section to article 3 to read:

8 **Sec. 47.14.245. Public outreach.** The state panel shall conduct public
9 outreach and gather public comment on current department procedures and practices
10 involving children and family services.

11 * **Sec. 40.** AS 47.14 is amended by adding a new section to article 3 to read:

12 **Sec. 47.14.255. Report.** (a) The state panel shall prepare and make available
13 to the governor and to the public an annual report containing a summary of the
14 activities of the panel conducted under AS 47.14.205 - 47.14.295 and
15 recommendations for the improvement of child protection services in the state.

16 (b) Not later than six months after the date on which the report under (a) of
17 this section is submitted to the governor, the department shall submit a written
18 response to the report to the governor. The department's response must include a
19 description of whether and how the department will incorporate the recommendations
20 of the panel, where appropriate.

21 * **Sec. 41.** AS 47.14 is amended by adding a new section to article 3 to read:

22 **Sec. 47.14.265. Civil penalty for violation of AS 47.14.235.** A violation
23 under 47.14.235 is subject to a civil penalty of up to \$2,500 for each violation.

24 * **Sec. 42.** AS 47.14 is amended by adding a new section to article 3 to read:

25 **Sec. 47.14.275. Immunity.** A member of the state panel and a person who
26 furnishes services to or advises the state panel is not liable for damages or other relief
27 in an action involving the performance or failure to perform a duty or other activity of
28 the state panel.

29 * **Sec. 43.** AS 47.14 is amended by adding a new section to article 3 to read:

30 **Sec. 47.14.295. Definitions.** In AS 47.14.205 - 47.14.295,

31 (1) "state panel" means the Citizen Review Panel established under

1 AS 47.14.205;

2 (2) "near fatality" has the meaning given in AS 47.10.990.

3 * Sec. 44. AS 47.17.025 is amended by adding a new subsection to read:

4 (c) Within 20 days after receiving a report of harm, whether or not the matter
5 is referred to a local government agency, the department shall notify the person who
6 made the report and who made a request to be notified, about the status of the
7 investigation, without disclosing any confidential information.

8 * Sec. 45. AS 47.17.027(a) is amended to read:

9 (a) If the department or a law enforcement agency provides written
10 certification to the child's school officials that (1) there is reasonable cause to suspect
11 that the child has been abused or neglected by a person responsible for the child's
12 welfare or as a result of conditions created by a person responsible for the child's
13 welfare; (2) an interview at school is a necessary part of an investigation to determine
14 whether the child has been abused or neglected; and (3) the interview at school is in
15 the best interests of the child, school officials shall permit the child to be interviewed
16 at school by the department or a law enforcement agency before notification of, or
17 receiving permission from, the child's parent, guardian, or custodian. A school official
18 shall be present during an interview at the school unless the child objects or the
19 department or law enforcement agency determines that the presence of the school
20 official will interfere with the investigation. **The interview shall be conducted as**
21 **required under AS 47.17.033.** Immediately after conducting an interview authorized
22 under this section, and after informing the child of the intention to notify the child's
23 parent, guardian, or custodian, the department or agency shall make every reasonable
24 effort to notify the child's parent, guardian, or custodian that the interview occurred
25 unless it appears to the department or agency that notifying the child's parent,
26 guardian, or custodian would endanger the child.

27 * Sec. 46. AS 47.17.033 is amended by adding new subsections to read:

28 (c) An investigation by the department of child abuse or neglect reported
29 under this chapter shall be conducted by a person trained to conduct a child abuse and
30 neglect investigation and without subjecting a child to more than one interview about
31 the abuse or neglect except when new information is obtained that requires further

1 information from the child.

2 (d) An interview of a child conducted as a result of a report of harm may be
3 audiotaped or videotaped. However, if an interview of a child is to be electronically
4 recorded and the interview concerns a report of sexual abuse of the child, the interview
5 shall be videotaped, except that an interview of a child may not be videotaped if
6 videotaping the interview is impracticable or will, in the opinion of the investigating
7 agency, result in trauma to the child.

8 (e) An interview of a child that is audiotaped or videotaped under (d) of this
9 section shall be conducted

10 (1) by a person trained and competent to conduct the interview;

11 (2) if available, at a child advocacy center; and

12 (3) by a person who is a party to a memorandum of understanding with
13 the department to conduct the interview or who is employed by an agency that is
14 authorized to conduct investigations.

15 (f) An interview of a child may not be videotaped more than one time unless
16 the interviewer or the investigating agency determines that one or more additional
17 interviews are necessary to complete an investigation. If additional interviews are
18 necessary, the additional interviews shall be conducted, to the extent possible, by the
19 same interviewer who conducted the initial interview of the child.

20 (g) A recorded interview of a child shall be preserved in the manner and for a
21 period provided by law for maintaining evidence and records of a public agency.

22 (h) A recorded interview of a child is subject to disclosure under the
23 applicable court rules for discovery in a civil or criminal case.

24 * **Sec. 47.** AS 47.35.015 is amended by adding a new subsection to read:

25 (j) If a person operates a foster home to provide care only for a relative and the
26 department requires licensure under an agreement for services, the department shall
27 issue a temporary license to an eligible person while an application for a license under
28 this section is pending. The department shall issue the temporary license to the
29 applicant within five days after receiving a complete application for a foster care
30 license under AS 47.35.017. A temporary license is valid for 90 days or until a license
31 is either issued under AS 47.35.017 or denied under AS 47.35.019, whichever is

1 sooner.

2 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 3(c), Alaska Child in Need of
5 Aid Rules of Procedure, is amended to read:

6 (c) **Presence of Grandparent or Foster Parent.** A grandparent of a child
7 and the foster parent or other out-of-home care provider are [IS] entitled to be heard
8 at any hearing at which the person is present. However, the court may limit the
9 presence of these persons in a hearing that has been closed to the public under
10 (f)(2) of this rule [THE FOSTER PARENT OR CARE PROVIDER] to the time
11 during which the person's testimony is being given if the court determines that such
12 a limitation is necessary under the circumstances listed in (f)(2)(C) of this rule [IT
13 IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO
14 PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE
15 DETRIMENTAL TO THE CHILD].

16 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
19 Aid Rules of Procedure, is repealed and reenacted to read:

20 (f) **General Public Access to Hearings.**

21 (1) Except as provided in (2) of this paragraph, and unless prohibited
22 by federal or state statute or regulation, court order, or other court rule, hearings are
23 open to the public.

24 (2) The following hearings are closed to the public:

25 (A) the initial court hearing after the filing of a petition that
26 begins the child-in-need-of-aid case;

27 (B) a hearing following the initial hearing in which a parent,
28 child, or other party to the case is present but has not had an opportunity to
29 obtain legal representation;

30 (C) a hearing, or a part of a hearing, for which the court issues
31 a written order finding that allowing the hearing, or part of the hearing, to be

1 open to the public would reasonably be expected to stigmatize or be
2 emotionally damaging to a child; inhibit a child's testimony in the hearing;
3 disclose matters otherwise required to be kept confidential by state or federal
4 statute or regulation, court order, or court rule; or interfere with a criminal
5 investigation or proceeding or a criminal defendant's right to a fair trial in a
6 criminal proceeding.

7 (3) Before ruling on a request under (2)(C) of this paragraph
8 concerning potential interference with a criminal investigation or proceeding, the court
9 shall give notice and an opportunity to be heard to the state or a municipal agency that
10 is assigned to the criminal investigation or to the prosecuting attorney.

11 (4) If the court closes a hearing to the public under (2)(C) of this
12 paragraph, the court shall close only the portions of the hearing necessary to prevent
13 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,
14 is open to the public, the court shall hear in camera any information offered regarding
15 the location, or readily leading to the location, of a parent, child, or other party to the
16 case who is a victim of domestic violence. Access to testimony heard in camera under
17 this subparagraph is limited to the court and authorized court personnel.

18 (5) Notwithstanding any other provision of this rule, the court shall
19 issue an order to prohibit all persons in a hearing open to the public from disclosing to
20 any person a name, picture, or other information that would readily lead to the
21 identification of a child who is the subject of the proceeding. If a person violates the
22 order, the court may impose any appropriate sanction, including contempt and closure
23 of any further hearings in the proceeding to the person.

24 (6) A party to the proceeding may move the court to close to the public
25 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
26 paragraph. A member of the public may request in writing to be served with a motion
27 filed under this subparagraph. If such a request has been filed in advance of the filing
28 of the motion, the party filing the motion must also serve the member of the public
29 who requested notice under this subparagraph. The court may waive the service
30 required under this subparagraph to a member of the public if a motion to close the
31 hearing, or part of the hearing, is made under this subparagraph immediately before or

1 during the hearing and the court finds that

2 (A) the need for closure was not reasonably foreseeable
3 sufficiently in advance of the hearing to allow for notice;

4 (B) there is good cause not to delay the hearing in order to
5 achieve notice, taking into consideration the age of the child and the potential
6 adverse effect that a delay could have on the child; and

7 (C) whatever notice is practicable under the circumstances has
8 occurred.

9 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 DIRECT COURT RULE AMENDMENT. Rule 3, Alaska Child in Need of
12 Aid Rules of Procedure, is amended by adding a new subsection to read:

13 (j) **Use of Child's Name and Identifying Information Prohibited.**
14 References to a child shall be made using the child's first name only. All identifying
15 information of the child, including the child's last name, address, and the names of the
16 child's immediate family members, shall be protected during the hearing so that only
17 the confidential record contains that information. If a child appears at the hearing, the
18 child shall be located away from view of the public.

19 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 DIRECT COURT RULE AMENDMENT. Rule 18(e), Alaska Child in Need
22 of Aid Rules of Procedure, is amended to read:

23 (e) **Trial.** A trial on the petition to terminate parental rights

24 (1) shall be held within six months after the date on which the petition
25 to terminate parental rights is filed, unless the court finds that good cause is shown for
26 a continuance; when [. WHEN] determining whether to grant a continuance for good
27 cause, the court shall take into consideration the age of the child and the potential
28 adverse effect that the delay may have on the child; the [. THE] court shall make
29 written findings when granting a continuance;

30 (2) shall be by jury when a jury trial has been demanded and not
31 waived by a party as provided in Rules 38 and 39, Alaska Rules of Civil

1 **Procedure.**

2 * **Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 18(g), Alaska Child in Need
5 of Aid Rules of Procedure, is amended to read:

6 (g) **Judgment.** The court shall make findings of fact **for matters tried to the**
7 **court** and **shall** enter an order within 90 days after the last day of trial on the petition
8 to terminate parental rights. The court shall commit the child to the custody of the
9 Department if parental rights are terminated.

10 * **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
13 of Aid Rules of Procedure, is amended to read:

14 (c) **Child's Name or Picture.** The name or picture of a child who is the
15 subject of a CINA proceeding may not be made available to the public unless
16 authorized by court order accompanied by a written statement reciting the
17 circumstances which support such authorization, **or unless to implement the**
18 **permanency plan for the child after all parental rights of custody have been**
19 **terminated.**

20 * **Sec. 54.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 9(a), Alaska Adoption Rules,
23 is amended to read:

24 (a) **Form.** A consent or relinquishment must be in writing and must include:

25 (1) notice of the person's right to withdraw the consent or
26 relinquishment as provided by paragraphs (g) and (h) of this rule;

27 (2) the address and telephone number of the court in which the
28 adoption or relinquishment proceeding has or is expected to be filed;

29 (3) a statement of the right to counsel as stated in Rule 8;

30 (4) a statement concerning whether or not any visitation rights **or**
31 **other parental privileges** are sought to be retained after the adoption;

1 (5) if a consent, the information required in AS 25.23.060; and

2 (6) if signed by a parent, a statement of whether the parent is a minor.

3 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 13(a), Alaska Adoption
6 Rules, is amended to read:

7 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
8 entered after a voluntary relinquishment pursuant to AS 25.23.180. The court shall
9 enter findings of fact which must include a statement concerning whether visitation
10 rights are being allowed under AS 25.23.130(c) or AS 25.23.180, whether other
11 privileges are being retained under AS 25.23.180, and whether the time limit for
12 withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the
13 presence of the court, findings also must be entered as to whether the parent
14 understood the consequences of the relinquishment, and whether the relinquishment
15 was voluntarily signed.

16 In the case of a voluntary relinquishment of parental rights to an Indian child,
17 the court shall make additional findings concerning whether any notice required by
18 Rule 10(e) was timely given; whether the relinquishment was voluntary and in
19 compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's
20 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
21 cause exists for deviation from the placement preference.

22 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 INDIRECT COURT RULE AMENDMENT. AS 25.23.180(j), added by sec. 2 of this
25 Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set
26 out in the relinquishment form and order.

27 * Sec. 57. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 INDIRECT COURT RULE AMENDMENT. (a) Sections 9 and 10 of this Act
30 AS 47.10.080(v), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 15 of
31 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure.

1 by allowing members of the public to attend court hearings except in certain circumstances.

2 (b) AS 47.10.065, enacted by sec. 8 of this Act, and AS 47.10.080(c), as amended by
3 sec. 11 of this Act, have the effect of changing Rule 18, Alaska Child in Need of Aid Rules of
4 Procedure, by providing for a right to a jury trial on a petition to terminate parental rights.

5 (c) Sections 18 and 21 - 26 of this Act have the effect of changing Rule 22, Alaska
6 Child in Need of Aid Rules of Procedure, by allowing the disclosure of confidential
7 information pertaining to a child, including a child's name or picture to be made public in
8 certain circumstances.

9 * **Sec. 58.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.**

12 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
13 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
14 enactment and amendments provide a right to a jury trial on a petition to terminate parental
15 rights affect a substantive right, secs. 8, 11, 51, 52, and 57 of this Act do not require a two-
16 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
17 parental rights.

18 * **Sec. 59.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **APPLICABILITY.** (a) AS 47.10.065, enacted by sec. 8 of this Act, 47.10.080(c), as
21 amended by sec. 11 of this Act, and Rules 18(e) and 18(g), Alaska Child in Need of Aid Rules
22 of Procedure, as amended by secs. 51 and 52 of this Act, apply to petitions to terminate
23 parental rights that are filed on or after the effective date of secs. 8, 11, 51, and 52 of this Act.

24 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
25 made by secs. 48 - 50 of this Act, apply to hearings that are conducted on or after the effective
26 date of secs. 48 - 50 of this Act.

27 (c) Sections 9 - 11, 13, 15, 17, 18, 21 - 27, 31, 48 - 50, and 53 of this Act apply to all
28 proceedings and hearings conducted on or after the effective date of those sections.

29 (d) Sections 9, 10, 13, 15, and 18 - 27 of this Act apply to all information, records,
30 and files created on or after the effective date of those sections; however, if a file contains
31 information and records that were created before the effective date of secs. 9, 10, 13, 15, and

1 18 - 27 of this Act, that information and those records retain the confidentiality that they had
2 under the law on the day before the effective date of secs. 9, 10, 13, 15, and 18 - 27 of this
3 Act.

4 * **Sec. 60.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 **TRANSITION: REGULATIONS.** The Department of Health and Social Services
7 may proceed to adopt regulations necessary to implement the changes made by this Act. The
8 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
9 effective date of the relevant statutory change.

10 * **Sec. 61.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **REPORT.** By December 1, 2006, the governor shall issue a report, including any
13 recommendations for statutory changes, to the public and the legislature on the
14 implementation of this Act.

15 * **Sec. 62.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **CONDITIONAL EFFECT.** (a) That portion of Rule 18(e)(2), Alaska Child in Need
18 of Aid Rules of Procedure, added by sec. 51 of this Act, that reads "and not waived by a party
19 as provided in Rules 38 and 39, Alaska Rules of Civil Procedure," takes effect only if sec. 51
20 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
21 Constitution of the State of Alaska.

22 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
23 made by secs. 48 - 50 of this Act, take effect only if secs. 48 - 50 of this Act receive the two-
24 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
25 Alaska.

26 (c) The amendments to Rule 22(c), Alaska Child in Need of Aid Rules of Procedure,
27 made by sec. 53 of this Act take effect only if sec. 53 of this Act receives the two-thirds
28 majority vote of each house required by Art. IV, sec. 15, Constitution of the State of Alaska.

29 (d) Sections 9 and 10 of this Act, AS 47.10.080(v), enacted by sec. 13 of this Act,
30 AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 - 26 of this Act, take
31 effect only if secs. 48 - 50, 53, and 57(a) and (c) of this Act receive the two-thirds majority

1 | vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

2 | (e) Rule 9(a), Alaska Adoption Rules, as amended by sec. 54 of this Act, takes effect
3 | only if sec. 54 of this Act receives the two-thirds majority vote of each house required by art.
4 | IV, sec. 15, Constitution of the State of Alaska.

5 | (f) Rule 13(a), Alaska Adoption Rules, as amended by sec. 55 of this Act, takes effect
6 | only if sec. 55 of this Act receives the two-thirds majority vote of each house required by art.
7 | IV, sec. 15, Constitution of the State of Alaska.

8 | (g) AS 25.23.180(j), added by sec. 2 of this Act, takes effect only if sec. 56 of this Act
9 | receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
10 | of the State of Alaska.

11 | * **Sec. 63.** AS 47.10.960, as amended by sec. 29 of this Act, takes effect 180 days after the
12 | effective date of sec. 1 of this Act.

13 | * **Sec. 64.** If, under sec. 62 of this Act, secs. 9 and 10 of this Act, AS 47.10.080(v), enacted
14 | by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 -
15 | 26 of this Act take effect, they take effect July 1, 2005.

16 | * **Sec. 65.** Except as provided in secs. 63 and 64 of this Act, this Act takes effect
17 | immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
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MEMORANDUM

March 22, 2005

SUBJECT: Children's Services - CSHB 53()
(Work Order No. 24-GH 0251\5)

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Jean M. Mischel
Legislative Counsel

Attached is the most recent version of HB 53. One of the changes included in this draft appears to affect a Rule of Professional Conduct for Attorneys, that may go beyond the legislature's authority. At page 17, section 20, the addition of the Department of Administration for the disclosure of confidential or privileged information, including attorney-client information, has at least an indirect effect on Rule 1.6, Rules of Professional Conduct, that otherwise prohibits such a disclosure except in certain very limited circumstances. That effect has been noted in the bill and in the bill's title but the provision may be invalidated if challenged.

If I may be of further assistance, please advise.

JMM:med
05-202.med

Enclosure

24-LS0251AS
Mischel
3/22/05

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO 53()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly, McGuire, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to child-in-need-of-aid proceedings; amending the construction of
2 statutes pertaining to children in need of aid; relating to a duty and standard of care for
3 services to children and families, to the confidentiality of investigations, court hearings,
4 and public agency records and information in child-in-need-of-aid matters and certain
5 child protection matters, to immunity regarding disclosure of information in child-in-
6 need-of-aid matters and certain child protection matters, to proceedings regarding
7 voluntary relinquishment and termination of a parent and child relationship, to
8 eligibility for permanent fund dividends for certain children in the custody of the state,
9 and to juvenile delinquency proceedings and placements; establishing a right to a trial
10 by jury in termination of parental rights proceedings; reestablishing and relating to a
11 state citizens' review panel; amending the duty to disclose information pertaining to a
12 child in need of aid; authorizing additional family members to consent to disclosure of

1 confidential or privileged information about children and families involved with
2 children's services within the Department of Health and Social Services to officials for
3 review or use in official capacities; relating to reports of harm and to adoptions and
4 foster care; mandating consent for the medication of children in state custody;
5 prescribing the rights of family members related to child-in-need-of-aid cases and
6 establishing a familial priority for adoption in certain child-in-need-of-aid cases;
7 modifying adoption and placement procedures in certain child-in-need-of-aid cases;
8 amending treatment service requirements for parents involved in child-in-need-of-aid
9 proceedings; amending Rules 9 and 13, Alaska Adoption Rules; amending Rules 3, 17.2,
10 18, and 22, Alaska Child in Need of Aid Rules of Procedure; amending Rule 1.6, Alaska
11 Rules of Professional Conduct; and providing for an effective date."

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

13 * **Section 1.** AS 25.23 is amended by adding a new section to read:

14 **Sec. 25.23.127. Adult family member preference to adopt.**

15 Notwithstanding a child's stated preference under AS 25.23.125 and 25.23.040(a)(5),
16 an adult family member, including a grandparent, who has had physical custody of a
17 child for at least two consecutive years when the parental rights to the child have been
18 terminated under AS 47.10.080(c)(3) shall be permitted to adopt the child before any
19 other person upon the filing of a petition by the adult family member under
20 AS 25.23.080 unless the court finds that the adult family member is not fit to raise the
21 child. In this section, "adult family member" has the meaning given in AS 47.10.990.

22 * **Sec. 2.** AS 43.23.005(f) is amended to read:

23 (f) The [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
24 commissioner may waive the requirement of (a)(4) of this section for an individual
25 absent from the state

26 (1) in a time of national military emergency under military orders
27 while serving in the armed forces of the United States, or for the spouse and

1 dependents of that individual; or

2 (2) while in the custody of the Department of Health and Social
3 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed
4 outside of the state by the Department of Health and Social Services for purposes
5 of medical or behavioral treatment.

6 * Sec. 3. AS 47.10.005 is amended to read:

7 Sec. 47.10.005. Construction. The provisions of this chapter shall be
8 liberally construed to

9 (1) achieve the end that a child coming within the jurisdiction of the
10 court under this chapter may receive the care, guidance, treatment, and control that
11 will promote the child's welfare and the parents' participation in the upbringing of
12 the child;

13 (2) recognize that a parent possesses inherent individual rights to
14 direct and control the education and upbringing of the parent's child;

15 (3) promote and protect the safety, welfare, health, and good of
16 children, grandparents, and family members living in the state;

17 (4) benefit future generations; and

18 (5) bring fairness and equality to biological family members and
19 children in the state.

20 * Sec. 4. AS 47.10.020(a) is amended to read:

21 (a) Whenever circumstances subject a child to the jurisdiction of the court
22 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
23 to make a preliminary inquiry and report for the information of the court to determine
24 whether the best interests of the child require that further action be taken. The court
25 shall make the appointment on its own motion or at the request of a person or
26 agency having knowledge of the child's circumstances. If, under this subsection,
27 the court appoints a person or agency to make a preliminary inquiry and to report to it,
28 or if the department is conducting an investigation of a report of child abuse or
29 neglect, the court may issue any orders necessary to aid the person, the agency,
30 or the department in its investigation or in making the preliminary inquiry and
31 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the

1 court may

2 (1) close the matter without a court hearing;

3 (2) determine whether the best interests of the child require that further
4 action be taken; or

5 (3) authorize the person or agency having knowledge of the facts of the
6 case to file with the court a petition setting out the facts.

7 * Sec. 5. AS 47.10.020 is amended by adding a new subsection to read:

8 (e) Nothing in this section requires the department to obtain authorization
9 from the court before

10 (1) conducting an investigation of a report of child abuse or neglect; or

11 (2) filing a petition.

12 * Sec. 6. AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.025. Adult family member's rights.** (a) An adult family member,
14 including a grandparent, of a child who has been adjudicated a child in need of aid
15 under this chapter may initiate special proceedings by filing a petition under
16 AS 47.10.110 to obtain custody of the child if

17 (1) both of the child's parents are dead; or

18 (2) one of the child's parents is dead and the child has been abandoned
19 by a remaining parent.

20 (b) In a proceeding initiated under (a) of this section, the court shall presume
21 that awarding custody to an adult family member, including a grandparent, is in the
22 best interest of the child. A presumption under this subsection may be overcome by
23 evidence of abuse, neglect, or other harm to the child attributable to the adult family
24 member.

25 (c) The department shall attempt to locate all living adult family members of a
26 child and to investigate the adult family member's ability to care for the child before
27 placing the child or approving an adoption of the child under this chapter. The
28 department shall provide written notice to all identified adult family members of their
29 rights under this chapter and of the procedures necessary to gain custody of the child.
30 The adult family members shall sign a receipt of the notice and, if the adult family
31 member is competent, state that the adult family member understands the adult family

1 member's right to initiate proceedings to gain custody of the child and either intends or
2 declines to proceed.

3 * Sec. 7. AS 47.10 is amended by adding a new section to read:

4 **Sec. 47.10.065. Right to demand jury trial in certain cases.** A party has the
5 right to demand a jury trial for a hearing under this chapter on a petition to terminate
6 parental rights. If a hearing to adjudicate whether a child is a child in need of aid
7 under AS 47.10.011 is consolidated with a hearing on a petition to terminate parental
8 rights, the right to a jury trial under this section applies only to the issue of whether
9 parental rights should be terminated after the court enters a finding under
10 AS 47.10.080(a). In this section, "party" has the meaning given in Rule 2, Alaska
11 Child in Need of Aid Rules of Procedure.

12 * Sec. 8. AS 47.10.070(a) is amended to read:

13 (a) The court may conduct the hearing on the petition in an informal manner.
14 The court shall give notice of the hearing to the department, and it may send a
15 representative to the hearing. The court shall also transmit a copy of the petition to the
16 department. The department shall send notice of the hearing to the persons for whom
17 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
18 to notice under AS 47.10.030(d). The department and the persons to whom the
19 department must send notice of the hearing are entitled to be heard at the hearing.
20 Except as provided in (c) of this section, and unless prohibited by federal or state
21 law, court order, or court rule, a hearing is open to the public [HOWEVER, THE
22 COURT MAY LIMIT THE PRESENCE OF THE FOSTER PARENT OR OTHER
23 OUT-OF-HOME CARE PROVIDER AND OF ANY GRANDPARENT OF THE
24 CHILD TO THE TIME DURING WHICH THE PERSON'S TESTIMONY IS BEING
25 GIVEN IF IT IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2)
26 NECESSARY TO PROTECT THE PRIVACY INTERESTS OF THE PARTIES
27 AND WILL NOT BE DETRIMENTAL TO THE CHILD. THE PUBLIC SHALL BE
28 EXCLUDED FROM THE HEARING, BUT THE COURT, IN ITS DISCRETION,
29 MAY PERMIT INDIVIDUALS TO ATTEND A HEARING IF THEIR
30 ATTENDANCE IS COMPATIBLE WITH THE BEST INTERESTS OF THE
31 CHILD].

