

HB

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HB 114



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 2005

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding, relating to eligibility for Permanent Fund dividends for certain children in the custody of the state, and relating to child in need of aid proceedings under AS 47.10 and juvenile delinquency proceedings under AS 47.12.

The bill would add language to AS 25.23.180 to permit parents to relinquish their parental rights to a child while retaining certain privileges, such as ongoing communication or visitation with the child. This proposed amendment is in response to a recent Alaska Supreme Court decision holding that current law prohibits a parent from retaining any rights or privileges in a relinquishment. In some cases, ongoing contact with the parent is in the child's best interest, particularly in cases involving adoption by relatives or family acquaintances. Before the Supreme Court's decision, retention of privileges in relinquishments was a common practice. The proposed amendment would authorize retained privileges in appropriate cases.

The bill would add language to AS 43.23.005 to allow children who are placed temporarily by the Department of Health and Social Services (DHSS) outside of the state--in out-of-state treatment facilities, for example--to maintain their eligibility for Permanent Fund dividends. Some children require long-term treatment of a nature that is currently unavailable in this state; such children are at risk of losing their Permanent Fund dividend eligibility if they remain placed out of state for more than a year and are unable to return to the state to meet permanent fund dividend eligibility requirements. These Alaskan children should not lose the privilege of dividend eligibility as a result of being placed by the DHSS in a treatment program that is only available out-of-state.

The bill would add language to AS 47.10.020 to clarify that the court may issue any orders necessary to aid the DHSS in its investigation of an allegation of child abuse or neglect. Orders to aid DHSS are not prohibited by existing law;

The Honorable John Harris

January 25, 2005

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however, the proposed clarification would resolve any ambiguity regarding the ability of judges to issue such orders.

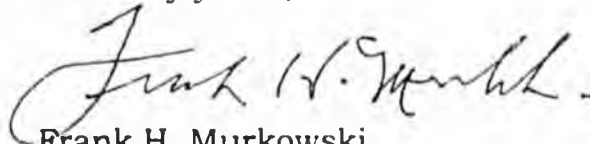
The bill also would add a new provision to permit courts to dispense with unnecessary and costly expert witness appearances in child in need of aid cases involving parents who cannot be located or identified. Under existing federal law, in order for a court to authorize the out-of-home placement of, or termination of parental rights to, an Indian child, the court must consider the testimony of a qualified expert witness. In cases involving a parent whose whereabouts remain unknown despite a diligent search, this federal law would appear to require that an expert witness be called solely to support the self-evident finding that placement of a child with the parent who cannot be found is likely to place the child at risk of harm. The proposed addition to AS 47.10 would permit a court to conclude, as a matter of law, that the testimony of a qualified expert witness would support a finding that placing the child with an absent parent would place a child at substantial risk of serious harm. This provision will satisfy federal legal requirements.

Finally, the bill would amend the definition of the term "mental health professional" for purposes of child in need of aid and juvenile delinquency proceedings. In order to authorize placement of children in secure residential psychiatric treatment facilities, courts must hear the testimony of a "mental health professional." The current definition of that term, contained in AS 47.30.915, excludes professionals who may be licensed to practice in other states, but not in Alaska. The testimony of such professionals is often critical in cases involving Alaska children who are already placed out of state by DHSS. Thus, expansion of the existing definition is necessary to ensure that Alaska children who are placed outside of this state receive the psychiatric treatment they need.

Each of the provisions of this bill constitutes a step toward making Alaska's children safer, healthier, and more secure, without unreasonably expanding governmental powers.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

24-GH1108\Y
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3/18/05

CS FOR HOUSE BILL NO. 114()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to proceedings regarding voluntary relinquishments and terminations
2 of a parent and child relationship; relating to eligibility for permanent fund dividends
3 for certain children in the custody of the state; relating to child-in-need-of-aid
4 proceedings, adoption proceedings, and juvenile delinquency proceedings; relating to
5 findings in permanency hearings in child-in-need-of-aid proceedings; amending Rules 9
6 and 13, Alaska Adoption Rules and Rules 17.2 and 18, Child in Need of Aid Rules; and
7 providing for an effective date."

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

9 * **Section 1.** AS 25.23.180 is amended by adding new subsections to read:

10 (j) In a relinquishment of parental rights executed under (a) of this section, a
11 parent may retain privileges with respect to the child, including the ability to have
12 future contact, communication, and visitation with the child. A retained privilege
13 must be stated with specificity in writing, and, not less than 10 days after the

1 relinquishment is signed, the court may enter an order terminating parental rights if the
2 court finds that termination of parental rights under the terms of the agreement is in
3 the child's best interest. If a parent has retained one or more privileges, the court shall
4 incorporate the retained privileges into the termination order with a recommendation
5 that the retained privileges be incorporated in an adoption or legal guardianship
6 decree.

7 (k) A voluntary relinquishment may not be withdrawn and a termination order
8 may not be vacated on the ground that a retained privilege has been withheld from the
9 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
10 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
11 Procedure.

12 (l) After a termination order is entered, a person who has voluntarily
13 relinquished parental rights under this section may request a review hearing, upon a
14 showing of good cause, to seek enforcement or modification of or to vacate a privilege
15 retained in the termination order. The court may modify, enforce, or vacate the
16 retained privilege if the court finds, by clear and convincing evidence, that it is in the
17 best interest of the child to do so.

18 (m) After a termination order is entered and before the entry of an adoption or
19 legal guardianship decree, a prospective adoptive parent or a guardian of the child may
20 request, after providing notice as specified under this subsection, that the court decline
21 to incorporate a privilege retained in a termination order and recommended for
22 incorporation in an adoption or guardianship decree under (j) of this section. If the
23 person who has relinquished parental rights to the child who is the subject of the
24 adoption or guardianship decree did not waive rights to notice of adoption under (b) of
25 this section, the request made under this subsection may only be considered after
26 providing at least 10 days' notice by certified mail to the last known address of the
27 person who has voluntarily relinquished parental rights to the child. The notice under
28 this subsection must describe the request and explain that the recipient of the notice
29 may submit a written affidavit to the court in support of or in opposition to the request.
30 The court may decline to incorporate a retained privilege if the person who retained
31 the privilege supports the request or if the court finds that it is in the child's best

1 interest.

2 (n) After a termination order is entered and before the entry of an adoption
3 order, a person who voluntarily relinquished parental rights to a child under this
4 section may request a review hearing, upon a showing of good cause, to vacate the
5 termination order and reinstate parental rights relating to that child. A court shall
6 vacate a termination order if the person shows, by clear and convincing evidence, that
7 reinstatement of parental rights is in the best interest of the child and that the person is
8 rehabilitated and capable of providing the care and guidance that will serve the moral,
9 emotional, mental, and physical welfare of the child.

10 (o) A person seeking a review hearing under (m) or (n) of this section is
11 entitled to the appointment of an attorney to the same extent as if the parent's rights
12 had not been terminated in a child-in-need-of-aid proceeding.

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

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

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

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

24 * Sec. 3. AS 47.10.020(a) is amended to read:

25 (a) Whenever circumstances subject a child to the jurisdiction of the court
26 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
27 to make a preliminary inquiry and report for the information of the court to determine
28 whether the best interests of the child require that further action be taken. The court
29 shall make the appointment on its own motion or at the request of a person or
30 agency having knowledge of the child's circumstances. If, under this subsection,
31 the court appoints a person or agency to make a preliminary inquiry and to report to it,

1 or if the department is conducting an investigation of a report of child abuse or
2 neglect, the court may issue any orders necessary to aid the person, the agency,
3 or the department in its investigation or in making the preliminary inquiry and
4 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
5 court may

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

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

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

11 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

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

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

15 (2) filing a petition.

16 * Sec. 5. AS 47.10.080(f) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
24 **responsibilities.** (a) When a child is committed to the custody of the department
25 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a
26 parent with respect to the child, including parental rights to control the child, to
27 withhold consent to an adoption, or to receive notice of a hearing on a petition for
28 adoption, may be voluntarily relinquished to the department and the relationship of
29 parent and child terminated in a proceeding as provided under this section.

30 (b) A voluntary relinquishment must be in writing and signed by a parent,
31 regardless of the age of the parent, in the presence of a representative of the

1 department or in the presence of a court of competent jurisdiction with the knowledge
2 and approval of the department. A copy of the signed relinquishment shall be given to
3 the parent.

4 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
5 signed. The relinquishment is invalid unless the relinquishment contains the right of
6 withdrawal as specified under this subsection.

7 (d) A parent may retain privileges with respect to the child, including the
8 ability to have future contact, communication, and visitation with the child in a
9 voluntary relinquishment executed under this section. A retained privilege must be in
10 writing and stated with specificity.

11 (e) Not less than ~~10~~ ¹⁴ days after a voluntary relinquishment is signed, the court
12 shall enter an order terminating parental rights if the court finds that termination of
13 parental rights under the terms of the relinquishment is in the child's best interest. If a
14 parent has retained one or more privileges under (d) of this section, the court shall
15 incorporate the retained privileges in the termination order with a recommendation
16 that the retained privileges be incorporated in an adoption or legal guardianship
17 decree.

18 (f) A voluntary relinquishment may not be withdrawn and a termination order
19 may not be vacated on the ground that a retained privilege has been withheld from the
20 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
21 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
22 Procedure.

23 (g) After a termination order is entered, a person who has voluntarily
24 relinquished parental rights under this section may request a review hearing, upon a
25 showing of good cause, to seek enforcement or modification of or to vacate a privilege
26 retained in the termination order. The court may modify, enforce, or vacate the
27 retained privilege if the court finds, by clear and convincing evidence, that it is in the
28 best interest of the child to do so.

29 (h) After a termination order is entered and before the entry of an adoption or
30 legal guardianship decree, a person who voluntarily relinquished parental rights to a
31 child under this section may request a review hearing, upon a showing of good cause,

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to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the person shows, by clear and convincing evidence, that reinstatement of parental rights is in the best interest of the child and that the person 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 person seeking a review hearing 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 in a child-in-need-of-aid proceeding.

(j) After a termination order is entered and before the entry of an adoption or legal guardianship decree, a prospective adoptive parent or a guardian of the child may request, after providing notice as specified under this subsection, that the court decline to incorporate a privilege retained in a termination order and recommended for incorporation in an adoption or guardianship decree under (e) of this section. If the person who has relinquished parental rights to the child who is the subject of the adoption or guardianship decree did not waive rights to notice of adoption under (a) of this section, the request made under this subsection may only be considered after providing at least 10 days' notice by certified mail to the last known address of the person who has voluntarily relinquished parental rights to the child. The notice under this subsection must describe the request and explain that the recipient of the notice may submit a written affidavit to the court in support of or in opposition to the request. The court may decline to incorporate a retained privilege if the person who retained the privilege supports the request or if the court finds that it is in the child's best interest.

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

Sec. 47.10.145. Expert witness testimony regarding absent parent, guardian, or custodian. If the court finds by clear and convincing evidence that a parent, guardian, or custodian of a child cannot be located after a reasonable search for the parent, guardian, or custodian has been conducted by the department, the court may conclude that the testimony of a qualified expert witness would support a finding that continued custody of the child by the absent parent, guardian, or custodian is likely to result in serious emotional or physical damage to the child.

1 * Sec. 8. 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. 9. AS 47.12.990(10) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

31 DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules,

1 is amended to read:

2 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.**

3 The parent of a non-Indian child may withdraw a consent or relinquishment by
4 notifying in writing the court, or the person or agency obtaining the consent or
5 relinquishment, within 10 days of the birth or signing of the consent or
6 relinquishment, whichever is later. Notification is timely if received or postmarked on
7 or before the last day of this time period. The parent may move the court to permit
8 withdrawal of the consent or relinquishment after the 10 day period pursuant to
9 AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a
10 relinquishment.

11 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

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

15 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
16 entered after a voluntary relinquishment pursuant to AS 25.23.180 or AS 47.10.089.
17 The court shall enter findings of fact which must include a statement concerning
18 whether visitation rights are being allowed under AS 25.23.130(c) or other privileges
19 are being retained under AS 25.23.180 or AS 47.10.089, and whether the time limit
20 for withdrawal of the relinquishment has elapsed. If the relinquishment was signed in
21 the presence of the court, findings also must be entered as to whether the parent
22 understood the consequences of the relinquishment, and whether the relinquishment
23 was voluntarily signed.

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

30 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

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

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

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

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

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

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

17 * Sec. 14. The uncoded law of the State of Alaska is amended by adding a new section to
18 read:

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

21 (d) **Relinquishment.**

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

26 * Sec. 15. The uncoded law of the State of Alaska is amended by adding a new section to
27 read:

28 INDIRECT COURT RULE AMENDMENT. (a) AS 25.23.180(j) - (o) and
29 AS 47.10.089, added by secs. 1 and 6 of this Act, amend Rules 9 and 13, Alaska Adoption
30 Rules, by requiring retained privileges to be set out in the relinquishment form and order and
31 by providing additional procedures related to the relinquishment.

1 (b) AS 25.23.180(k) - (o) and AS 47.10.089(g), (h), and (j), added by secs. 1 and 6 of
2 this Act, amend Rule 13, Alaska Adoption Rules, by authorizing review hearings for
3 voluntary relinquishments.

4 (c) AS 47.10.089, added by sec. 6 of this Act, amends Rule 18(d)(1), Alaska Child in
5 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
6 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
7 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

8 (d) AS 47.10.089, added by sec. 6 of this Act, amends Rule 18, Alaska Child in Need
9 of Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or
10 legal guardianship decree.

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

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

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

18 **CONDITIONAL EFFECT.** (a) Rule 9(a), Alaska Adoption Rules, as amended by
19 sec. 10 of this Act, takes effect only if sec. 10 of this Act receives the two-thirds majority vote
20 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

21 (b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 11 of this Act, takes effect
22 only if sec. 11 of this Act receives the two-thirds majority vote of each house required by art.
23 IV, sec. 15, Constitution of the State of Alaska.

24 (c) Rule 13(a), Alaska Adoption Rules, as amended by sec. 12 of this Act, takes effect
25 only if sec. 12 of this Act receives the two-thirds majority vote of each house required by art.
26 IV, sec. 15, Constitution of the State of Alaska.

27 (d) Section 5 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
28 amended by sec. 13 of this Act, take effect only if sec. 13 of this Act receives the two-thirds
29 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 14 of this
31 Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house

1 requir.d by art. IV, sec. 15, Constitution of the State of Alaska.

2 (f) AS 25.23.180(j) - (o), added by sec. 1 of this Act, and AS 47.10.089, added by sec.
3 6 of this Act, take effect only if sec. 15 of this Act receives the two-thirds majority vote of
4 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

5 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

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Changes from Y version

CS FOR HOUSE BILL NO. 114()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to proceedings regarding voluntary relinquishments and terminations**
2 **of a parent and child relationship; relating to eligibility for permanent fund dividends**
3 **for certain children in the custody of the state; relating to child-in-need-of-aid**
4 **proceedings, adoption proceedings, and juvenile delinquency proceedings; relating to**
5 **findings in permanency hearings in child-in-need-of-aid proceedings; amending Rules 9**
6 **and 13, Alaska Adoption Rules, Rules 17.2 and 18, Child in Need of Aid Rules (of**
7 **Procedure, and Rules 14 and 15, Rules of Probate Procedure); and providing for an**
8 **effective date."**

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

10 *** Section 1. AS 13.26 is amended by adding a new section to read:**

11 **Sec. 13.26.064. Guardianship after voluntary relinquishment; procedure.**

12 **In addition to the applicable procedures under this chapter, a guardianship decree and**

1 review of a guardianship decree are governed by the procedures established under
2 AS 25.23.180 and, for a child-in-need-of-aid, AS 47.10.089, pertaining to voluntary
3 relinquishment of parental rights and retaining of parental privileges in a guardianship
4 decree.

5 * Sec. 2. AS 25.23.180 is amended by adding new subsections to read:

6 (j) In a relinquishment of parental rights executed under (a) of this section, a
7 parent may retain privileges with respect to the child, including the ability to have
8 future contact, communication, and visitation with the child. A retained privilege
must be stated with specificity in writing, and, not less than 10 days after the
relinquishment is signed, the court may enter an order terminating parental rights if the
11 court finds that termination of parental rights under the terms of the agreement is in
12 the child's best interest. If a parent has retained one or more privileges, the court shall
13 incorporate the retained privileges into the termination order with a recommendation
14 that the retained privileges be incorporated in an adoption or legal guardianship
15 decree.