1 * Sec. 9. AS 47 10.070 is amended by adding new subsections to read:

2 (c) Except as provided in (e) of this section, the following hearings in child-in-
3 need-of-aid cases are closed to the public:

4 (1) the initial court hearing after the filing of a petition to commence
5 the child-in-need-of-aid case;

6 (2) a hearing following the initial hearing in which a parent, child, or
7 other party to the case is present but has not had an opportunity to obtain legal
8 representation;

9 (3) a hearing, or a part of a hearing, for which the court issues a written
10 order finding that allowing the hearing, or part of the hearing, to be open to the public
11 would reasonably be expected to

12 (A) stigmatize or be emotionally damaging to a child;

13 (B) inhibit a child's testimony in that hearing;

14 (C) disclose matters otherwise required to be kept confidential
15 by state or federal statute or regulation, court order, or court rule; or

16 (D) interfere with a criminal investigation or proceeding or a
17 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
18 on a request under this subparagraph, the court shall give notice and an
19 opportunity to be heard to the state or a municipal agency that is assigned to
20 the criminal investigation or to the prosecuting attorney.

21 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
22 closed under (c) of this section, the court shall hear in camera any information offered
23 regarding the location, or readily leading to the location, of a parent, child, or other
24 party to the case who is a victim of domestic violence. Access to testimony heard in
25 camera under this subsection is limited to the court and authorized court personnel.

26 (e) The grandparents of the child and the foster parents or other out-of-home
27 care provider may attend hearings that are otherwise closed to the public under (c) of
28 this section. However, the court shall limit the presence of these persons in a hearing
29 closed to the public to the time during which the person's testimony is being given if
30 the court determines that the limitation is necessary under (c)(3) of this section. In this
31 subsection, "out-of-home care provider" means an agency or person, other than the

1 child's legal parents, with whom a child who is in the custody of the state under
2 AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency
3 or person" includes a foster parent, an adult family member other than a parent, a
4 person who has petitioned for adoption of the child, and a residential child care
5 facility.

6 (f) Notwithstanding any other provision of this chapter, a person attending a
7 hearing open to the public may not disclose a name, picture, or other information that
8 would readily lead to the identification of a child who is the subject of the child-in-
9 need-of-aid case. At the beginning of the hearing, the court shall issue an order
10 specifying the restrictions necessary to comply with this subsection. If a person
11 violates the order, the court may impose any appropriate sanction, including contempt
12 and closure of any further hearings in the case to the person.

13 (g) Nothing contained in this section limits the rights of adult family members,
14 including grandparents, under this title.

15 * Sec. 10. AS 47.10.080(c) is amended to read:

16 (c) If the court finds that the child is a child in need of aid, the court shall

17 (1) order the child committed to the department for placement in an
18 appropriate setting for a period of time not to exceed two years or in any event not to
19 extend past the date the child becomes 19 years of age, except that the department or
20 the child's guardian ad litem may petition for and the court may grant in a hearing

21 (A) one-year extensions of commitment that do not extend
22 beyond the child's 19th birthday if the extension is in the best interests of the
23 child; and

24 (B) an additional one-year period of state custody past [AGE]
25 19 years of age if the continued state custody is in the best interests of the
26 person and the person consents to it;

27 (2) order the child released to a parent, adult family member
28 [RELATIVE], or guardian of the child or to another suitable person, and, in
29 appropriate cases, order the parent, adult family member [RELATIVE], guardian, or
30 other person to provide medical or other care and treatment; if the court releases the
31 child, it shall direct the department to supervise the care and treatment given to the

1 child, but the court may dispense with the department's supervision if the court finds
 2 that the adult to whom the child is released will adequately care for the child without
 3 supervision; the department's supervision may not exceed two years or in any event
 4 extend past the date the child reaches [AGE] i9 years of age, except that the
 5 department or the child's guardian ad litem may petition for and the court may grant in
 6 a hearing

7 (A) one-year extensions of supervision that do not extend
 8 beyond the child's 19th birthday if the extensions are in the best interests of the
 9 child; and

10 (B) an additional one-year period of supervision past age 19 if
 11 the continued supervision is in the best interests of the person and the person
 12 consents to it; or

13 (3) unless a jury trial has been requested by a party, order, under
 14 the grounds specified in (c) of this section or AS 47.10.088, the termination of
 15 parental rights and responsibilities of one or both parents and commit the child to the
 16 custody of the department, and the department shall report quarterly to the court on
 17 efforts being made to find a permanent placement for the child; if a jury trial has
 18 been requested by a party, the court shall conduct a jury trial on the termination
 19 of parental rights under this section.

20 * Sec. 11. AS 47.10.080(i) is amended to read:

21 (i) Within 12 months after the date a child enters foster care as calculated
 22 under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and
 23 permanent plan developed in the hearing are governed by the following provisions:

24 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of
 25 this section are also entitled to be heard at the hearing held under this subsection;

26 (2) when establishing the permanent plan for the child, the court shall
 27 make appropriate written findings, including findings related to whether

28 (A) and when the child should be returned to the parent or
 29 guardian;

30 (B) the child should be placed for adoption or legal
 31 guardianship and whether a petition for termination of parental rights should be

1 filed by the department; and

2 (C) the child should be placed in another planned, permanent
3 living arrangement and what steps are necessary to achieve the new
4 arrangement;

5 (3) if the court is unable to make a finding required under (2) of this
6 subsection, the court shall hold another hearing within a reasonable period of time;

7 (4) in addition to the findings required by (2) of this subsection, the
8 court shall also make appropriate written findings related to

9 (A) whether the department has made the reasonable efforts
10 required under AS 47.10.086 to offer appropriate family support services to
11 remedy the parent's or guardian's conduct or conditions in the home that made
12 the child a child in need of aid under this chapter;

13 (B) whether the parent or guardian has made substantial
14 progress to remedy the parent's or guardian's conduct or conditions in the home
15 that made the child a child in need of aid under this chapter; [AND]

16 (C) if the permanent plan is for the child to remain in out-of-
17 home-care, whether the child's out-of-home placement continues to be
18 appropriate and in the best interests of the child; and

19 (D) whether the department has made reasonable efforts to
20 finalize the permanent plan for the child;

21 (5) the court shall hold a hearing to review the permanent plan at least
22 annually until successful implementation of the plan; if the plan approved by the court
23 changes after the hearing, the department shall promptly apply to the court for another
24 permanency hearing, and the court shall conduct the hearing within 30 days after
25 application by the department.

26 * Sec. 12. AS 47.10.080(p) is amended to read:

27 (p) If a child is removed from the parental home, the department shall provide
28 reasonable visitation between the child and the child's parents, guardian, and family.
29 When determining what constitutes reasonable visitation with a family member, the
30 department shall consider the nature and quality of the relationship that existed
31 between the child and the family member before the child was committed to the

1 custody of the department. The court may require the department to file a visitation
2 plan with the court. The department may deny visitation to the parents, guardian, or
3 family members if there is clear and convincing evidence that visits are not in the
4 child's best interests. If the department denies visitation to a parent or family
5 member of a child, the department shall inform the parent or family member of a
6 reason for the denial and of the parent's or family member's right to request a
7 review hearing as an interested person. A parent, family member, or guardian who
8 is denied visitation may request a review hearing as an interested person. An
9 interested person is not entitled to a court-appointed attorney. In this subsection,
10 "interested person" means a person who has the right to request a hearing on a
11 departmental decision involving visitation by a family member.

12 * Sec. 13. AS 47.10.080 is amended by adding new subsections to read:

13 (t) The court or a jury, if a jury trial is requested, may not terminate parental
14 rights solely on the basis that the parent did not complete treatment required of the
15 parent by the department for reunification with the child if the treatment required was
16 unavailable to the parent and the department did not provide the treatment.

17 (u) For a child who is placed in foster care, when the department finds that it
18 is in the best interest of a child and that the foster family will not be placed in undue
19 risk of harm, the department shall require foster parents to provide regular
20 opportunities for visitation with the child by the parents of the child and encourage
21 foster parents to serve as mentors for facilitating family reunification.

22 (v) A hearing conducted under this section is open to the public unless an
23 exception provided in AS 47.10.070(c) applies to make the hearing closed to the
24 public or unless prohibited by federal or state statute or regulation.

25 * Sec. 14. AS 47.10.084 is amended by adding a new subsection to read:

26 (d) When a child who is in the custody of the department is prescribed a
27 psychotropic or other mental health medication, the department shall obtain the
28 consent of a parent who has residual parental rights under (c) of this section, or, if no
29 residual parental rights exist, of a legal guardian, before administering the medication.

30 * Sec. 15. AS 47.10.088(i) is amended to read:

31 (i) The department shall concurrently identify, recruit, process, and approve a

1 qualified person or family for an adoption whenever a petition to terminate a parent's
2 rights to a child is filed. The department may not approve an adoption by a
3 person or family who is not related to the child by blood if an adult family
4 member of the child requests that the department approve the adult family
5 member for the adoption unless the adoption by the child's adult family member
6 is not in the child's best interest, is prohibited under (l) of this section, or is
7 otherwise contrary to federal or state law. If the court issues an order to terminate
8 under (j) of this section, the department shall report within 30 days on the efforts being
9 made to recruit a permanent placement for the child if a permanent placement was not
10 approved at the time of the trial under (j) of this section. The report must document
11 recruitment efforts made for the child.

12 * Sec. 16. AS 47.10.088 is amended by adding new subsections to read:

13 (l) The department may not approve an adoption by a person related to the
14 child by blood if the department

15 (1) makes a determination, supported by clear and convincing
16 evidence, that adoption of the child by the adult family member will result in physical
17 or mental injury to the child; in making that determination, poverty, including
18 inadequate or crowded housing, on the part of the person related to the child by blood
19 is not considered prima facie evidence that physical or mental injury to the child will
20 occur;

21 (2) determines that a member of the adult family member's household
22 who is 12 years of age or older was the perpetrator in a substantiated report of abuse
23 under AS 47.17; or

24 (3) determines that a member of the adult family member's household
25 who is 12 years of age or older is under arrest for, is charged with, has been convicted
26 of, or has been found not guilty by reason of insanity of, a serious offense;
27 notwithstanding this paragraph, the department may approve an adoption by the adult
28 family member if the adult family member demonstrates to the satisfaction of the
29 department that conduct described in this paragraph occurred at least five years before
30 the intended adoption and the conduct

31 (A) did not involve a victim who was under 18 years of age at

1 the time of the conduct;

2 (B) was not a crime of domestic violence as defined in
3 AS 18.66.990; and

4 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
5 a law or ordinance of another jurisdiction having similar elements.

6 (m) For the purpose of determining whether the home of an adult family
7 member meets the requirements for adoption of the child, the department shall conduct
8 a criminal background check from state and national criminal justice information
9 available under AS 12.62. The department may conduct a fingerprint background
10 check on any member of the adult family member's household who is 12 years of age
11 or older when the adult family member requests adoption of the child. For the
12 purposes of obtaining criminal justice information under this subsection, the
13 department is a criminal justice agency conducting a criminal justice activity under
14 AS 12.62.

15 (n) An interested person related to a child by blood who is denied a request for
16 an adoption under (i) of this section may request a review hearing by the court. If the
17 department denies a request by a person related to a child by blood to adopt a child
18 under (i) of this section, the department shall inform the adult family member of the
19 reason for the denial and of the adult family member's right to request a review
20 hearing. An interested person is not entitled to a court-appointed attorney. In this
21 subsection, "interested person" means an individual who has requested approval of the
22 department to adopt a child under the custody of the department.

23 (o) A trial or hearing conducted under this section is open to the public unless
24 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
25 to the public. The court shall uphold the department's decision under this section if the
26 court finds, by clear and convincing evidence, that the decision is in the best interest of
27 the child and otherwise complies with the requirements of this section.

28 * Sec. 17. AS 47.10 is amended by adding a new section to read:

29 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
30 **responsibilities.** (a) When a child is committed to the custody of the department
31 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a

1 parent with respect to the child, including parental rights to control the child, to
2 withhold consent to an adoption, or to receive notice of a hearing on a petition for
3 adoption, may be voluntarily relinquished to the department and the relationship of
4 parent and child terminated in a proceeding as provided under this section.

5 (b) A voluntary relinquishment must be in writing and signed by a parent,
6 regardless of the age of the parent, in the presence of a representative of the
7 department or in the presence of a court of competent jurisdiction with the knowledge
8 and approval of the department. A copy of the signed relinquishment shall be given to
9 the parent.

10 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
11 signed. The relinquishment is invalid unless the relinquishment contains the right of
12 withdrawal as specified under this subsection.

13 (d) A parent may retain privileges with respect to the child, including the
14 ability to have future contact, communication, and visitation with the child in a
15 voluntary relinquishment executed under this section. A retained privilege must be in
16 writing and stated with specificity.

17 (e) Not less than 10 days after a voluntary relinquishment is signed, the court
18 shall enter an order terminating parental rights if the court finds that termination of
19 parental rights under the terms of the relinquishment is in the child's best interest. If a
20 parent has retained one or more privileges under (d) of this section, the court shall
21 incorporate the retained privileges in the termination order with a recommendation
22 that the retained privileges be incorporated in an adoption or legal guardianship
23 decree.

24 (f) A voluntary relinquishment may not be withdrawn and a termination order
25 may not be vacated on the ground that a retained privilege has been withheld from the
26 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
27 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
28 Procedure.

29 (g) After a termination order is entered and before the entry of an adoption or
30 legal guardianship decree, a person who has voluntarily relinquished parental rights
31 under this section may request a review hearing, upon a showing of good cause, to

1 seek enforcement or modification of a privilege retained in the termination order. The
2 court may modify or enforce the retained privilege if it is in the best interest of the
3 child to do so.

4 (h) After a termination order is entered and before the entry of an adoption or
5 legal guardianship decree, a person who voluntarily relinquished parental rights to a
6 child under this section may request a review hearing, upon a showing of good cause,
7 to vacate the termination order and reinstate parental rights relating to that child. A
8 court shall vacate a termination order if the person shows, by clear and convincing
9 evidence, that reinstatement of parental rights is in the best interest of the child and
10 that the person is rehabilitated and capable of providing the care and guidance that will
11 serve the moral, emotional, mental, and physical welfare of the child.

12 (i) A person seeking a review hearing under (g) or (h) of this section is entitled
13 to the appointment of an attorney to the same extent as if the parent's rights had not
14 been terminated in a child-in-need-of-aid proceeding.

15 * Sec. 18. AS 47.10.090(c) is amended to read:

16 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
17 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
18 18th birthday, within 30 days after [OF] the date on which the court releases
19 jurisdiction over the child [MINOR], the court shall order all the court's official
20 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
21 person may not use these sealed records unless authorized by order of [FOR ANY
22 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
23 USE FOR] good cause [SHOWN].

24 * Sec. 19. AS 47.10.090(d) is amended to read:

25 (d) Except as provided in AS 47.10.070, 47.10.080(v), and 47.10.093, the
26 [THE] name or picture of a child [MINOR] under the jurisdiction of the court may not
27 be made public in connection with the child's [MINOR'S] status as a child in need of
28 aid unless authorized by order of the court or unless to implement the permanency
29 plan for a child after all parental rights of custody have been terminated. This
30 subsection does not prohibit the release of aggregate information for statistical or
31 other informational purposes if the identity of any particular person is not

1 revealed by the release.

2 * Sec. 20. AS 47.10.092(a) is amended to read:

3 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member
4 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005
5 - 47.10.142 may disclose confidential or privileged information about the child or the
6 child's family, including information that has been lawfully obtained from agency or
7 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
8 appointed under AS 24.55, the attorney general, and the commissioner
9 [COMMISSIONERS] of health and social services, administration, or public safety, or
10 an employee of these persons, for review or use in their official capacities. The
11 Department of Health and Social Services and the Department of Administration
12 [DEPARTMENT] shall disclose additional confidential or privileged information and
13 make copies of documents available for inspection about the child or the child's family
14 to these state officials or employees for review or use in their official capacities upon
15 request of the official or employee and submission of satisfactory evidence that a
16 parent or legal guardian of the child has requested the state official's assistance in the
17 case as part of the official's duties. A person to whom disclosure is made under this
18 section may not disclose confidential or privileged information about the child or the
19 child's family to a person not authorized to receive it. In this subsection, "privileged
20 information" includes an attorney-client privilege if the person has an attorney-
21 client relationship with the child or the child's family.

22 * Sec. 21. AS 47.10.092 is amended by adding new subsections to read:

23 (d) The duty imposed on the departments under (a) of this section to disclose
24 information to and make copies of documents available for inspection by state
25 officials and employees upon proof that a parent has requested the assistance of the
26 state official or employee with respect to a child's case does not lapse when the
27 parent's parental rights have been terminated with respect to the child. However, the
28 duty does lapse after termination of the parent's parental rights if another parent or
29 legal guardian of the child subsequently files a notice with the Department of Health
30 and Social Services that the assistance of the state official or employee is no longer
31 requested.

1 (e) The Department of Health and Social Services shall notify an official
2 identified under (a) of this section of the opportunity to file a grievance under
3 AS 47.10.098 - 47.10.099 when the official is denied access to all or part of a
4 requested record.

5 * Sec. 22. AS 47.10.093(a) is amended to read:

6 (a) Except as specified in AS 47.10.092 and in (b) - (g) and (k) - (n) [(b) -
7 (g)] of this section, all information and social records pertaining to a child [MINOR]
8 who is subject to this chapter or AS 47.17 prepared by or in the possession of a
9 federal, state, or municipal agency or employee in the discharge of the agency's or
10 employee's official duty are privileged and may not be disclosed directly or indirectly
11 to anyone without a court order.

12 * Sec. 23. AS 47.10.093(b) is amended to read:

13 (b) A state or municipal agency or employee shall disclose appropriate
14 confidential information regarding a case to

15 (1) a guardian ad litem appointed by the court;

16 (2) a person or an agency requested by the department or the child's
17 legal custodian to provide consultation or services for a child who is subject to the
18 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
19 the consultation or services;

20 (3) a foster parent [PARENTS] or adult family member
21 [RELATIVES] with whom the child is placed by the department as [MAY BE]
22 necessary to enable the foster parent [PARENTS] or adult family member
23 [RELATIVES] to provide appropriate care to [FOR] the child [WHO IS THE
24 SUBJECT OF THE CASE], to protect the safety of the child [WHO IS THE
25 SUBJECT OF THE CASE], and to protect the safety and property of family members
26 and visitors of the foster parent [PARENTS] or adult family member
27 [RELATIVES];

28 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable
29 the school to provide appropriate counseling and support services to a [THE] child
30 who is the subject of the case, to protect the safety of the child [WHO IS THE
31 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

1 (5) a governmental agency as [MAY BE] necessary to obtain that
2 agency's assistance for the department in its investigation or to obtain physical custody
3 of a child;

4 (6) a law enforcement agency of this state or another jurisdiction as
5 [MAY BE] necessary for the protection of any child or for actions by that agency to
6 protect the public safety;

7 (7) a member [MEMBERS] of a multidisciplinary child protection
8 team created under AS 47.14.300 as [MAY BE] necessary for the performance of the
9 member's [THEIR] duties;

10 (8) the state medical examiner under AS 12.65 as [MAY BE]
11 necessary for the performance of the duties of the state medical examiner;

12 (9) a person who has made a report of harm as required by
13 AS 47.17.020 to inform the person that the investigation was completed and of action
14 taken to protect the child who was the subject of the report; [AND]

15 (10) the child support services agency established in AS 25.27.010 as
16 [MAY BE] necessary to establish and collect child support for a child who is a child in
17 need of aid under this chapter;

18 (11) a caregiver of a child or an entity responsible for ensuring the
19 safety of children as necessary to protect the safety of a child; and

20 (12) a review panel established by the department for the purpose
21 of reviewing the actions taken by the department in a specific case.

22 * Sec. 24. AS 47.10.093(c) is repealed and reenacted to read:

23 (c) A state or municipal law enforcement agency shall disclose information
24 regarding a case that is needed by the person or agency charged with making a
25 preliminary investigation for the information of the court under AS 47.10.020.

26 * Sec. 25. AS 47.10.093(f) is amended to read:

27 (f) The department may release to a person with a legitimate interest
28 confidential information relating to children [MINORS] not subject to the
29 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT
30 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
31 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

1 * Sec. 26. AS 47.10.093(g) is amended to read:

2 (g) The department and affected law enforcement agencies shall work with
3 school districts and private schools to develop procedures for the disclosure of
4 confidential information to a school official [OFFICIALS] under (b)(4) of this
5 section. The procedures must provide a method for informing the principal or the
6 principal's designee of the school that the student attends as soon as it is reasonably
7 practicable.

8 * Sec. 27. AS 47.10.093 is amended by adding new subsections to read:

9 (k) The department may disclose to the public, upon request, confidential
10 information, as set out in (l) of this section, when

11 (1) the parent or guardian of a child who is the subject of a report of
12 harm under AS 47.17 has made a public disclosure concerning the department's
13 involvement with the family;

14 (2) the alleged perpetrator named in a report of harm under AS 47.17
15 has been charged with a crime concerning the alleged abuse or neglect; or

16 (3) a report of harm under AS 47.17 has resulted in the fatality or near
17 fatality of that child.

18 (l) The type of information that may be publicly disclosed under (k) of this
19 section is information related to the determination, if any, made by the department
20 regarding the validity of a report of harm under AS 47.17 or the department's
21 activities arising from the department's investigation of the report. The department

22 (1) may withhold disclosure of the child's name, picture, or other
23 information that would readily lead to the identification of the child if the department
24 determines that the disclosure would be contrary to the best interests of the child, the
25 child's siblings, or other children in the child's household; or

26 (2) after consultation with a prosecuting attorney, may withhold
27 disclosure of information that would reasonably be expected to interfere with a
28 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
29 criminal proceeding.

30 (m) Except for a disclosure made under (k) of this section, a person to whom
31 disclosure is made under this section may not disclose confidential information about

1 the child or the child's family to a person not authorized to receive it.

2 (n) The department may adopt regulations to implement and interpret its
3 duties under this section, including regulations governing the release of confidential
4 information and identifying a sufficient legitimate interest under (f) of this section.

5 (o) A person may not bring an action for damages against the state, the
6 commissioner, or the commissioner's designee based on the disclosure or
7 nondisclosure of information under (k) of this section except for civil damages
8 resulting from gross negligence or reckless or intentional misconduct.

9 * **Sec. 28.** AS 47.10 is amended by adding new sections to read:

10 **Sec. 47.10.098. Grievance procedure.** (a) An individual may file a
11 grievance with the department for a complaint involving the disclosure of records
12 under this chapter if the complaint is based on

13 (1) the application of a department policy or procedure;

14 (2) compliance with this chapter or a regulation adopted under this
15 chapter; or

16 (3) an act or failure to act by the department.

17 (b) An aggrieved individual shall submit a written complaint on a form
18 provided by the department, to the supervisor of the person whose action is being
19 grieved stating the specific concern, the name of the department staff member
20 involved, and the desired relief sought. The supervisor shall provide a copy of the
21 grievance procedure to the aggrieved individual. The grievance procedure must
22 include

23 (1) review of the grievance by the supervisor within three working
24 days after receipt of the grievance to determine

25 (A) the nature of the complaint; and

26 (B) whether the action or inaction of the department falls
27 within the grounds established under (a) of this section:

28 (2) if the supervisor determines that the grievance falls within the
29 grounds established under (a) of this section, contacting the aggrieved individual to
30 schedule an informal meeting, within 10 days after the supervisor's decision, with the
31 supervisor, the aggrieved individual, and the department staff member identified in the

1 grievance in order to attempt to informally resolve the grievance;

2 (3) if the supervisor determines that the grievance does not fall within
3 the grounds established under (a) of this section, notifying the aggrieved individual of
4 the inapplicability of the grievance procedure and closing the file;

5 (4) the availability of more than one informal meeting if it is in the best
6 interest of the parties to the grievance;

7 (5) written recommendations of the supervisor and filing of a summary
8 of the informal meetings within five working days after the conclusion of the informal
9 meetings; a copy of the recommendations and summary must be sent to the aggrieved
10 individual; and

11 (6) opportunity for review under AS 47.10.099.

12 **Sec. 47.10.099. Review of grievances.** (a) An aggrieved individual may file
13 a request with the state panel to review the recommendations of the supervisor of the
14 person whose action is being grieved under AS 47.10.098.

15 (b) For purposes of conducting a review under this section, the state panel
16 shall meet at least one time, either in person or telephonically, to conduct a fact-
17 finding meeting at which the aggrieved party and the department staff member
18 involved in the grievance may appear. The state panel may rely on outside
19 information gathered to resolve the grievance as well as information received at the
20 meeting. If the department staff member involved in the grievance is unable to attend
21 the meeting, a written explanation of the staff member's absence shall be provided to
22 the state panel before the meeting.

23 (c) Following the fact-finding meeting held under (b) of this section, the state
24 panel shall convene telephonically or in person to deliberate and resolve the grievance.

25 (d) Within 10 working days after the meeting held under (c) of this section,
26 the state panel shall issue written findings and a resolution. The state panel shall send
27 a copy of the findings and resolution to the aggrieved party and to the department staff
28 member named in the grievance.

29 (e) The information reviewed by the state panel shall be made part of a
30 confidential record, and information containing identifying information of recipients
31 of department services, along with all other information made confidential by state or

1 federal law, may not be discussed publicly by any person involved in the grievance.

2 (f) The state panel shall prepare a report of each grievance reviewed that
3 contains a summary of the complaint, the review or evaluation process used, and the
4 outcome of the review or evaluation, including any recommendations made as a result
5 of the review. Before the report is disclosed, the state panel shall modify a report
6 prepared or produced under this subsection to exclude all personal identifying
7 information of a child, the child's family, and witnesses.

8 (g) In this section, "state panel" has the meaning given in AS 47.14.295.

9 * Sec. 29. AS 47.10.960 is repealed and reenacted to read:

10 Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title
11 does not constitute a basis for civil liability for damages except for civil damages
12 resulting from gross negligence or reckless or intentional misconduct.