16 (k) A voluntary relinquishment may not be withdrawn and a termination order
17 may not be vacated on the ground that a retained privilege has been withheld from the
18 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
19 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
20 Procedure.

21 (l) After a termination order is entered, a person who has voluntarily
22 relinquished parental rights under this section may request a review hearing, upon a
23 showing of good cause, to seek enforcement or modification of or to vacate a privilege
24 retained in the termination order. The court may modify, enforce, or vacate the
25 retained privilege if the court finds, by clear and convincing evidence, that it is in the
26 best interest of the child to do so.

27 (m) After a termination order is entered and before the entry of an adoption or
28 legal guardianship decree, a prospective adoptive parent or a guardian of the child may
29 request, after providing notice as specified under this subsection, that the court decline
30 to incorporate a privilege retained in a termination order and recommended for
31 incorporation in an adoption or guardianship decree under (j) of this section. If the

1 person who has relinquished parental rights to the child who is the subject of the
 2 adoption or guardianship decree did not waive rights to notice of adoption under (b) of
 3 this section, the request made under this subsection may only be considered ~~(by the~~
 4 ~~court)~~ after providing at least 20 days' notice by certified mail to the last known address
 5 of the person who has voluntarily relinquished parental rights to the child. The notice
 6 under this subsection must describe the request and explain that the recipient of the
 7 notice may submit a written ~~(statement under penalty of perjury)~~ to the court ~~(that the~~
 8 recipient either agrees with or opposes) the request. The notice must also include the
 9 deadline for submitting the statement and the mailing address of the court. The court
 10 may decline to incorporate a retained privilege if the person who retained the privilege
 11 ~~(agrees with)~~ the request or if the court finds that it is in the child's best interest.

12 (n) After a termination order is entered and before the entry of an adoption
 13 ~~(decree)~~ a person who voluntarily relinquished parental rights to a child under this
 14 section may request a review hearing, upon a showing of good cause, to vacate the
 15 termination order and reinstate parental rights relating to that child. A court shall
 16 vacate a termination order if the person shows, by clear and convincing evidence, that
 17 reinstatement of parental rights is in the best interest of the child and that the person is
 18 rehabilitated and capable of providing the care and guidance that will serve the moral,
 19 emotional, mental, and physical welfare of the child.

20 (o) A person ~~(who relinquished parental rights is entitled to the appointment of~~
 21 ~~an attorney if a hearing is requested under (l), (m), or (n) of this section to the same~~
 22 ~~extent as if the parent's rights had not been terminated in a child-in-need-of-aid~~
 23 ~~proceeding.~~

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

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

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

31 (2) while in the custody of the Department of Health and Social

delete affidavit

replace order

new wording + adds (1)

delete in support
delete support

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

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

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

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

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

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

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

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

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

26 (2) filing a petition.

27 * Sec. 6. AS 47.10.080(l) is amended to read:

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

31 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of

1 this section are also entitled to be heard at the hearing held under this subsection;

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

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

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

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

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

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

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

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

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

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

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

1 application by the department.

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

3 Sec. 47.10.089. Voluntary relinquishment of parental rights and
4 responsibilities. (a) When a child is committed to the custody of the department
5 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a
6 parent with respect to the child, including parental rights to control the child, to
7 withhold consent to an adoption, or to receive notice of a hearing on a petition for
8 adoption, may be voluntarily relinquished to the department and the relationship of
9 parent and child terminated in a proceeding as provided under this section.

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

15 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
16 signed. The relinquishment is invalid unless the relinquishment contains the right of
17 withdrawal as specified under this subsection.

18 (d) A parent may retain privileges with respect to the child, including the
19 ability to have future contact, communication, and visitation with the child in a
20 voluntary relinquishment executed under this section. A retained privilege must be in
21 writing and stated with specificity.

22 (e) Not less than 10 days after a voluntary relinquishment is signed, the court
23 shall enter an order terminating parental rights if the court ~~determines~~ that termination
24 of parental rights under the terms of the relinquishment is in the child's best interest.
25 If a parent has retained one or more privileges under (d) of this section, the court shall
26 incorporate the retained privileges in the termination order with a recommendation
27 that the retained privileges be incorporated in an adoption or legal guardianship
28 decree.

29 (f) A voluntary relinquishment may not be withdrawn and a termination order
30 may not be vacated on the ground that a retained privilege has been withheld from the
31 relinquishing parent or that the relinquishing parent has been unable, for any reason, to

change from finds

1 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
2 Procedure.

3 (g) After a termination order is entered, a person who has voluntarily
4 relinquished parental rights under this section may request a review hearing, upon a
5 showing of good cause, to seek enforcement or modification of or to vacate a privilege
6 retained in the termination order. The court may modify, enforce, or vacate the
7 retained privilege if the court finds, by clear and convincing evidence, that it is in the
8 best interest of the child to do so.

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

17 (i) A person who relinquished parental rights is entitled to the appointment of
18 an attorney if a hearing is requested under (g), (h), or (j) of this section to the same
19 extent as if the parent's rights had not been terminated in a child-in-need-of-aid
20 proceeding.

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21 (j) After a termination order is entered and before the entry of an adoption or
22 legal guardianship decree, a prospective adoptive parent or a guardian of the child may
23 request, after providing notice as specified under this subsection, that the court decline
24 to incorporate a privilege retained in a termination order and recommended for
25 incorporation in an adoption or guardianship decree under (e) of this section. If the
26 person who has relinquished parental rights to the child who is the subject of the
27 adoption or guardianship decree did not waive rights to notice of adoption under (a) of
28 this section, the request made under this subsection may only be considered (by the
29 court) after providing at least 20 days' notice by certified mail to the last known address
30 of the person who has voluntarily relinquished parental rights to the child. The notice
31 under this subsection must describe the request and explain that the recipient of the

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1 notice may submit a written statement (under penalty of perjury) to the court (that the
 2 recipient either agrees with or opposes) the request. The notice must also include the
 3 deadline for submitting the statement and the mailing address of the court. The court
 4 may decline to incorporate a retained privilege if the person who retained the privilege
 5 (agrees with) the request or if the court finds that it is in the child's best interest.

6 * Sec. 8. AS 47.10.990(16) is amended to read:

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

13 * Sec. 9. AS 47.12.990(10) is amended to read:

14 (10) "mental health professional" has the meaning given in
 15 AS 47.30.915, except that, if the minor 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 minor is placed;

20 * Sec. 10. 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;

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- (5) if a consent, the information required in AS 25.23.060; and
- (6) if signed by a parent, a statement of whether the parent is a minor.

* Sec. 11. 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 period pursuant to AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment.

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* Sec. 12. The uncoded law of the State of Alaska is amended by adding a new section to read:

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

(a) Voluntary Relinquishment. A decree terminating parental rights may be entered after a voluntary relinquishment pursuant to AS 25.23.180 or AS 47.10.089. The court shall enter findings of fact which must include a statement concerning whether visitation rights are being allowed under AS 25.23.130(c) or other privileges are being retained under AS 25.23.180 or AS 47.10.089, and whether the time limit for withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the presence of the court, findings also must be entered as to whether the parent understood the consequences of the relinquishment, and whether the relinquishment was voluntarily signed.

In the case of a voluntary relinquishment of parental rights to an Indian child, the court shall make additional findings concerning whether any notice required by 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.

OK 4 * Sec. 13. 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.

OK 22 * Sec. 14. 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 25.25.180]. 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. 15. 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 13.26.064, added by sec. 1 of
3 this Act, amends Rules 14 and 15, Rules of Probate Procedure, by providing that retained
4 privileges be set out in the guardianship decree and by providing additional procedures related
5 to a voluntary relinquishment of parental rights.

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Probate*

6 (b) AS 25.23.180(j) - (o) and AS 47.10.089, added by secs. 2 and 7 of this Act, amend
7 Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set out in the
8 relinquishment form and order and by providing additional procedures related to the
9 relinquishment.

10 (c) AS 25.23.180(k) - (o) and AS 47.10.089(g), (h), and (j), added by secs. 2 and 7 of
11 this Act, amend Rule 13, Alaska Adoption Rules, by authorizing review hearings for
12 voluntary relinquishments.

13 (d) AS 47.10.089, added by sec. 7 of this Act, amends Rule 18(d)(1), Alaska Child in
14 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
15 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
16 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

17 (e) AS 47.10.089, added by sec. 7 of this Act, amends Rule 18, Alaska Child in Need
18 of Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or
19 legal guardianship decree.

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

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

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

27 CONDITIONAL EFFECT. (a) Rule 9(a), Alaska Adoption Rules, as amended by
28 sec. 10 of this Act, takes effect only if sec. 10 of this Act receives the two-thirds majority vote
29 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 11 of this Act, takes effect
31 only if sec. 11 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 (c) Rule 13(a), Alaska Adoption Rules, as amended by sec. 12 of this Act, takes effect
3 only if sec. 12 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 (d) Section 5 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
6 amended by sec. 13 of this Act, take effect only if sec. 13 of this Act receives the two-thirds
7 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

8 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 14 of this
9 Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house
10 required by art. IV, sec. 15, Constitution of the State of Alaska.

11 (f) (AS 13.26.064, added by sec. 1 of this Act,) AS 25.23.180(j) - (o), added by sec. 2
12 of this Act, and AS 47.10.089, added by sec. 7 of this Act, take effect only if sec. 15 of this
13 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
14 Constitution of the State of Alaska.

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15 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

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CS FOR HOUSE BILL NO. 114()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponso.(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the retaining of certain privileges of a parent in a relinquishment**
2 **and termination of a parent and child relationship proceeding; relating to eligibility for**
3 **permanent fund dividends for certain children in the custody of the state; relating to**
4 **child-in-need-of-aid proceedings, adoption proceedings, and juvenile delinquency**
5 **proceedings; amending Rules 9 and 13, Alaska Adoption Rules; and providing for an**
6 **effective date."**

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

8 *** Section 1.** AS 25.23.180 is amended by adding new subsections to read:

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

1 termination order. A relinquishment may be withdrawn before the entry of a
2 termination order if a retained privilege is not included in the termination order. * *Section*

3 (k) A parent who voluntarily relinquished parental rights to a child may
4 request a review hearing of the termination order entered by a court relating to that
5 child at any time before entry of an adoption order. *same* A court shall invalidate a
6 termination order if the parent can show good cause that the invalidation is in the best
7 interest of the child *and that* ~~because~~ the parent is rehabilitated and capable of providing the
8 care and guidance that will serve the moral, emotional, mental, and physical welfare of
9 the child.

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

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

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

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

21 * Sec. 3. AS 47.10.020(a) is amended to read:

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

1 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
2 court may

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

8 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

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

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

13 ~~* Sec. 5. AS 47.10 is amended by adding a new section to read:~~

14 ~~Sec. 47.10.145. Expert witness testimony regarding absent parent,~~
 15 ~~guardian, or custodian. If the court finds by clear and convincing evidence that a~~
 16 ~~parent, guardian, or custodian of a child cannot be located after a reasonable search for~~
 17 ~~the parent, guardian, or custodian has been conducted by the department, the court~~
 18 ~~may conclude that the testimony of a qualified expert witness would support a finding~~
 19 ~~that continued custody of the child by the absent parent, guardian, or custodian is~~
 20 ~~likely to result in serious emotional or physical damage to the child.~~

21 * Sec. 6. AS 47.10.990(16) is amended to read:

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

28 * Sec. 7. 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. 8. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

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

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

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

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

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

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

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

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

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

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

22 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
23 entered after a voluntary relinquishment pursuant to AS 25.23.180. The court shall
24 enter findings of fact which must include a statement concerning whether visitation
25 rights are being allowed under AS 25.23.130(c) or AS 25.23.180, whether other
26 privileges are being retained under AS 25.23.180, and whether the time limit for
27 withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the
28 presence of the court, findings also must be entered as to whether the parent
29 understood the consequences of the relinquishment, and whether the relinquishment
30 was voluntarily signed.

31 In the case of a voluntary relinquishment of parental rights to an Indian child,

1 the court shall make additional findings concerning whether any notice required by
2 Rule 10(e) was timely given; whether the relinquishment was voluntary and in
3 compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's
4 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
5 cause exists for deviation from the placement preference.

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

8 **INDIRECT COURT RULE AMENDMENT.** (a) AS 25.23.180(j), added by sec. 1 of
9 this Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to
10 be set out in the relinquishment form and order.

11 (b) AS 25.23.180(k), added by sec. 1 of this Act, amends Rule 13, Alaska Adoption
12 Rules, by authorizing a review hearing for a voluntary relinquishment before the entry of an
13 adoption decree.

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

16 **CONDITIONAL EFFECT.** (a) Rule 9(a), Alaska Adoption Rules, as amended by
17 sec. 8 of this Act, takes effect only if sec. 8 of this Act receives the two-thirds majority vote of
18 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

19 (b) Rule 13(a), Alaska Adoption Rules, as amended by sec. 9 of this Act, takes effect
20 only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art.
21 IV, sec. 15, Constitution of the State of Alaska.

22 (c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take effect only if sec. 10 of
23 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
24 Constitution of the State of Alaska.

25 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).



24-GH1108F
Mischel
3/8/05

CS FOR HOUSE BILL NO. 114()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the retaining of certain privileges of a parent in a relinquishment
2 and termination of a parent and child relationship proceeding; relating to eligibility for
3 permanent fund dividends for certain children in the custody of the state; relating to
4 child-in-need-of-aid proceedings, adoption proceedings, and juvenile delinquency
5 proceedings; amending Rules 9 and 13, Alaska Adoption Rules; and providing for an
6 effective date."

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

8 * **Section 1.** AS 25.23.180 is amended by adding new subsections to read:

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

1 termination order. A relinquishment may be withdrawn before the entry of a
2 termination order if a retained privilege is not included in the termination order.

3 (k) A parent who voluntarily relinquished parental rights to a child may
4 request a review hearing of the termination order entered by a court relating to that
5 child at any time before entry of an adoption order. A court shall invalidate a
6 termination order if the parent can show good cause that the invalidation is in the best
7 interest of the child because the parent is rehabilitated and capable of providing the
8 care and guidance that will serve the moral, emotional, mental, and physical welfare of
9 the child.

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

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

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

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

21 * Sec. 3. AS 47.10.020(a) is amended to read:

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

1 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
2 court may

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

8 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

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

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

13 ~~* Sec. 5. AS 47.10 is amended by adding a new section to read:~~

14 ~~Sec. 47.10.145. Expert witness testimony regarding absent parent,
15 guardian, or custodian. If the court finds by clear and convincing evidence that a
16 parent, guardian, or custodian of a child cannot be located after a reasonable search for
17 the parent, guardian, or custodian has been conducted by the department, the court
18 may conclude that the testimony of a qualified expert witness would support a finding
19 that continued custody of the child by the absent parent, guardian, or custodian is
20 likely to result in serious emotional or physical damage to the child.~~

Delete

21 * Sec. 6. AS 47.10.990(16) is amended to read:

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

28 * Sec. 7. 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. 8. The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

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

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

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

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

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

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

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

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

18 * Sec. 9. The uncoded law of the State of Alaska is amended by adding a new section to
19 read:

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

22 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
23 entered after a voluntary relinquishment pursuant to AS 25.23.180. The court shall
24 enter findings of fact which must include a statement concerning whether visitation
25 rights are being allowed under AS 25.23.130(c) or AS 25.23.180, whether other
26 privileges are being retained under AS 25.23.180, and whether the time limit for
27 withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the
28 presence of the court, findings also must be entered as to whether the parent
29 understood the consequences of the relinquishment, and whether the relinquishment
30 was voluntarily signed.

31 In the case of a voluntary relinquishment of parental rights to an Indian child,

1 the court shall make additional findings concerning whether any notice required by
2 Rule 10(e) was timely given; whether the relinquishment was voluntary and in
3 compliance with the requirements of 25 U.S.C. Section 1913, and whether the child's
4 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
5 cause exists for deviation from the placement preference.

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

8 **INDIRECT COURT RULE AMENDMENT.** (a) AS 25.23.180(j), added by sec. 1 of
9 this Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to
10 be set out in the relinquishment form and order.

11 (b) AS 25.23.180(k), added by sec. 1 of this Act, amends Rule 13, Alaska Adoption
12 Rules, by authorizing a review hearing for a voluntary relinquishment before the entry of an
13 adoption decree.