13 * Sec. 30. AS 47.10.990(16) is amended to read:

14 (16) "mental health professional" has the meaning given in
15 AS 47.30.915, except that, if the child is placed in another state by the
16 department, "mental health professional" also includes a professional listed in
17 the definition of "mental health professional" in AS 47.30.915 who is not licensed
18 to practice by a board of this state but is licensed by a corresponding licensing
19 authority to practice in the state in which the child is placed;

20 * Sec. 31. AS 47.10.990 is amended by adding new paragraphs to read:

21 (28) "adult family member" means a person who is 18 years of age or
22 older and who is related to the child as the child's legal parent, grandparent, aunt,
23 uncle, or sibling;

24 (29) "family member" means a person of any age who is related to the
25 child as the child's legal parent, grandparent, aunt, uncle, or sibling;

26 (30) "near fatality" means physical injury or other harm, as certified by
27 a physician, caused by an act or omission that created a substantial risk of death.

28 * Sec. 32. AS 47.12.990(10) is amended to read:

29 (10) "mental health professional" has the meaning given in
30 AS 47.30.915, except that, if the minor is placed in another state by the
31 department, "mental health professional" also includes a professional listed in

1 the definition of "mental health professional" in AS 47.30.915 who is not licensed
2 to practice by a board of this state but is licensed by a corresponding licensing
3 authority to practice in the state in which the minor is placed;

4 * Sec. 33. AS 47.14.100(e) is amended to read:

5 (e) If [A CHILD MAY NOT BE PLACED IN A FOSTER HOME OR IN
6 THE CARE OF AN AGENCY OR INSTITUTION PROVIDING CARE FOR
7 CHILDREN IF] a relative by blood or marriage or a family friend requests placement
8 of the child in the [RELATIVE'S] home of the relative or family friend, and the
9 parent or guardian of the child agrees to the placement, a child may not be
10 placed in a foster home that is not operated by the relative or may not be placed
11 in the care of an agency or institution providing care for children. However, the
12 department may retain custody of the child and provide for its placement in the same
13 manner as for other children if the department

14 (1) makes a determination, supported by clear and convincing
15 evidence, that placement of the child with the relative or family friend will result in
16 physical or mental injury; in making that determination, poverty, including inadequate
17 or crowded housing, on the part of the [BLOOD] relative or family friend, is not
18 considered prima facie evidence that physical or emotional damage to the child will
19 occur; this determination may be appealed to the superior court to hear the matter de
20 novo;

21 (2) determines that a member of the relative's or family friend's
22 household who is 12 years of age or older was the perpetrator in a substantiated report
23 of abuse under AS 47.17; or

24 (3) determines that a member of the relative's or family friend's
25 household who is 12 years of age or older is under arrest for, charged with, has been
26 convicted of, or has been found not guilty by reason of insanity of, a serious offense;
27 notwithstanding this paragraph, the department may place or continue the placement
28 of a child at the relative's or family friend's home if the relative or family friend
29 demonstrates to the satisfaction of the department that conduct described in this
30 paragraph occurred at least five years before the intended placement and the conduct

31 (A) did not involve a victim who was under 18 years of age at

1 the time of the conduct;

2 (B) was not a crime of domestic violence as defined in
3 AS 18.66.990; and

4 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
5 a law or ordinance of another jurisdiction having similar elements.

6 * Sec. 34. AS 47.14.100(f) is amended to read:

7 (f) If a blood relative of the child specified under (e) of this section exists and
8 agrees that the child should be placed elsewhere, before placement elsewhere, the
9 department shall fully communicate the nature of the placement proceedings to the
10 relative. Communication under this subsection shall be made in the relative's native
11 language, if necessary. [NOTHING IN THIS SUBSECTION OR IN (e) OF THIS
12 SECTION APPLIES TO CHILD PLACEMENT FOR ADOPTIVE PURPOSES.]

13 * Sec. 35. AS 47.14 is amended by adding a new section to article 3 to read:

14 **Sec. 47.14.205. State Citizen Review Panel.** (a) There is established within
15 the department a Citizen Review Panel. The panel shall be composed of volunteer
16 members who are broadly representative of the state, including members who have
17 expertise in the prevention and treatment of child abuse and neglect.

18 (b) The panel shall meet not less than once every three months. Meetings may
19 take place telephonically and shall be closed to the public.

20 * Sec. 36. AS 47.14 is amended by adding a new section to article 3 to read:

21 **Sec. 47.14.215. Duties of the state panel.** (a) The state panel shall evaluate
22 the extent to which the department is effectively discharging its child protection
23 responsibilities under

24 (1) the state plan submitted to the United States Department of Health
25 and Human Services under 42 U.S.C. 5106a(b);

26 (2) child protection standards under federal and state laws; and

27 (3) any other criteria that the panel considers important to ensuring the
28 protection of children, including the level and efficiency of coordination of foster care
29 and adoption programs in the state and a review of child fatalities and near fatalities.

30 (b) In carrying out the responsibilities under (a) of this section, the state panel
31 shall examine the policies, procedures, and practices of the department, and, where

1 appropriate, evaluate specific cases of child abuse or neglect.

2 (c) The commissioner shall, by regulation, establish policies and procedures
3 necessary to carrying out the duties of the state panel under this section.

4 * **Sec. 37.** AS 47.14 is amended by adding a new section to article 3 to read:

5 **Sec. 47.14.225. Cooperation with state panel.** (a) The department shall
6 provide the panel access to information on child abuse or neglect cases that is
7 necessary for the panel to carry out its duties under AS 47.14.215.

8 (b) The department shall serve as staff to the state panel as requested by the
9 panel members.

10 * **Sec. 38.** AS 47.14 is amended by adding a new section to article 3 to read:

11 **Sec. 47.14.235. Confidentiality.** The members and staff of the state panel
12 may not disclose to any person, including a government agency or official, records or
13 other information containing personally identifying or other information made
14 confidential under state or federal law about a child or a witnesses involved in a case
15 under review by the panel.

16 * **Sec. 39.** AS 47.14 is amended by adding a new section to article 3 to read:

17 **Sec. 47.14.245. Public outreach.** The state panel shall conduct public
18 outreach and gather public comment on current department procedures and practices
19 involving children and family services.

20 * **Sec. 40.** AS 47.14 is amended by adding a new section to article 3 to read:

21 **Sec. 47.14.255. Report.** (a) The state panel shall prepare and make available
22 to the governor, the legislature, and to the public an annual report containing a
23 summary of the activities of the panel conducted under AS 47.14.205 - 47.14.295 and
24 recommendations for the improvement of child protection services in the state.

25 (b) Not later than six months after the date on which the report under (a) of
26 this section is submitted to the governor, the department shall submit a written
27 response to the report to the governor. The department's response must include a
28 description of whether and how the department will incorporate the recommendations
29 of the panel, where appropriate.

30 * **Sec. 41.** AS 47.14 is amended by adding a new section to article 3 to read:

31 **Sec. 47.14.265. Civil penalty for violation of AS 47.14.235.** A violation

1 under 47.14.235 is subject to a civil penalty of up to \$2,500 for each violation.

2 * Sec. 42. AS 47.14 is amended by adding a new section to article 3 to read:

3 **Sec. 47.14.275. Immunity.** A member of the state panel and a person who
4 furnishes services to or advises the state panel is not liable for damages or other relief
5 in an action involving the performance or failure to perform a duty or other activity of
6 the state panel.

7 * Sec. 43. AS 47.14 is amended by adding a new section to article 3 to read:

8 **Sec. 47.14.295. Definitions.** In AS 47.14.205 - 47.14.295,

9 (1) "state panel" means the Citizen Review Panel established under
10 AS 47.14.205;

11 (2) "near fatality" has the meaning given in AS 47.10.990.

12 * Sec. 44. AS 47.17.025 is amended by adding a new subsection to read:

13 (c) Within 20 days after receiving a report of harm, whether or not the matter
14 is referred to a local government agency, the department shall notify the person who
15 made the report and who made a request to be notified, about the status of the
16 investigation, without disclosing any confidential information.

17 * Sec. 45. AS 47.17.027(a) is amended to read:

18 (a) If the department or a law enforcement agency provides written
19 certification to the child's school officials that (1) there is reasonable cause to suspect
20 that the child has been abused or neglected by a person responsible for the child's
21 welfare or as a result of conditions created by a person responsible for the child's
22 welfare; (2) an interview at school is a necessary part of an investigation to determine
23 whether the child has been abused or neglected; and (3) the interview at school is in
24 the best interests of the child, school officials shall permit the child to be interviewed
25 at school by the department or a law enforcement agency before notification of, or
26 receiving permission from, the child's parent, guardian, or custodian. A school official
27 shall be present during an interview at the school unless the child objects or the
28 department or law enforcement agency determines that the presence of the school
29 official will interfere with the investigation. The interview shall be conducted as
30 required under AS 47.17.033. Immediately after conducting an interview authorized
31 under this section, and after informing the child of the intention to notify the child's

1 parent, guardian, or custodian, the department or agency shall make every reasonable
2 effort to notify the child's parent, guardian, or custodian that the interview occurred
3 unless it appears to the department or agency that notifying the child's parent,
4 guardian, or custodian would endanger the child.

5 * Sec. 46. AS 47.17.033 is amended by adding new subsections to read:

6 (c) An investigation by the department of child abuse or neglect reported
7 under this chapter shall be conducted by a person trained to conduct a child abuse and
8 neglect investigation and without subjecting a child to more than one interview about
9 the abuse or neglect except when new information is obtained that requires further
10 information from the child.

11 (d) An interview of a child conducted as a result of a report of harm may be
12 audiotaped or videotaped. However, if an interview of a child is to be electronically
13 recorded and the interview concerns a report of sexual abuse of the child, the interview
14 shall be videotaped, except that an interview of a child may not be videotaped if
15 videotaping the interview is impracticable or will, in the opinion of the investigating
16 agency, result in trauma to the child.

17 (e) An interview of a child that is audiotaped or videotaped under (d) of this
18 section shall be conducted

19 (1) by a person trained and competent to conduct the interview;

20 (2) if available, at a child advocacy center; and

21 (3) by a person who is a party to a memorandum of understanding with
22 the department to conduct the interview or who is employed by an agency that is
23 authorized to conduct investigations.

24 (f) An interview of a child may not be videotaped more than one time unless
25 the interviewer or the investigating agency determines that one or more additional
26 interviews are necessary to complete an investigation. If additional interviews are
27 necessary, the additional interviews shall be conducted, to the extent possible, by the
28 same interviewer who conducted the initial interview of the child.

29 (g) A recorded interview of a child shall be preserved in the manner and for a
30 period provided by law for maintaining evidence and records of a public agency.

31 (h) A recorded interview of a child is subject to disclosure under the

1 applicable court rules for discovery in a civil or criminal case.

2 * Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 3(c), Alaska Child in Need of
5 Aid Rules of Procedure, is amended to read:

6 (c) **Presence of Grandparent or Foster Parent**. A grandparent of a child
7 and the foster parent or other out-of-home care provider are [IS] entitled to be heard
8 at any hearing at which the person is present. However, the court may limit the
9 presence of these persons in a hearing that has been closed to the public under
10 (f)(2) of this rule [THE FOSTER PARENT OR CARE PROVIDER] to the time
11 during which the person's testimony is being given if the court determines that such
12 a limitation is necessary under the circumstances listed in (f)(2)(C) of this rule [IT
13 IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO
14 PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE
15 DETRIMENTAL TO THE CHILD].

16 * Sec. 48. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
19 Aid Rules of Procedure, is repealed and reenacted to read:

20 (f) **General Public Access to Hearings.**

21 (1) Except as provided in (2) of this paragraph, and unless prohibited
22 by federal or state statute or regulation, court order, or other court rule, hearings are
23 open to the public.

24 (2) The following hearings are closed to the public:

25 (A) the initial court hearing after the filing of a petition that
26 begins the child-in-need-of-aid case;

27 (B) a hearing following the initial hearing in which a parent,
28 child, or other party to the case is present but has not had an opportunity to
29 obtain legal representation;

30 (C) a hearing, or a part of a hearing, for which the court issues
31 a written order finding that allowing the hearing, or part of the hearing, to be

1 open to the public would reasonably be expected to stigmatize or be
2 emotionally damaging to a child; inhibit a child's testimony in the hearing;
3 disclose matters otherwise required to be kept confidential by state or federal
4 statute or regulation, court order, or court rule; or interfere with a criminal
5 investigation or proceeding or a criminal defendant's right to a fair trial in a
6 criminal proceeding.

7 (3) Before ruling on a request under (2)(C) of this paragraph
8 concerning potential interference with a criminal investigation or proceeding, the court
9 shall give notice and an opportunity to be heard to the state or a municipal agency that
10 is assigned to the criminal investigation or to the prosecuting attorney.

11 (4) If the court closes a hearing to the public under (2)(C) of this
12 paragraph, the court shall close only the portions of the hearing necessary to prevent
13 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,
14 is open to the public, the court shall hear in camera any information offered regarding
15 the location, or readily leading to the location, of a parent, child, or other party to the
16 case who is a victim of domestic violence. Access to testimony heard in camera under
17 this subparagraph is limited to the court and authorized court personnel.

18 (5) Notwithstanding any other provision of this rule, the court shall
19 issue an order to prohibit all persons in a hearing open to the public from disclosing to
20 any person a name, picture, or other information that would readily lead to the
21 identification of a child who is the subject of the proceeding. If a person violates the
22 order, the court may impose any appropriate sanction, including contempt and closure
23 of any further hearings in the proceeding to the person.

24 (6) A party to the proceeding may move the court to close to the public
25 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
26 paragraph. A member of the public may request in writing to be served with a motion
27 filed under this subparagraph. If such a request has been filed in advance of the filing
28 of the motion, the party filing the motion must also serve the member of the public
29 who requested notice under this subparagraph. The court may waive the service
30 required under this subparagraph to a member of the public if a motion to close the
31 hearing, or part of the hearing, is made under this subparagraph immediately before or

1 during the hearing and the court finds that

2 (A) the need for closure was not reasonably foreseeable
3 sufficiently in advance of the hearing to allow for notice;

4 (B) there is good cause not to delay the hearing in order to
5 achieve notice, taking into consideration the age of the child and the potential
6 adverse effect that a delay could have on the child; and

7 (C) whatever notice is practicable under the circumstances has
8 occurred.

9 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 DIRECT COURT RULE AMENDMENT. Rule 3, Alaska Child in Need of
12 Aid Rules of Procedure, is amended by adding a new subsection to read:

13 (j) **Use of Child's Name and Identifying Information Prohibited.**
14 References to a child shall be made using the child's first name only. All identifying
15 information of the child, including the child's last name, address, and the names of the
16 child's immediate family members, shall be protected during the hearing so that only
17 the confidential record contains that information. If a child appears at the hearing, the
18 child shall be located away from view of the public.

19 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 DIRECT COURT RULE AMENDMENT. Rule 18(e), Alaska Child in Need
22 of Aid Rules of Procedure, is amended to read:

23 (e) **Trial.** A trial on the petition to terminate parental rights

24 (1) shall be held within six months after the date on which the petition
25 to terminate parental rights is filed, unless the court finds that good cause is shown for
26 a continuance; when [. WHEN] determining whether to grant a continuance for good
27 cause, the court shall take into consideration the age of the child and the potential
28 adverse effect that the delay may have on the child; the [. THE] court shall make
29 written findings when granting a continuance;

30 (2) shall be by jury when a jury trial has been demanded and not
31 waived by a party as provided in Rules 38 and 39, Alaska Rules of Civil

1 **Procedure.**

2 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 18(g), Alaska Child in Need
5 of Aid Rules of Procedure, is amended to read:

6 (g) **Judgment.** The court shall make findings of fact for matters tried to the
7 court and shall enter an order within 90 days after the last day of trial on the petition
8 to terminate parental rights. The court shall commit the child to the custody of the
9 Department if parental rights are terminated.

10 * **Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
13 of Aid Rules of Procedure, is amended to read:

14 (c) **Child's Name or Picture.** The name or picture of a child who is the
15 subject of a CINA proceeding may not be made available to the public unless
16 authorized by court order accompanied by a written statement reciting the
17 circumstances which support such authorization, or unless to implement the
18 permanency plan for the child after all parental rights of custody have been
19 terminated.

20 * **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 9(a), Alaska Adoption Rules,
23 is amended to read:

24 (a) **Form.** A consent or relinquishment must be in writing and must include:

25 (1) notice of the person's right to withdraw the consent or
26 relinquishment as provided by paragraphs (g) and (h) of this rule;

27 (2) the address and telephone number of the court in which the
28 adoption or relinquishment proceeding has or is expected to be filed;

29 (3) a statement of the right to counsel as stated in Rule 8;

30 (4) a statement concerning whether or not any visitation rights or
31 other parental privileges are sought to be retained after the adoption;

- 1 (5) if a consent, the information required in AS 25.23.060; and
2 (6) if signed by a parent, a statement of whether the parent is a minor.

3 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules,
6 is amended to read:

7 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.**

8 The parent of a non-Indian child may withdraw a consent or relinquishment by
9 notifying in writing the court, or the person or agency obtaining the consent or
10 relinquishment, within 10 days of the birth or signing of the consent or
11 relinquishment, whichever is later. Notification is timely if received or postmarked on
12 or before the last day of this time period. The parent may move the court to permit
13 withdrawal of the consent or relinquishment after the 10 day period pursuant to
14 AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a
15 relinquishment.

16 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 13(a), Alaska Adoption
19 Rules, is amended to read:

20 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
21 entered after a voluntary relinquishment pursuant to AS 25.23.180 or AS 47.10.089.
22 The court shall enter findings of fact which must include a statement concerning
23 whether visitation rights are being allowed under AS 25.23.130(c) or other privileges
24 are being retained under AS 47.10.089, and whether the time limit for withdrawal of
25 the relinquishment has elapsed. If the relinquishment was signed in the presence of
26 the court, findings also must be entered as to whether the parent understood the
27 consequences of the relinquishment, and whether the relinquishment was voluntarily
28 signed.

29 In the case of a voluntary relinquishment of parental rights to an Indian child,
30 the court shall make additional findings concerning whether any notice required by
31 Rule 10(e) was timely given; whether the relinquishment was voluntary and in

1 compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's
2 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
3 cause exists for deviation from the placement preference.

4 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need
7 of Aid Rules, is amended to read:

8 (f) **Additional Findings.** In addition to the findings required under paragraph
9 (e), the court shall also make written findings related to

10 (1) whether the Department has made reasonable efforts required
11 under AS 47.10.086 or, in the case of an Indian child, whether the Department has
12 made active efforts to provide remedial services and rehabilitative programs as
13 required by 25 U.S.C. Sec. 1912(d);

14 (2) whether the parent or guardian has made substantial progress to
15 remedy the parent's or guardian's conduct or conditions in the home that made the
16 child a child in need of aid; [AND]

17 (3) if the permanent plan is for the child to remain in out-of-home care,
18 whether the child's out-of-home placement continues to be appropriate and in the best
19 interests of the child; and

20 (4) whether the Department has made reasonable efforts to finalize
21 the permanent plan for the child.

22 * Sec. 57. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in
25 Need of Aid Rules, is amended to read:

26 (d) **Relinquishment.**

27 (1) Notwithstanding other provisions of this rule, the court may
28 terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089
29 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
30 requirements set forth in 25 U.S.C. § 1913(c).

31 * Sec. 58. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INDIRECT COURT RULE AMENDMENT. (a) AS 47.10.089(e), added by sec. 17
3 of this Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges
4 to be set out in the relinquishment form and order.

5 (b) AS 47.10.089(g) and (h), added by sec. 17 of this Act, amend Rule 13, Alaska
6 Adoption Rules, by authorizing a review hearing for a voluntary relinquishment before the
7 entry of an adoption decree.

8 (c) AS 47.10.089, added by sec. 17 of this Act, amends Rule 18, Alaska Child in
9 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
10 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
11 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

12 * Sec. 59. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 INDIRECT COURT RULE AMENDMENT. (a) Sections 8 and 9 of this Act,
15 AS 47.10.080(v), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 16 of
16 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure,
17 by allowing members of the public to attend court hearings except in certain circumstances.

18 (b) AS 47.10.065, enacted by sec. 7 of this Act, and AS 47.10.080(c), as amended by
19 sec. 10 of this Act, have the effect of changing Rule 18, Alaska Child in Need of Aid Rules of
20 Procedure, by providing for a right to a jury trial on a petition to terminate parental rights.

21 (c) Sections 19 and 22 - 27 of this Act have the effect of changing Rule 22, Alaska
22 Child in Need of Aid Rules of Procedure, by allowing the disclosure of confidential
23 information pertaining to a child, including a child's name or picture to be made public in
24 certain circumstances.

25 (d) Section 20 of this Act has the effect of amending Rule 1.6, Alaska Rules of
26 Professional Responsibility by requiring attorneys employed by the Department of Health and
27 Social Services or the Department of Administration to disclose information otherwise
28 protected by the attorney-client privilege.

29 * Sec. 60. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.

1 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
2 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
3 enactment and amendments provide a right to a jury trial on a petition to terminate parental
4 rights, affect a substantive right, secs. 7, 10, 50, 51, and 59 of this Act do not require a two-
5 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
6 parental rights.

7 * Sec. 61. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICABILITY. (a) AS 47.10.065, enacted by sec. 7 of this Act, 47.10.080(c), as
10 amended by sec. 10 of this Act, and Rules 18(e) and 18(g), Alaska Child in Need of Aid Rules
11 of Procedure, as amended by secs. 50 and 51 of this Act, apply to petitions to terminate
12 parental rights that are filed on or after the effective date of secs. 7, 10, 50, and 51 of this Act.

13 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
14 made by secs. 47 - 49 of this Act, apply to hearings that are conducted on or after the effective
15 date of secs. 47 - 49 of this Act.

16 (c) Sections 8 - 10, 13, 16, 18, 19, 22 - 27, 31, 47 - 49, and 52 of this Act apply to all
17 proceedings and hearings conducted on or after the effective date of those sections.

18 (d) Sections 8, 9, 13, 16, and 19 - 27 of this Act apply to all information, records, and
19 files created on or after the effective date of those sections; however, if a file contains
20 information and records that were created before the effective date of secs. 8, 9, 13, 16, and
21 19 - 27 of this Act, that information and those records retain the confidentiality that they had
22 under the law on the day before the effective date of secs. 8, 9, 13, 16, and 19 - 27 of this Act.

23 * Sec. 62. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 TRANSITION: REGULATIONS. The Department of Health and Social Services
26 may proceed to adopt regulations necessary to implement the changes made by this Act. The
27 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
28 effective date of the relevant statutory change.

29 * Sec. 63. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the

1 heading of AS 47.10.088 from "Termination of parental rights and responsibilities" to
2 "Involuntary termination of parental rights and responsibilities."

3 * Sec. 64. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 CONDITIONAL EFFECT. (a) That portion of Rule 18(e)(2), Alaska Child in Need
6 of Aid Rules of Procedure, added by sec. 50 of this Act, that reads "and not waived by a party
7 as provided in Rules 37 and 38, Alaska Rules of Civil Procedure," takes effect only if sec. 50
8 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
9 Constitution of the State of Alaska.

10 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
11 made by secs. 47 - 49 of this Act, take effect only if secs. 47 - 49 of this Act receive the two-
12 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
13 Alaska.

14 (c) Section 11 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
15 amended by sec. 56 of this Act, take effect only if sec. 56 of this Act receives the two-thirds
16 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

17 (d) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 57 of this
18 Act, takes effect only if sec. 57 of this Act receives the two-thirds majority vote of each house
19 required by art. IV, sec. 15, Constitution of the State of Alaska.

20 (e) The amendments to Rule 22(c), Alaska Child in Need of Aid Rules of Procedure,
21 made by sec. 52 of this Act take effect only if sec. 52 of this Act receives the two-thirds
22 majority vote of each house required by Art. IV, sec. 15, Constitution of the State of Alaska.

23 (f) Sections 8 and 9 of this Act, AS 47.10.080(v), enacted by sec. 13 of this Act,
24 AS 47.10.088(o), enacted by sec. 16 of this Act, and secs. 19 and 22 - 27 of this Act, take
25 effect only if secs. 47 - 49, 52, and 59(a) and (c) of this Act receive the two-thirds majority
26 vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

27 (g) Rule 9(a), Alaska Adoption Rules, as amended by sec. 53 of this Act, takes effect
28 only if sec. 53 of this Act receives the two-thirds majority vote of each house required by art.
29 IV, sec. 15, Constitution of the State of Alaska.

30 (h) Rule 9(g), Alaska Adoption Rules, as amended by sec. 54 of this Act, takes effect
31 only if sec. 54 of this Act receives the two-thirds majority vote of each house required by art.

1 IV, sec. 15, Constitution of the State of Alaska.

2 (i) Rule 13(a), Alaska Adoption Rules, as amended by sec. 56 of this Act, takes effect
3 only if sec. 56 of this Act receives the two-thirds majority vote of each house required by art.
4 IV, sec. 15, Constitution of the State of Alaska.

5 (j) AS 47.10.089, added by sec. 17 of this Act, takes effect only if sec. 58 of this Act
6 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
7 of the State of Alaska.

8 (k) That portion of sec. 20 of this Act that adds to AS 47.10.092(a) the words "In this
9 subsection, "privileged information" includes an attorney-client privilege if the person has an
10 attorney-client relationship with the child or the child's family." takes effect only if sec. 59(d)
11 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
12 Constitution of the State of Alaska.

13 * Sec. 65. If, under sec. 64 of this Act, secs. 8 and 9 of this Act, AS 47.10.080(v), enacted
14 by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 16 of this Act, and secs. 19 and 22 -
15 27 of this Act take effect, they take effect July 1, 2005.

16 * Sec. 66. Except as provided in sec. 65 of this Act, this Act takes effect immediately under
17 AS 01.10.070(c).