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

16 **CONDITIONAL EFFECT.** (a) Rule 9(a), Alaska Adoption Rules, as amended by
17 sec. 8 of this Act, takes effect only if sec. 8 of this Act receives the two-thirds majority vote of
18 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

19 (b) Rule 13(a), Alaska Adoption Rules, as amended by sec. 9 of this Act, takes effect
20 only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art.
21 IV, sec. 15, Constitution of the State of Alaska.

22 (c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take effect only if sec. 10 of
23 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
24 Constitution of the State of Alaska.

25 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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STATE OF ALASKA

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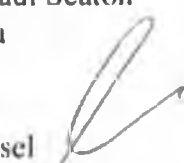
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2005

SUBJECT: CSHB 114 (), Amendment F.1
(Work Order No. 24-GH1108\F.1)

TO: Representative Paul Scaton
Attn: Louie Flora

FROM: Jean M. Mischel
Legislative Counsel 

Enclosed is the requested amendment to the above referenced bill draft. Other than a few formatting changes, we have made two additional changes to the version submitted by the Department of Law.

The first is at page 7, line 1 of the amendment that now refers to subsection (e), rather than subsection (d) of the new section AS 47.10.089. The reason for the changed reference for court rule purposes is that subsection (e), rather than (d), refers directly to court actions.

The other significant change made was the addition of modifying language to the new section AS 47.10.089 that appears as new section 5 of the bill at page 3, line 14 of the amendment. Since the voluntary relinquishment procedure was taken out of AS 25.23.180, relating to adoptions, and placed in AS 47.10, relating to CINA cases, I made a judgment call as to the applicability of the new procedure being limited to children placed in the custody of the department or otherwise adjudicated a child-in-need-of-aid. If this is not the case, the placement of the new relinquishment procedures should be back in AS 25.23. I made an unsuccessful attempt this evening to call Stacy Kraly at the Department of Law to discuss this change.

If I may be of further assistance, please advise.

JMM:lmb
05-080.lmb

Enclosure

AMENDMENT

OFFERED IN THE HOUSE BY THE HOUSE STATE AFFAIRS COMMITTEE

TO: CSHB 114(), Draft Version "F"

1 Page 1, line 1:

2 Delete "**the retaining of certain privileges of a parent in a**"

3 Insert "**proceedings regarding voluntary**"

4

5 Page 1, line 2:

6 Delete "**proceeding**"

7

8 Page 1, line 4:

9 Delete "**, adoption proceedings,**"

10

11 Page 1, line 5, following "**proceedings;**":

12 Insert "**relating to findings in permanency hearings in child-in-need-of-aid**
13 **proceedings;**"

14

15 Page 1, line 5, following "**Adoption Rules**":

16 Insert "**, and Rules 17.2 and 18, Child in Need of Aid Rules**"

17

18 Page 1, line 8, through page 2, line 9:

19 Delete all material.

20

21 Page 2, line 10:

22 Delete "**Sec. 2.**"

23 Insert "**Section 1.**"

1

2 Renumber the following bill sections accordingly.

3

4 Page 3, following line 12:

5 Insert new bill sections to read:

6 **** Sec. 4.** AS 47.10.080(*l*) is amended to read:

7

(*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:

9

(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;

11

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

13

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

15

(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

18

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

21

(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;

23

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

25

(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;

29

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home

31

1 that made the child a child in need of aid under this chapter; [AND]

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

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

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

12 * Sec. 5. AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
14 **responsibilities.** (a) When a child is committed to the custody of the department
15 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a
16 parent with respect to the child, including parental rights to control the child, to
17 withhold consent to an adoption, or to receive notice of a hearing on a petition for
18 adoption, may be voluntarily relinquished to the department and the relationship of
19 parent and child terminated in a proceeding as provided under this section.

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

25 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
26 signed. The relinquishment is invalid unless the relinquishment contains the right of
27 withdrawal as specified under this subsection.

28 (d) A parent may retain privileges with respect to the child, including the
29 ability to have future contact, communication, and visitation with the child in a
30 voluntary relinquishment executed under this section. A retained privilege must be in
31 writing and stated with specificity.

1 (e) Not less than 10 days after a voluntary relinquishment is signed, the court
2 shall enter an order terminating parental rights if the court finds that termination of
3 parental rights under the terms of the relinquishment is in the child's best interest. If a
4 parent has retained one or more privileges under (d) of this section, the court shall
5 incorporate the retained privileges in the termination order with a recommendation
6 that the retained privileges be incorporated in an adoption or legal guardianship
7 decree.

8 (f) A voluntary relinquishment may not be withdrawn and a termination order
9 may not be vacated on the ground that a retained privilege has been withheld from the
10 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
11 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
12 Procedure.

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

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

27 (i) A parent seeking a review hearing under (g) or (h) of this section is entitled
28 to the appointment of an attorney to the same extent as if the parent's rights had not
29 been terminated in a child-in-need-of-aid proceeding."
30

31 Renumber the following bill sections accordingly.

1

2 Page 4, following line 17:

3 Insert a new bill section to read:

4 **** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:6 **DIRECT COURT RULE AMENDMENT.** Rule 9(g), Alaska Adoption Rules,
7 is amended to read:8 **(g) Withdrawal of Consent or Relinquishment of a Non-Indian Child.**9 The parent of a non-Indian child may withdraw a consent or relinquishment by
10 notifying in writing the court, or the person or agency obtaining the consent or
11 relinquishment, within 10 days of the birth or signing of the consent or
12 relinquishment, whichever is later. Notification is timely if received or postmarked on
13 or before the last day of this time period. The parent may move the court to permit
14 withdrawal of the consent or relinquishment after the 10 day period pursuant to
15 AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a
16 relinquishment."
17

17

18 Renumber the following bill sections accordingly

19

20 Page 4, line 23, following "AS 25.23.180":

21 Insert "or AS 47.10.089"

22

23 Page 4, line 25:

24 Delete "AS 25.23.180, whether"

25

26 Page 4, line 26:

27 Delete "AS 25.23.180"28 Insert "AS 47.10.089"

29

30 Page 5, following line 5:

31 Insert new bill sections to read:

1 ** Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

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

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

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

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

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

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

19 * Sec. 13. 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(d)(1), Alaska Child in
22 Need of Aid Rules, is amended to read:

23 (d) **Relinquishment.**

24 (1) Notwithstanding other provisions of this rule, the court may
25 terminate parental rights after a voluntary relinquishment pursuant to **AS 47.10.089**
26 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
27 requirements set forth in 25 U.S.C. § 1913(c)."
28

29 Renumber the following bill sections accordingly.

30

31 Page 5, line 8:

1 Delete "AS 25.23.180(j), added by sec. 1"

2 Insert "AS 47.10.089(e), added by sec. 5"

3

4 Page 5, line 11:

5 Delete "AS 25.23.180(k), added by sec. 1"

6 Insert "AS 47.10.089(g) and (h), added by sec. 5"

7 Delete "amends"

8 Insert "amend"

9

10 Page 5, following line 13:

11 Insert new material to read:

12 "(c) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18(d)(1), Alaska Child in
13 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
14 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
15 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

16 (d) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18, Alaska Child in Need
17 of Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or
18 legal guardianship decree.

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

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

24

25 Renumber the following bill sections accordingly.

26

27 Page 5, line 17:

28 Delete the first occurrence of "sec. 8"

29 Insert "sec. 9"

30

31 Delete "only if sec. 8"

1 Insert "only if sec. 9"

2

3 Page 5, following line 18:

4 Insert a new subsection to read:

5 "(b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 10 of this Act, takes effect
6 only if sec. 10 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

9 Reletter the following subsections accordingly.

10

11 Page 5, line 19:

12 Delete "9"

13 Insert "11"

14

15 Page 5, line 20:

16 Delete "9"

17 Insert "11"

18

19 Page 5, following line 21:

20 Insert new subsections to read:

21 "(d) Section 4 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
22 amended by sec. 12 of this Act, take effect only if sec. 12 of this Act receives the two-thirds
23 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

24 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 13 of this
25 Act, takes effect only if sec. 13 of this Act receives the two-thirds majority vote of each house
26 required by art. IV, sec. 15, Constitution of the State of Alaska."

27

28 Reletter the following subsection accordingly.

29

30 Page 5, line 22:

31 Delete "AS 25.23.180(j) and (k), added by sec. 1 of this Act, take effect only if sec.

1 10"

2 Insert "AS 47.10.089, added by sec. 5 of this Act, takes effect only if sec. 14"

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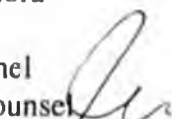
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2005

SUBJECT: Child Protection (HB 114 (Work Order No. 24-GH1108G))

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: Jean M. Mischel
Legislative Counsel 

You have asked whether any legal or drafting problems exist with HB 114. Attached is CSHB 114() making technical corrections in compliance with the drafting manual.

I have identified one potential legal issue that is raised by section 5 of the bill that allows a court to take judicial notice of what an expert witness would testify to with respect to the effect of continued custody by an absent parent, guardian, or custodian. That section provides

Sec. 47.10.145. Expert witness testimony regarding absent parent, guardian, or custodian. If the court finds by clear and convincing evidence that a parent, guardian, or custodian of a child cannot be located after a reasonable search for the parent, guardian, or custodian has been conducted by the department, the court may conclude that the testimony of a qualified expert witness would support a finding that continued custody of the child by the absent parent, guardian, or custodian is likely to result in serious emotional or physical damage to the child.

To the extent that this procedure is used to support a petition to terminate parental rights by the department in a case involving a native child, there is a question as to the consistency with the Indian Child Welfare Act, 25 U.S.C. sec. 1912(f) which requires the support of testimony of a qualified expert witness. That section provides that:

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, **including testimony of qualified expert witnesses**, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (emphasis added)

Representative Paul Seaton
February 28, 2005
Page 2

It may be that judicial notice of expert witness testimony would satisfy ICWA in cases involving native children, particularly with a heightened standard. Section 5 does not, however, meet a literal or conservative interpretation of ICWA.

In addition, I have added what our office has identified as a direct court rule amendment to the Adoption Rules created by section 1. Changes have been made in this version in the title and by new sections 8 and 9.

If I may be of further assistance, please advise.

JMM:med
05-124.med

Enclosure

Marci

HOUSE BILL NO. 114

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/05

Referred: State Affairs, Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the retaining of certain privileges of a parent in a relinquishment
2 and termination of a parent and child relationship proceeding; relating to eligibility for
3 permanent fund dividends for certain children in the custody of the state; relating to
4 child in need of aid proceedings and juvenile delinquency proceedings; and providing
5 for an effective date."

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

7 * Section 1. AS 25.23.180 is amended by adding a new subsection to read:

8 (j) In a relinquishment of parental rights executed under (a) of this section, a
9 parent may retain privileges with respect to the child, including the ability to have
10 future contact, communication, and visitation with the child. A retained privilege
11 must be stated with specificity in the writing and, if a termination order is entered
12 following the relinquishment, the court shall incorporate a retained privilege into the
13 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. 2. AS 43.03.005(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. 3. AS 47.10.020(a) is amended to read:

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

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

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

31 (3) authorize the person or agency having knowledge of the facts of the

1 case to file with the court a petition setting out the facts.

2 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

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

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

7 * Sec. 5. AS 47.10 is amended by adding a new section to read:

8 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
9 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
10 parent, guardian, or custodian of a child cannot be located after a reasonable search for
11 the parent, guardian, or custodian has been conducted by the department, the court
12 may conclude that the testimony of a qualified expert witness would support a finding
13 that continued custody of the child by the absent parent, guardian, or custodian is
14 likely to result in serious emotional or physical damage to the child.

15 * Sec. 6. AS 47.10.990(16) is amended to read:

16 (16) "mental health professional" has the meaning given in
17 AS 47.30.915, except that if the child is placed in another state by the department,
18 "mental health professional" also includes a professional listed in the definition
19 of "mental health professional" in AS 47.30.915 who is not licensed to practice by
20 a board of this state but is licensed by a corresponding licensing authority to
21 practice in the state in which the child is placed.

22 * Sec. 7. 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. 8. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

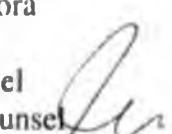
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2005

SUBJECT: Child Protection (HB 114 (Work Order No. 24-GH1108\G))

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: Jean M. Mischel
Legislative Counsel 

You have asked whether any legal or drafting problems exist with HB 114. Attached is CSHB 114() making technical corrections in compliance with the drafting manual.

I have identified one potential legal issue that is raised by section 5 of the bill that allows a court to take judicial notice of what an expert witness would testify to with respect to the effect of continued custody by an absent parent, guardian, or custodian. That section provides

Sec. 47.10.145. Expert witness testimony regarding absent parent, guardian, or custodian. If the court finds by clear and convincing evidence that a parent, guardian, or custodian of a child cannot be located after a reasonable search for the parent, guardian, or custodian has been conducted by the department, the court may conclude that the testimony of a qualified expert witness would support a finding that continued custody of the child by the absent parent, guardian, or custodian is likely to result in serious emotional or physical damage to the child.

To the extent that this procedure is used to support a petition to terminate parental rights by the department in a case involving a native child, there is a question as to the consistency with the Indian Child Welfare Act, 25 U.S.C. sec. 1912(f) which requires the support of testimony of a qualified expert witness. That section provides that:

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, **including testimony of qualified expert witnesses**, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (emphasis added)

Representative Paul Seaton

February 28, 2005

Page 2

It may be that judicial notice of expert witness testimony would satisfy ICWA in cases involving native children, particularly with a heightened standard. Section 5 does not, however, meet a literal or conservative interpretation of ICWA.

In addition, I have added what our office has identified as a direct court rule amendment to the Adoption Rules created by section 1. Changes have been made in this version in the title and by new sections 8 and 9.

If I may be of further assistance, please advise.

JMM.med

05-124.med

Enclosure

24 GH1108\G
Mischel
2/28/05

CS FOR HOUSE BILL NO. 114()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the retaining of certain privileges of a parent in a relinquishment
2 and termination of a parent and child relationship proceeding; relating to eligibility for
3 permanent fund dividends for certain children in the custody of the state; relating to
4 child-in-need-of-aid proceedings and juvenile delinquency proceedings; amending Rules
5 9 and 13, Alaska Adoption Rules; and providing for an effective date."

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

7 * **Section 1.** AS 25.23.180 is amended by adding a new subsection to read:

8 (j) In a relinquishment of parental rights executed under (a) of this section, a
9 parent may retain privileges with respect to the child, including the ability to have
10 future contact, communication, and visitation with the child. A retained privilege
11 must be stated with specificity in writing, and, if a termination order is entered
12 following the relinquishment, the court shall incorporate a retained privilege into the
13 termination order. A relinquishment may not be withdrawn or invalidated, and a

*retain a privilege but
is not enforceable*

1 termination order may not be vacated, on the grounds that a retained privilege has
 2 been 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. 2. 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. 3. AS 47.10.020(a) is amended to read:

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

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

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

31 (3) authorize the person or agency having knowledge of the facts of the

1 case to file with the court a petition setting out the facts.

2 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

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

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

6 (2) filing a petition.

7 * Sec. 5. AS 47.10 is amended by adding a new section to read:

8 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
9 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
10 parent, guardian, or custodian of a child cannot be located after a reasonable search for
11 the parent, guardian, or custodian has been conducted by the department, the court
12 may conclude that the testimony of a qualified expert witness would support a finding
13 that continued custody of the child by the absent parent, guardian, or custodian is
14 likely to result in serious emotional or physical damage to the child.

15 * Sec. 6. AS 47.10.990(16) is amended to read:

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

22 * Sec. 7. 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. 8. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 9(a), Alaska Adoption Rules,

1 is amended to read:

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

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

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

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

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

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

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

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

14 DIRECT COURT RULE AMENDMENT. Rule 13(a), Alaska Adoption
15 Rules, is amended to read

16 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
17 entered after a voluntary relinquishment pursuant to AS 25.23.180. The court shall
18 enter findings of fact which must include a statement concerning whether visitation
19 rights are being allowed under AS 25.23.130(c) or AS 25.23.180 whether other
20 privileges are being retained under AS 25.23.180. and whether the time limit for
21 withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the
22 presence of the court, findings also must be entered as to whether the parent
23 understood the consequences of the relinquishment, and whether the relinquishment
24 was voluntarily signed.