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REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 23, 2005
To: Jean Mischel, Legal Counsel
From: Rynniva Moss, Legislative Aide
Re: Additional amendments to Version S

I forgot to add two amendments the Office of Public Advocacy requested to my memo amending Version S of SSHB 53.

Page 18, line 9:

Delete: "department"

Insert: "Department of Health and Social Services and the Department of Administration"

Page 19, line 2:

Delete: "department"

Insert: "Department of Health and Social Services and the Department of Administration"

In 2002 (in conjunction with HB 252) the House Rules Committee addressed the disconnect between how a lay person would read AS 47.10.960 (that the Division had no standards or obligations that they had to follow), and the statute's intended legal interpretation. House Rules agreed to a concept that articulated the intent behind AS 47.10.960 when it was passed in 1998 while avoiding the confusion raised by use of the words "standard of care" and "duty". The concept is embodied in the proposed language. This language avoids the apparent misunderstandings and "mixed message" caused by the language in AS 47.10.960 but preserves the intent of the original statute (that the statutory provisions in title 47 are not independent causes of action to bring as tort lawsuits for damages).

Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title does not constitute a basis for civil liability for damages.

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REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 23, 2005
To: Jean Mischel, Legal Counsel
From: Rynniva Moss, Legislative Aide
Re: Amendments to Version S CSSH B 53(STA)

Page 2, line 13:

Insert:

*Section 1. AS 13.26.055 is amended to read:

Sec. 13.26.055. Court appointment of guardian of minor; qualifications; priority of minor's nominee and an adult family member. The court may appoint as guardian any person whose appointment would be in the best interests of the minor, subject to the following requirements. The court shall appoint

- (a) a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor; or
- (b) , unless in conflict with subsection (a), an adult family member, unless the court finds the appointment contrary to the best interests of the minor.

Renumber the following bill sections accordingly.

Page 2, line 16:

Delete: “, including a grandparent,”¹

Page 2, line 17:

Delete: “two consecutive years”

Insert: “twelve consecutive months”

Page 2, line 18:

After “AS 47.10.080(c)(3)”

Insert: “,”

Page 2, line 20:

After the word “person”

Insert: “,”

Delete: “that the adult family member is not fit to raise”

Insert: “good cause not to grant the petition”²

Page 2, line 22:

Fold in any changes made in State Affairs CS for HB 114.

¹ since the definition of “adult family member” in sec. 31 of the bill (AS 47.10.990(28)) includes grandparents

² good cause is an accepted legal term

Page 4, line 12 through page 5, line 2:

Delete all material³

Page 5, line 5:

Delete: "under this chapter"

Page 5, line 6:

After the word "rights"

Insert: "under 47.10.080(o) or AS 47.10.088"

Page 7, lines 13-14:

After "members"

Delete: ", including grandparents,"

Page 8, line 10:

After "past"

Delete: "age"

After "19"

Insert: "years of age,"

³ (a) moved to page 2, line 13 (amending AS 13.26.055), (b) is unnecessary and part of (c) moved to Page 9, line 31 (amending AS 47.10.088(i))

Page 8, line 13:

After "(3)"

Delete: "unless a jury trial has been requested by a party,"⁴

Page 8, lines 17-19:

After "child"

Delete all material except the period

Page 10, line 8-11:

After "hearing"

Delete all material

Insert: "A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 10, line 25-29:

Delete all materials and insert new section

AS 47.10.084(c) is amended to read:

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 25.20.025, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

⁴ unnecessary due to suggested changes on page 5, line 6

"Major medical treatment" includes medication used to treat a diagnosed mental health disorder.

Page 11, line 2:

After "filed."

Insert: The department shall attempt to locate all living adult family members of a child and to investigate the adult family member's ability to care for the child before placing the child for adoption or approving an adoption of the child under this chapter. The department shall provide written notice to all located adult family members of their rights under this chapter and of the procedures necessary to gain custody of the child.

Page 11, line 3:

After "child"

Delete: "by blood"

Page 11, line 5:

After "adoption"

Insert: ";

Page 11, lines 13-14:

After "by"

Delete: "a person related to the child by blood"

Insert: "an adult family member"

Page 11, line 18:

After second "the"

Delete: "person related to the child by blood"

Insert: "adult family member"

Page 12, line 15:

After "(n)"

Delete: "A person related to a child by blood"

Insert: "An adult family member"

Page 12, line 17:

After first "by"

Delete: "a person related to a child by blood"

Insert: "an adult family member"

Page 12, line 20-22:

After the word "hearing."

Delete: all materials

Insert: **"A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."**

Page 12, Line 28 through page 14, line 14:

Make sure all revisions from CSHB 114(STA) are folded into HB 53 Version S.

Page 11, lines 24-28:

Delete all material.

Page 15, line 12:

After "information"

Insert: "excluding privileged attorney/client communications and the names and other identifying information of mandatory reporters under AS 47.17."

Page 15, line 23:

After "The"

Delete: "duty imposed on"

Insert: "requirements of"

Page 15, lines 23-26:

After "section"

Delete all material

Insert: "remain in effect throughout the time the child is in the custody of the department, including after the"

Page 15, lines 27:

After "child"

Delete: ". However, the duty does lapse after termination of the parent's parent rights if"

Insert: "unless"

Page 16, line 7:

After "section,"

Insert: **"and as provided to all parties in a child-in-need-of-aid proceeding under court rules,"**

Page 13, line 25:

After "(1)"

Delete: A guardian ad litem appointed by the court;⁵

Renumber subsections accordingly.

Page 16, line 20:

After "or"

Delete: "adult family member:

Re-insert: "relatives"

Page 17, line 20:

After "department"

Insert: ", the governor, or the legislature"

⁵ a guardian ad litem already has access to confidential information

Page 19, line 9, through Page 21, line 8:

Delete all material.

Insert:

Sec. 47.10.098. **Grievance Procedure.** (a) The department shall develop, through regulation, a grievance procedure that provides parents a process to file complaints with respect to the

1. Application of a departmental policy or procedure;
2. Compliance with this chapter or a regulation adopted under this chapter; or
3. An act or failure to act by the department.

(b) the department shall develop a handout that explains this procedure, which shall be offered to each parent involved with the department.⁶

Page 21, lines 11-12:

After the word "damages"

Delete all material except "."

Page 22, line 7:

Delete: "a relative by blood or marriage"

Insert: "an adult family member"

Page 22, line 8:

After third "the"

Delete: "relative"

Insert: "adult family member"

⁶ the Department prefers that statute established a grievance process but to leave the ability to change the process at the regulatory level

Page 22, line 9:

After "placement"

Insert: "Nothing in this section waives the requirement that a non-relative be licensed as a foster home prior to any child being placed in their care."

Page 22, lines 15, 17, 21, 24, & 28:

Substitute "adult family member" in place of "relative"

Page 22 line 23:

After "AS 47.17;

Delete: "or"

Page 23, line 5:

After "elements."

Insert:

(4) determines that placement under this section, with a family friend or relative is the best interest of the child over the objection of the parent of guardian; or

(5) determines that the parent or guardians preference is not appropriate because placement of the child would not be in the child's best interest because the child would not be located near parents for purposes of visitation or reunification.

Page 23, line 7:

After "If"

Delete: "a blood relative"

Insert: "adult family member"

Page 23 line 10:

Delete: "relative's"

Insert: "adult family member's"

Page 24, line 25:

After "report"

Insert: "is released"

Page 24, line 26:

After "section"

Delete: "is submitted to the governor"

After "submit"

Insert: "to the governor"

Page 24, line 27:

After "report"

Delete: "to the governor"

Page 27, line 1: OCS proposes that the following provision be included in this bill:

Insert: AS 47.18.300(a) is amended to read:

(a) The department, in coordination with local public and private agencies, shall design, develop, and implement a foster care transition program to provide support and services to individuals who

(1) reach or have reached the age of 16 or older while in state foster care and have not yet reached the age of 23[21] and

(2) meet other eligibility criteria established by the department under (b) of this section.

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REPRESENTATIVE JOHN COGHILL

THE FAMILY RIGHTS ACT (SSHB 53)

Sectional

Section 1. Gives preference to a grandparent who has cared for a grandchild for two years or more to adopt the child(ren) unless the court finds that the grandparent is not fit to raise the child.

Sec. 2. Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 4. Language intent for the Family Rights Act.

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.

Sec. 7. Provides for grandparents to petition special proceedings to obtain custody of a grandchild when the grandchild is found to be a child in need of aid and one or both parents are dead and the child has been abandoned by the other parent; creates a presumption that the awarding custody to biological grandparent(s) is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the grandparents; and puts in statute provisions that grandparents will be contacted by written notice of the procedures to obtain custody and the grandparents will sign a receipt of the notice.

Sec. 8. Right to a jury trial for the termination of parental rights.

Sec. 9. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 10. Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of a grandparent to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a grandparent under Title 47.

Sec. 11. Legal has added some cleanup language to this section. They also amended the process to include provisions for a jury trial.

Sec. 12. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial.

Sec. 13. Amends AS 47.10.80 (Judgments and Orders) to add five provisions:

The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

A child cannot be placed in a foster home known as a home requesting adoption before certain three things occur, including the decision to terminate parental rights and a court hearing approving the placement.

The court shall notify the local citizen out-of-home care review panel within 60 days of a child being removed from his or her home.

The court shall notify all parties about the citizens review panel within 60 days after it orders custody of a child to the State.

It opens adjudication hearings to the public unless an exception in Section 10 applies.

Sec. 14. Provides that OCS cannot approve an adoption by a non-related party if a relative requests a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

Sec. 15. This section sets out three reasons the department could deny the adoption of a child by a blood relative. The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.

If a relative is denied adoption they are entitled to a review hearing and that hearing is open to the public.

Sec. 16. Requires the Department to maintain information about the use of psychotropic or other mental health medication on children in state custody and supply a report to the Legislature annually.

Sec. 17. Language cleanup by the legislative legal.

Sec. 18. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 19. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. This is an expansion from parental disclosure.

Sec. 20. This section amends the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested.

Subsection (e) provides that if the department conducts an internal; audit, a official truncated report will be prepared and will be made available to the person requesting the review.

An "adult family member" is defined as a person who is 18 years of age or older and who is related to the child as the child's biological or adoptive parent, grandparent, aunt, uncle, or sibling.

Sec. 21. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public official. Exceptions to confidentiality have been expanded to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

This subsection gives OCS the ability to promulgate regulations for disclosure of confidential information.

- Sec. 22.** Disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.
- Sec. 23.** Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.
- Sec. 24.** The regulatory language is deleted because it has been added to Section 21.
- Sec. 25.** Cleanup language by legislative legal.
- Sec. 26.** The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials but additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.
- Sec. 28.** Provides that within 60 days after an emergency custody and temporary placement hearing the court will inform parties about the local citizen out-of-home care review panel.
- Sec. 29.** This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt.
- Sec. 30.** Creates a duty and standard of care.
- Sec. 31.** Defines "mental health professional" in CINA statutes.
- Sec. 32.** Defines "near fatality" in CINA statutes.
- Sec. 33.** Defines "mental health professional" in Delinquent minor statutes.
- Sec. 34.** Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member, friend, or neighbor has an issue that is not in the best interest of the child.
- Sec. 35.** Eliminates a provision that is currently used by OCS to refuse placement with a relative because the child was placed in a home for adoptive purposes. Compliments due process.
- Sec. 36.** Creates a Citizens' Review Panel for Permanency Planning consisting of five members appointed by the governor to serve staggered terms of three years. There will be one panel member from each judicial district and the panel will have broad representation of people with expertise in the prevention and treatment of child abuse and neglect.

The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

Sec. 37. Provides for duties of the panel which include adopting policies and procedures; examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

Sec. 38. Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel.

Sec. 39. Directs the court, the department, and the child's guardian cooperate with the state panel by furnishing relevant records to the panel. The state panel is required to return all documents when the panel has concluded the investigation or has completed the report. All information is confidential.

The state panel is not subject to the Open Meetings Act of AS 44.62.310.

Sec. 40. Provides that when admissible, the court will review a state panel report and take it into consideration when rendering judgments and orders.

Sec. 41. Indemnifies panel members.

Sec. 42. Definitions for "state panel" and "near fatality" in the Juvenile Programs and Institutions Title 47.14.

Sec. 43. Requires OCS to notify a person who has made a ROH with a status report within 20 days.

Sec. 44. Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.

Sec. 45. Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.

Sec. 46. Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.

Sec. 47. Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.

Sec. 48. Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.

Sec. 49. Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.

Sec. 50. Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.

Sec. 51. Language cleanup by legal services.

Sec. 52. Adds a new subsection to Rule 22 that allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed. This implements Section 18 of the HB 53.

Sec. 53. Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.

Sec. 54. Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.

Sec. 55. An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

Sec. 56. An indirect court rule¹ amendment to open custody petition hearings, adjudication hearings, and termination hearings to the public except in certain circumstances.

There is also an indirect court rule amendment in Section 8 and Section 11 providing for a jury trial in a termination hearing.

Rule 22 has an indirect court rule amendment by allowing for the disclosure of confidential information on a child, including a child's name or picture under certain circumstances.

Sec. 57. This section outlines the section of the bill, which is and can, therefore, be adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

Sec. 58. Adds to uncodified law the process by which the governor appoints the initial members of the review panel so that the terms of serving will be staggered.

Sec. 59. Applicability language.

Sec. 60. Gives authority to Health & Social Services to adopt regulations to implement the changes to law made by HB 53.

¹ Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

Sec. 61. Requires the governor to review the changes made in HB 53 that deal with opening meetings to the public and being able to disclose some information and submit a report to the public and the legislature concerning the success or failure of the change and making suggestions for changes.

Sec. 62. The transitional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

Sec. 63. Gives the department 180 days after the enactment of the bill to adopt a duty and standard of care.

Sec. 64. The open hearing provisions of this act become effective July 1, 2005.

Sec. 65. All other sections of the bill have an immediate effective date clause.

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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: February 28, 2005
To: Members of the House
From: Representative John Coghill 
Re: HB 53 The Family Rights Act

Attached is Sponsor Substitute for House Bill 53. In an attempt to bring the issue of family rights to the table as a policy discussion, I met with several members of the House and staff from the governor's office who identified family rights as an issue for them. SSHB 53 is the result of merging HB 17, HB ~~133~~ ¹¹³, HB 114, and HB 53 into a family rights omnibus bill. Because this piece of legislation is so much different than the original bill I introduced, I reintroduced the bill as a sponsor statement.

Also attached is a sponsor statement, a sectional for the bill, and a subject summary. If you have any questions or comments, feel free to contact me or my staff for this legislation, Rynnieva Moss.

I am requesting that the Health & Social Services Committee hold a hearing on Sponsor Substitute for House Bill 53 during the week of March 14th.

I have attached the sponsor statement and the sectional.

Thank you for your consideration.

ALASKA STATE HOUSE OF REPRESENTATIVES



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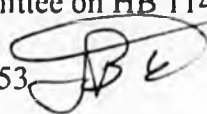
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REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 4, 2005
To: Representative Gatto, Chairman, HSS Subcommittee on HB 114
From: Representative John Coghill, Sponsor of SSHB 53 
Re: HB 114

The following is an index to the portions of SSHB 53 that are the language incorporated from HB 114. I would appreciate being kept in the loop during your discussions of the bill.

Sec. 2. Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges. (HB 114, Sec. 1)

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment. (HB 114, Sec. 2)

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation. (HB 114, Sec. 3)

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody. (HB 114, Sec. 4)

Sec. 29. This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt. **(HB 114, Sec. 5)**

Sec. 31. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

(HB 114, Sec. 6)

Sec. 33. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment. **(HB 114, Sec. 7)**

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REPRESENTATIVE JOHN COGHILL

FAMILY RIGHTS ACT

HB 53

Sponsor Statement

My belief that children belong to their parents and that families should be preserved was why I ran for office the first time in 1998. To protect vulnerable children the government requires parents to raise their children by certain standards, and I believe government should be held to those high standards when they take children into their custody. Dealing with the Office of Children's Services should have good due process and should be transparent so that everyone involved knows what the rules are and what is required of them.

HB 53 is an omnibus bill that does many things. It creates a duty and standard of care for social workers who are making decisions for children in state custody. It makes the process transparent by making confidential information currently unavailable accessible to certain people, making court proceedings open to the public, and giving parents the right to a jury trial in proceedings to terminate their parental rights.

This legislation also strengthens the rights of grandparents, especially those who have already been instrumental in raising the child. Many times when parents run awry of OCS, grandparents get placement of the child. If parental rights are terminated, the grandparents should have preference for adoption. Other relatives or family friends should also be considered for placement before a child is placed with complete strangers. Grandparents also gain accessibility to information and hearings in CINA cases through this legislation.

An additional safeguard to transparency and due process is the re-establishment of state and local citizens review panels that will adopt policies and procedures by regulation, compile reports, report to the governor annually, and conduct hearings on complaints filed against OCS.

The bill encourages the use of Child Advocacy Centers (CAC) in areas they are available and requires audio recordings for all other interviews of children believed to have been sexually abused. This creates accountability in interviewing and protects the child from multiple interrogations.

This legislation goes a long way in protecting and preserving families in Alaska and making government accountable for its actions when children are in State custody.

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REPRESENTATIVE JOHN COGHILL

THE FAMILY RIGHTS ACT (SSHB 53)

Sectional

Section 1. Gives preference to a grandparent who has cared for a grandchild for two years or more to adopt the child(ren) unless the court finds that the grandparent is not fit to raise the child.

Sec. 2. Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges.

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 4. Language intent for the Family Rights Act.

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation.

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody.

Sec. 7. Provides for grandparents to petition special proceedings to obtain custody of a grandchild when the grandchild is found to be a child in need of aid and one or both parents are dead and the child has been abandoned by the other parent; creates a presumption that the awarding custody to biological grandparent(s) is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the grandparents; and puts in statute provisions that grandparents will be contacted by written notice of the procedures to obtain custody and the grandparents will sign a receipt of the notice.

Sec. 8. Right to a jury trial for the termination of parental rights.

Sec. 9. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 10. Applies sideboards to the opening of CINA court proceedings to give guidelines to the court as to when the proceeding must be closed to the public, when evidence is made in camera, and when a person's presence must be limited.

Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Finally, this section clarifies that the right of a grandparent to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a grandparent under Title 47.

Sec. 11. Legal has added some cleanup language to this section. They also amended the process to include provisions for a jury trial.

Sec. 12. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial.

Sec. 13. Amends AS 47.10.80 (Judgments and Orders) to add five provisions:

(t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

(u) A child cannot be placed in a foster home known as a home requesting adoption before certain three things occur, including the decision to terminate parental rights and a court hearing approving the placement.

(v) The court shall notify the local citizen out-of-home care review panel within 60 days of a child being removed from his or her home.

(w) The court shall notify all parties about the citizens review panel within 60 days after it orders custody of a child to the State.

(x) It opens adjudication hearings to the public unless an exception in Section 10 applies.

Sec. 14. Provides that OCS cannot approve an adoption by a non-related party if a relative requests a relative requests approval for adoption unless that relative is disqualified for some reason set out in statute that is not in the best interest of the child.

Sec. 15. This section sets out three reasons the department could deny the adoption of a child by a blood relative. The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.

If a relative is denied adoption they are entitled to a review hearing and that hearing is open to the public.

Sec. 16. Requires the Department to maintain information about the use of psychotropic or other mental health medication on children in state custody and supply a report to the Legislature annually.

Sec. 17. Language cleanup by the legislative legal.

Sec. 18. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 19. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. This is an expansion from parental disclosure.

Sec. 20. This section amends the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested.

Subsection (e) provides that if the department conducts an internal; audit, a official truncated report will be prepared and will be made available to the person requesting the review.

An "adult family member" is defined as a person who is 18 years of age or older and who is related to the child as the child's biological or adoptive parent, grandparent, aunt, uncle, or sibling.

Sec. 21. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public official. Exceptions to confidentiality have been expanded to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

Sec. 22. Disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.

Sec. 23. Language cleanup by legislative legal where four former subsections were repealed in 1996 and only one provision remained, which is disclosing to a person charged with making a preliminary investigation.

Sec. 24. The regulatory language is deleted because it has been added to Section 26.

Sec. 25. Cleanup language by legislative legal.

Sec. 26. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials but additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

Gives department authority to promulgate regulations.

Sec. 28. Provides that within 60 days after an emergency custody and temporary placement hearing the court will inform parties about the local citizen out-of-home care review panel.

Sec. 29. This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt.

Sec. 30. Creates a duty and standard of care.

Sec. 31. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 32. Defines "near fatality" in CINA statutes.

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Sec. 35. Eliminates a provision that is currently used by OCS to refuse placement with a relative because the child was placed in a home for adoptive purposes. Compliments due process.

Sec. 36. Creates a Citizens' Review Panel for Permanency Planning consisting of five members appointed by the governor to serve staggered terms of three years. There will be one panel member from each judicial district and the panel will have broad representation of people with expertise in the prevention and treatment of child abuse and neglect.

The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

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Sec. 46. Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.

Sec. 47. Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.

Sec. 48. Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.

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Sec. 62. The conditional effect section outlines what sections of the bill will take place only if a two-thirds vote is obtained on those sections.

Sec. 63. Gives the department 180 days after the enactment of the bill to adopt a duty and standard of care.

Sec. 64. The open hearing provisions of this act become effective July 1, 2005.

Sec. 65. All other sections of the bill have an immediate effective date clause.

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REPRESENTATIVE JOHN COGHILL

SSHB 55

THE FAMILY RIGHTS ACT

SUBJECT SECTIONAL

Childrens' Rights

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment.

Sec. 16. Requires the Department to maintain information about the use of psychotropic or other mental health medication on children in state custody and supply a report to the Legislature annually.

Sec. 20(d). This section amends the disclosure requirements for state officials when a parent's rights have been terminated, unless another parent or legal guardian files a notice with OCS that the assistance is no longer requested.

Sec. 34. Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member, friend, or neighbor has an issue that is not in the best interest of the child.

Family Preservation

Sec. 12. This section instructs OCS that the legislature wants everything done possible to assure visitation by parents and families with children in custody. If OCS denies visitations they must notify the parents or family members of the reason for denying visitation and inform them of their right to request a review hearing on the denial.

Sec. 13(u). A child cannot be placed in a foster home known as a home requesting adoption before certain three things occur, including the decision to terminate parental rights and a court hearing approving the placement.

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Sec. 20(f). An "adult family member" is defined as a person who is 18 years of age or older and who is related to the child as the child's biological or adoptive parent, grandparent, aunt, uncle, or sibling.

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Sec. 13(t). The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

Sec. 13(v). The court shall notify the local citizen out-of-home care review panel within 60 days of a child being removed from his or her home.

Sec. 13(w). The court shall notify all parties about the citizens review panel within 60 days after it orders custody of a child to the State.

Sec. 53. Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.

Sec. 54. Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.

Sec. 55. An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

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Sec. 7. Provides for grandparents to petition special proceedings to obtain custody of a grandchild when the grandchild is found to be a child in need of aid and one or both parents are dead and the child has been abandoned by the other parent; creates a presumption that the awarding custody to biological grandparent(s) is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the grandparents; and puts in statute provisions that grandparents will be contacted by written notice of the procedures to obtain custody and the grandparents will sign a receipt of the notice.

Sec. 10(g). Finally, this section clarifies that the right of a grandparent to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a grandparent under Title 47.

Sec. 47. Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.

Improving the Judicial Process

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Section 10 also sets restrictions on persons attending hearings, which the court will specify to attendants at the beginning of the hearing.

Sec. 29. This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt.

Sec. 35. Eliminates a provision that is currently used by OCS to refuse placement with a relative because the child was placed in a home for adoptive purposes. Compliments due process.

Jury Trial

Sec. 8. Right to a jury trial for the termination of parental rights.

Sec. 11. Legal has added some cleanup language to this section. They also amended the process to include provisions for a jury trial.

Sec. 50. Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.

Creating Transparency in the Process

Sec. 9. Opens CINA hearings to the public and allows the court to exclude individuals from hearings if it is in the best interest of the child. The court can also limit the presence of an attendee to the time that person is giving testimony.

Sec. 13(x). It opens adjudication hearings to the public unless an exception in Section 10 applies.

Sec. 18. Allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed.

Sec. 19. Allows adult family members to disclose to or request confidential information be provided to certain state officials such as the governor, the lieutenant governor, legislators, the ombudsman, the attorney general, and certain commissioners. This is an expansion from parental disclosure.

Sec. 20(e). provides that if the department conducts an internal; audit, a official truncated report will be prepared and will be made available to the person requesting the review.

Sec. 21. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public official. Exceptions to confidentiality have been expanded to apply additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child.

The department can withhold any information that would readily identify the child or would interfere with a criminal investigation.

Except for a disclosure because a family member has gone public with the case, all information received under a disclosure request will remain confidential.

Sec. 22. Disclosure of confidential agency records is expanded to include a caregiver, an entity responsible for ensuring the safety of children, and the citizen's review panel.

Sec. 26. The purposes for which confidential agency records can be disclosed to the public have been expanded to include public officials but additionally when the parents have made information public concerning the department's involvement with the family, when the perpetrator has been charged with a crime, and when a report of harm has resulted in a death or near fatality of the child. Gives department authority to promulgate regulations.

Sec. 28. Provides that within 60 days after an emergency custody and temporary placement hearing the court will inform parties about the local citizen out-of-home care review panel.

Sec. 43. Requires OCS to notify a person who has made a ROH with a status report within 20 days.

Sec. 48. Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.

Sec. 49. Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.

Sec. 52. Adds a new subsection to Rule 22 that allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed. This implements Section 18 of the HB 53.

Sec. 56(a). An indirect court rule¹ amendment to open custody petition hearings, adjudication hearings, and termination hearings to the public except in certain circumstances.

Sec. 56(b). There is also an indirect court rule amendment in Section 8 and Section 11 providing for a jury trial in a termination hearing.

Sec. 56(c).

Rule 22 has an indirect court rule amendment by allowing for the disclosure of confidential information on a child, including a child's name or picture under certain circumstances.

Videotaping

Sec. 44. Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.

Sec. 45. Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.

Accountability

Sec. 30. Creates a duty and standard of care.

Sec. 36. Creates a Citizens' Review Panel for Permanency Planning consisting of five members appointed by the governor to serve staggered terms of three years. There will be one panel member from each judicial district and the panel will have broad representation of people with expertise in the prevention and treatment of child abuse and neglect. The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

¹ Go in and see a change insert or delete language in the court rule. Indirect court rule doesn't require a language change in the court rule but affects the way the court rule is applied by the court. The language of the court rule doesn't change but court would have to use new statutes to apply rule. Reviser recommends that both direct and indirect court rules even though if the direct court rule is passed the indirect court rule would not be necessary.

Sec. 37. Provides for duties of the panel which include adopting policies and procedures; examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

Sec. 38. Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel.

Sec. 39. Directs the court, the department, and the child's guardian cooperate with the state panel by furnishing relevant records to the panel. The state panel is required to return all documents when the panel has concluded the investigation or has completed the report. All information is confidential. The state panel is not subject to the Open Meetings Act of AS 44.62.310.

Sec. 40. Provides that when admissible, the court will review a state panel report and take it into consideration when rendering judgments and orders.

Sec. 41. Indemnifies panel members.

Sec. 58. Adds to uncodified law the process by which the governor appoints the initial members of the review panel so that the terms of serving will be staggered.

Sec. 61. Requires the governor to review the changes made in HB 53 that deal with opening meetings to the public and being able to disclose some information and submit a report to the public and the legislature outlining the success or failure of the change and making suggestions for changes.

LEGAL SERVICES

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FEB 25 2005

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MEMORANDUM

February 25, 2005

SUBJECT: Children's Services Omnibus Bill (Work Order No. 24-LS0251\Y)

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Jean M. Mischel
Legislative Counsel

Enclosed is the Children's Services Omnibus Bill merging three governor's bills with your bill and tying in a federal act. We drafted this bill to duplicate, to the extent possible, the merged bills with a few exceptions that require your careful consideration.

With respect to grandparent rights, the reference to a grandparent having special access to termination hearings was removed from section 7 since the grandparent has access under the open hearings provisions in this and other sections of the bill. The bill retains, however, the direct court rule amendment on this issue.

The reestablishment of citizen review panels in sections 36 through 42 of the bill has been significantly rewritten to more closely reflect the minimum federal requirements as requested. The existence of local panels has been deleted but the establishment of three state panels is now required in this draft. Since the minimum number of panels is set at three for a certain benefit level in the federal act, I used that number. The support material did not provide the benefit level and three panels will satisfy any benefit level. Other changes pertaining to duties and reporting have been made that need to be reviewed to determine whether I captured your intent.

The originating bills for this draft contained some errors with respect to the indirect court rule effect that were corrected in this draft. These changes appear in sections 53 and 54 of this draft. I encourage you to have these reviewed by the governor's office or the Department of Law since they vary significantly from the governor's drafts.

An additional potential court rule effect appears to be raised in this bill that I have not included in this draft. Since this bill (following the originating bills) opens child-in-need-of-aid hearings and those hearings can be consolidated with adoption hearings that are closed under Adoption Rules 11 and 13, a potential conflict exists between sections 9 and 10 of the bill and the Adoption Rules. I do not know, however, whether a court can reconcile this conflict without amending the court rules. A court, could, for example, hold the CINA portion of the consolidated hearing as an open hearing and close the

Representative John Coghill
February 25, 2005
Page 2

adoption portion of the hearing. While this may defeat the purpose of closing an adoption hearing, I am unable to make this policy and procedural decision and therefore have left the potential effect out of this draft.

The applicability of relevant portions of the bill has also been carefully redrafted in section 56 to incorporate all court hearing and document disclosure changes in order to avoid future litigation. Although the basis for the applicability language is the originating bill language, additional sections were included as deemed necessary.

Finally, the conditional effect and the effective dates in sections 59 through 62 should reflect those of the originating bills. The bill, as a whole, retains an immediate effective date with significant exceptions and contingencies. Please review those sections carefully to determine whether all of the sections are given their intended effective dates.

If I may be of further assistance, please advise.

JMM:jad
05-124.jad

Enclosure

24-LS0251\Y
Mischel
2/25/05

CS FOR HOUSE BILL NO. 53()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to child-in-need-of-aid proceedings; amending the construction of
2 statutes pertaining to children in need of aid; relating to a duty and standard of care for
3 services to children and families, to the confidentiality of investigations, court hearings,
4 and public agency records and information in child-in-need-of-aid matters and certain
5 child protection matters, to immunity regarding disclosure of information in child-in-
6 need-of-aid matters and certain child protection matters, to the retention of certain
7 privileges of a parent in a relinquishment and termination of a parent and child
8 relationship proceeding, to eligibility for permanent fund dividends for certain children
9 in the custody of the state, and to juvenile delinquency proceedings and placements;
10 establishing a right to a trial by jury in termination of parental rights proceedings;
11 reestablishing and relating to state citizens' review panels for certain child protection
12 and custody matters; amending the duty to disclose information pertaining to a child in

1 need of aid; authorizing additional family members to consent to disclosure of
2 confidential or privileged information about children and families involved with
children's services within the Department of Health and Social Services to officials for
4 review or use in official capacities; relating to reports of harm and to adoptions and
5 foster care; mandating reporting of the medication of children in state custody;
6 prescribing the rights of grandparents related to child-in-need-of-aid cases and
7 establishing a grandparent priority for adoption in certain child-in-need-of-aid cases;
8 modifying adoption and placement procedures in certain child-in-need-of-aid cases;
9 amending treatment service requirements for parents involved in child-in-need-of-aid
10 proceedings; amending Rules 3, 18, and 22, Alaska Child in Need of Aid Rules of
11 Procedure; and providing for an effective date."

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

13 * **Section 1.** AS 25.23 is amended by adding a new section to read:

14 **Sec. 25.23.127. Grandparent's preference to adopt.** Notwithstanding a
15 child's stated preference under AS 25.23.125 and 25.23.040(a)(5), a grandparent who
16 has had physical custody of a child for at least two consecutive years when the
17 parental rights to the child have been terminated under AS 47.10.080(c)(3), shall be
18 permitted to adopt the child before any other person upon the filing of a petition by the
19 grandparent under AS 25.23.080 unless the court finds that the grandparent is not fit to
20 raise the child.

21 * **Sec. 2.** AS 25.23.180 is amended by adding a new subsection to read:

22 (j) In a relinquishment of parental rights executed under (a) of this section, a
23 parent may retain privileges with respect to the child, including the ability to have
24 future contact, communication, and visitation with the child. A retained privilege
25 must be stated with specificity in writing, and, if a termination order is entered
26 following the relinquishment, the court shall incorporate a retained privilege into the
27 termination order. A relinquishment may not be withdrawn or invalidated, nor may a

1 termination order be vacated, on the grounds that a retained privilege has been
2 withheld from the relinquishing parent or that the relinquishing parent has been
3 unable, for any reason, to act upon a retained privilege.

4 * Sec. 3. AS 43.23.005(f) is amended to read:

5 (f) The [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
6 commissioner may waive the requirement of (a)(4) of this section for an individual
7 absent from the state

8 (1) in a time of national military emergency under military orders
9 while serving in the armed forces of the United States, or for the spouse and
10 dependents of that individual; or

11 (2) while in the custody of the Department of Health and Social
12 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed
13 outside of the state by the Department of Health and Social Services for purposes
14 of medical or behavioral treatment.

15 * Sec. 4. AS 47.10.005 is amended to read:

16 Sec. 47.10.005. Construction. The provisions of this chapter shall be
17 liberally construed to

18 (1) achieve the end that a child coming within the jurisdiction of the
19 court under this chapter may receive the care, guidance, treatment, and control that
20 will promote the child's welfare;

21 (2) recognize that a parent possesses inherent individual rights to
22 direct and control the education and upbringing of the parent's child;

23 (3) promote and protect the safety, welfare, health, and good of
24 children, grandparents, and relatives living in the state;

25 (4) benefit future generations;

26 (5) bring fairness and equality to biological family members and
27 children in the state; and

28 (6) recognize that a parent is held to a standard of care and that
29 the state must be held to the same standard.

30 * Sec. 5. AS 47.10.020(a) is amended to read:

31 (a) Whenever circumstances subject a child to the jurisdiction of the court

1 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
2 to make a preliminary inquiry and report for the information of the court to determine
3 whether the best interests of the child require that further action be taken. The court
4 shall make the appointment on its own motion or at the request of a person or
5 agency having knowledge of the child's circumstances. If, under this subsection,
6 the court appoints a person or agency to make a preliminary inquiry and to report to it,
7 or if the department is conducting an investigation of a report of child abuse or
8 neglect, the court may issue any orders necessary to aid the person, the agency,
9 or the department in its investigation or in making the preliminary inquiry and
10 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
11 court may

- 12 (1) close the matter without a court hearing;
- 13 (2) determine whether the best interests of the child require that further
14 action be taken; or
- 15 (3) authorize the person or agency having knowledge of the facts of the
16 case to file with the court a petition setting out the facts.

17 * Sec. 6. AS 47.10.020 is amended by adding a new subsection to read:

18 (e) Nothing in this section requires the department to obtain authorization
19 from the court before

- 20 (1) conducting an investigation of a report of child abuse or neglect; or
- 21 (2) filing a petition.

22 * Sec. 7. AS 47.10 is amended by adding a new section to read:

23 **Sec. 47.10.025. Biological grandparent's rights.** (a) A biological
24 grandparent of a child who has been adjudicated a child in need of aid under this
25 chapter may initiate special proceedings by filing a petition to obtain custody of the
26 child if

- 27 (1) one or both of the child's parents are dead; and
- 28 (2) the child has been abandoned by a remaining parent.

29 (b) In a proceeding initiated under (a) of this section, the court shall presume
30 that awarding custody to a biological grandparent is in the best interest of the child. A
31 presumption under this subsection may be overcome by evidence of abuse, neglect, or

1 other harm to the child attributable to the biological grandparent.

2 (c) The department shall attempt to locate all living biological grandparents of
3 a child and to investigate the biological grandparent's ability to care for the child
4 before placing the child or approving an adoption of the child under this chapter. The
5 department shall provide written notice to all identified biological grandparents of
6 their rights under this chapter and of the procedures necessary to gain custody of the
7 child. The biological grandparents shall sign a receipt of the notice and, if the
8 biological grandparent is competent, state that the biological grandparent understands
9 the biological grandparent's right to initiate proceedings to gain custody of the child
10 and either intends or declines to proceed.

11 * **Sec. 8.** AS 47.10 is amended by adding a new section to read:

12 **Sec. 47.10.065. Right to demand jury trial in certain cases.** A party has the
13 right to demand a jury trial for a hearing under this chapter on a petition to terminate
14 parental rights. If a hearing to adjudicate whether a child is a child in need of aid
15 under AS 47.10.011 is consolidated with a hearing on a petition to terminate parental
16 rights, the right to a jury trial under this section applies only to the issue of whether
17 parental rights should be terminated after the court enters a finding under
18 AS 47.10.080(a). In this section, "party" has the meaning given in Rule 2, Alaska
19 Child in Need of Aid Rules of Procedure.

20 * **Sec. 9.** AS 47.10.070(a) is amended to read:

21 (a) The court may conduct the hearing on the petition in an informal manner.
22 The court shall give notice of the hearing to the department, and it may send a
23 representative to the hearing. The court shall also transmit a copy of the petition to the
24 department. The department shall send notice of the hearing to the persons for whom
25 notice is required under AS 47.10.030(b) and to each grandparent of the child entitled
26 to notice under AS 47.10.030(d). The department and the persons to whom the
27 department must send notice of the hearing are entitled to be heard at the hearing.
28 Except as provided in (c) of this section, and unless prohibited by federal or state
29 law, court order, or court rule, a hearing is open to the public [HOWEVER, THE
30 COURT MAY LIMIT THE PRESENCE OF THE FOSTER PARENT OR OTHER
31 OUT-OF-HOME CARE PROVIDER AND OF ANY GRANDPARENT OF THE

1 CHILD TO THE TIME DURING WHICH THE PERSON'S TESTIMONY IS BEING
2 GIVEN IF IT IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2)
3 NECESSARY TO PROTECT THE PRIVACY INTERESTS OF THE PARTIES
4 AND WILL NOT BE DETRIMENTAL TO THE CHILD. THE PUBLIC SHALL BE
5 EXCLUDED FROM THE HEARING, BUT THE COURT, IN ITS DISCRETION,
6 MAY PERMIT INDIVIDUALS TO ATTEND A HEARING IF THEIR
7 ATTENDANCE IS COMPATIBLE WITH THE BEST INTERESTS OF THE
8 CHILD].

9 * **Sec. 10.** AS 47.10.070 is amended by adding new subsections to read:

10 (c) Except as provided in (e) of this section, the following hearings in child-in-
11 need-of-aid cases are closed to the public:

12 (1) the initial court hearing after the filing of a petition to commence
13 the child-in-need-of-aid case;

14 (2) a hearing following the initial hearing in which a parent, child, or
15 other party to the case is present but has not had an opportunity to obtain legal
16 representation;

17 (3) a hearing, or a part of a hearing, for which the court issues a written
18 order finding that allowing the hearing, or part of the hearing, to be open to the public
19 would reasonably be expected to

20 (A) stigmatize or be emotionally damaging to a child;

21 (B) inhibit a child's testimony in that hearing;

22 (C) disclose matters otherwise required to be kept confidential
23 by state or federal statute or regulation, court order, or court rule; or

24 (D) interfere with a criminal investigation or proceeding or a
25 criminal defendant's right to a fair trial in a criminal proceeding; before ruling
26 on a request under this subparagraph, the court shall give notice and an
27 opportunity to be heard to the state or a municipal agency that is assigned to
28 the criminal investigation or to the prosecuting attorney.

29 (d) If a hearing, or part of a hearing, in a child-in-need-of-aid case is not
30 closed under (c) of this section, the court shall hear in camera any information offered
31 regarding the location, or readily leading to the location, of a parent, child, or other

1 party to the case who is a victim of domestic violence. Access to testimony heard in
2 camera under this subsection is limited to the court and authorized court personnel.

3 (e) The grandparents of the child and the foster parents or other out-of-home
4 care provider may attend hearings that are otherwise closed to the public under (c) of
5 this section. However, the court shall limit the presence of these persons in a hearing
6 closed to the public to the time during which the person's testimony is being given if
7 the court determines that the limitation is necessary under (c)(3) of this section. In this
8 subsection, "out-of-home care provider" means an agency or person, other than the
9 child's legal parents, with whom a child who is in the custody of the state under
10 AS 47.10.080(c)(1) or (3), 47.10.142, or AS 47.14.100(c) is currently placed; "agency
11 or person" includes a foster parent, a relative other than a parent, a person who has
12 petitioned for adoption of the child, and a residential child care facility.

13 (f) Notwithstanding any other provision of this chapter, a person attending a
14 hearing open to the public may not disclose a name, picture, or other information that
15 would readily lead to the identification of a child who is the subject of the child-in-
16 need-of-aid case. At the beginning of the hearing, the court shall issue an order
17 specifying the restrictions necessary to comply with this subsection. If a person
18 violates the order, the court may impose any appropriate sanction, including contempt
19 and closure of any further hearings in the case to the person.

20 (g) Nothing contained in this section limits the rights of grandparents under
21 this title.

22 * Sec. 11. AS 47.10.080(c) is amended to read:

23 (c) If the court finds that the child is a child in need of aid, the court shall

24 (1) order the child committed to the department for placement in an
25 appropriate setting for a period of time not to exceed two years or in any event not to
26 extend past the date the child becomes 19 years of age, except that the department or
27 the child's guardian ad litem may petition for and the court may grant in a hearing

28 (A) one-year extensions of commitment that do not extend
29 beyond the child's 19th birthday if the extension is in the best interests of the
30 child; and

31 (B) an additional one-year period of state custody past [AGE]

1 19 years of age if the continued state custody is in the best interests of the
2 person and the person consents to it;

3 (2) order the child released to a parent, relative, or guardian of the
4 child or to another suitable person, and, in appropriate cases, order the parent, relative,
5 guardian, or other person to provide medical or other care and treatment; if the court
6 releases the child, it shall direct the department to supervise the care and treatment
7 given to the child, but the court may dispense with the department's supervision if the
8 court finds that the adult to whom the child is released will adequately care for the
9 child without supervision; the department's supervision may not exceed two years or
10 in any event extend past the date the child reaches [AGE] 19 years of age, except that
11 the department or the child's guardian ad litem may petition for and the court may
12 grant in a hearing

13 (A) one-year extensions of supervision that do not extend
14 beyond the child's 19th birthday if the extensions are in the best interests of the
15 child; and

16 (B) an additional one-year period of supervision past age 19 if
17 the continued supervision is in the best interests of the person and the person
18 consents to it; or

19 (3) unless a jury trial has been requested by a party, order, under
20 the grounds specified in (o) of this section or AS 47.10.088, the termination of
21 parental rights and responsibilities of one or both parents and commit the child to the
22 custody of the department, and the department shall report quarterly to the court on
23 efforts being made to find a permanent placement for the child; if a jury trial has
24 been requested by a party, the court shall conduct a jury trial on the termination
25 of parental rights under this section.

26 * Sec. 12. AS 47.10.080(p) is amended to read:

27 (p) If a child is removed from the parental home, the department shall provide
28 reasonable visitation between the child and the child's parents, guardian, and family.
29 When determining what constitutes reasonable visitation with a family member, the
30 department shall consider the nature and quality of the relationship that existed
31 between the child and the family member before the child was committed to the

1 custody of the department. The court may require the department to file a visitation
2 plan with the court. The department may deny visitation to the parents, guardian, or
3 family members if there is clear and convincing evidence that visits are not in the
4 child's best interests. If the department denies visitation to a parent or family
5 member of a child, the department shall inform the parent or family member of a
6 reason for the denial and of the parent's or family member's right to request a
7 review hearing. A parent, family member, or guardian who is denied visitation may
8 request a review hearing.

9 * Sec. 13. AS 47.10.080 is amended by adding new subsections to read:

10 (t) The court or a jury, if a jury trial is requested, may not terminate parental
11 rights solely on the basis that the parent did not complete treatment required of the
12 parent by the department for reunification with the child if the parent can show, by a
13 preponderance of the evidence, that the treatment required was unavailable to the
14 parent and the department did not provide the treatment.

15 (u) A child may not be placed in a foster home known to the department as a
16 home requesting adoption of a child before

17 (1) 30 days after the date of the first permanency hearing;

18 (2) the decision of the department is made to seek termination of
19 parental rights; and

20 (3) the court approves of the placement after a hearing.

21 (v) Within 60 days after the date a child is removed from the child's home by
22 the department, the department shall notify the appropriate citizen review panel
23 established under AS 47.14.205.

24 (w) Within 60 days after a court orders a child committed to the department
25 under (c) of this section and at a review under (f) or (l) of this section, the department
26 shall inform the parties about the citizen review panels established under
27 AS 47.14.205.

28 (x) A hearing conducted under this section is open to the public unless an
29 exception provided in AS 47.10.070(c) applies to make the hearing closed to the
30 public or unless prohibited by federal or state statute or regulation.

31 * Sec. 14. AS 47.10.088(i) is amended to read:

1 (i) The department shall concurrently identify, recruit, process, and approve a
2 qualified person or family for an adoption whenever a petition to terminate a parent's
3 rights to a child is filed. The department may not approve an adoption by a
4 person or family who is not related to the child by blood if a relative of the child
5 requests that the department approve the relative for the adoption unless the
6 adoption by the child's relative is not in the child's best interest, is prohibited
7 under (l) of this section, or is otherwise contrary to federal or state law. If the
8 court issues an order to terminate under (j) of this section, the department shall report
9 within 30 days on the efforts being made to recruit a permanent placement for the
10 child if a permanent placement was not approved at the time of the trial under (j) of
11 this section. The report must document recruitment efforts made for the child.

12 * Sec. 15. AS 47.10.088 is amended by adding new subsections to read:

13 (l) The department may not approve an adoption by a person related to the
14 child by blood if the department

15 (1) makes a determination, supported by clear and convincing
16 evidence, that adoption of the child by the relative will result in physical or mental
17 injury to the child; in making that determination, poverty, including inadequate or
18 crowded housing, on the part of the person related to the child by blood is not
19 considered prima facie evidence that physical or mental injury to the child will occur;

20 (2) determines that a member of the relative's household who is 12
21 years of age or older was the perpetrator in a substantiated report of abuse under
22 AS 47.17; or

23 (3) determines that a member of the relative's household who is 12
24 years of age or older is under arrest for, is charged with, has been convicted of, or has
25 been found not guilty by reason of insanity of, a serious offense; notwithstanding this
26 paragraph, the department may approve an adoption by the relative if the relative
27 demonstrates to the satisfaction of the department that conduct described in this
28 paragraph occurred at least five years before the intended adoption and the conduct

29 (A) did not involve a victim who was under 18 years of age at
30 the time of the conduct;

31 (B) was not a crime of domestic violence as defined in

1 AS 18.66.990; and

2 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
3 a law or ordinance of another jurisdiction having similar elements.

4 (m) For the purpose of determining whether the home of a relative meets the
5 requirements for adoption of the child, the department shall conduct a criminal
6 background check from state and national criminal justice information available under
7 AS 12.62. The department may conduct a fingerprint background check on any
8 member of the relative's household who is 12 years of age or older when the relative
9 requests adoption of the child. For the purposes of obtaining criminal justice
10 information under this subsection, the department is a criminal justice agency
11 conducting a criminal justice activity under AS 12.62.

12 (n) A person related to a child by blood who is denied a request for an
13 adoption under (i) of this section may request a review hearing by the court. If the
14 department denies a request by a person related to a child by blood to adopt a child
15 under (i) of this section, the department shall inform the relative of the reason for the
16 denial and of the relative's right to request a review hearing.

17 (o) A trial or hearing conducted under this section is open to the public unless
18 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
19 to the public.

20 * **Sec. 16.** AS 47.10 is amended by adding a new section to read:

21 **Sec. 47.10.089. Report of prescription drugs.** (a) When a child is in the
22 custody of the department under AS 47.10.084 and the child is prescribed a
23 psychotropic or other mental health medication, the department shall prepare a report.

24 The report must include the

- 25 (1) child's name and date of birth;
- 26 (2) name and dosage of the medication;
- 27 (3) condition or diagnosis for which the medication is prescribed;
- 28 (4) name of the prescribing physician;
- 29 (5) assessment of the child's caseworker pertaining to the child's
30 response to the medication; and
- 31 (6) assessment of the child's caregiver pertaining to the child's

1 response to the medication, if available.

2 (b) A report prepared under (a) of this section shall be distributed to the
3 statewide supervisor of the caseworker of the child, the parent or guardian of the child,
4 and, to the extent allowed under applicable federal and state law, the intervening tribal
5 or tribal custodian for the child.

6 (c) A summary of the reports prepared under (a) of this section, excluding
7 identifying information of a child, shall be distributed to members of the Senate and
8 House Health and Social Service Committees by March 1 of each year.

9 (d) In this section, "caregiver" includes a parent, grandparent, foster parent,
10 relative, teacher, or child care provider.

11 * Sec. 17. AS 47.10.090(c) is amended to read:

12 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
13 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
14 18th birthday, within 30 days after [OF] the date on which the court releases
15 jurisdiction over the child [MINOR], the court shall order all the court's official
16 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
17 person may not use these sealed records unless authorized by order of [FOR ANY
18 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
19 USE FOR] good cause [SHOWN].

20 * Sec. 18. AS 47.10.090(d) is amended to read:

21 (d) Except as provided in AS 47.10.070, 47.10.080(x), and 47.10.093, the
22 [THE] name or picture of a child [MINOR] under the jurisdiction of the court may not
23 be made public in connection with the child's [MINOR'S] status as a child in need of
24 aid unless authorized by order of the court or unless to implement the permanency
25 plan for a child after all parental rights of custody have been terminated. This
26 subsection does not prohibit the release of aggregate information for statistical or
27 other informational purposes if the identity of any particular person is not
28 revealed by the release.

29 * Sec. 19. AS 47.10.092(a) is amended to read:

30 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member
31 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005

1 - 47.10.142 may disclose confidential or privileged information about the child or the
2 child's family, including information that has been lawfully obtained from agency or
3 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
4 appointed under AS 24.55, the attorney general, and the commissioner
5 [COMMISSIONERS] of health and social services, administration, or public safety, or
6 an employee of these persons, for review or use in their official capacities. The
7 department shall disclose additional confidential or privileged information and make
8 copies of documents available for inspection about the child or the child's family to
9 these state officials or employees for review or use in their official capacities upon
10 request of the official or employee and submission of satisfactory evidence that an
11 adult family member [A PARENT] or legal guardian of the child has requested the
12 state official's assistance in the case as part of the official's duties. A person to whom
13 disclosure is made under this section may not disclose confidential or privileged
14 information about the child or the child's family to a person not authorized to receive
15 it.

16 * **Sec. 20.** AS 47.10.092 is amended by adding new subsections to read:

17 (d) The duty imposed on the department under (a) of this section to disclose
18 information to and make copies of documents available for inspection by state
19 officials and employees upon proof that a parent has requested the assistance of the
20 state official or employee with respect to a child's case does not lapse when the
21 parent's parental rights have been terminated with respect to the child. However, the
22 duty does lapse after termination of the parent's parental rights if another parent or
23 legal guardian of the child subsequently files a notice with the department that the
24 assistance of the state official or employee is no longer requested.

25 (e) If, in response to a requirement of federal law or a request made by an
26 official identified in (a) of this section, the department initiates an internal review or
27 evaluation of its activities under this chapter, notwithstanding AS 47.10.090 and
28 47.10.093, the department shall either provide a copy of a report resulting from that
29 internal review or evaluation to the official or prepare a report of that internal review
30 and evaluation when requested to do so by an official identified in (a) of this section.
31 The report must contain a summary of the complaint, the review or evaluation process

1 used, and the outcome of the review or evaluation, including any recommendations
2 made as a result of the review. Before being disclosed, the department shall modify a
3 report prepared or produced under this subsection to exclude all personal identifying
4 information of a child, the child's family, and witnesses.