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

31 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 INDIRECT COURT RULE AMENDMENT. AS 25.23.180(j), added by sec. 1 of this
3 Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set
4 out in the relinquishment form and order.

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

7 CONDITIONAL EFFECT. (a) Rule 9(a), Alaska Adoption Rules, as amended by
8 sec. 8 of this Act, takes effect only if sec. 8 of this Act receives the two-thirds majority vote of
9 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

10 (b) Rule 13(a), Alaska Adoption Rules, as amended by sec. 9 of this Act, takes effect
11 only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art.
12 IV, sec. 15, Constitution of the State of Alaska.

13 (c) AS 25.23.180(j), added by sec. 1 of this Act, takes effect only if sec. 10 of this Act
14 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
15 of the State of Alaska.

16 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS
COMMITTEE

BY _____

TO: CSHB 114() (24-GH1108F) (3/8/05 Work Draft)

1 Page 1, line 1:

2 Delete "the retaining of certain privileges of a parent in a"

3 Insert "proceedings regarding voluntary"

4

5 Page 1, line 2:

6 Delete "proceeding"

7

8 Page 1, line 4:

9 Delete ", adoption proceedings,"

10

11 Page 1, line 5, following "Rules":

12 Insert ", and Rule 18, Child in Need of Aid Rules"

13

14 Page 1, line 8, through page 2, line 9:

15 Delete all material.

16

17 Renumber the following bill sections accordingly.

18

19 Page 3, following line 12:

20 Insert a new bill section to read.

21 **** Sec. 4.** AS 47.10 is amended by adding a new section to read:

1 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
2 **responsibilities.** (a) The rights of a parent with reference to a child, including parental
3 right to control the child, to withhold consent to an adoption, or to receive notice of a
4 hearing on a petition for adoption, may be relinquished to the department and the
5 relationship of parent and child terminated in a proceeding as provided in this section.

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

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

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

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

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

28 (g) After a termination order is entered, but before the entry of an adoption or
29 legal guardianship decree, a party or a parent who has voluntarily relinquished parental
30 rights under this section may request a review hearing, upon a showing of good cause, to
31 seek enforcement or modification of a privilege retained in the termination order. The

1 court may modify or enforce the retained privilege if it is in the best interests of the child
2 to do so.

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

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

14
15 Renumber the following bill sections accordingly.

16
17 Page 4, following line 17:

18 Insert a new bill section to read:

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

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

23 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The
24 parent of a non-Indian child may withdraw a consent or relinquishment by notifying in
25 writing the court, or the person or agency obtaining the consent or relinquishment, within
26 10 days of the birth or signing of the consent or relinquishment, whichever is later.
27 Notification is timely if received or postmarked on or before the last day of this time
28 period. The parent may move the court to permit withdrawal of the consent or
29 relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent
30 or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment."
31

1 Renumber the following bill sections accordingly.

2

3 Page 4, line 23 following "AS 25.23.180":

4 Insert "or AS 47.10.089"

5

6 Page 4, line 25:

7 Delete "AS 25.23.180, whether"

8

9 Page 4, line 26:

10 Delete "AS 25.23.180"

11 Insert "AS 47.10.089"

12

13 Page 5, following line 5:

14 Insert a new bill section to read:

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

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

19 (d) **Relinquishment.**

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

24

25 Renumber the following bill sections accordingly.

26

27 Page 5, line 8:

28 Delete "AS 25.23.180(j), added by sec. 1"

29 Insert "AS 47.10.089(i), added by sec. 4"

30

31 Page 5, line 11:

1 Delete "AS 25.23.180(k), added by sec. 1"

2 Insert "AS 47.10.089(g) and (h), added by sec. 4"

3

4 Delete "amends"

5 Insert "amend"

6

7 Page 5, following line 13:

8 Insert the following new material:

9 "(c) AS 47.10.089, added by sec. 4 of this Act, amends Rule 18(d)(1), Child in Need of
10 Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of the
11 relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing
12 before the entry of an adoption or legal guardianship decree.

13 (d) AS 47.10.089, added by sec. 4 of this Act, amends Rule 18, Child in Need of Aid
14 Rules, by authorizing a review hearing for a termination before entry of an adoption or legal
15 guardianship decree.

16 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

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

21

22 Renumber the following bill sections accordingly.

23

24 Page 5, following line 18:

25 Insert the following new material:

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

29

30 Page 5, line 19:

31 Delete "(b)"

- 1 Insert "(c)"
- 2
- 3 Delete "9"
- 4 Insert "10"
- 5 Page 5, line 20:
- 6 Delete "9"
- 7 Insert "10"
- 8
- 9 Page 5, following line 21:
- 10 Insert the following new material:
- 11 "(d) Rule 18(d)(i), Child in Need of Aid Rules, as amended by sec. 11 of this Act, takes
- 12 effect only if sec. 11 of this Act receives the two-thirds majority vote of each house required by
- 13 art. IV, sec. 15, Constitution of the State of Alaska."
- 14
- 15 Page 5, line 22:
- 16 Delete "(c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take"
- 17 Insert "(e) AS 47.10.089, added by sec. 4 of this Act, takes"
- 18
- 19 Delete "10"
- 20 Insert "12"

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS

BY _____

COMMITTEE

TO: CSHB 114() (24-GH1108\F) (3/8/05 Work Draft)

1 Page 1, line 5, following "proceedings;":

2 Insert "relating to findings in permanency hearings in child in need of aid
3 proceedings; amending Rule 17.2, Alaska Child in Need of Aid Rules;"

4

5 Page 3, following line 12:

6 Insert a new bill section to read:

7 **** Sec. 5.** AS 47.10.080(*l*) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Renumber the following bill sections accordingly.

24
25 Page 5, following line 5:

26 Insert a new bill section to read:

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

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

31 **(f) Additional Findings.** In addition to the findings required under paragraph

1 (e), the court shall also make written findings related to

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

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

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

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

14
15 Renumber the following bill sections accordingly.

16
17 Page 5, line 17:

18 Delete "sec. 8"

19 Insert "sec. 9"

20
21 Delete "only if sec. 8"

22 Insert "only if sec. 9"

23
24 Page 5, line 19:

25 Delete "9"

26 Insert "10"

27
28 Page 5, line 20:

29 Delete "9"

30 Insert "10"

31

1 Page 5, line 22:

2 Delete "10"

3 Insert "12"

4

5 Page 5, following line 24:

6 Insert the following new material:

7 "(d) Section 5 of this Act takes effect only if sec. 11 of this Act receives the two-thirds
8 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

24G-1
3/4/2005
(11:23 AM)

A M E N D M E N T

OFFERED IN THE HOUSE STATE
AFFAIRS COMMITTEE

BY _____

TO: CSHB 114() (24-GH1108\G Work Draft 2/28/05)

1 Page 1, lines 1 - 2:

2 Delete "relating to the retaining of certain privileges of a parent in a relinquishment
3 and termination of a parent and child relationship proceeding;"

4

5 Page 1, lines 4 - 5:

6 Delete "amending Rules 9 and 13, Alaska Adoption Rules;"

7

8 Page 1, line 7 through page 2, line 3:

9 Delete all material.

10

11 Renumber the following bill sections accordingly.

12

13 Page 3, lines 7 - 14:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 29 through page 5, line 15:

19 Delete all material.

20

21 Renumber the remaining bill section accordingly.

Armed: 2

Greenberg: Delete Section line 13 Page 1 thyl
Page 2 line 3

"A Relinquished not only to w/down on
→ grants and a Relinquish
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2
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3 part process currently

Frank or Dennis

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~~200-221~~

Ref: Olson, synopsis + disagreements??

Phone #5 -

→ Carter call

Diana,
Linda,
Barbara

Will be available

Sec. 1,

Sec. 5

→ Diana Olson
supports delay Sec. 5

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS

BY _____

COMMITTEE

TO: CSHB 114() (24-GH1108\F) (3/8/05 Work Draft)

- 1 Page 1, line 1:
2 Delete "the retaining of certain privileges of a parent in a"
3 Insert "proceedings regarding voluntary"
4
5 Page 1, line 2:
6 Delete "proceeding"
7
8 Page 1, line 4:
9 Delete ", adoption proceedings,"
10
11 Page 1, line 5, following "proceedings;":
12 Insert "relating to findings in permanency hearings in child in need of aid
13 proceedings;"
14
15 Page 1, line 5, following "Adoption Rules":
16 Insert ", and Rules 17.2 and 18, Alaska Child in Need of Aid Rules"
17
18 Page 1, line 8, through page 2, line 9:
19 Delete all material.
20
21 Renumber the following bill sections accordingly.

1 Page 3, following line 12:

2 Insert new bill sections to read:

3 **** Sec. 4. AS 47.10.080(l) is amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 * Sec. 5. AS 47.10 is amended by adding a new section to read:

9 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
10 **responsibilities.** (a) The rights of a parent with reference to a child, including parental
11 right to control the child, to withhold consent to an adoption, or to receive notice of a
12 hearing on a petition for adoption, may be relinquished to the department and the
13 relationship of parent and child terminated in a proceeding as provided in this section.

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

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

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

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

31 (f) A relinquishment may not be withdrawn and a termination order may not be

1 vacated on the ground that a retained privilege has been withheld from the relinquishing
2 parent or that the relinquishing parent has been unable, for any reason, to act upon a
3 retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil
4 Procedure.

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

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

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

22
23 Renumber the following bill sections accordingly.

24
25 Page 4, following line 17:

26 Insert a new bill section to read:

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

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

1 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The
2 parent of a non-Indian child may withdraw a consent or relinquishment by notifying in
3 writing the court, or the person or agency obtaining the consent or relinquishment, within
4 10 days of the birth or signing of the consent or relinquishment, whichever is later.
5 Notification is timely if received or postmarked on or before the last day of this time
6 period. The parent may move the court to permit withdrawal of the consent or
7 relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent
8 or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment."
9

10 Renumber the following bill sections accordingly.

11
12 Page 4, line 23, following "AS 25.23.180":

13 Insert "or AS 47.10.089"

14
15 Page 4, line 25:

16 Delete "AS 25.23.180, whether"

17
18 Page 4, line 26:

19 Delete "AS 25.23.180"

20 Insert "AS 47.10.089"

21
22 Page 5, following line 5:

23 Insert new bill sections to read:

24 "* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

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

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

30 (1) whether the Department has made reasonable efforts required under
31 AS 47.10.086 or, in the case of an Indian child, whether the Department has made active

1 efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C.
2 Sec. 1912(d);

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

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

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

11 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

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

15 (d) Relinquishment.

16 (1) Notwithstanding other provisions of this rule, the court may terminate
17 parental rights after a voluntary relinquishment pursuant to AS 47.10.089
18 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
19 requirements set forth in 25 U.S.C. sec. 1913(c)."
20

21 Renumber the following bill sections accordingly.

22
23 Page 5, line 8:

24 Delete "AS 25.23.180(j), added by sec. 1"

25 Insert "AS 47.10.089(d), added by sec. 5"

26
27 Page 5, line 11:

28 Delete "AS 25.23.180(k), added by sec. 1"

29 Insert "AS 47.10.089(g) and (h), added by sec. 5"

30
31 Delete "amends"

1 Insert "amend"

2
3 Page 5, following line 13:

4 Insert the following new material:

5 "(c) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18(d)(1), Alaska Child in
6 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of
7 the relinquishment, allowing for the retention of certain privileges, and authorizing a review
8 hearing before the entry of an adoption or legal guardianship decree.

9 (d) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18, Alaska Child in Need of
10 Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or legal
11 guardianship decree.

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

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

17
18 Renumber the following bill sections accordingly.

19
20 Page 5, line 17:

21 Delete "sec. 8"

22 Insert "sec. 9"

23
24 Delete "only if sec. 8"

25 Insert "only if sec. 9"

26
27 Page 5, following line 18:

28 Insert the following new material:

29 "(b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 10 of this Act, takes effect
30 only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art. IV,
31 sec. 15, Constitution of the State of Alaska."

1 Page 5, line 19:
2 Delete "(b)"
3 Insert "(c)"
4
5 Delete "9"
6 Insert "11"
7
8 Page 5, line 20:
9 Delete "9"
10 Insert "11"
11
12 Page 5, following line 21:
13 Insert the following new material:
14 "(d) Section 4 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
15 amended by sec. 12 of this Act, take effect only if sec. 12 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 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 13 of this Act,
18 takes effect only if sec. 13 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
21 Page 5, line 22:
22 Delete "(c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take"
23 Insert "(f) AS 47.10.089, added by sec. 5 of this Act, takes"
24
25 Delete "10"
26 Insert "14"

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: 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.

Re-number 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 AS 47.10.088 (f);

(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."

Remember 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 - 2

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 uncodified 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 uncodified 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”

Conceptual #2

a relinquishment may only be withdrawn

a) before Termination of
parent rights

b) in accord with court rules

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 114
 (H) Publish Date: 1/26/05
 Dept. Affected: Health & Social Services
 RDU: Children's Services
 Component: Front Line Social Workers

Revision Date/Time (Note if correction):

Title: RELATING TO CHILDREN IN NEED OF AID

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR

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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0):						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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)

This bill addresses a number of different issues related to children in the custody of the department. The bill modifies various sections of Alaska Law by:

1. Allowing a parent to retain privileges of ongoing contact or communication with a child, when appropriate, after relinquishment of parental rights;
2. Maintaining permanent fund dividend eligibility for Alaskan children temporarily placed outside the state by the Department of Health and Social Services (DHSS)
3. Clarifying the court's authority to issue orders to aid the DHSS in its investigations of child abuse and neglect;

Prepared by: Marcia Kennai, Deputy Commissioner Phone 465-3191
 Division: Office of Children's Services Date/Time 12/27/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 12/29/2004
 Agency: Department of Health and Social Services

(Revised 9/27/2004 OMB)

FISCAL NOTE

FN # 1

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HB 114

ANALYSIS CONTINUATION

4. Modifying the circumstances under which the DHSS may assume emergency custody of a child in order to better protect abused and neglected children;
5. Establishing a definition of "mental health professional" for purposes of child in need of aid and juvenile delinquency proceedings, and
6. Allowing the court to make findings regarding the testimony of expert witnesses in cases where parents cannot be located.

Passage of this bill will not have a fiscal impact on the department.

Louie Flora

From: Linda Wilson [linda_wilson@admin.state.ak.us]
Sent: Tuesday, March 01, 2005 10:14 AM
To: Rep. Paul Seaton; Louie Flora
Cc: Michael A Tibbles; Joshua P Fink; Barbara L Malchick
Subject: HB114

Mr. Chairman: In response to your request this morning at the State Affairs hearing, here is my email address. My phone number is 334-4416.
I look forward to working with a subcommittee on this bill, and will let OPA know of your request as well. Linda Wilson, Deputy Director, Public Defender Agency.

Louie Flora

From: Joshua Fink [joshua_fink@admin.state.ak.us]
Sent: Tuesday, March 01, 2005 5:47 PM
To: Rep. Paul Seaton
Cc: Linda Wilson; Louie Flora; Michael A Tibbles; Barbara L Malchick
Subject: Re: HB114

Representative Seaton, I will participate as well. I will also have my civil section head, Barb Malchick, participate on OPA's behalf. My direct line is 269-3501. Please advise when you'd like me available.
Thanks, Josh Fink

Linda Wilson wrote:

>Mr. Chairman: In response to your request this morning at the State
>Affairs hearing, here is my email address. My phone number is 334-4416.
>I look forward to working with a subcommittee on this bill, and will
>let OPA know of your request as well. Linda Wilson, Deputy Director,
>Public Defender Agency.
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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) 465-3031
FAX: (907) 465-3068

January 27, 2004

Honorable Paul Seaton, Chairman
House State Affairs Committee
Alaska State Capitol; Rm. 102
Juneau, AK 99801

Dear Representative Seaton,


The Department of Health and Social Services respectfully requests a hearing in the House State Affairs Committee on House Bill 114 "An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."

This bill contains several distinct provisions relating to the child protection system.

A copy of Governor Murkowski's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill, Special Assistant
Office of the Commissioner

cc: Kevin Jardell, Legislative Director
Office of the Governor

Marcie Kennai, Deputy Commissioner
Division of Health Care Services

pense" is not defined in the statute, but an examination of the rest of AS 18.85 clarifies its meaning.