5 (f) In this section, "adult family member" means a person who is 18 years of
6 age or older and who is related to the child as the child's biological or adoptive parent,
7 grandparent, aunt, uncle, or sibling.

8 * **Sec. 21.** AS 47.10.093(a) is amended to read:

9 (a) Except as specified in AS 47.10.092 and in (b) - (g) and (k) - (n) [(b) -
10 (g)] of this section, all information and social records pertaining to a child [MINOR]
11 who is subject to this chapter or AS 47.17 prepared by or in the possession of a
12 federal, state, or municipal agency or employee in the discharge of the agency's or
13 employee's official duty are privileged and may not be disclosed directly or indirectly
14 to anyone without a court order.

15 * **Sec. 22.** AS 47.10.093(b) is amended to read:

16 (b) A state or municipal agency or employee shall disclose appropriate
17 confidential information regarding a case to

18 (1) a guardian ad litem appointed by the court;

19 (2) a person or an agency requested by the department or the child's
20 legal custodian to provide consultation or services for a child who is subject to the
21 jurisdiction of the court under AS 47.10.010 as necessary to enable the provision of
22 the consultation or services;

23 (3) a foster parent [PARENTS] or relative [RELATIVES] with
24 whom the child is placed by the department as [MAY BE] necessary to enable the
25 foster parent [PARENTS] or relative [RELATIVES] to provide appropriate care to
26 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
27 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and
28 property of family members and visitors of the foster parent [PARENTS] or relative
29 [RELATIVES];

30 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable
31 the school to provide appropriate counseling and support services to a [THE] child

1 who is the subject of the case, to protect the safety of the child [WHO IS THE
2 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

3 (5) a governmental agency as [MAY BE] necessary to obtain that
4 agency's assistance for the department in its investigation or to obtain physical custody
5 of a child;

6 (6) a law enforcement agency of this state or another jurisdiction as
7 [MAY BE] necessary for the protection of any child or for actions by that agency to
8 protect the public safety;

9 (7) a member [MEMBERS] of a multidisciplinary child protection
10 team created under AS 47.14.300 as [MAY BE] necessary for the performance of the
11 member's [THEIR] duties;

12 (8) the state medical examiner under AS 12.65 as [MAY BE]
13 necessary for the performance of the duties of the state medical examiner;

14 (9) a person who has made a report of harm as required by
15 AS 47.17.020 to inform the person that the investigation was completed and of action
16 taken to protect the child who was the subject of the report; [AND]

17 (10) the child support services agency established in AS 25.27.010 as
18 [MAY BE] necessary to establish and collect child support for a child who is a child in
19 need of aid under this chapter;

20 (11) a caregiver of a child or an entity responsible for ensuring the
21 safety of children as necessary to protect the safety of a child; and

22 (12) a review panel established by the department for the purpose
23 of reviewing the actions taken by the department in a specific case.

24 * Sec. 23. AS 47.10.093(c) is repealed and reenacted to read:

25 (c) A state or municipal law enforcement agency shall disclose information
26 regarding a case that is needed by the person or agency charged with making a
27 preliminary investigation for the information of the court under AS 47.10.020.

28 * Sec. 24. AS 47.10.093(f) is amended to read:

29 (f) The department may release to a person with a legitimate interest
30 confidential information relating to children [MINORS] not subject to the
31 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT

1 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
2 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

3 * Sec. 25. AS 47.10.093(g) is amended to read:

4 (g) The department and affected law enforcement agencies shall work with
5 school districts and private schools to develop procedures for the disclosure of
6 confidential information to a school official [OFFICIALS] under (b)(4) of this
7 section. The procedures must provide a method for informing the principal or the
8 principal's designee of the school that the student attends as soon as it is reasonably
9 practicable.

10 * Sec. 26. AS 47.10.093 is amended by adding new subsections to read:

11 (k) The department may disclose to the public, upon request, confidential
12 information, as set out in (l) of this section, when

13 (1) the parent or guardian of a child who is the subject of a report of
14 harm under AS 47.17 has made a public disclosure concerning the department's
15 involvement with the family;

16 (2) the alleged perpetrator named in a report of harm under AS 47.17
17 has been charged with a crime concerning the alleged abuse or neglect; or

18 (3) a report of harm under AS 47.17 has resulted in the fatality or near
19 fatality of that child.

20 (l) The type of information that may be publicly disclosed under (k) of this
21 section is information related to the determination, if any, made by the department
22 regarding the validity of a report of harm under AS 47.17 and the department's
23 activities arising from the department's investigation of the report. The department

24 (1) may withhold disclosure of the child's name, picture, or other
25 information that would readily lead to the identification of the child if the department
26 determines that the disclosure would be contrary to the best interests of the child, the
27 child's siblings, or other children in the child's household; or

28 (2) after consultation with a prosecuting attorney, may withhold
29 disclosure of information that would reasonably be expected to interfere with a
30 criminal investigation or proceeding or a criminal defendant's right to a fair trial in a
31 criminal proceeding.

1 (m) Except for a disclosure made under (k) of this section, a person to whom
2 disclosure is made under this section may not disclose confidential information about
3 the child or the child's family to a person not authorized to receive it.

4 (n) The department may adopt regulations to implement and interpret its
5 duties under this section, including regulations governing the release of confidential
6 information and identifying a sufficient legitimate interest under (f) of this section.

7 * Sec. 27. AS 47.10 is amended by adding a new section to read:

8 **Sec. 47.10.094. Immunity from liability.** A person may not bring an action
9 for damages against the state, a municipality, or state or municipal agencies, officers,
10 employees, or agents based on the disclosure or nondisclosure of information in
11 accordance with this chapter.

12 * Sec. 28. AS 47.10.142 is amended by adding a new subsection to read:

13 (i) Within 60 days after a court orders a child committed to the department
14 under this section, the department shall inform the parties about the citizen review
15 panel established under AS 47.14.205.

16 * Sec. 29. AS 47.10 is amended by adding a new section to read:

17 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
18 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
19 parent, guardian, or custodian of a child cannot be located after a reasonable search for
20 the parent, guardian, or custodian has been conducted by the department, the court
21 may conclude that the testimony of a qualified expert witness would support a finding
22 that continued custody of the child by the absent parent, guardian, or custodian is
23 likely to result in serious emotional or physical damage to the child.

24 * Sec. 30. AS 47.10.960 is amended to read:

25 **Sec. 47.10.960. Duty and standard of care [NOT] created. The**
26 **department shall adopt regulations establishing [NOTHING IN THIS TITLE**
27 **CREATES] a duty and [OR] standard of care for services to children and their**
28 **families being served under this chapter [AS 47.10]. The regulations must be**
29 **consistent in all relevant respects with the code of professional ethics and the**
30 **standards of practice for social workers adopted by the Board of Social Work**
31 **Examiners under AS 08.95.**

1 * Sec. 31. AS 47.10.990(16) is amended to read:

2 (16) "mental health professional" has the meaning given in
3 AS 47.30.915, except that, if the child is placed in another state by the
4 department, "mental health professional" also includes a professional listed in
5 the definition of "mental health professional" in AS 47.30.915 who is not licensed
6 to practice by a board of this state but is licensed by a corresponding licensing
7 authority to practice in the state in which the child is placed;

8 * Sec. 32. AS 47.10.990 is amended by adding a new paragraph to read:

9 (28) "near fatality" means physical injury or other harm, as certified by
10 a physician, caused by an act or omission that created a substantial risk of death.

11 * Sec. 33. AS 47.12.990(10) is amended to read:

12 (10) "mental health professional" has the meaning given in
13 AS 47.30.915, except that, if the minor is placed in another state by the
14 department, "mental health professional" also includes a professional listed in
15 the definition of "mental health professional" in AS 47.30.915 who is not licensed
16 to practice by a board of this state but is licensed by a corresponding licensing
17 authority to practice in the state in which the minor is placed;

18 * Sec. 34. AS 47.14.100(e) is amended to read:

19 (e) A child may not be placed in a foster home or in the care of an agency or
20 institution providing care for children if a relative by blood or marriage, family
21 friend, or neighbor requests placement of the child in the [RELATIVE'S] home of
22 the relative, family friend, or neighbor and the parent or guardian of the child
23 agrees to the placement. However, the department may retain custody of the child
24 and provide for its placement in the same manner as for other children if the
25 department

26 (1) makes a determination, supported by clear and convincing
27 evidence, that placement of the child with the relative, family friend, or neighbor
28 will result in physical or mental injury; in making that determination, poverty,
29 including inadequate or crowded housing, on the part of the [BLOOD] relative, family
30 friend, or neighbor is not considered prima facie evidence that physical or emotional
31 damage to the child will occur; this determination may be appealed to the superior

1 court to hear the matter de novo;

2 (2) determines that a member of the relative's, family friend's, or
3 neighbor's household who is 12 years of age or older was the perpetrator in a
4 substantiated report of abuse under AS 47.17; or

5 (3) determines that a member of the relative's, family friend's, or
6 neighbor's household who is 12 years of age or older is under arrest for, charged with,
7 has been convicted of, or has been found not guilty by reason of insanity of, a serious
8 offense; notwithstanding this paragraph, the department may place or continue the
9 placement of a child at the relative's, family friend's, or neighbor's home if the
10 relative, family friend, or neighbor demonstrates to the satisfaction of the department
11 that conduct described in this paragraph occurred at least five years before the
12 intended placement and the conduct

13 (A) did not involve a victim who was under 18 years of age at
14 the time of the conduct;

15 (B) was not a crime of domestic violence as defined in
16 AS 18.66.990; and

17 (C) was not a violent crime under AS 11.41.100 - 11.41.455 or
18 a law or ordinance of another jurisdiction having similar elements.

19 * **Sec. 35.** AS 47.14.100(f) is amended to read:

20 (f) If a blood relative of the child specified under (e) of this section exists and
21 agrees that the child should be placed elsewhere, before placement elsewhere, the
22 department shall fully communicate the nature of the placement proceedings to the
23 relative. Communication under this subsection shall be made in the relative's native
24 language, if necessary. [NOTHING IN THIS SUBSECTION OR IN (e) OF THIS
25 SECTION APPLIES TO CHILD PLACEMENT FOR ADOPTIVE PURPOSES.]

26 * **Sec. 36.** AS 47.14 is amended by adding a new section to article 3 to read:

27 **Sec. 47 14.205. Citizens' Review Panels for Permanency Planning.** (a)
28 There is created in the Department of Administration three Citizens' Review Panels for
29 Permanency Planning. Each state panel shall consist of five members appointed by
30 the governor from a broad representation of individuals located in the communities
31 served and including individuals with expertise in the prevention and treatment of

1 child abuse and neglect. The governor shall appoint at least one state panel member
2 from each judicial district. The governor may not appoint a person who has
3 committed a felony or violated AS 11.51.130 or a law with substantially similar
4 elements. The governor may designate an existing entity established under state or
5 federal law as a state panel if the entity performs the functions set out under
6 AS 47.14.205 - 47.14.295.

7 (b) Members of the state panels serve at the pleasure of the governor for
8 staggered terms of three years or until their successors are appointed.

9 (c) The members of each state panel shall elect from among the members a
10 chair who shall serve for one year. Three members of each state panel constitute a
11 quorum for the transaction of business. A panel may not take official action without
12 the affirmative vote of at least three of its members.

13 (d) Members of the state panels are entitled to reimbursement for actual
14 expenses necessary to perform their duties as state panel members. The
15 reimbursement may not exceed the amount of per diem and expenses authorized for
16 boards and commissions under AS 39.20.180.

17 (e) The state panels shall meet not less than every three months. Meetings
18 may take place telephonically.

19 (f) The state panels may employ a program manager and two assistant
20 managers who shall serve at the pleasure of the state panels. The program manager
21 shall employ staff as necessary to carry out the program manager's duties under state
22 panel directives and to provide clerical assistance to the state panels.

23 (g) When a person is appointed to serve on a state panel, the person shall
24 swear or affirm to keep confidential all information that comes before the state panel
25 except for nonidentifying case information included in a report required under
26 AS 47.17, or as required by court order for good cause shown. A state panel member
27 may also share confidential information with other members of the state panel and
28 staff who serve a state panel.

29 * **Sec. 37.** AS 47.14 is amended by adding a new section to article 3 to read:

30 **Sec. 47.14.215. Duties of the state panels.** The state panels shall

31 (1) by regulation adopt policies and procedures to carry out the panels'

1 duties;

2 (2) examine the policies, procedures, and practices of state and local
3 agencies involved in making or investigating a report of harm to a child;

4 (3) where appropriate, evaluate specific cases of a report of child abuse
5 or neglect to determine the extent to which the state and local child protection systems
6 are effectively discharging child protection responsibilities under

7 (A) the state plan submitted to the United States Department of
8 Health and Human Services;

9 (B) child protection standards under federal and state laws;

10 (C) any other criteria that the panel considers important to
11 ensuring the protection of children, including the level and efficiency of
12 coordination of foster care and adoption programs in the state and a review of
13 child fatalities and near fatalities; and

14 (4) report annually to the governor by the 10th day of each regular
15 legislative session, concerning the activities of the state panels during the previous
16 fiscal year; the report must include a summary of the information gathered and
17 recommendations made under paragraphs (2) and (3) of this section, the number of
18 cases reviewed by each panel, a description of the characteristics of the children
19 whose cases were reviewed by the panels, the number of children reunited with their
20 families, the number of children placed in other permanent homes, and the timeliness
21 of each review conducted under this section; the report may contain other information
22 on the experience of the panels.

23 * **Sec. 38.** AS 47.14 is amended by adding a new section to article 3 to read:

24 **Sec. 47.14.225. Cooperation with state panels.** The department, the
25 Department of Law, the Public Defender Agency, the office of public advocacy, and
26 the court system shall cooperate with the state panels to facilitate timely review of
27 plans for children whose cases are under the jurisdiction of the panels and to facilitate
28 access to records required under AS 47.14.235.

29 * **Sec. 39.** AS 47.14 is amended by adding a new section to article 3 to read:

30 **Sec. 47.14.235. Records; communications.** (a) Notwithstanding
31 AS 47.10.090, at the request of a state panel, the department, the child's guardian ad

1 litem, and the court shall furnish to the state panel relevant records concerning a child
2 and the child's family who are the subjects of a state panel review. At the conclusion
3 of a review, all copies of records provided to a state panel under this section shall be
4 returned to the staff that serves the state panel or to the agency from which the original
5 copy was obtained, unless the panel members need the copies to prepare the reports
6 required under AS 47.14.215. Copies retained for preparation of the reports shall be
7 returned to the staff that serves the state panel or to the originating agency upon
8 completion of the reports. Notwithstanding AS 44.62.310, records and reports of the
9 state panel, testimony before the state panel, and deliberations of the state panel are
10 confidential under AS 47.10.090.

11 (b) A state panel member may not reveal to another person, other than another
12 member of the state panel or the staff serving the state panel, a communication made
13 to the member while performing the member's duties under AS 47.14.205 - 47.14.295,
14 except as required under AS 47.17 or as required by court order for good cause shown.
15 A state panel member may disclose information related to the state panel member's
16 performance of official duties if the state panel member omits identifying information.

17 (c) A state panel proceeding is not governed by AS 44.62.310.

18 * **Sec. 40.** AS 47.14 is amended by adding a new section to article 3 to read:

19 **Sec. 47.14.245. Court review of report.** (a) When a report is admissible
20 under court rules, the court may consider the report of the state panel in its review
21 under AS 47.10.080(f) and at other disposition hearings other than hearings related to
22 delinquency proceedings.

23 (b) The court may refer to the state panel a case called for a special review
24 under AS 47.10.080(f).

25 * **Sec. 41.** AS 47.14 is amended by adding a new section to article 3 to read:

26 **Sec. 47.14.255. Liability and indemnification of panel members.** (a) A
27 state panel member shall be indemnified by the state for civil liability for a negligent
28 act or omission of the panel member that occurs in the performance of the member's
29 duties under AS 47.14.205 - 47.14.295, unless the civil liability results from the panel
30 member's violation of

31 (1) AS 47.14.235(b); or

1 (2) the oath or affirmation required under AS 47.14.205(g).

2 (b) A violation of (a)(1) or (2) of this section is subject to a civil penalty of up
3 to \$2,500 for each violation.

4 * **Sec. 42.** AS 47.14 is amended by adding a new section to article 3 to read:

5 **Sec. 47.14.295. Definitions.** In AS 47.14.205 - 47.14.295,

6 (1) "state panel" or "state panels" means one or all of the Citizens'
7 Review Panels for Permanency Planning established under AS 47.14.205;

8 (2) "near fatality" has the meaning given in AS 47.10.990.

9 * **Sec. 43.** AS 47.17.025 is amended by adding a new subsection to read:

10 (c) Within 20 days after receiving a report of harm, whether or not the matter
11 is referred to a local government agency, the department shall notify the person who
12 made the report about the status of the investigation, without disclosing any
13 confidential information.

14 * **Sec. 44.** AS 47.17.027(a) is amended to read:

15 (a) If the department or a law enforcement agency provides written
16 certification to the child's school officials that (1) there is reasonable cause to suspect
17 that the child has been abused or neglected by a person responsible for the child's
18 welfare or as a result of conditions created by a person responsible for the child's
19 welfare; (2) an interview at school is a necessary part of an investigation to determine
20 whether the child has been abused or neglected; and (3) the interview at school is in
21 the best interests of the child, school officials shall permit the child to be interviewed
22 at school by the department or a law enforcement agency before notification of, or
23 receiving permission from, the child's parent, guardian, or custodian. A school official
24 shall be present during an interview at the school unless the child objects or the
25 department or law enforcement agency determines that the presence of the school
26 official will interfere with the investigation. The interview shall be conducted as
27 required under AS 47.17.033. Immediately after conducting an interview authorized
28 under this section, and after informing the child of the intention to notify the child's
29 parent, guardian, or custodian, the department or agency shall make every reasonable
30 effort to notify the child's parent, guardian, or custodian that the interview occurred
31 unless it appears to the department or agency that notifying the child's parent,

1 guardian, or custodian would endanger the child.

2 * **Sec. 45.** AS 47.17.033 is amended by adding new subsections to read:

3 (c) An investigation by the department of child abuse or neglect reported
4 under this chapter shall be conducted by a person trained to conduct a child abuse and
5 neglect investigation and without subjecting a child to more than one interview about
6 the abuse or neglect except when new information is obtained that requires further
7 information from the child.

8 (d) An interview of a child conducted as a result of a report of harm may be
9 audiotaped or videotaped. However, if an interview of a child is to be electronically
10 recorded and the interview concerns a report of sexual abuse of the child, the interview
11 shall be videotaped, except that an interview of a child may not be videotaped if
12 videotaping the interview is impracticable or will, in the opinion of the investigating
13 agency, result in trauma to the child.

14 (e) An interview of a child that is audiotaped or videotaped under (d) of this
15 section shall be conducted

16 (1) by a person trained and competent to conduct the interview;

17 (2) if available, at a child advocacy center; and

18 (3) by a person who is a party to a memorandum of understanding with
19 the department to conduct the interview or who is employed by an agency that is
20 authorized to conduct investigations.

21 (f) An interview of a child may not be videotaped more than one time unless
22 the interviewer or the investigating agency determines that one or more additional
23 interviews are necessary to complete an investigation. If additional interviews are
24 necessary, the additional interviews shall be conducted, to the extent possible, by the
25 same interviewer who conducted the initial interview of the child.

26 (g) A recorded interview of a child shall be preserved in the manner and for a
27 period provided by law for maintaining evidence and records of a public agency.

28 (h) A recorded interview of a child is subject to disclosure under the
29 applicable court rules for discovery in a civil or criminal case.

30 * **Sec. 46.** AS 47.35.015 is amended by adding a new subsection to read:

31 (j) If a person operates a foster home to provide care only for a relative and the

1 department requires licensure under an agreement for services, the department shall
2 issue a temporary license to an eligible person while an application for a license under
3 this section is pending. The department shall issue the temporary license to the
4 applicant within five days after receiving a complete application for a foster care
5 license under AS 47.35.017. A temporary license is valid for 90 days or until a license
6 is either issued under AS 47.35.017 or denied under AS 47.35.019, whichever is
7 sooner.

8 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 DIRECT COURT RULE AMENDMENT. Rule 3(c), Alaska Child in Need of
11 Aid Rules of Procedure, is amended to read:

12 (c) **Presence of Grandparent or Foster Parent.** A grandparent of a child
13 and the foster parent or other out-of-home care provider **are** [IS] entitled to be heard
14 at any hearing at which the person is present. However, the court may limit the
15 presence of these persons in a hearing that has been closed to the public under
16 (f)(2) of this rule [THE FOSTER PARENT OR CARE PROVIDER] to the time
17 during which the person's testimony is being given if the court determines that such
18 a limitation is necessary under the circumstances listed in (f)(2)(C) of this rule [IT
19 IS (1) IN THE BEST INTEREST OF THE CHILD; OR (2) NECESSARY TO
20 PROTECT THE PRIVACY INTERESTS OF THE PARTIES AND WILL NOT BE
21 DETRIMENTAL TO THE CHILD].

22 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 DIRECT COURT RULE AMENDMENT. Rule 3(f), Alaska Child in Need of
25 Aid Rules of Procedure, is repealed and reenacted to read:

26 (f) **General Public Access to Hearings.**

27 (1) Except as provided in (2) of this paragraph, and unless prohibited
28 by federal or state statute or regulation, court order, or other court rule, hearings are
29 open to the public.

30 (2) The following hearings are closed to the public:

31 (A) the initial court hearing after the filing of a petition that

1 begins the child-in-need-of-aid case;

2 (B) a hearing following the initial hearing in which a parent,
3 child, or other party to the case is present but has not had an opportunity to
4 obtain legal representation;

5 (C) a hearing, or a part of a hearing, for which the court issues
6 a written order finding that allowing the hearing, or part of the hearing, to be
7 open to the public would reasonably be expected to stigmatize or be
8 emotionally damaging to a child; inhibit a child's testimony in the hearing;
9 disclose matters otherwise required to be kept confidential by state or federal
10 statute or regulation, court order, or court rule; or interfere with a criminal
11 investigation or proceeding or a criminal defendant's right to a fair trial in a
12 criminal proceeding.

13 (3) Before ruling on a request under (2)(C) of this paragraph
14 concerning potential interference with a criminal investigation or proceeding, the court
15 shall give notice and an opportunity to be heard to the state or a municipal agency that
16 is assigned to the criminal investigation or to the prosecuting attorney.

17 (4) If the court closes a hearing to the public under (2)(C) of this
18 paragraph, the court shall close only the portions of the hearing necessary to prevent
19 the potential harm listed in (2)(C) of this paragraph. If a hearing, or part of a hearing,
20 is open to the public, the court shall hear in camera any information offered regarding
21 the location, or readily leading to the location, of a parent, child, or other party to the
22 case who is a victim of domestic violence. Access to testimony heard in camera under
23 this subparagraph is limited to the court and authorized court personnel.

24 (5) Notwithstanding any other provision of this rule, the court shall
25 issue an order to prohibit all persons in a hearing open to the public from disclosing to
26 any person a name, picture, or other information that would readily lead to the
27 identification of a child who is the subject of the proceeding. If a person violates the
28 order, the court may impose any appropriate sanction, including contempt and closure
29 of any further hearings in the proceeding to the person.

30 (6) A party to the proceeding may move the court to close to the public
31 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this

1 paragraph. A member of the public may request in writing to be served with a motion
2 filed under this subparagraph. If such a request has been filed in advance of the filing
3 of the motion, the party filing the motion must also serve the member of the public
4 who requested notice under this subparagraph. The court may waive the service
5 required under this subparagraph to a member of the public if a motion to close the
6 hearing, or part of the hearing, is made under this subparagraph immediately before or
7 during the hearing and the court finds that

8 (A) the need for closure was not reasonably foreseeable
9 sufficiently in advance of the hearing to allow for notice;

10 (B) there is good cause not to delay the hearing in order to
11 achieve notice, taking into consideration the age of the child and the potential
12 adverse effect that a delay could have on the child; and

13 (C) whatever notice is practicable under the circumstances has
14 occurred.

15 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 DIRECT COURT RULE AMENDMENT. Rule 3, Alaska Child in Need of
18 Aid Rules of Procedure, is amended by adding a new subsection to read:

19 (j) **Use of Child's Name and Identifying Information Prohibited.**
20 References to a child shall be made using the child's first name only. All identifying
21 information of the child, including the child's last name, address, and the names of the
22 child's immediate family members, shall be protected during the hearing so that only
23 the confidential record contains that information. If a child appears at the hearing, the
24 child shall be located away from view of the public.

25 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 DIRECT COURT RULE AMENDMENT. Rule 18(e), Alaska Child in Need
28 of Aid Rules of Procedure, is amended to read:

29 (e) **Trial.** A trial on the petition to terminate parental rights
30 (1) shall be held within six months after the date on which the petition
31 to terminate parental rights is filed, unless the court finds that good cause is shown for

1 a continuance; when [. WHEN] determining whether to grant a continuance for good
2 cause, the court shall take into consideration the age of the child and the potential
3 adverse effect that the delay may have on the child; the [. THE] court shall make
4 written findings when granting a continuance;

5 (2) shall be by jury when a jury trial has been demanded and not
6 waived by a party as provided in Rules 38 and 39, Alaska Rules of Civil
7 Procedure.

8 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 DIRECT COURT RULE AMENDMENT. Rule 18(g), Alaska Child in Need
11 of Aid Rules of Procedure, is amended to read:

12 (g) **Judgment.** The court shall make findings of fact for matters tried to the
13 court and shall enter an order within 90 days after the last day of trial on the petition
14 to terminate parental rights. The court shall commit the child to the custody of the
15 Department if parental rights are terminated.