[2] Chapter 85 of Title 18 of Alaska Statutes deals with the public defender agency. The agency is created by AS 18.85.010 "to serve the needs of indigent defendants." "If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the [public defender] agency or assign a private attorney for him under § 130 of this chapter." AS 18.85.110(d). AS 18.85.190(a) specifies that if the court makes the appointment, reasonable compensation and expenses "shall be paid by the court system." Paragraph (b) provides that if the agency contracts for private counsel for a defendant, "the public defender shall pay for these services out of appropriations to the agency." The plain meaning of the words "at public expense" as used in AS 18.85 is that either the public defender agency will pay the attorney's fees if it hires private counsel for a defendant, or the court system will pay if it appoints the private counsel. In any case, it is the state that pays. There is clearly no statutory authorization for assessing other non-parties for the fees of an indigent defendant for whom the court appoints counsel.

[3] ALSC is a non-profit corporation organized under AS 10.20. It receives most of its funding from Legal Services Corporation, also a non-profit corporation, although created by a federal act. ALSC does not have a general legal duty to provide lawyers to indigents in the same sense as the court system and the public defender agency do.

[4] The trial court clearly exceeded its authority when it ordered Alaska Legal Services to pay the fees of defendant's court-appointed counsel. While the court may be authorized to appoint counsel in this case, an issue which we do not decide, by appointing private counsel to represent the indigent defendant, the judge obligated the court system to pay for the attorney's serv-

not the question. The question is whether this was an order that the judge had the authority

ices. The statute makes no provision for requiring anyone else to reimburse the state when the court system pays for appointed counsel.

The judgment below must be reversed.
REVERSED.

BOOCHEVER, J., not participating.



RITA T., Appellant,

v.

STATE of Alaska, Appellee.

No. 5036.

Supreme Court of Alaska.

Feb. 13, 1981.

Following termination of parental rights, child's mother applied for hearing, which was denied by the Superior Court, Fourth Judicial District, Bethel, Gerald J. Van Hoomissen, J., without explanation. On appeal by the mother, the Supreme Court, Dimond, Senior Justice, held that: (1) all superior court orders of disposition of child-in-need-of-aid are to be reviewed upon application of interested party if party establishes good cause for review and if child is still ward of court, and (2) where mother on applying for hearing before superior court indicated that as result of 14-month rehabilitation program she had overcome problems leading to termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing warm and loving home for her child, same was sufficient showing of good cause to entitle her to review of order terminating her parental rights, providing final decree of adoption had not already been entered.

to make in the first place. An invalid order is unenforceable regardless of Civil Rule 71.

Case re
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1. Infants
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Case remanded.

Rabinowitz, C. J., filed a concurring opinion.

1. Infants \Rightarrow 242

All superior court orders of disposition of child-in-need-of-aid are to be reviewed upon application of interested party if party establishes good cause for review and if child is still ward of court. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(b, c), (c)(1-3), (f).

2. Adoption \Rightarrow 14

Entry of final decree of adoption dissolves any legal relationship between natural parents and their child, and child is no longer ward of court and natural parents cannot then seek review of order that terminated their parental rights. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

3. Infants \Rightarrow 242

So long as child remains a ward of court, his or her natural parents are entitled to review of order terminating their parental rights upon showing of good cause for hearing, and good cause can be established if parents show that it would be in best interests of child to resume living with them because they have sufficiently rehabilitated themselves that they can provide proper guidance and care for the child. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

4. Infants \Rightarrow 242

Where mother on applying for hearing before superior court indicated that as result of 14-month rehabilitation program she had overcome problems leading to termination of her parental rights and also

1. AS 47.10.080(c) provides in part:

If the court finds that the minor is a child in need of aid, it shall

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the

indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing warm and loving home for her child, same was sufficient showing of good cause to entitle her to review of order terminating her parental rights, providing final decree of adoption had not already been entered. AS 20.15.130(a), 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

Daniel N. Branch, Alaska Legal Services Corp., Bethel, for appellant.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., CONNOR, BUSKE and MATTHEWS, JJ., and DIMOND, Senior Justice.

OPINION

DIMOND, Senior Justice.

When Rita T.'s minor daughter C. L. T., was two years old, Rita and her boyfriend burned the child with a cigarette and beat her with a belt and a stick. As a result of these events, proceedings were commenced in superior court to terminate Rita's parental rights. After hearings in 1976 and 1977, the superior court adjudged C. L. T. to be a neglected child and committed her to the custody of the Department of Health and Social Services. The superior court terminated Rita's parental rights under subdivision (c)(3) of AS 47.10.080.¹ Rita appealed to this court and we affirmed the judgment. *In re C. L. T.*, 597 P.2d 518 (Alaska 1979).

In her first appeal, Rita contended that she was entitled to a review of the order terminating her parental rights. We held

parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

that the issue was not properly before this court because Rita had not requested a hearing on the matter in the superior court. *In re C. L. T.*, 597 P.2d at 601. Rita subsequently applied for a hearing and the superior court denied the application without explanation. Rita has again appealed to this court. We now consider whether she is entitled to a review by the superior court of its order which terminated her parental rights.

AS 47.10.080(f) governs the review by the superior court of its orders relating to delinquent children and children in need of aid (identified as neglected children before the statute was amended). It states:

A minor found to be delinquent or a child in need of aid is a ward of the state as long as he is committed to the department [of health and social services] or the department has the power to supervise his actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

This subsection contains two separate provisions for the review of orders made under AS 47.10.080. The subsection first provides

2. Subsection (b), which is not relevant here, is a lengthy section dealing generally with the dispositive phase of a hearing after a minor is found delinquent. Subsections (c)(1) and (2), provide, in pertinent part:

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

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two

that orders made under AS 47.10.080(b), (c)(1) or (c)(2)² shall be reviewed automatically each year, or more frequently if necessary. The subsection then provides that orders shall be reviewed upon the application of certain interested parties, such as the minor's parents, when the application establishes good cause for the review. It is clear that orders made under (c)(3) are not entitled to automatic review, inasmuch as subsection (f) specifies which orders are entitled to this review and orders under (c)(3) are not included within the list. There is no similar enumeration of which orders are entitled to review upon a showing of good cause, and the language of the subsection does not clearly indicate whether orders made pursuant to (c)(3) are to be included or not for this type of review.

[1] An examination of public policy and the purposes of title 47 as it relates to children, however, convinces us that all orders made pursuant to AS 47.10.080, including orders under subsection (c)(3), are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. AS 47.06.060 provides as follows:

The purpose of this title as it relates to children is to secure for each child the care and guidance, preferably in his own home, that will serve the moral, emotional, mental, and physical welfare of the child and the best interests of the community; to preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only as a last resort when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the child is removed from his family, to secure for him adequate custody and care.

years . . . except that the department may petition for and the court may grant in a hearing . . . two-year extensions of commitment which do not extend beyond the child's 18th birthday if the extension is in the best interest of the minor and the public; . . .

(2) order the minor released to his parents, guardian, or some other suitable person

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We believe that an interpretation of subsection (f) which permits the review of an order that terminates parental rights is most consonant with these purposes because it provides an opportunity for the child to resume living with his or her parents when the parents become capable of providing "adequate custody and care" for the child. While it may not be true of all, some parents are capable of changing and overcoming the problems that caused the termination of their parental rights. For those who can now provide the care and guidance "that will serve the moral, emotional, mental and physical welfare of the child," AS 47.05.060, good cause exists for reviewing the order that terminated their parental rights. Many children who become wards of the court when their parents' rights are terminated are not adopted and they therefore remain wards of the court throughout their minority. Permitting a renewal of the relationship between the child and his parents if the child is still a ward of the court and the parents have undergone a substantial rehabilitation fulfills the purposes of title 47 as much, if not more, than permitting the child to spend his or her entire minority in a succession of foster homes.

[2] We note that AS 47.10.080(c)(3) requires the Department of Health and Social Services to attempt to find a permanent placement for the child when the parental rights of his natural parents have been terminated,³ and subdivision (d) of that statute authorizes the Commissioner of Health and Social Services to consent to the adoption of the child.⁴ These subsections indicate a leg-

islative intent that permanent homes be found for the children so that a stable family life can be created for them. Our holding in this case does not conflict with this purpose. Once the child has been adopted, he or she is no longer a ward of the court and the natural parents cannot seek review of the order that terminated their parental rights. The entry of a final decree of adoption dissolves any legal relationship between the natural parents and their child,⁵ and, therefore, no relationship exists which could be renewed if the order terminating the parental rights were reviewed.

[3, 4] We conclude that as long as a child remains the ward of the court, under AS 47.10.080(f) his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child.

When Rita applied for a hearing before the superior court, she indicated that as a result of a fourteen-month rehabilitation program she has overcome the problems that led to the termination of her parental rights. She also indicated that professional counselors, social workers and others would be able to establish that she is now capable of providing a warm and loving home for C. L. T. This is a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if C. L. T. has not yet been adopted.⁶

3. AS 47.10.080(c)(3) provides in relevant part that "the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child."

4. AS 47.10.080(d) states: "An order issued under (c)(3) of this section authorizes the commissioner of health and social services or his designee or the guardian of the person of the child to consent to the adoption of the child."

5. AS 20.15.130(a) provides in relevant part:

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

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and his relatives, including his natural parents, so that the adopted person thereafter is a stranger to his former relatives for all purposes

6. We note that at the time of Rita's application for a hearing proceedings for the adoption of C. L. T. had been commenced. If a final decree of adoption has already been entered, Rita's request for a hearing should be denied.

We REMAND this case to the superior court for further proceedings consistent with this opinion.

RABINOWITZ, Chief Justice, concurring.

I agree with the court's construction of AS 47.10.080(f) that a natural parent whose parental rights have been terminated has the right to a review of the order terminating parental rights upon a showing of good cause.

However, I would also grant a hearing to Rita T. to review the original termination order under the significantly stricter standards of the new statute, regardless of whether or not C. L. T. has now been adopted. The new statute became effective less than four months after the order terminating Rita T.'s parental rights was entered under the former statute.

In the Matter of J. M. and M. M., 573 P.2d 1376, 1378-79 (Alaska 1978), holds that the repeal of a former statute and adoption of a new statute with significantly stricter standards constitute good cause for review of a judgment of dependency, and that children adjudged dependent under AS 47.10.010(a)(5) prior to its repeal are entitled to a hearing under the stricter standards of the new AS 47.10.010(a). Since under the court's decision in the case at bar we have held that good-cause review is available in a termination case, I conclude that Rita T. is entitled to a hearing to review the termination of her parental rights under the standards of the new statute without regard to whether or not C. L. T. has been adopted prior to the hearing. In contrast with the "good cause" of Rita T.'s rehabilitation, the "good cause" justifying the hearing under the new standards is that she has the right to have the new standards applied to the original termination of her parental rights. Thus, the hearing I contemplate would determine whether or not the original termination was valid.



Peter DANA, a/k/a Peter Olsen,
Appellant,

v.

STATE of Alaska, Appellee.

No. 4888.

Court of Appeals of Alaska.

Jan. 22, 1981.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, Ralph E. Moody, J., of sale of one gram of cocaine, and he appealed. The Court of Appeals, Coats, J., held that: (1) trial court did not err in admitting a tape recording of conversation between defendant and undercover officer, despite the defendant's contention that, because the tape was of poor quality and had significant gaps where equipment failed and conversation could not be heard, exculpatory statements which he allegedly made were not on tape and that the tape was misleading, where defendant failed to show any way in which he had been unfairly prejudiced in presenting his defense by admission of the tape; and (2) given limited nature of offer of proof and vague and conclusory manner in which it was stated, trial court did not err in denying defendant's motion for evidentiary hearing on his motion to have venue changed to place where offense occurred on theory of alleged cultural and social differences between that place and places where court offered to have case tried and court did not err in denying the motion; and (3) although defendant sold a small quantity of cocaine and had a relatively clean record, sentence of four years' imprisonment with two years suspended and fine of \$1,000 was not improper, in view of evidence that defendant possessed 50 to 75 packets similar to one which he sold to undercover officer and which contained cocaine and that defendant told undercover officer he had been

in the business
the cocaine fro

Affirmed.

1. Criminal Law

When trials of statutory offenses based on venue based on special differences in offense was alleged which trial is the duty of the court to exclude from class of person changed. AS Rules of Criminal

2. Criminal Law

Given limited and vague and it was stated, denying defendant hearing on his changed to place theory of alleged differences between court offered to did not err in c Art. 1, § 11; AS Rules of Criminal

3. Criminal Law

In prosecution court did not because prosecution agent, did not suggest to him no violation of criminal or prosecution or advising persons from discussing and court ruled by to anything report and indicate deposition of officer proper showing,

(3) an agency; or

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

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

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

(h) The respondent to a petition filed for the termination of parental rights on grounds set out in (c)(3) of this section is entitled to representation in the proceedings by an attorney. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of sexual abuse of a minor or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct. (§ 1 ch 84 SLA 1974; am § 32 ch 21 SLA 1985; am §§ 10 — 13 ch 50 SLA 1987; am § 12 ch 99 SLA 1998)

Revisor's notes. — Formerly AS 20.15.180. Renumbered in 1962.

Effect of amendments. — The 1998 amendment,

effective September 14, 1998, in subsection (c) made minor stylistic changes and a section reference substitution.

NOTES TO DECISIONS

Substantial compliance with consent requirements. — When it is clear that the statutory purpose has been fulfilled, substantial compliance with the requirements governing consent to adoption is sufficient. *S.O. v. W.S.*, 643 P.2d 997 (Alaska 1982), overruled on other grounds, *Rosen v. State Bd. of Pub. Accountancy*, 689 P.2d 478 (Alaska 1984).

Unreasonable refusal to consent to adoption. — The trial court did not err in finding that the father's refusal to consent to the adoption of his child by the maternal grandparents was unreasonable where the father's conviction of the murder of the child's mother had been affirmed and he had only slight chance of prevailing on further appeals. *R.F. v. S.S.*, 928 P.2d 1194 (Alaska 1996).

Applicability of requirement to include statement of right to withdraw. — The inclusion of a statement of right to withdraw requirement of paragraph (b)(1) is not applicable to a consent to adoption. *B.J.B.A. v. M.J.B.*, 620 P.2d 652 (Alaska 1980).

Termination of parental rights. — The language in subsection (a) stating that termination of parental rights can occur "before an adoption proceeding" must be read in conjunction with the "relinquishment" language of subsection (b), which does not contemplate involuntary termination actions, but instead refers to cases in which parents choose to give up their parental rights. *S.J. v. L.T.*, 727 P.2d 789 (Alaska 1986).

Absent statutory authorization, there can be no termination of parental rights and obligations; therefore, 1986 termination order was erroneously entered since it was not entered in a statutorily authorized adoption proceeding or a child in need of aid proceeding. *Perry v. Newkirk*, 871 P.2d 1150 (Alaska 1994).

Conditional relinquishment not statutorily authorized. — Biological mother's relinquishment of parental rights in her child, conditioned on the adoption of the child by named adoptive parents, did not constitute an effective relinquishment of parental rights because conditional relinquishments were not authorized by this section. *Native Vill. of Napaimute Traditional Council v. Terence W.* (In re Adoption of M.W.), 79 P.3d 623 (Alaska 2003).

Revocation before entry of termination order. — Biological mother's relinquishment of parental rights in her child, conditioned on the adoption of the child by named adoptive parents, did not constitute an effective relinquishment of parental rights where the mother revoked her consent before entry of the decree terminating her parental rights. *Native Vill. of Napaimute Traditional Council v. Terence W.* (In re Adoption of M.W.), 79 P.3d 623 (Alaska 2003).

Sexual abuse termination. — The superior court erred in denying stepfather's motion for a hearing on natural father's alleged abuse of his children, since, under paragraph (c)(1), stepfather could properly seek to terminate natural father's parental rights in connection with adoption proceedings as specified in AS 47.10.080 (c)(3). *In re J.B.K.*, 865 P.2d 737 (Alaska 1993).

Conception resulting from sexual assault. — Paragraph (c)(3) expressly authorizes a court to terminate a biological father's parental rights in an adoption proceeding if it finds that his child's conception resulted from an act of sexual assault and that termination is in the child's best interests. *B.F. v. D.M.*, 15 P.3d 258 (Alaska 2001).

"Parent who does not have custody". — A parent who has rights to visitation is not a parent who

26.33.280

DOMESTIC RELATIONS

C.J.S. Health and Environment § 41.

Appeal, time allowed for filing notice,
see Wash.Prac. vol. 3, Orland and
Tejland, RAP 5.2.

26.33.290. Decree of adoption—Duties of state registrar of vital statistics

Upon receipt of a decree of adoption, the state registrar of vital statistics shall:

(1) Return the decree to the court clerk if all information required by RCW 26.33.250 is not included in the decree;

(2) If the adoptee was born in a state other than Washington, or in a territory of the United States, forward the certificate of adoption to the appropriate health record recording agency of the state or territory of the United States in which the birth occurred;

(3) If the adoptee was born outside of the United States or its territories, issue a new certificate of birth by the office of the state registrar of vital statistics which reflects the information contained in the decree.

Enacted by Laws 1984, ch. 155, § 29, eff. Jan. 1, 1985.

Cross References

Vital statistics, see § 70.58.005 et seq.

Library References

Health and Environment § 41,
Statutes § 73,
WESTLAW Topic Nos. 199, 360.

C.J.S. Health and Environment § 41,
C.J.S. Statutes §§ 130 to 134, 140.

26.33.295. Open adoption agreements—Agreed order.—Enforcement

(1) Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents.

(2) Agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section. The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any birth parent whose parental rights have not previously been terminated, and, if the child is in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian ad litem in a

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Washington

ADOPTION

26.33.300

proceeding under this chapter or in any other child-care body proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the child adoptee, the adoptive parents, and a birth parent or parents as agreed upon and as set forth in the proposed order, would be in the child adoptee's best interests.

(3) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.

(4) An agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the child adoptee, and that: (a) The modification is agreed to by the adoptive parent and the birth parent or parents; or (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

Enacted by Laws 1990, ch. 285, § 4.

Historical and Statutory Notes

Purpose—Purpose—Severability—
Laws 1990, ch. 285: See Historical and
Statutory Notes following § 74.04.005.

United States Supreme Court

Adoption, federal due process rights of
adoptive parents and child, habeas cor-
pus ordering surrender of custody, see
O'Connell v. Kirchner, 1995, 115 S.Ct.
891, 130 L.Ed.2d 873.

26.33.300. Adoption statistical data

The department of health shall be a depository for statistical data concerning adoption. It shall furnish to the clerk of each county a data card which shall be completed and filed with the clerk on behalf of each petitioner. The clerk shall forward the completed cards to the department of health which shall compile the data and publish reports summarizing the data. A birth certificate shall not be issued showing the petitioner as the parent of any child adopted in the state of Washington until a data card has been completed and filed. Enacted by Laws 1984, ch. 155, § 30, eff. Jan. 1, 1985. Amended by Laws 1990, ch. 146, § 5; Laws 1991, ch. 3, § 288.

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OREGON

109.305

DOMESTIC RELATIONS

as may be required by ORS 109.312 or 109.342. [1993 c.717 §8]

109.305 Interpretation of adoption law agreement for continuing contact.

(1) The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of this state.

(2) Nothing in the adoption laws of this state shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or the adoptive parents. As used in this subsection, "birth relatives" includes birth parents, grandparents, siblings and other members of the child's birth family.

(3) Failure to comply with the terms of an agreement made under subsection (2) of this section is not grounds for setting aside an adoption judgment or revocation of a written consent to an adoption.

(4)(a) An agreement made under subsection (2) of this section may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

(b) The court may modify an agreement made under subsection (2) of this section if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:

(A) The modification is agreed to by all parties to the original agreement; or

(B) Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement. [1967 c.710 §15; subsections (2), (3) and (4) enacted as 1993 c.401 §1; 2003 c.578 §142]

Note: 109.306 (3) to (4) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.307 Court required to act within six months of filing of petition for adoption; duty of clerk. (1) Not earlier than provided in ORS 109.309 and not later than six months from the date on which the petition for leave to adopt another is filed under ORS 109.309, the court before which the petition is pending shall hold a hearing and shall:

(a) Enter a judgment under ORS 109.350;

(b) Continue the guardianship or legal custodial status of the child;

(c) Waive the child to a court having jurisdiction under ORS 419B.100 or 419C.005; or

(d) Take such other action as the court considers necessary.

(2) The court before which the petition is pending, on its own motion, may take testimony from or confer with the child to be adopted and may exclude from the conference the parents or guardians of the child, the proposed adoptive parents and other persons if the court finds that such action would be likely to be in the best interests of the child. However, the court shall permit an attorney for each party to attend the conference, and the conference shall be reported.

(3) The clerk of the court before which petitions for leave to adopt another are pending shall periodically notify the court and the Department of Human Services of all such petitions which have been pending before the court for more than six months without final disposition pursuant to subsection (1) of this section.

(4) The clerk of the court before which a petition is filed for leave to adopt a minor child shall provide to the Director of Human Services a copy of the court's order of disposition of the petition. [1965 c.188 §2; 1965 c.369 §8; 1967 c.814 §2; 1968 c.33 §22; 1969 c.548 §117; 2003 c.578 §143]

109.308 Confidentiality of petitioners. In any adoption proceeding that is contested or in which citation is required to be served, the court may preserve the confidentiality of the names and addresses of the petitioners for the adoption if it finds that to do so is in the best interests of the child. [Formerly 109.285]

Note: 109.308 was made a part of ORS chapter 109 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

109.309 Petition for adoption; residency requirements; where filed; venue; notice; placement report; fee; rules. (1) Any person may petition the circuit court for leave to adopt another person and, if desired, for a change of the other person's name. One petitioner, the child, one parent or the person, who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) must be a resident of this state. As used in this subsection, "resident" means a person who has resided in this state continuously for a period of six months prior to the date of the petition.

(2) Except as provided in subsection (3) of this section, when the petition is for the adoption of a minor child, the adoption shall be governed by the Uniform Child Custody

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THE SUPREME COURT OF THE STATE OF ALASKA

ALDEN H., SR.,)	
)	Supreme Court No. S-11450
Appellant,)	
)	Superior Court No.
v.)	3AN-98-00357/358 CP
)	
STATE OF ALASKA, OFFICE OF)	
CHILDREN'S SERVICES,)	<u>OPINION</u>
)	
Appellee.)	[No. 5874 - March 4, 2005]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Peter A. Michalski, Judge.

Appearances: Chad W. Holt, Holt & Brockberg, LLC, Anchorage, for Appellant. Michael G. Hotchkoin, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee State of Alaska. Lealie Dickson, Assistant Public Advocate, Anchorage, for Appellee Guardian *ad Litem*.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

CARPENETI, Justice.

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Clerk of the Appellate Courts

I INTRODUCTION

Alden H. is the father of two severely troubled boys, Alden, Jr. and Neil.¹

¹ Pseudonyms have been used for all family members throughout this opinion in order to protect their identities.

In 2000 Alden voluntarily relinquished his parental rights.² He is now attempting to withdraw his relinquishment and re-enter his sons' lives. Alden moved before the superior court for a hearing to review his relinquishment and for an order to enforce a provision of the relinquishment purporting to grant him visitation rights. The superior court denied both motions and Alden appeals. Finding no error, we affirm.

II. FACTS AND PROCEEDINGS

A. Facts

Alden H. is the father of Alden H., Jr. and Neil H. The boys' mother is Sara B. She is not a party to this action. Alden and Sara lived together in Anchorage with Alden Jr., Neil, and Sara's two older children by a different father, Zander and Nancy. The Alaska Department of Health and Social Services³ had received reports of substance abuse, neglect, and domestic violence but had lost track of the family because of frequent moves. On June 4, 1998 the Anchorage Police Department responded to a report that a child had been left unattended in a stroller all day. The police discovered Neil in a stroller in the driveway of the family's home, and found Sara inside, asleep, and smelling of alcohol.

After this incident, the family fled to a Fairbanks campground. On June 11, 1998 Zander ran to the police recounting a variety of abuses — including being forced to drink alcohol and ingest hallucinogenic mushrooms, and physical abuse by Alden. At the

² Alden voluntarily relinquished his parental rights pursuant to AS 25.23.180(b): "All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing"

³ Appellee Office of Children's Services is the successor to the Division of Family and Youth Services in the Alaska Department of Health and Social Services. It is referred to in this opinion as "the department."

time, Zander was reportedly filthy and suffering from bronchitis. All four children were taken into state custody. Like Zander, the others were "filthy, with dirt in their hair, ears, eyes, mouth and genital areas." Neil was diagnosed with conjunctivitis. Nancy later reported that Alden had sexually abused her. Zander added that Alden had threatened to kill Zander and Nancy if Nancy ever reported the abuse.

The department developed a family reunification plan for Alden and Sara. The plan required both parents to work toward permanent sobriety, receive counseling for anger management, and attend parenting classes. Neither parent complied. In 1999 Alden spent ninety days in jail on a domestic violence charge. After his release, he was arrested on federal drug charges related to the manufacture of methamphetamines. He was later convicted and sentenced to seventy months in prison.

In June 2000 the department placed the boys with Alden's mother, Meg H. The department commenced proceedings to terminate the parental rights of Alden and Sara in August 2000. On December 27, 2000, prior to trial, Alden executed a voluntary relinquishment of his parental rights from federal prison in California. The relinquishment specified that Alden retained the right to contact his children subject to the discretion of the adoptive parents. The relinquishment also stated that the children would be placed for adoption with Meg, and that if Meg ever became unable to care for the boys for any reason, the department would contact Alden, and give him an opportunity to request the withdrawal of his relinquishment subject to the approval of the department. Sara's parental rights were involuntarily terminated on January 22, 2001.

The boys were removed from Meg's home in October 2001 following reports of abuse. The children were subsequently separated and placed in therapeutic foster care. Both suffer from severe emotional and behavioral problems; each has been through several foster homes. According to therapists who have treated Alden Jr. and

Neil, "[v]ery skilled therapeutic foster parents with additional case manager and activity therapy support are, at times, taxed to their limit [in] maintaining the boys adequately." These therapists believe that an appropriate care giver would need "stellar therapeutic parenting skills, saintly patience, and an extensive working knowledge of developmental issues of emotionally disturbed children."

Alden was transferred from prison to a halfway house in Spokane, Washington in February 2002. While incarcerated, he stopped drinking and taking drugs. He reportedly remains sober. Alden was released from federal custody in August 2002. As of May 2003, he planned to marry a woman he had met at the halfway house. His fiancée has four children — including a twenty-year-old daughter with a young child. He currently works as an independent contractor in the Spokane area. Alden learned that the boys had been removed from Meg's home in April 2002 and promptly requested the withdrawal of his relinquishment.

B. Proceedings

Alden moved for a hearing to review the order terminating his parental rights on January 5, 2004. He claimed that the relinquishment had been conditioned on the permanent placement of his boys with Meg and that the relinquishment should be withdrawn because that placement had failed. He also argued that he had a right to withdraw his relinquishment pursuant to *Rita T. v. State*⁴ because he had overcome his substance abuse problems and was gainfully employed. On January 12, 2004 he added a motion to enforce visitation rights he claimed were contained within the relinquishment agreement. The department opposed both motions.

Alden's motions were reviewed by William C. Hitchcock, Standing Master of Anchorage Children's Court. Neither party requested oral arguments or an evidentiary

⁴ 623 P.2d 344 (Alaska 1981).

hearing before Master Hitchcock. Briefing was completed on February 25, 2004 and Master Hitchcock issued his recommendation shortly thereafter. The master recommended denying both of Alden's motions. He found that the relinquishment agreement was not conditioned on the successful placement of the boys with Meg, that Alden had failed to show good cause for a *Rita T.* hearing, and that the department soundly exercised its discretion by refusing to allow Alden to have contact with his children. Alden objected to Master Hitchcock's recommendations and asked for a hearing *de novo* before the superior court. On March 30, 2004, Superior Court Judge Peter A. Michalski adopted Master Hitchcock's recommendations as the order of the court without alterations and without specifically ruling on Alden's demand for a hearing. Alden appeals from this decision.

III. STANDARD OF REVIEW

Ordinarily, we review the validity of a relinquishment *de novo*.⁶ However, this issue was raised for the first time on appeal. "Issues not raised in the trial court shall not be considered on appeal, except for plain error. Plain error exists 'where an obvious mistake has been made which creates a high likelihood that injustice has resulted.'"⁶ We review the superior court's decision to enforce the relinquishment for plain error.

We review the factual conclusions of a lower court for clear error.⁷ We will find clear error "if a review of the entire record in the light most favorable to the party prevailing below leaves us 'with a definite and firm conviction that a mistake has been

⁶ *In re Adoption of Keth M. W.*, 79 P.3d 623, 625 (Alaska 2003).

⁶ *D.J. v. P.C.*, 36 P.3d 663, 667-68 (Alaska 2001) (quoting *Broeckel v. State, Dep't of Corrections*, 941 P.2d 893, 897 (Alaska 1997)).

⁷ *Brynna B. v. State, Dep't of Health & Soc. Servs.*, 88 P.3d 527, 529 (Alaska 2004).

made.⁸

A finding that a party failed to show good cause that a *Rita T.* hearing should be held is reviewed for abuse of discretion.⁹

We review the superior court's decision to deny *de novo* review of the master's report also for abuse of discretion.¹⁰ We will find an abuse of discretion only if, based on a review of the whole record, we are left with a definite and firm conviction that a mistake has been made.¹¹

IV. DISCUSSION

A. Enforcing the Relinquishment Was Not Plain Error.

Alden relinquished his parental rights subject to AS 25.23.180(b). We have recognized that the termination of parental rights did not exist at common law and that no termination is valid without statutory authorization.¹² In *In re Adoption of Keith M. W.*,¹³ we noted that AS 25.23.180(b) authorizes only the complete relinquishment of

⁸ *Id.* (quoting *A.B. v. State, Dep't of Health & Soc. Servs.*, 7 P.3d 946, 950 (Alaska 2000)).

⁹ *C.L. v. P.C.S.*, 17 P.3d 769, 772 (Alaska 2001) (finding of good cause to deviate from Indian Child Welfare Act (ICWA) placement preferences is reviewed for abuse of discretion).

¹⁰ *Faulkner v. Goldfuss*, 46 P.3d 993, 996 (Alaska 2002).

¹¹ *Stinson v. Holder*, 996 P.2d 1238, 1242 (Alaska 2000).

¹² *Perry v. Newkirk*, 871 P.2d 1150, 1153 (Alaska 1994) (citing Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443 (1972)); see also *S.J. v. L.T.*, 727 P.2d 789, 797 (Alaska 1986).

¹³ 79 P.3d 623 (Alaska 2003).

parental rights.¹⁴ The statute does not authorize conditional or partial relinquishments.¹⁶

Alden argues that his voluntary relinquishment was conditional because it required the adoptive placement of his boys specifically with his mother, or that it was partial because he reserved a right of contact with his children, or both. Because conditional and partial relinquishments are not authorized by AS 25.23.180(b), Alden contends that the relinquishment was void and that it was error for the superior court to enforce it. Since Alden did not raise this issue before the superior court, we review for plain error.¹⁶ Plain error exists "where an obvious mistake has been made which creates a high likelihood that injustice has resulted."¹⁷ Because the relinquishment was not conditioned on the placement of his children with his mother, and because the master's finding that "the relinquishment was not conditioned on the provision of visitation rights" was not a mistake (much less an obvious mistake), we affirm the superior court.

1. The relinquishment agreement was not conditioned on placement of the children with Alden's mother, Meg H.

Master Hitchcock found "nothing which supports [Alden's] assertion that failure of the placement gave rise to an automatic right to withdraw the relinquishment and thus vacate the termination order." We agree. The relinquishment contained no language specifying that the relinquishment is void if the placement with Meg H. should

¹⁴ *Id.* at 627.

¹⁵ *Id.*

¹⁶ *D.J. v. P.C.*, 36 P.3d 663, 667-68 (Alaska 2001). Alden concedes that the plain error standard applies.

¹⁷ *Id.* (quoting *Broeckel v. State, Dep't of Corrections*, 941 P.2d 893, 897 (Alaska 1997)).

fail." The relinquishment actually stated that the placement with Meg H. itself was conditional. According to the agreement, the department must receive "a positive home study . . . before the Department can consent to adoption of [Alden Jr.] and [Neil] by [Meg H.]" The agreement also allowed Alden to request the withdrawal of his relinquishment if the placement with Meg H. failed, but it explicitly noted that Alden could withdraw his relinquishment only if the department agreed to allow it. The relinquishment was therefore not conditioned on the successful placement of the children for adoption with Meg H.