16 * Sec. 52. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 22(c), Alaska Child in Need
19 of Aid Rules of Procedure, is amended to read:

20 (c) **Child's Name or Picture.** The name or picture of a child who is the
21 subject of a CINA proceeding may not be made available to the public unless
22 authorized by court order accompanied by a written statement reciting the
23 circumstances which support such authorization, or unless to implement the
24 permanency plan for the child after all parental rights of custody have been
25 terminated.

26 * Sec. 53. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 INDIRECT COURT RULE AMENDMENT. (a) Sections 9 and 10 of this Act
29 AS 47.10.080(x), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 15 of
30 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure,
31 by allowing members of the public to attend court hearings except in certain circumstances.

1 (b) AS 47.10.065, enacted by sec. 8 of this Act, and AS 47.10.080(c), as amended by
2 sec. 11 of this Act, have the effect of changing Rule 18, Alaska Child in Need of Aid Rules of
3 Procedure, by providing for a right to a jury trial on a petition to terminate parental rights.

4 (c) Sections 18 and 21-26 of this Act have the effect of changing Rule 22, Alaska
5 Child in Need of Aid Rules of Procedure, by allowing the disclosure of confidential
6 information pertaining to a child, including a child's name or picture to be made public in
7 certain circumstances.

8 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.
11 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
12 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
13 enactment and amendments provide a right to a jury trial on a petition to terminate parental
14 rights, affect a substantive right, secs. 8, 11, 50, 51, and 53 of this Act do not require a two-
15 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
16 parental rights.

17 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 INITIAL MEMBERS OF STATE PANEL. (a) Notwithstanding AS 47.14.205(b),
20 enacted by sec. 36 of this Act, the governor shall appoint the initial public members of each of
21 the Citizens' Review Panel for Permanency Planning so that one member of each panel serves
22 a one-year term, two members of each panel serve two-year terms, and two members of each
23 panel serve three-year terms.

24 (b) The initial public members must be persons who have experience, special
25 knowledge, or a demonstrated interest in the welfare of children.

26 * Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 APPLICABILITY. (a) AS 47.10.065, enacted by sec. 8 of this Act, 47.10.080(c), as
29 amended by sec. 11 of this Act, and Rules 18(e) and 18(g), Alaska Child in Need of Aid Rules
30 of Procedure, as amended by secs. 50 and 51 of this Act, apply to petitions to terminate
31 parental rights that are filed on or after the effective date of secs. 8, 11, 50, and 51 of this Act.

1 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
2 made by secs. 47 - 49 of this Act, apply to hearings that are conducted on or after the effective
3 date of secs. 47 - 49 of this Act.

4 (c) Sections 9 - 11, 13, 15, 17, 18, 21 - 27, 32, 47 - 49, and 52 of this Act apply to all
5 proceedings and hearings conducted on or after the effective date of those sections.

6 (d) Sections 9, 10, 13, 15, and 18 - 27 of this Act apply to all information, records,
7 and files created on or after the effective date of those sections; however, if a file contains
8 information and records that were created before the effective date of secs. 9, 10, 13, 15, and
9 18 - 27 of this Act, that information and those records retain the confidentiality status that
10 they had under the law on the day before the effective date of secs. 9, 10, 13, 15, and 18 - 27
11 of this Act.

12 * **Sec. 57.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **TRANSITION: REGULATIONS.** The Department of Health and Social Services
15 may proceed to adopt regulations necessary to implement the changes made by this Act. The
16 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
17 effective date of the relevant statutory change.

18 * **Sec. 58.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **REPORT.** By December 1, 2006, the governor shall issue a report, including any
21 recommendations for statutory changes, to the public and the legislature on the
22 implementation of this Act.

23 * **Sec. 59.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **CONDITIONAL EFFECT.** (a) That portion of Rule 18(e)(2), Alaska Child in Need
26 of Aid Rules of Procedure, added by sec. 50 of this Act, that reads "and not waived by a party
27 as provided in Rules 38 and 39, Alaska Rules of Civil Procedure," takes effect only if sec. 50
28 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
29 Constitution of the State of Alaska.

30 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
31 made by secs. 47 - 49 of this Act, take effect only if secs. 47 - 49 of this Act receive the two-

1 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
2 Alaska.

3 (c) The amendments to Rule 22(c), Alaska Child in Need of Aid Rules of Procedure,
4 made by sec. 52 of this Act take effect only if sec. 52 of this Act receives the two-thirds
5 majority vote of each house required by Art. IV, sec. 15, Constitution of the State of Alaska.

6 (d) Sections 9 and 10 of this Act, AS 47.10.080(x), enacted by sec. 13 of this Act,
7 AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 - 27 of this Act, take
8 effect only if secs. 47 - 49, 52, and 53(a) and (c) of this Act receive the two-thirds majority
9 vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

10 * Sec. 60. AS 47.10.960, as amended by sec. 30 of this Act, takes effect 180 days after the
11 effective date of sec. 1 of this Act.

12 * Sec. 61. If, under sec. 59 of this Act, secs. 9 and 10 of this Act, AS 47.10.080(x), enacted
13 by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 -
14 27 of this Act take effect, they take effect July 1, 2005.

15 * Sec. 62. Except as provided in secs. 60 and 61 of this Act, this Act takes effect
16 immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HB-53 hearing
 Committee on CINA Committee Name
 Dated 31 March
 Bill / Subject

I have wanted & worked to promote this Bill 6 years. I have never had opportunity to testify. I refuse to remain & listen to the same tired monologue of AGENCY personnel who have your law 29/7

I am a busy person & do NOT have time to waste to come to a meeting & ~~listen to~~ not be allowed to provide input. I had things to do today but took time to attend

SIGNED: Betty Rollins
 Testifier
ALL Kids Count
 Representing
P.O. Box 55163, 488-6614
 Address / Phone Number

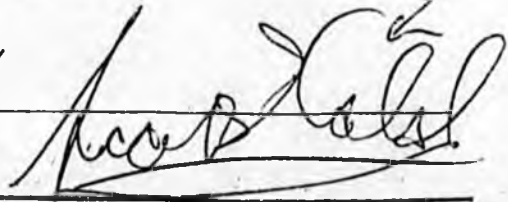


ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (M) M.E.S.S.
 Committee on CSSS HB 53 Committee Name Dated 3-31-05
Bill / Subject

I SUPPORT CHAPTER 117, SLA 1990.
 CITIZENS MAKING TIME
 TO TESTIFY ON THIS BILL
 WERE GREATLY DISAPPOINTED
 TO LEARN, SHORTLY AFTER THIS
 COMMITTEE CONVENED TODAY
 THAT THEY WOULD NOT BE HEARD.
 ETHICAL LEGISLATORS SHOULD
 ALWAYS EXCUSE AND ZEALOUSLY
REPRESENT CITIZENS, AND THEIR
INTERESTS, WHEN THEY BECOME
 ANXIOUS ABOUT OTHER UNETHICAL
~~LEGISLATORS~~ LEGISLATORS, WHO EXEMPLIFY HOSTILE
 IGNORANCE TOWARD MEMBERS
 OF THE PUBLIC [REP. ANDERSON], PLEASE.

SIGNED: SCOTT TRAFFORD CALDER
 Testifier
P.O. 75011 FBKS, AK. 99707
 Representing
(907) 474-0174
 Address / Phone Number





Municipality of Anchorage

P.O. Box 190650 • Anchorage, Alaska 99519-0650 • 825 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Department of Health and Human Services

March 18, 2005

MAR 30 2005

The Honorable Peggy Wilson
Chair, State House Health, Education and Social Services Committee
Alaska State House of Representatives
State Capitol, Room 108
Juneau, AK 99811
VIA fax: 465-3175

Dear Representative Wilson:

I write to comment on behalf of the Municipality of Anchorage on the Family Rights Act, CSSHB (HESS) ("HB 53"). We thank you for the concern for the children of this state which HB 33 articulates. We want to bring to your attention our view that the bill should more clearly give child care licensing entities in Alaska greater access to the records of the Office of Children's Services (OCS) for purposes of licensing and investigating child care facilities. We believe all children of this state will benefit if OCS and child care licensing entities share information.

I. Introduction

The Municipality of Anchorage, Department of Health and Human Services, Child & Adult Care Program (CAC) now has full responsibility for licensing all child care facilities in Anchorage. Its duties include issuing licenses as well as restricting and removing these licenses. As you are aware, many children in Alaska now spend their most formative years in the care of licensed child care providers. Many of these young children are infants who are unable to talk. Therefore, it is the responsibility of CAC and other licensing entities in Alaska to ensure that these young children are safe and well-cared for in child care entities.

II. Background

Before the CAC issues a license, it conducts an investigation which consists of checking criminal backgrounds and fingerprinting applicants, in addition to other investigation.¹ It also asks child care providers to sign releases so that it may check the provider's child protection background.²

When CAC receives complaints about child care facilities, it must investigate those complaints and take licensing action if the complaints have merit. Unfortunately, the CAC's ability to license and investigate child care facilities in Anchorage has been compromised in recent years by the inability of its workers to gain access to OCS files of child care providers. For example,

¹ See, AMC16.55.100.

² See, AMC 16.55.100 D. 15. a. ii.

Community, Security, Prosperity

in one instance, after receiving several complaints about a child care facility, CAC initiated proceedings to revoke the facility's license. During the course of preparing the case for hearing, CAC learned that the child care provider at issue had an extensive file at OCS, with serious allegations relating to the health and safety of children which spanned a 10-year period. None of these episodes had been reported to CAC, and line workers at OCS had been afraid to tell CAC of these episodes because of the restriction on disclosure of child protection records.³ In other instances, CAC has been concerned that home-based child care providers had children of their own in the home who had serious behavioral problems and who thus posed a threat to the children in their care.

Therefore, in addition to wanting to protect children in care from adults who may pose a threat to their well being, CAC wants to be able to protect children in care from potential abuse or neglect by other children.⁴ If CAC is allowed greater access to OCS records, it could then make a better determination as to whether some applicants should be awarded a license in the first place. In addition, if CAC receives complaints about a child care facility after it has been licensed, it will have a better means of investigating those complaints.

III. Discussion of HB33

As you know, AS 47.10.093 currently states as follows:

- (a) Except as specified in 47.10.092 and (b) – (g) of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty are privileged and may not be disclosed directly or indirectly without a court order.

Section 22 of HB 33, adds a new exception to the prohibition on disclosure, which appears to give OCS the authority to provide records to licensing agencies like CAC. It provides as follows:

Sec. 22. AS 47.10.093 (b) is amended to read:

- (b) A state or municipal agency or employee shall disclose appropriate confidential information regarding a case to

...

- (11) a caregiver of a child or entity responsible for ensuring the safety of children as necessary to protect the safety of a child

Subsection (11) as drafted appears to relate to agencies like CAC, as CAC is "an entity responsible for ensuring the safety of children." However, to clarify the fact that child care licensing authorities have access to child protection records of providers, we request that you substitute "of children" for "a child" at the end of subsection 11. If this phrase "of children" is

³ See, AS 47.10.093.

added, the legislation will more clearly indicate the intent that agencies such as CAC have the ability to review child protection records so that it can better protect all children in a child care facility from potentially harmful child care providers and individuals who have contact with children in child care entities.

CAC will agree to keep information it receives from OCS confidential. Indeed, AS 47.10.093 (m) as drafted states that:

- (m) Except for a disclosure made under (k) of this section, a person to whom disclosure is made under this section may not disclose confidential information about the child or the child's family to a person not authorized to receive it.

Moreover, CAC is bound by the confidentiality requirements of its own regulations.⁵

IV. Conclusion

If agencies such as the CAC have greater access to OCS records of providers, they can better serve the young children of this state. CAC's goals are so closely aligned with the goals of OCS that this access should not create a conflict for either agency, as long as both agencies agree to maintain confidentiality. We therefore request that you clarify HB 33 so that child care licensing entities have greater access to State child protection records.

If you have questions or would like to speak with me about this matter further, please call me at (907) 343-4676.

Sincerely,



Martha M. Anderson
Child and Adult Care Program Manager

cc: Senator Fred Dyson
Representative Sharon Cissna
Representative John Coghill Jr., House Majority Leader
Beverly K. Wooley, Director
Mary Pinkel, Assistant Municipal Attorney

⁵ See, AMC 16.55.160.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Department of Health and Human Services

March 14, 2005

Representative Peggy Wilson
House Health, Education and Social Services Committee Chairperson
Alaska Legislature
Juneau, Alaska

MAR 21 2005

Representative Wilson:

This letter is in response to revisions to the Alaska Statutes regarding confidentiality of Child Protection information. It is a pleasure to see proposed language to improve some of the child protection concerns.

The Municipality of Anchorage (MOA), Department of Health and Human Services is responsible for conducting child protection investigations for allegations made against all licensed child care facilities. The State investigates allegations when the parent or family member has been accused of harming a relative.

The inability of the Municipality to receive records from the State Child Protection files creates a major danger for children. With the proposed revisions to the statute, we strongly advise language be included to grant permission for MOA licensing to have access to this information.

Information was available when State Licensing and Child Protection services were both under the same Division, DFYS. It is commonly available in other states.

Licensing has strict requirements to protect children's identities, as does Child Protection. So any new systems to share information will continue to protect children's anonymity. Both agencies need to be able to exchange information.

Licensing needs information from the Child Protection files that relates in any way to licensing statutes, regulations and Anchorage Municipal code, AMC 16.55. Licensing needs to review and copy any and all reports of concerns filed with Child Protection and findings whether or not they were substantiated. It needs to know the type of investigation already performed. It also needs information on all cases associated with the names submitted to the Child Protection office by licensing including all "persons in contact with children" as defined in licensing code, AMC 16.55, and children of providers who will be in the facility and have been accused of harming others, for example the child of a license applicant who has sexually assaulted or threatened to kill others. It is important to know the degree and frequency of the allegation of harm in order to protect children in care.

Licensing has many tools to protect children including denial or removal of a license or more minor protections such as restricting hours of operation or the ages served. It does not remove children from parent's custody. So while a Child Protection office may not be able to act or may

Community, Security, Prosperity

not classify the allegation at a level requiring an investigation, licensing must consider all the allegations before allowing other children to be cared for by the potential abuser.

There has been more than one case where Child Protection staff were aware of dangers to children if the facility was licensed, but have not been allowed to inform us. In one case recently, a provider was licensed in the Municipality to do child care after licensing received clearance from Child Protection. Several years later, licensing found the Child Protection files had had approximately 14 abuse allegations over a ten year period that was not reported to licensing. When Child Protection removed a child because of abuse they were not sure they could tell licensing, they required a court order before licensing could obtain information to accurately determine whether a license should continue, and weren't sure they could even testify at a licensing hearing.

Both Child Protection and MOA Licensing share a mandate to protect children and although each agency plays a specific role, inadequacies in the current law should not be an impediment to partnership. Any revised statutes that do not support the sharing of information between State Child Protection and local Licensing puts children at grave risk.

In House Bill 53, Section 22 amending AS 47.10.093 (b) adds subsection (11) including the phrase "entity responsible for ensuring the safety of children as necessary to protect the safety of a child;" If this section is designed to allow Licensing access of Child Protection files, we urge that the language more clearly address licensing and the protection of all the children. The last word child suggests it is the one child who was harmed rather than a protection for all children who may be in care. There are other sections in the Bill also that seem to apply to licensing that may also need clarifying. We need the Bill to address all the issues identified in this letter.

The Municipality has been working for years to try to resolve these issues and will be glad to continue to assist you in this important revision. Please contact me at 343-4758, 343-6536 with further questions or suggestions.

Thanks you for your attention to this important matter.

Sincerely,

Martha M. Anderson
Child & Adult Care Program Manager

cc: Sharon Cissna, House Representative
Ken Takakuwa, Division Manager
Mary Pinkel, Assistant Municipal Attorney

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

March 3, 2015

Honorable Peggy Wilson, Chair
House Health, Education and
Social Services Committee
Alaska State Capitol; Rm. 108
Juneau, AK 99801

Dear Representative Wilson,

The Department of Health and Social Services respectfully requests a hearing in the House Health, Education, and Social Services Committee on House Bill 193 "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

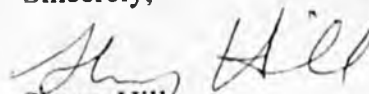
The proposed bill will streamline the department's licensing processes by consolidating virtually all of the licensing functions related to standards, enforcement, and appeal rights into a single chapter of the Alaska Statutes.

The Governor's transmittal letter providing additional information about the bill and a fiscal note should be on file with the committee. The department will provide the committee with a sectional analysis of the bill in the next several days.

Honorable Peggy Wilson
Page 2

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill
Special Assistant

cc: Kevin Jardell, Legislative Director
Office of the Governor

Dr. Richard Mandsager, Director
Division of Public Health

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110300
DIMOND COURT HOUSE, 5TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

April 19, 2005

APR 21 2005

The Honorable Peggy Wilson
House of Representatives
Alaska State Capital—Room 108
Mail stop: 3100

Dear Representative Wilson:

At a hearing on HB 53, you asked me to give you a form notice that we provide to grandparents and foster parents. Enclosed is this form. I apologize for the delay.

You will notice that we try to use plain language. Please let me know if you wish any additional information.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:



Jan A. Rutherford
Assistant Attorney General

JAR:aeo

The following are the DOL/OSC comments to the proposed amendments to HB 53, along with additional suggestions. Note: OCS has not reviewed this document, and both DOL and OSC may have further comments or proposed amendments to this large bill in the future.

Page 1, line 6: proposed amendment is OK.

Page 1, line 2: we were unsure of this proposal since the deleted word is not at this place.

Page 2, line 9, following "Adoption Rules": we are not sure if there is there still an amendment to CINA Rule22. If so the amendment should read:

Insert: “, and Rules 17.2 , 18 and 22, Alaska Child in Need of Aid Rules”

Page 2, line 13:

Insert:

*Section 1. AS 13.26.055 is amended to read:

Sec. 13.26.055. Court appointment of guardian of minor; qualifications; priority of minor's nominee and an adult family member. The court may appoint as guardian any person whose appointment would be in the best interests of the minor, subject to the following requirments. The court shall appoint

- (a) a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor; or
- (b) , unless in conflict with subsection (a), an adult family member, unless the court finds the appointment contrary to the best interests of the minor.

Renumber the following bill sections accordingly.

Page 2, line 16:

Delete: “, including a grandparent,” [since the definition of “adult family member” in sec. 31 of the bill (AS 47.10.990(28) includes grandparents]

Page 2, line 17:

Delete: “two consecutive years”

Insert: “twelve consecutive months” or “one continuous year”

Page 2, line 18:

After “AS 47.10.080(c)(3)”

Insert: “,”

Page 2, line 19:

After the word "person"

Insert: ", "

Delete: "that the adult family member is not fit to raise"

Insert: "good cause not to grant the petition" [good cause is an accepted legal term]

Page 2, line 22, through page 3, line 4: All changes to HB 114, which should pass out of House State Affairs on 3/22/05, need to be included.

Page 3, lines 25-28: The construction language does not track the changes made in this bill. We need to revisit this section once all the other changes are set.

Page 4, line 22 through page 5, line 2:

Delete all material [(a) moved to page 2, line 13 (amending AS 13.26.055), (b) is unnecessary and part of (c) moved to Page 9, line 31 (amending AS 47.10.088(i))]

Page 4, line 27: The proposed amendment is moot due our suggested changes to AS 13.26.055 (see page 2, line 13).

Page 4, line 24: (this should be Page 4, Line 25); proposed amendment also moot.

Page 5, line 14:

Delete: "under this chapter"

Page 5, line 15:

After the word "rights"

Insert: "under 47.10.080(o) or AS 47.10.088"

Page 7, lines 22-23:

After "members"

Delete: ", including grandparents,"

Page 8, line 19:

After "past"

Delete: "age"

After "19"

Insert: "years of age,"

Page 8, line 22:

After "(3)"

Delete: "unless a jury trial has been requested by a party," [unnecessary due to suggested changes on page 5, line 15]

Page 8, lines 26-28:

After "child"

Delete all material except the period

Page 8, line 29: proposed amendment is OK (but remove "and" at end of (4)(B))

Page 9, lines 11-13:

After "hearing"

Delete all material

Insert: "A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 9, lines 11 & 12: proposed amendment is moot due our suggested changes to this section.

Page 9, lines 17 & 18: proposed amendment is OK

Page 9, lines 23:

After "and"

Insert: "encourage foster parents"

Page 9, line 28: Insert new section

AS 47.10.084(c) is amended to read:

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 25.20.025, and the responsibility for support, except if by court order any residual

right and responsibility has been delegated to a guardian under (b) of this section. “Major medical treatment” includes medication used to treat a diagnosed mental health disorder.

Page 9, line 31:

After “filed.”

Insert: The department shall attempt to locate all living adult family members of a child and to investigate the adult family member’s ability to care for the child before placing the child for adoption or approving an adoption of the child under this chapter. The department shall provide written notice to all located adult family members of their rights under this chapter and of the procedures necessary to gain custody of the child.

Page 10, line 1:

After “child”

Delete: “by blood”

Page 10, line 3:

After “adoption”

Insert: “,”

Page 10, lines 11-12:

After “by”

Delete: “a person related to the child by blood”

Insert: “an adult family member”

Page 10, line 16:

After second “the”

Delete: “person related to the child by blood”

Insert: “adult family member”

Page 11, line 13:

After “(n)”

Delete: “A person related to a child by blood”

Insert: “An adult family member”

Page 11, line 13: proposed amendment is moot due our suggested changes to this section.

Page 11, line 15:

After first "by"

Delete: "a person related to a child by blood"

Insert: "an adult family member"

Page 11, line 18: we would propose the following language:

After the word "hearing."

Insert: "A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 11, line 24: See comments re Page 2, line 22 (be sure all changes to HB 114 are incorporated in this version).

Page 11, lines 24-28:

Delete all material.

Page 12, lines 17 & 18:

Delete: "an adult family member"

Re-insert: "parent"

Page 12, line 25: proposed amendment is OK

Page 12, line 25: we propose the following:

After "information"

Insert: "excluding privileged attorney/client communications and the names and other identifying information of mandatory reporters under AS 47.17."

Page 12, lines 28 & 29: proposed amendment is OK

Page 13, line 4:

After "The"

Delete: "duty imposed on"

Insert: "requirements of"

Page 13, lines 4-7:

After "section"

Delete all material

Insert: "remain in effect throughout the time the child is in the custody of the department, including after the"

Page 13, lines 89:

After "child"

Delete: ". However, the duty does lapse after termination of the parent's parent rights if"

Insert. "unless"

Page 13, line 17:

After "section,"

Insert: "and as provided to all parties in a child-in-need-of-aid proceeding under court rules,"

Page 13, line 25:

After "(1)"

Delete: "A guardian ad litem appointed by the court;"

Page 13, line 30:

After "or"

Delete: "adult family member:"

Re-insert: "relatives"

Page 14, line 30:

After "department"

Insert: ", the governor, or the legislature"

Page 16, lines 16 - 19: proposed amendment is OK

Page 16 through 18 (Section 28): we propose a new section to establish the grievance procedure along with provisions that require OCS to notify parents of their rights under this statute. We would prefer to keep the process in regulation, which is where it is currently. As such we propose adding a new section to Title 47 that reads something like:

Sec. 47.10.098. **Grievance Procedure.** (a) The department shall develop, through regulation, a grievance procedure that provides parents a process to file complaints with respect to the

1. Application of a departmental policy or procedure;
2. Compliance with this chapter or a regulation adopted under this chapter; or
3. An act or failure to act by the department.

(b) the department shall develop a handout that explains this procedure, which shall be offered to each parent involved with the department.

[If our proposal is accepted, Page 16, line 21 – page 18 – line 30 should be deleted]

Page 19, lines 1 - 8:

Delete all language.

Insert:

Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title does not constitute a basis for civil liability for damages.

Page 19, line 18: proposed amendment is OK

Page 19, line 31:

After first "a"

Delete: "relative by blood or marriage"

Insert: "adult family member"

Page 20, line 1:

After third "the"

Delete: "relative"

Insert: "adult family member"

Page 20, line 2:

After "placement"

Insert: "Nothing in this section waives the requirement that a non-relative be licensed as a foster home prior to any child being placed in their care."

Page 20, lines 6, 8, 12, 15 & 19:

Substitute "adult family member" in place of "relative"

Page 20 line 14:

After "AS 47.17;

Delete: "or"

Page 20 line 27:

After "elements."

Insert:

(4) determines that placement under this section, with a family friend or relative is the best interest of the child over the objection of the parent of guardian; or

(5) determines that the parent or guardians preference is not appropriate because placement of the child would not be in the child's best interest because the child would not be located near parents for purposes of visitation or reunification.

Page 20 line 29:

After "If"

Delete: "a blood relative"

Insert: "adult family member"

Page 21 line 1:

Delete: "relative" and "relative's"

Insert: "adult family member" and "adult family member's"

Page 22, line 13: proposed amendment is OK

Page 22, line 16:

After "report"

Insert: "is released"

Page 22, line 17:

After "section"

Delete: "is submitted to the governor"

After "submit"

Insert: "to the governor"

Page 22, line 18:

After "report"

Delete: "to the governor"

Page 24, line 24: OCS proposes that the following provision be included in this bill:

Insert: AS 47.18.300(a) is amended to read:

(a) The department, in coordination with local public and private agencies, shall design, develop, and implement a foster care transition program to provide support and services to individuals who

(1) reach or have reached the age of 16 or older while in state foster care and have not yet reached the age of 23[21] and

(2) meet other eligibility criteria established by the department under (b) of this section.

Page 24, line 24 through Page 25, line 1: proposed amendment is OK

Page 29, line 3: proposed amendment is OK

Page 29, line 8: proposed amendment is OK

Page 29, line 10: proposed amendment is OK

Page 29, line 11: proposed amendment is OK

Page 29, line 22: proposed amendment is OK

Page 29, line 24: proposed amendment is OK

Page 31, lines 12-14: proposed amendment is OK

Page 32, line 5: proposed amendment is OK

Page 32, line 8: proposed amendment is OK

Page 32, line 8: proposed amendment is OK

(3) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(8) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Nov. 8, 1978, P. L. 95-608, § 2, 92 Stat. 3069.)

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families, by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Nov. 8, 1978, P. L. 95-608, § 3, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this Act [25 USCS §§ 1901 et seq.], except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive

placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689) [49 USCS § 1606];

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended [49 USCS § 1602(o)];

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a



✚ Sec. ~~47.10.960~~. Duty and standard of care not created.

Nothing in this title creates a duty or standard of care for services to children and their families being served under AS 47.10.



Must be served by certified mail or personal service (Trooper)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT *

In the Matter of)
)
*)
)
)
A Child Under the Age)
of Eighteen (18) Years.)
Date of Birth: *) No. 1 CP
_____)

NOTICE OF ADJUDICATION HEARING TO FOSTER PARENTS/
OUT-OF-HOME CARE PROVIDER/GRANDPARENTS

TO:
Name and capacity (Foster
parent/caregiver/grandparent)

This notice is to inform you that a petition has been filed in state court to decide whether [name of child/ren] is/are [a] child/ren in need of aid under Alaska Statute 47.10.011. An adjudication hearing about this child/these children will be held on *, 2005, at * a.m./p.m., a pretrial hearing will be held on *, 2005, at * a.m./p.m., and a case conference is scheduled for *, 2005, at * a.m./p.m., in the Superior Court, First Judicial District, [Dimond Courthouse, Courtroom 'C'/'D', 123 4th Street, Juneau, Alaska; 17 Nordic Drive, Petersburg, Alaska; 415 Main Street, Courtroom 'A'/'D', Ketchikan, Alaska; 304 Lake Street, Room 203, Sitka, Alaska; Public Safety Building, Mile Zero, Zimovia Hwy., Wrangell, Alaska]. At the hearing the court may find that [name of child/ren] is/are [a] child/ren in need of aid. If

the court does so it may also order the child/ren committed to the custody of the Department of Health and Social Services for up to two years or it may permanently terminate the parental rights and responsibilities of the child/ren's parents.

This letter is being sent to you because of Alaska laws (AS 47.10.030(b), AS 47.10.070(a), AS 47.10.090, and AS 47.10.093). These laws say that a child's foster parent, other out-of-home care provider, or grandparent must be told whenever a hearing is held to decide whether a child is a child in need of aid. This will be the only notice you will receive from the Attorney General's Office, but the Office of Children's Services (OCS) is required to send notice of later hearings. You can also call OCS at (907) 465-1650 to learn when the later hearings are scheduled.

You do not have to go to the hearing. If you do go to the hearing you may tell the court what you think. The court may allow you to attend the entire hearing, or the court may allow you to be present only while you are testifying if the court finds that this would be in the child/ren's best interest, or that this is necessary to protect a party's privacy interest and will not harm the child/ren.

You have the right to be told when any other hearings are going to be held about this child/ren. Please let us know if your address changes.

If you are a relative of this/these child/ren by blood

or marriage, you may be entitled to have the child/ren placed with you pursuant to AS 47.14.100(e). If the child/ren is/are [an] Indian child/ren under the terms of the Indian Child Welfare Act, and you are a member of the child/ren's extended family, you may be considered a priority placement for the child/ren pursuant to 25 U.S.C. § 1915.

This is a confidential proceeding pursuant to AS 47.10.090 and .093. Failure to maintain that confidentiality is a class B misdemeanor pursuant to AS 47.10.093(i).

[If you live out of town and cannot appear in person, you may be present by calling the court at the start of the hearing at (907) 463-4741/2(juno); 772-3824 (ptsbg); 225-3141/9876 (ket); 747-6271 (sitka); 874-2311 (wrangell). If a teleconference is set up due to multiple telephonic participation, you will be billed for an equitable portion of the teleconference cost.]

DATED: _____

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:

*
Assistant Attorney General
Alaska Bar No. *

CERTIFICATION

This is to certify that on * ____, 2005, a true and correct copy of the foregoing document was mailed/placed in the court box to the following attorneys or parties of record:

*, Law Office Assistant

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.

THE SUPREME COURT OF THE STATE OF ALASKA

JOHNNY McGREW and MARY)	
McGREW,)	Supreme Court No. S-10699
)	
Appellants,)	Superior Court No. 3AN-01-9334 CI
)	
v.)	<u>OPINION</u>
)	
STATE OF ALASKA, DEPART-)	[No. 5866 - February 4, 2005]
MENT OF HEALTH AND SOCIAL)	
SERVICES, DIVISION OF FAMILY)	
AND YOUTH SERVICES,)	
)	
Appellee.)	
)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Mark Rindner, Judge.

Appearances: James Alan Wendt, Law Offices of James Alan Wendt, Anchorage, for Appellants. Gail T. Voigtlander, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee.

Before: Eastaugh, Fabe, and Carpeneti, Justices. [Bryner, Chief Justice, and Matthews, Justice, not participating.]

EASTAUGH, Justice.

I. INTRODUCTION

Grandparents of an orphaned child sued the State of Alaska, claiming that it prevented them from adequately litigating their interests in child-in-need-of-aid (CINA) and adoption proceedings relating to their grandchild. We consider here whether it was error to grant the state's Alaska Civil Rule 12(b)(6) motion to dismiss their claims of negligence, intentional infliction of emotional distress (IIED), and violation of constitutional rights. We affirm the dismissal of their negligence claim, because the state owed them no actionable duty. We also affirm the dismissal of their constitutional claim, because they had alternative litigation remedies available. But because their complaint adequately pleaded an IIED claim, we reverse the Rule 12(b)(6) dismissal of that claim and remand.

II. FACTS AND PROCEEDINGS

The Alaska Division of Family and Youth Services (DFYS) took emergency custody of Johnny and Mary McGrews' infant granddaughter, Lucy M.,¹ after the sudden deaths of the infant's parents and twin sibling in July 1999. According to the McGrews, Lucy's father shot and killed Lucy's mother, and then shot and killed himself. Lucy's twin sister died when Lucy's mother fell on the infant and smothered her. DFYS filed a petition for an adjudication that Lucy was a child in need of aid under AS 47.10.011. The superior court granted DFYS's petition and placed Lucy with Elsa C., who had been a friend of Lucy's mother and a babysitter for Lucy and her twin sister. In September 1999 the McGrews filed a motion to intervene in the CINA proceedings. In November 1999 Elsa and her husband, Dillon C., also moved to intervene in the CINA proceedings. The superior court granted both intervention motions. After

¹ Pseudonyms have been used for all persons other than the appellants.

conducting a hearing in February 2000, the superior court released Lucy from DFYS's custody and continued Lucy's pre-adoptive placement with the C. family.

In August 2001 Johnny and Mary McGrew filed a tort complaint against the Alaska Department of Health and Social Services, Division of Family and Youth Services. We refer to the defendants as the "state" or "DFYS." The complaint alleged that Mary McGrew had notified DFYS that she was a licensed foster care provider and that she and her husband, and other family members, were willing to take custody of Lucy. The complaint alleged that DFYS refused to provide the McGrews with any information about their granddaughter's placement, and that any information DFYS provided was "false and misleading."

The complaint alleged that even though DFYS had been advised that the McGrews were interested in obtaining custody of Lucy, DFYS appeared ex parte at Lucy's CINA hearing and failed to inform the court of the McGrews' interest in caring for their granddaughter. The complaint also alleged that DFYS failed to notify the court that one of the adults with whom Lucy had been placed, Dillon C., had a criminal history. The complaint alleged that in placing Lucy, DFYS failed to abide by applicable statutes, rules, and its own policies and procedures.

The McGrews' complaint asserted three claims. Count I asserted a negligence claim for DFYS's alleged failure to abide by its own policies in placing Lucy. Count II asserted a "*Bivens* action"² for alleged failures to abide by the Alaska Constitution, applicable Alaska Statutes, the Alaska Administrative Code, and DFYS's internal policies. Count III asserted an IIED claim. The complaint sought compensatory damages, pre- and post-judgment interest, costs, and attorney's fees.

² *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

The state moved under Alaska Civil Rule 12(b)(6) to dismiss the entire action, arguing that the complaint failed to state legally cognizable claims.

The McGrews opposed the motion to dismiss, arguing that DFYS owed them an actionable duty and that no alternate remedies were available for purposes of the *Bivens* action. They asked for leave to amend their complaint under Alaska Civil Rule 15(a) if the court found the state's arguments persuasive.

The McGrews also moved in the superior court to supplement the record. The order denying their motion to supplement stated that "the issue of duty raised by the motion [to dismiss] is a legal issue, not a fact based inquiry As there is no need to consider factual issues, there is no need to allow [supplementation] of the record."

After hearing oral argument, the superior court granted the state's motion to dismiss the IED and negligence claims, ruling that the state only owed a duty to the child in need of aid, and did not owe a duty to the child's relatives, such as parents and grandparents. The court also declined to allow a *Bivens* remedy in this case.

The McGrews moved for reconsideration under Alaska Civil Rule 77(k). The superior court denied this motion and entered final judgment for the state. The McGrews appeal the dismissal of their complaint and the denial of their motion to supplement the record.

The McGrews were also parties to another appeal challenging the superior court's dismissal of their adoption petition and the award of custody of Lucy to Elsa and Dillon C.³ In *In re Adoption of L.E.K.M.*, decided after the superior court dismissed the

³ See *In re Adoption of L.E.K.M.*, 70 P.3d 1097 (Alaska 2003). That case concerned the private adoption of Lucy after the CINA proceedings ended. *Id.* at 1100.

tort claims in the present case, we affirmed the superior court's placement of Lucy with the C. family.⁴

III. DISCUSSION

A. Standard of Review

Alaska Civil Rule 12(b)(6) allows the dismissal of a complaint for "failure to state a claim upon which relief can be granted." We review the superior court's Rule 12(b)(6) dismissal of the McGrews' complaint de novo,⁵ deeming all facts in the complaint "true and provable."⁶ To survive a motion to dismiss, a complaint need only allege "a set of facts consistent with and appropriate to some enforceable cause of action."⁷ A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief.⁸

B. The Negligence Claim

The McGrews argue that because they were parties in the CINA proceeding, DFYS owed them a duty of care once it made the decision to seek and obtain temporary emergency custody of Lucy. They therefore argue that it was error to dismiss their negligence claim.

⁴ *Id.* at 1099.

⁵ *Valdez Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657, 664 (Alaska 2002).

⁶ *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000).

⁷ *Id.* (internal quotation marks omitted).

⁸ *Angnabooguk v. State*, 26 P.3d 447, 451 (Alaska 2001).

In deciding whether a defendant owes a plaintiff a duty of reasonable care, we first determine whether a duty is imposed by statute, regulation, contract, undertaking, the parties' preexisting relationship, or existing case law.⁹ If these sources do not resolve the issue, we apply the multi-factor approach discussed in *D.S.W. v. Fairbanks North Star Borough School District*¹⁰ to determine whether an actionable duty of care exists.¹¹

The McGrews argue that an actionable duty is imposed by AS 47.14.240, which specifies the responsibilities of the local review boards which review DFYS's placement decisions. It requires a review board to allow the child's relatives to participate.¹² But another statute, AS 47.10.960, states that "[n]othing in this title creates

⁹ In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services* we stated: "[T]ypical theoretical sources of actionable duties are statutes, regulations, certain contracts, express undertakings, or fiduciary relationships. . . . If one of those duty sources applied, it would not be necessary to consider the *D.S.W. [v. Fairbanks North Star Borough School District]* factors." 953 P.2d 871, 875 n.9 (Alaska 1998) (internal citations omitted). See also *Wongittilin v. State*, 36 P.3d 678, 681 (Alaska 2001); *Waskey v. Municipality of Anchorage*, 909 P.2d 342, 343-44 (Alaska 1996) (finding it "unnecessary to resort to the *D.S.W.* approach" where we had decided other cases "more closely related" to the subject duty dispute); *Estate of Day v. Willis*, 897 P.2d 78, 81 n.7 (Alaska 1995) (holding internal administrative and training manual did not impose duty of care toward fleeing suspects).

¹⁰ *D.S.W. v. Fairbanks N. Star Borough Sch. Dist.*, 628 P.2d 554, 555 (Alaska 1981).

¹¹ *Wongittilin*, 36 P.3d at 681. The *D.S.W.* factors include foreseeability of harm; degree of certainty plaintiff suffered injury; closeness of connection between defendant's conduct and injury; moral blame attached to defendant's conduct; policy of preventing future harm; extent of burden to defendant and availability; cost and prevalence of insurance for the risk involved. *D.S.W.*, 628 P.2d at 555.

¹² AS 47.14.240(d)(2).

a duty or standard of care for services to children and their families being served under AS 47.10." Lucy was a child "being served under AS 47.10." Section .960 therefore precludes the McGrews from contending in a tort suit that AS 47.14.240 can be the basis of an actionable duty.

The McGrews also assert that other statutes are sources of an actionable duty: AS 47.10.142(a), (e), and (h);¹³ AS 47.10.020(a);¹⁴ AS 47.10.080(l) and (l)(2)(B);¹⁵

¹³ AS 47.10.142(a) allows the Department of Health and Social Services to take emergency custody of a child in certain circumstances. Subsection .142(e) provides that when a temporary custody hearing is held, a court shall then determine "whether probable cause exists for believing the child to be a child in need of aid." Subsection .142(h) provides that "[w]ithin 12 months after a child is committed to the department under this section, the court shall review the placement plan and actual placement of the child under AS 47.10.080(l)."

¹⁴ AS 47.10.020(a) provides in pertinent part:

Whenever circumstances subject a child to the jurisdiction of the court under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the best interests of the child require that further action be taken. If, under this subsection, the court appoints a person or agency to make a preliminary inquiry and to report to it, then, upon the receipt of the report, the court may . . . (3) authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts.

¹⁵ AS 47.10.080(l) provides in pertinent part:

Within 12 months after the date a child enters foster care as calculated under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following

(continued...)

and AS 47.05.060.¹⁶ Any claim based on these statutes is likewise barred by AS 47.10.960.

In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services*, we considered whether a mother could assert tort claims arising from CINA proceedings addressing placement of a child in DFYS custody.¹⁷ The superior court there granted summary judgment to the state, DFYS, state social workers, and the child's guardians ad litem, dismissing all of the mother's claims, including her negligence claims.¹⁸ We held that the state and the social workers did not owe the

¹⁵(...continued)

provisions . . . (2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether . . . (B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department

¹⁶ AS 47.05.060 provides in pertinent part:

The purpose of this title as it relates to children is . . . to preserve and strengthen the child's family ties unless efforts to preserve and strengthen the ties are likely to result in physical or emotional damage to the child . . . and . . . to secure for the child adequate custody and care and adequate planning for permanent placement of the child.

¹⁷ *Karen L. v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Serv.*, 953 P.2d 871, 876 (Alaska 1998) (declining to impose duty of care on state and social workers because it was not reasonably foreseeable that their conduct would cause Karen L. "actionable emotional harm").

¹⁸ *Id.* at 873.

mother an actionable duty of care.¹⁹ The mother therefore could not maintain negligence claims against the state or its agencies and employees.

We recognize here, as we did in *Karen L.*, that "it is to be expected that any litigation, and certainly a CINA proceeding in which the child is taken from its [relatives] . . . will cause the [relatives] some distress. That does not mean that the distress should be actionable."²⁰ *Karen L.* establishes that DFYS does not owe a parent an actionable duty of reasonable care in a CINA proceeding.²¹ *Karen L.* therefore precludes the grandparents' negligence claim in this case.

The McGrews attempt to distinguish *Karen L.* on the theory there was no claim in that case that the state had bad motives. They assert that DFYS here engaged in intentional deceit and "affirmatively misled" them by making false statements about its placement plan for the child. That distinction is potentially pertinent only to the McGrews' claims alleging intentional misconduct. As to the McGrews' negligence claim, *Karen L.* controls.

The McGrews also argue that their case is distinguishable from *Karen L.* because DFYS failed to comply with the statutory requirements of AS 47.14.240, denying them their right to be "meaningfully heard in a timely fashion." They therefore argue that *Karen L.* does not apply to them because the court there held that there was no statute that imposed an actionable tort duty.

But as we saw above, AS 47.10.960 establishes that DFYS owes the McGrews no actionable duty arising out of any provision in Title 47. Therefore, *Karen*

¹⁹ *Id.* at 876, 878.

²⁰ *Id.* at 876.

²¹ *Id.* at 878.

L. cannot be distinguished on a theory the McGrews were owed a statutory duty not addressed in *Karen L.*

C. The *Bivens*-type Claim

A "*Bivens* claim" is the cause of action sometimes permitted in federal courts for a governmental violation of the plaintiff's constitutional rights.²² We have never decided whether a *Bivens*-like remedy is available for violations of the Alaska Constitution.²³ In *Brown v. Ely* we noted that "federal courts have not permitted the *Bivens* remedy if alternative remedies are available."²⁴ The McGrews' opportunities to participate as intervenors in the CINA proceeding and to oppose the adoption decree gave them adequate alternative avenues to challenge the litigation conduct of the governmental agency, DFYS. The alleged misconduct occurred during existing judicial proceedings, during which the McGrews had opportunities to seek prompt judicial relief that might have avoided or remedied any harm they allegedly suffered. The availability of judicial remedies in the very proceedings in which the misconduct allegedly took place distinguishes the McGrews' case from federal cases in which grave governmental

²² See, e.g., *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389 (1971) (holding that Fourth Amendment violation by federal agent acting under color of his authority gave rise to cause of action for damages directly under U.S. Constitution).

²³ *Brown v. Ely*, 14 P.3d 257, 261 (Alaska 2000) ("We have neither adopted nor rejected the *Bivens* approach with respect to state constitutional violations."); *King v. Alaska State Hous. Auth.*, 633 P.2d 256, 261 (Alaska 1981).

²⁴ *Brown v. Ely*, 14 P.3d 257, 261 (Alaska 2000); *Thoma v. Hickel*, 947 P.2d 816, 824 (Alaska 1997); *Dick Fischer Dev. No. 2, Inc. v. Dep't of Admin.*, 838 P.2d 263, 268 (Alaska 1992) ("We are also hesitant to extend the *Bivens* decision, and will not allow a claim for damages except in cases of flagrant constitutional violations where little or no alternative remedies are available.").

misconduct has immediate consequences that cannot be readily avoided or corrected in existing judicial proceedings.²⁵ We see no reason why the McGrews should have an additional means of challenging, through a tort suit, the alleged unconstitutionality of that conduct.

Furthermore, the McGrews' *Bivens* claims inherently allege misconduct by persons acting for the government. At least in context of this case, the theoretical availability of an IIED claim would be an alternative remedy that obviates any need for a *Bivens* claim. We therefore do not need to approve a *Bivens* remedy here.

D. The Intentional Infliction of Emotional Distress Claim

The McGrews contend that *Karen L.* does not require dismissal of their claim that DFYS engaged in intentional misconduct. They argue that their allegations of intentional wrongdoing and deceit distinguish *Karen L.*²⁶ The state simply responds that *Karen L.* bars the "McGrews' claims for negligence and emotional distress."

To plead a claim for IIED, a plaintiff must allege these necessary elements: "(1) the conduct is extreme and outrageous, (2) the conduct is intentional or reckless, (3) the conduct causes emotional distress, and (4) the distress is severe."²⁷ The McGrews' complaint alleged that DFYS's conduct was "extreme, outrageous and atrocious"; that its conduct was "intentional and/or reckless"; that its conduct "caused emotional distress"

²⁵ See *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 73-74 (2001) (refusing to extend *Bivens* action to plaintiff "whose lack of alternative tort remedies was due solely to strategic choice").

²⁶ They also argue that their allegations of intentional wrongdoing and deceit satisfy the *D.S.W.* factors. But those factors pertain only to torts involving negligent, not intentional, acts. See *infra*.

²⁷ *Lincoln v. Interior Reg'l Hous. Auth.*, 30 P.3d 582, 589 (Alaska 2001).

to the McGrews; and that their distress was "severe" and that they "suffered personal injury, personal humiliation, mental anguish, pain and suffering." Their complaint therefore adequately pleaded all necessary elements of an IIED claim.

IIED claims require the trial court to make a "threshold determination whether the severity of the emotional distress and the conduct of the offending party warrant a claim."²⁸ We review this threshold determination for abuse of discretion,²⁹ but there was no threshold determination in this case about whether the state's alleged conduct was sufficiently outrageous or whether the McGrews' alleged emotional distress was sufficiently severe for an IIED claim. Instead, the Rule 12(b)(6) dismissal of the IIED claim seems to have been based on a conclusion that *Karen L.*'s discussion of duty also controls IIED claims against DFYS. We review that conclusion de novo because it presents an issue of law.³⁰

In *Karen L.* we considered the "narrow question" whether the state defendants owed Karen "a duty of care to protect her from emotional distress with respect to the CINA proceeding."³¹ We have usually discussed the element of "duty of care" in context of negligence claims, not intentional tort claims. For example, in *Chizmar v. Mackie*, we stated that "a plaintiff's right to recover emotional damages caused by mere negligence should be limited to those cases where the defendant owes

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Wongittilin*, 36 P.3d at 681 (stating nature and extent of duty are questions of law).

³¹ *Karen L.*, 953 P.2d at 874.

the plaintiff a preexisting duty.”³² We noted in *Hawks v. State, Department of Public Safety* that the first step in determining whether a negligence action can be maintained is determining whether the defendant owed the plaintiff a duty of care.³³ Our discussion in *Karen L.* of a duty of care and the *D.S.W.* factors pertained only to *Karen L.*’s negligence claims against the state and its agencies and employees.³⁴ That discussion does not control the McGrews’ IIED claims here.

We discussed separately in *Karen L.* the mother’s IIED claims against the state defendants. The superior court had dismissed the mother’s IIED claims on summary judgment.³⁵ We affirmed, holding that “Karen did not make the necessary threshold showing on the conduct element for an IIED claim, and the record requires the conclusion that the conduct of the social worker defendants was neither outrageous nor extreme.”³⁶ But the McGrews’ IIED claim was dismissed on the pleadings, not summary judgment, and as we noted above, the McGrews’ complaint sufficiently pleaded an IIED claim. The superior court here consequently never had to decide whether their case met the thresholds for an IIED claim.

Moreover, we discussed duty in *Karen L.* and *D.S.W.* in context of claims in which the existence of an actionable duty of care was legally and factually problematic. The legal determination whether there is an actionable duty of care has little if any conceptual relevance to an IIED claim. The concept of a “duty of care” is

³² *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995).

³³ *Hawks v. State, Dep’t of Public Safety*, 908 P.2d 1013, 1016 (Alaska 1995).

³⁴ *Karen L.*, 953 P.2d at 874-78.

³⁵ *Id.* at 873.

³⁶ *Id.* at 876 n.10.

usually identified with negligence claims,³⁷ and has no obvious bearing on a claim of intentional and outrageous conduct; the intentionality of the outrageous conduct needed for an IIED claim presupposes at least some intended relationship between the actor and the person harmed. The *D.S.W.* factors are typically applied to determine whether there is an actionable duty of care when there is no existing or intended relationship between the actor and the person harmed.³⁸

We conclude that the *D.S.W.* multi-factor duty analysis we applied in *Karen L.* does not apply to intentional tort claims.

Karen L.'s duty discussion therefore does not preclude the McGrews' IIED claim. Because that claim was dismissed on the pleadings under Rule 12(b)(6), there was no opportunity to consider whether plaintiffs' evidence could surmount the thresholds for the severity of any emotional distress and the outrageousness of the actor's conduct.³⁹ We therefore cannot affirm the dismissal of this claim on a possible alternative theory that the McGrews did not or cannot overcome the threshold for an IIED claim. We consequently reverse the dismissal of their IIED claim.

³⁷ *Silvers v. Silvers*, 999 P.2d 786, 793 (Alaska 2000) (stating that "[a]s with any negligence case, the plaintiff must establish (1) a duty of care; (2) breach of the duty; (3) causation; and (4) harm").

³⁸ The prototypical Alaska case was *Transamerica Title Insurance v. Ramsey*, 507 P.2d 492 (Alaska 1973). We there followed *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968), in which we adopted the test applied by the California Supreme Court in *Lucas v. Hamm*, 364 P.2d 685, 687 (Cal. 1961). *State v. Sandsnes*, 72 P.3d 299 (Alaska 2003), is typical of our modern cases. There was no relevant preexisting relationship between the state and the decedent, a taxicab driver shot by a state juvenile releasee. *Id.* at 300, 305.

³⁹ *Lincoln*, 30 P.3d at 589.

E. Other Issues

The parties' briefs do not discuss whether our decision in the adoption case, *L.E.K.M.*, has any effect on the McGrews' tort claims.⁴⁰ We leave it to the parties to raise on remand any question about what effect *L.E.K.M.* may have on the IIED claim, particularly with respect to the issues of liability, causation, and damages.

Our rulings on the negligence and IIED claims and the *Bivens*-type remedy make it unnecessary to consider the McGrews' argument that the superior court erred when it denied their motion to supplement the record. Their negligence claim and *Bivens* action are precluded as a matter of law and were therefore properly dismissed on the pleadings. No factual disputes, however genuine, would be material to those claims. And because we reverse the dismissal of the IIED claim, the McGrews are free on remand to offer evidence relevant to that claim.

The McGrews assert that the state is not immune from suit under the Alaska Tort Claims Act, AS 09.50.250. The state does not address the issue of statutory immunity. As to the negligence claim and the *Bivens*-remedy claim, no discussion of immunity is needed here. And because the parties have altogether failed to explain what effect AS 09.50.250, particularly subsection .250(3), might have on the IIED claim, we decline to consider whether the state is immune from the IIED claim pleaded here.⁴¹

IV. CONCLUSION

We AFFIRM the dismissal of the McGrews' negligence and constitutional violation claims. We REVERSE the dismissal of their IIED claim and REMAND for further proceedings.

⁴⁰ *In re Adoption of L.E.K.M.*, 70 P.3d 1097 (Alaska 2003).

⁴¹ AS 09.50.250 provides in part: "[A]n action may not be brought if the claim . . . (3) arises out of . . . misrepresentation, [or] deceit . . ."