2. Enforcing the relinquishment in light of language purporting to preserve a right of contact was not plain error.

Alden also argues that the relinquishment is void because it retained a right of contact. We disagree for two reasons. First, Master Hitchcock concluded that the relinquishment agreement did not preserve a right of contact. This interpretation is not obviously mistaken. Second, even assuming that the relinquishment agreement did retain Alden's right of contact, Alden cannot be heard now to claim that it was an obvious mistake, for in the superior court he adamantly insisted that the court enforce the agreement.

i. Master Hitchcock did not make an obvious mistake by interpreting the relinquishment agreement as not preserving a right of contact.

Master Hitchcock concluded that the relinquishment agreement did not preserve Alden's right to contact his children. Because Master Hitchcock was not obviously mistaken in his interpretation of the relinquishment, there is no plain error.

¹⁶ The relinquishment deemed "conditional" in *Keith M.W.* contained such language: "If the adoption [by the Wilsons] is not completed, I understand that this relinquishment will be voided." 79 P.3d at 627.

The relinquishment agreement stated generally that Alden retained certain rights:

I give this relinquishment in accordance with AS 25.23.180. Subject only to those rights specifically retained as set forth in this relinquishment, I voluntarily relinquish to the Department of Health and Social Services . . . any and all rights and responsibilities of a parent with respect to these children.

(Emphasis added.) The right of contact was the only retained right specifically mentioned by the relinquishment.

[Paragraph] 7. I retain the right of contact with my children to be arranged in advance with the adoptive parents, in their sole discretion based on the best interests of the children. Such contact includes visitation, writing letters, and the exchange of photographs and gifts.

Under this provision, Alden's "right of contact" with his children is subject to the "sole discretion" of the adoptive parents in determining the children's best interests. It is, therefore, quite circumscribed. Master Hitchcock accordingly determined that this paragraph did not actually preserve a "right" of contact. He found that "the relinquishment was not conditioned on the provision of visitation rights. Paragraph 7 of the document provides a 'right of contact' but conditions it on the discretion of the adoptive parents 'based on the best interests of the children.'" Because this interpretation was not mistaken (much less obviously mistaken), we decline to find the enforcement of the relinquishment to be plain error.¹⁹

¹⁹ Master Hitchcock did not address whether the relinquishment merely expressed Alden's desire that any future adoption decree include a visitation provision. Nor do we. Because superior courts are afforded discretion to fashion open adoption decrees, AS 25.23.130(c), *Matter of A.F.M.*, 960 P.2d 602, 605-06 (Alaska 1998), a natural parent is entitled to request the inclusion of visitation rights in a future decree. (continued...)

II. Even assuming that the relinquishment improperly purported to preserve a right of contact, the superior court did not commit plain error in enforcing the relinquishment.

Assuming *arguendo* that the relinquishment agreement improperly purported to preserve a right of contact, enforcing the relinquishment was not an obvious mistake because Alden demanded that Master Hitchcock and the superior court enforce the relinquishment agreement. On appeal, Alden claims that the superior court made an obvious mistake by not recognizing that Alden was asking for the enforcement of a void agreement. This position is not tenable. According to Alden, the superior court's purported mistake consisted of failing to void a "conditional" relinquishment *sua sponte* even though Alden himself demanded enforcement below. There is no obvious mistake under these circumstances.²⁰

B. The Master's Finding that Evidence Supported the Department's Decision To Deny Visitation Was Not Clearly Erroneous.

Alden has not been allowed any contact with his children since they were removed from Meg's home in October 2001. Alden argued below that he "should be allowed reasonable visitation with his children" in accordance with the terms of the relinquishment agreement. Master Hitchcock upheld the department's decision to deny visitation. He ruled "that the Department is soundly exercising its discretion, based on the expert opinion of the children's therapists, in presently restricting contact between

¹⁹ (...continued)

Alaska's general prohibition on conditional relinquishments forbids, however, the conditioning of a voluntary relinquishment of parental rights on the eventual inclusion of such visitation rights.

²⁰ See *Barrett v. State*, 772 P.2d 559, 568-69 n.10 (Alaska App. 1989) (discussing doctrine of invited error: party that requested instruction not entitled to obtain reversal based on giving of instruction).

[Alden] and the children."

On appeal, Alden asserts that Master Hitchcock's finding is clearly erroneous because "[t]here is no evidence which supports the continued denial of [Alden's] right to contact." Because the record contains ample evidence supporting Master's Hitchcock's finding, we affirm.

Master Hitchcock reviewed various documents submitted by the department, including the recommendations of the children's therapists and a psychological evaluation of Alden. (Master Hitchcock also reviewed letters and certificates submitted by Alden.) A review of this evidence does not leave us with the firm conviction that Master Hitchcock was mistaken. Contrary to Alden's assertion that "no evidence" supports the denial of visitation, the documentary evidence shows clearly that contact is not currently in the best interests of the children. Moreover, Alden has not submitted any evidence demonstrating that visitation serves the best interests of the children.

Master Hitchcock reviewed a December 1, 2003 letter and a February 19, 2004 affidavit from an outpatient therapist who had treated Alden Jr. since May 2001. In the letter, the therapist wrote: "[Alden Jr.] should not have any contact with his biological father at this time. 'Any contact' would include telephone and written correspondence as well as face to face." The therapist listed several reasons why there should be no contact:

Contact at this time could destabilize [Alden Jr.] . . . [Alden Jr.] would have increased difficulty with concentration, attention, impulsivity, and oppositional behavior . . . [Alden Jr.] would use the concept of a future relationship with his biological father as a reason to defy adult authority figures and act out with negative behavior towards others. In the past when [Alden Jr.] acts out he is frequently a danger to himself and others.

He concluded that "[Alden Jr.] should be successfully placed in a permanent placement for a minimum of one year prior to considering introducing the relationship of his biological father." He repeated these conclusions in his affidavit.

The department also submitted a February 19, 2004 affidavit from a therapist who had treated Neil for the past three years. The affidavit described Neil as a "severely emotionally disturbed child who is very aggressive, oppositional and defiant, has ADHD, pervasive development delays, enuresis, encopresis and attachment disorder." The therapist believed that Neil "should not have any contact with his biological father." In her opinion, "[c]ontact with his biological father will result in increased difficulties maintaining [Neil] in his home as [Neil] would become increasingly aggressive, defiant and oppositional, his enuresis and encopresis will increase tremendously." Moreover, before there is any consideration of introducing Neil to his father, "[Neil] needs to show signs of stability and progress with his behavioral issues"

Both therapists described the results of reintroducing the children to their father in a joint letter. The letter stated that "[i]t is difficult to evaluate the possible father-son relationship that the boys might develop in the future without having any credible evaluations of [Alden, Sr.]." They warned, however, that "[a]ny contact, and certainly any inappropriate contact, that the boys might have with their biological father could cause them to regress significantly Hence, beginning a relationship with him at this time . . . is only going to make the boys' lives more confusing and problematic."

Master Hitchcock also reviewed documents submitted by Alden in support of his motion to enforce his visitation rights. This evidence consisted of a letter from an outpatient clinic that had treated Alden for his drug problems following his release from federal prison, a letter from a halfway house where Alden had stayed after release from

prison, various occupational and religious certificates, and a letter from Alden's probation officer. These documents supported Alden's contention that he is sober and working. They did not, however, provide any evidence of his children's needs or any evidence that contact with Alden serves their best interests.

Because the record contained substantial evidence that even minimal contact between Alden and his children would have negative consequences, and because Alden submitted no evidence that contact would serve their best interests, there is no hint of clear error on this issue.

C. Alden Is Not Entitled to Relief Under *Rita T. v. State*.²¹

Rita T. v. State announced that a parent whose parental rights have been involuntarily terminated is entitled to a hearing to review the termination order, upon a showing that the parent has overcome the problems that lead to termination and is now capable of properly caring for the child.²² This entitlement promotes the purposes of title 47 of the Alaska Statutes by enlarging the potential supply of permanent care givers and reuniting families.²³ It was based on the proposition that allowing a parent who is capable of providing proper care to regain her parental rights is preferable to allowing a child who remains "a ward of the court . . . to spend his or her entire minority in a

²¹ 623 P.2d 344 (Alaska 1981). The department's concern that *Rita T.* reflects an anachronistic emphasis on family reunification is misplaced. *Rita T.* does not privilege a parent's desire to regain custody over the best interests of the child. Entitlement to a *Rita T.* hearing requires a parent to show both that she is rehabilitated and that she is currently capable of providing "the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child[.]'" *Id.* at 347 (quoting AS 47.05.060).

²² *Id.* at 347.

²³ *Id.*

succession of foster homes."²⁴

We have never decided whether the right announced in *Rita T.* is available to parents who voluntarily relinquish their parental rights pursuant to AS 25.23.180 and we need not address this issue here. Even assuming that Alden could seek relief under *Rita T.*, the superior court did not abuse its discretion by holding that Alden failed to show good cause.

Good cause for a *Rita T.* hearing can "be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child."²⁵ A parent can provide proper guidance and care if he can "provide the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child[.]'"²⁶

Master Hitchcock concluded that Alden had not shown good cause:

Looking at the factual basis for the adjudication of these Children in Need of Aid, and the subsequent treatment efforts of [Alden], I find the evidence does not support a finding that he has 'sufficiently rehabilitated' in order to reassume custody of these children. I base that conclusion in large part upon the special needs of the children and the expert opinions of their therapists. I do not find that good cause has been shown to warrant setting aside the relinquishment

Alden contends that the superior court abused its discretion because Master Hitchcock's finding relied on the reports of the children's therapists, who had never met Alden. Accordingly, the therapists' recommendations relied only on their contact with

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* (quoting AS 47.05.060).

the children and their knowledge of the children's history.

Master Hitchcock's partial reliance on the opinions of the children's therapists was wholly appropriate.²⁷ Alden's ability to adequately care for his children depends not only on his rehabilitation but also on the needs of his children. *Rita T.* does not deem a parent who has "rehabilitated" himself automatically capable of caring for his children. *Rita T.* requires a parent to have the capability of providing for the individual needs of the child. Good cause exists only for those parents "who can now provide the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child'"²⁸ Consequently it is not only appropriate but necessary for a court to consider the needs of the child who is the subject of a *Rita T.* motion. To do that, the court properly considered evidence from the children's therapists.

Master Hitchcock's finding that Alden had not shown good cause to believe that he was capable of providing for the needs of his children was well supported by the record. According to the reports submitted by the children's therapists, Alden's children have very demanding needs: "Very skilled therapeutic foster parents with additional case manager and activity therapy support are, at times, taxed to their limit [in] maintaining the boys adequately." The therapists opined that a care giver for the children should have "stellar therapeutic parenting skills, saintly patience, and an extensive working knowledge of developmental issues of emotionally disturbed children."

The psychological evaluation of Alden conducted by Dr. Thomas McKnight suggests that Alden's parenting abilities do not approach these requirements. Dr.

²⁷ Because Master Hitchcock reviewed evidence both of Alden's rehabilitation and parenting capabilities and the special needs of his children, we do not decide whether a court would be justified in relying solely upon evidence provided by a child's therapist.

²⁸ *Rita T.*, 623 P.2d at 347.

McKnight opined that Alden most likely has "limited to no insight into the needs of his children or the realities of a parent-child relationship." Additionally, he concluded that Alden's "desire to assume parent responsibility for his boys is admirable but there is no reasonable psychological probability he can provide the environment, support, and stability these children need"

Even if Alden's children did not have special needs, Master Hitchcock's decision would not have been an abuse of discretion because the evidence offered by Alden to show that he had overcome the problems that led the department to institute termination proceedings was weak. The department's original case plan for family reunification required that Alden (1) "complete an anger management assessment and follow all recommendations," (2) "attend on an ongoing basis AA/NA/CA meetings," (3) "complete a state certified substance abuse program," and (4) "enter and complete parenting class." Alden submitted evidence to Master Hitchcock indicating that he had completed a substance abuse program. The evidence that he complied with the other criteria was flimsy.

The only evidence in the record that Alden attended twelve-step programs, and the main evidence that he addressed his anger management issues²⁹ or attended

²⁹ Alden also contends that notes from a telephone conversation with the case worker for his children, Heather Pough, constituted evidence that he completed anger management classes. The notes read: "4/23/02 TCT [Alden H] - 6:30 pm . . . Released now, in halfway house . . . 500 in patient program / 40 hr drug class / Anger mngmt. Currently checking into parenting classes. April 19th 1999 — clean/sober." It is not at all clear from these notes that Heather Pough was intending to record that Alden had told her that he had completed anger management classes. Moreover, even if it was clear that Alden communicated to Pough that he had done so, this fact does not establish that Alden actually completed anger management classes.

parenting classes,³⁰ is found in a May 10, 2002 letter from James Barrett.³¹ Master Hitchcock had good reasons to question Barrett's credibility. In preparation for his psychological evaluation of Alden, Dr. McKnight reviewed a "psychological report" of Alden prepared by Barrett. Dr. McKnight noted in his report that Barrett was unqualified to conduct a psychological evaluation — and may have done so in violation of Washington law. Additionally, Dr. McKnight determined that Barrett performed the evaluation incompetently. Consequently, it was reasonable for Master Hitchcock to discount the credibility of Barrett's letter.

Even if Barrett was credible, the letter was scant evidence of Alden's rehabilitation. It asserted that he had completed anger management classes while incarcerated, attended two twelve-step meetings per week, and that one of the primary goals of Alden's 500 hour Drug Abuse Program was to "improve parenting skills." It did not discuss the scope of Alden's anger management classes or the extent to which the Drug Abuse Program focused on parenting skills. Additionally, it only reflected Alden's participation in twelve-step programs up until May 2002. There was no indication in the record whether Alden continued to seek treatment after this date. We are not firmly convinced that Master Hitchcock was mistaken based on this evidence.

Because the record demonstrated that Alden did not have the ability to properly care for the special needs of his children, and because the evidence offered by Alden to prove his rehabilitation was weak, the superior court did not abuse its discretion in denying a hearing under *Rita T.*

³⁰ Rough's notes also mention that Alden was "Currently checking into parenting classes." This implies that he had not completed any parenting classes in prison.

³¹ Associate Director of the New Directions Outpatient Clinic, a substance abuse and mental health clinic in Spokane, Washington.

D. The Superior Court Did Not Abuse Its Discretion in Failing To Hold a *De Novo* Hearing.

Alden claims that the superior court erred in denying him a hearing *de novo* to review Master Hitchcock's recommendation that the superior court deny Alden's motion for visitation. Alden first requested a hearing in his objections to Master Hitchcock's report pursuant to Alaska Child in Need of Aid (CINA) Rule 4(f), which states that the "superior court may permit oral argument, order the taking of further evidence, or grant a hearing *de novo*" in response to objections to a master's report or recommendations. By specifying that a superior court "may permit" hearings or oral arguments, CINA Rule 4(f)(1) invests a superior court with discretion to grant or deny such a proceeding.

We conclude that the superior court did not abuse its discretion in denying a hearing. In his objection to Master Hitchcock's report, Alden argued that he should have received an evidentiary hearing "in order to present evidence and cross examine adverse parties and witnesses." Alden failed to mention, however, what new evidence he intended to present at the hearing or explain why such evidence was absent from his submissions to Master Hitchcock. It is within the superior court's discretion to deny a hearing requested for the purpose of presenting unspecified evidence.

Alden also suggested that because he "has submitted a great deal of evidence . . . [a] should at least be presented with the opportunity to present this evidence at a hearing." It is also well within the discretion of the superior court to deny Alden the opportunity to duplicate an earlier presentation of evidence.

Lastly, Alden argued that he should have been allowed to cross-examine witnesses, especially the children's therapists. But Alden does not indicate how an opportunity to cross-examine witnesses would have illuminated the evidence presented. He repeated his argument that the opinions of the therapists were not reliable because

neither of them had met Alden. We have already rejected this argument. Moreover, Alden made this argument in his response to the department's oppositions and Master Hitchcock was aware of it when he made his findings.

Finally, even if the superior court abused its discretion, Alden is not entitled to relief because he has not alleged any prejudice resulting from the superior court's denial of a hearing.³² "A party on appeal who alleges that oral argument was improperly denied must show both that the denial was in error and that the error caused substantial prejudice."³³ Neither in support of his request for a hearing, nor in this appeal, has Alden advanced one argument that he was unable to make before the master or list any evidence that he could not present. He argued only that he deserved to fully present the evidence he had already provided at a hearing and that he should have the opportunity to cross-examine the witnesses. Because Alden has not alleged any prejudice, any error by the superior court in denying a hearing is not reversible.

V. CONCLUSION

Because enforcing the relinquishment was not plain error, because the department did not abuse its discretion in denying Alden contact with his children, because the superior court did not abuse its discretion in denying a *Rita T.* hearing, and because the superior court did not abuse its discretion in denying a *de novo* hearing, we AFFIRM the decision of the superior court.

³² *Bennett v. Hedglin*, 995 P.2d 668, 674 (Alaska 2000).

³³ *Id.* (citing *Cleary Diving Servs., Inc. v. Thomas, Head & Gretsen*, 688 P.2d 940, 942 (Alaska 1984)).

Order Regarding Fees and Costs

Aiden H., Sr. v. State of Alaska, et al.

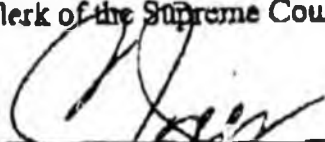
Supreme Court No. S-11450

Date of Order: 3/4/05

Each party is to bear its own costs and attorney's fees in the supreme court in this matter.

Entered at the direction of Justice Carpeneti on 03/04/05.

Clerk of the Supreme Court


Cheryl Jones, Deputy Clerk

cc: Authoring Justice
Trial Court Appeals Clerk/Anchorage

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Sectional Analysis of SB 83/HB 114 (Child in need of aid omnibus)

(Prepared by the Department of Law, February 11, 2005)

HB 114/SB 83 would allow certain privileges to a parent when relinquishing parental rights; allow a child placed out of state while in custody of the Department of Health and Social Services not to be disqualified from receiving a permanent fund dividend on that basis alone; clarify the court's authority with regard to the investigation of abuse or neglect of a child; allow the court to rely on certain expert testimony in the case of an absentee parent, guardian, or custodian; and broaden the definition of "mental health professional."

I. Change to add parental privileges at relinquishment (AS 25.23.180) (Section 1):

Sec. 1: Section 1 provides that a parent may retain certain privileges with respect to a child when relinquishing parental rights, including the ability to have future contact, communication, and visitation with the child. A relinquishment cannot be invalidated, nor a termination order vacated, if a retained privilege has been withheld from the relinquishing parent or if a relinquishing parent fails to exercise a retained privilege.

II. Changes to statute regarding eligibility for a permanent fund dividend (AS 43.23.035) (Section 2):

Sec. 2: Section 2 allows the commissioner of the Department of Revenue to waive the permanent fund dividend's physical presence requirement for an individual who is in the custody of the Department of Health and Social Services and placed outside of the state for medical or behavioral treatment.

III. Changes regarding Department of Health and Social Services' investigation of abuse or neglect of a child (AS 47.10.020) (Sections 3 and 4):

Sec. 3: Section 3 amends the section regarding the investigation of the abuse or neglect of a child to describe when the court shall appoint a person or agency to make a preliminary inquiry and report for the information of the court, and to permit the court to issue orders necessary to help a person, agency, or the Department of Health and Social Services in its investigation or in making the preliminary inquiry and report to the court.

Sec. 4: Section 4 adds a new subsection that states that nothing in the section requires the Department of Health and Social Services to obtain court approval before investigating a report of harm or filing a petition. This places in statute current practice.

IV. Changes to allow a court to rely upon certain expert testimony (Section 5):

Sec. 5: Section 5 adds a new subsection to the chapter regarding children in need of aid (AS 47.10) to allow a court, in certain circumstances, to conclude that the testimony of a qualified expert witness would support a finding that continued custody of a child by an absent parent, guardian, or custodian is likely to result in serious damage to the child.

V. Changes to broaden the definition of "mental health professional" (Sections 6 and 7):

Sec. 6: Section 6 amends the definition of "mental health professional" in the chapter regarding children in need of aid (AS 47.10) to include a professional who is licensed to practice in a state other than Alaska when the Department of Health and Social Services has placed a child in that state.

Sec. 7: Section 7 amends the definition of "mental health professional" in the chapter regarding delinquent minors (AS 47.12) to include a professional who is licensed to practice in a state other than Alaska when the Department of Health and Social Services has placed a child in that state.

VI. Effective date (Section 8):

Sec. 8: Section 8 provides that the bill would take effect immediately.

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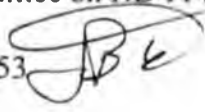
State Capitol
Room 204

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 (SSH B 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.

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.

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 permanent 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.

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. 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.

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REPRESENTATIVE JOHN COGHILL

SSHB 53 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. 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. 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.

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.

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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. 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.

Grandparents' Rights

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. 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

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. 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.

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, an 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 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. 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 that 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.

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 53
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly

Introduced:

Referred:

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
 3 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 9 and 13, Alaska Adoption Rules; amending Rules 3, 18,
 11 and 22, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective
 12 date."

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

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

15 **Sec. 25.23.127. Grandparent's preference to adopt.** Notwithstanding a
 16 child's stated preference under AS 25.23.125 and 25.23.040(a)(5), a grandparent who
 17 has had physical custody of a child for at least two consecutive years when the
 18 parental rights to the child have been terminated under AS 47.10.080(c)(3), shall be
 19 permitted to adopt the child before any other person upon the filing of a petition by the
 20 grandparent under AS 25.23.080 unless the court finds that the grandparent is not fit to
 21 raise the child.

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 grounds 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;

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

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

26 (4) benefit future generations;

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

29 (6) recognize that a parent is held to a standard of care and that
 30 the state must be held to the same standard.

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

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

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

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

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

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

19 (c) Nothing in this section requires the department to obtain authorization
 20 from the court before

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

22 (2) filing a petition.

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

24 **Sec. 47.10.025. Biological grandparent's rights.** (a) A biological
 25 grandparent of a child who has been adjudicated a child in need of aid under this
 26 chapter may initiate special proceedings by filing a petition to obtain custody of the
 27 child if

28 (1) one or both of the child's parents are dead; and

29 (2) the child has been abandoned by a remaining parent.

30 (b) In a proceeding initiated under (a) of this section, the court shall presume
 31 that awarding custody to a biological grandparent is in the best interest of the child. A

1 presumption under this subsection may be overcome by evidence of abuse, neglect, or
2 other harm to the child attributable to the biological grandparent.

3 (c) The department shall attempt to locate all living biological grandparents of
4 a child and to investigate the biological grandparent's ability to care for the child
5 before placing the child or approving an adoption of the child under this chapter. The
6 department shall provide written notice to all identified biological grandparents of
7 their rights under this chapter and of the procedures necessary to gain custody of the
8 child. The biological grandparents shall sign a receipt of the notice and, if the
9 biological grandparent is competent, state that the biological grandparent understands
10 the biological grandparent's right to initiate proceedings to gain custody of the child
11 and either intends or 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, a relative other than a parent, a person who has
 13 petitioned for adoption of the child, and a residential child care facility.

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

21 (g) Nothing contained in this section limits the rights of grandparents under
 22 this title.

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

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

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

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

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

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

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

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

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

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

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

1 between the child and the family member before the child was committed to the
 2 custody of the department. The court may require the department to file a visitation
 3 plan with the court. The department may deny visitation to the parents, guardian, or
 4 family members if there is clear and convincing evidence that visits are not in the
 5 child's best interests. **If the department denies visitation to a parent or family**
 6 **member of a child, the department shall inform the parent or family member of a**
 7 **reason for the denial and of the parent's or family member's right to request a**
 8 **review hearing.** A parent, **family member,** or guardian who is denied visitation may
 9 request a review hearing.

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

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

16 (u) A child may not be placed in a foster home known to the department as a
 17 home requesting adoption of a child before

18 (1) 30 days after the date of the first permanency hearing;

19 (2) the decision of the department is made to seek termination of
 20 parental rights; and

21 (3) the court approves of the placement after a hearing.

22 (v) Within 60 days after the date a child is removed from the child's home by
 23 the department, the department shall notify the appropriate citizen review panel
 24 established under AS 47.14.205.

25 (w) Within 60 days after a court orders a child committed to the department
 26 under (c) of this section and at a review under (f) or (l) of this section, the department
 27 shall inform the parties about the citizen review panels established under
 28 AS 47.14.205.

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

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

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

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

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

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

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

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

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

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

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

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

18 (o) A trial or hearing conducted under this section is open to the public unless
19 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
20 to the public.

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

22 **Sec. 47.10.089. Report of prescription drugs.** (a) When a child is in the
23 custody of the department under AS 47.10.084 and the child is prescribed a
24 psychotropic or other mental health medication, the department shall prepare a report.
25 The report must include the

- 26 (1) child's name and date of birth;
27 (2) name and dosage of the medication;
28 (3) condition or diagnosis for which the medication is prescribed;
29 (4) name of the prescribing physician;
30 (5) assessment of the child's caseworker pertaining to the child's
31 response to the medication; and

1 (6) assessment of the child's caregiver pertaining to the child's
2 response to the medication, if available.

3 (b) A report prepared under (a) of this section shall be distributed to the
4 statewide supervisor of the caseworker of the child, the parent or guardian of the child,
5 and, to the extent allowed under applicable federal and state law, the intervening tribal
6 or tribal custodian for the child.

7 (c) A summary of the reports prepared under (a) of this section, excluding
8 identifying information of a child, shall be distributed to members of the Senate and
9 House Health and Social Service Committees by March 1 of each year.

10 (d) In this section, "caregiver" includes a parent, grandparent, foster parent,
11 relative, teacher, or child care provider.

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

13 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
14 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
15 18th birthday, within 30 days after [OF] the date on which the court releases
16 jurisdiction over the child [MINOR], the court shall order all the court's official
17 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
18 person may not use these sealed records unless authorized by order of [FOR ANY
19 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
20 USE FOR] good cause [SHOWN].

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

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

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

31 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member

1 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005
 2 - 47.10.142 may disclose confidential or privileged information about the child or the
 3 child's family, including information that has been lawfully obtained from agency or
 4 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
 5 appointed under AS 24.55, the attorney general, and the commissioner
 6 [COMMISSIONERS] of health and social services, administration, or public safety, or
 7 an employee of these persons, for review or use in their official capacities. The
 8 department shall disclose additional confidential or privileged information and make
 9 copies of documents available for inspection about the child or the child's family to
 10 these state officials or employees for review or use in their official capacities upon
 11 request of the official or employee and submission of satisfactory evidence that an
 12 adult family member [A PARENT] or legal guardian of the child has requested the
 13 state official's assistance in the case as part of the official's duties. A person to whom
 14 disclosure is made under this section may not disclose confidential or privileged
 15 information about the child or the child's family to a person not authorized to receive
 16 it.

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

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

26 (e) If, in response to a requirement of federal law or a request made by an
 27 official identified in (a) of this section, the department initiates an internal review or
 28 evaluation of its activities under this chapter, notwithstanding AS 47.10.090 and
 29 47.10.093, the department shall either provide a copy of a report resulting from that
 30 internal review or evaluation to the official or prepare a report of that internal review
 31 and evaluation when requested to do so by an official identified in (a) of this section.

1 The report must contain a summary of the complaint, the review or evaluation process
 2 used, and the outcome of the review or evaluation, including any recommendations
 3 made as a result of the review. Before being disclosed, the department shall modify a
 4 report prepared or produced under this subsection to exclude all personal identifying
 5 information of a child, the child's family, and witnesses.

6 (f) In this section, "adult family member" means a person who is 18 years of
 7 age or older and who is related to the child as the child's biological or adoptive parent,
 8 grandparent, aunt, uncle, or sibling.

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

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

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

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

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

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

24 (3) a foster parent [PARENTS] or relative [RELATIVES] with
 25 whom the child is placed by the department as [MAY BE] necessary to enable the
 26 foster parent [PARENTS] or relative [RELATIVES] to provide appropriate care to
 27 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
 28 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and
 29 property of family members and visitors of the foster parent [PARENTS] or relative
 30 [RELATIVES];

31 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable

1 the school to provide appropriate counseling and support services to a [THE] child
 2 who is the subject of the case, to protect the safety of the child [WHO IS THE
 3 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

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

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

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

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

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

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

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

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

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

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

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

30 (f) The department may release to a person with a legitimate interest
 31 confidential information relating to children [MINORS] not subject to the

1 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT
2 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
3 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

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

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

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

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

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

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

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

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

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

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

1 criminal proceeding.

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

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

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

9 **Sec. 47.10.194. Immunity from liability.** A person may not bring an action
10 for damages against the state, a municipality, or state or municipal agencies, officers,
11 employees, or agents based on the disclosure or nondisclosure of information in
12 accordance with this chapter.

13 * **Sec. 28.** AS 47.10.142 is amended by adding a new subsection to read:

14 (i) Within 60 days after a court orders a child committed to the department
15 under this section, the department shall inform the parties about the citizen review
16 panel established under AS 47.14.205.

17 * **Sec. 29.** AS 47.10 is amended by adding a new section to read:

18 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
19 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
20 parent, guardian, or custodian of a child cannot be located after a reasonable search for
21 the parent, guardian, or custodian has been conducted by the department, the court
22 may conclude that the testimony of a qualified expert witness would support a finding
23 that continued custody of the child by the absent parent, guardian, or custodian is
24 likely to result in serious emotional or physical damage to the child.

25 * **Sec. 30.** AS 47.10.960 is amended to read:

26 **Sec. 47.10.960. Duty and standard of care [NOT] created.** The
27 department shall adopt regulations establishing [NOTHING IN THIS TITLE
28 CREATES] a duty and [OR] standard of care for services to children and their
29 families being served under this chapter [AS 47.10]. The regulations must be
30 consistent in all relevant respects with the code of professional ethics and the
31 standards of practice for social workers adopted by the Board of Social Work

1 **Examiners under AS 08.95.**

2 * Sec. 31. AS 47.10.990(16) is amended to read:

3 (16) "mental health professional" has the meaning given in
4 AS 47.30.915, **except that, if the child is placed in another state by the**
5 **department, "mental health professional" also includes a professional listed in**
6 **the definition of "mental health professional" in AS 47.30.915 who is not licensed**
7 **to practice by a board of this state but is licensed by a corresponding licensing**
8 **authority to practice in the state in which the child is placed;**

9 * Sec. 32. AS 47.10.990 is amended by adding a new paragraph to read:

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

12 * Sec. 33. AS 47.12.990(10) is amended to read:

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

19 * Sec. 34. AS 47.14.100(e) is amended to read:

20 (e) A child may not be placed in a foster home or in the care of an agency or
21 institution providing care for children if a relative by blood or marriage, **family**
22 **friend, or neighbor** requests placement of the child in the [RELATIVE'S] home **of**
23 **the relative, family friend, or neighbor and the parent or guardian of the child**
24 **agrees to the placement.** However, the department may retain custody of the child
25 and provide for its placement in the same manner as for other children if the
26 department

27 (1) makes a determination, supported by clear and convincing
28 evidence, that placement of the child with the relative, **family friend, or neighbor**
29 will result in physical or mental injury; in making that determination, poverty,
30 including inadequate or crowded housing, on the part of the [BLOOD] relative, **family**
31 **friend, or neighbor** is not considered prima facie evidence that physical or emotional

1 damage to the child will occur; this determination may be appealed to the superior
2 court to hear the matter de novo;

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

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

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

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

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

20 * **Sec. 35.** AS 47.14.100(f) is amended to read:

21 (f) If a blood relative of the child specified under (c) of this section exists and
22 agrees that the child should be placed elsewhere, before placement elsewhere, the
23 department shall fully communicate the nature of the placement proceedings to the
24 relative. Communication under this subsection shall be made in the relative's native
25 language, if necessary. [NOTHING IN THIS SUBSECTION OR IN (e) OF THIS
26 SECTION APPLIES TO CHILD PLACEMENT FOR ADOPTIVE PURPOSES.]

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

28 **Sec. 47.14.205. Citizens' Review Panels for Permanency Planning.** (a)
29 There is created in the Department of Administration three Citizens' Review Panels for
30 Permanency Planning. Each state panel shall consist of five members appointed by
31 the governor from a broad representation of individuals located in the communities

1 served and including individuals with expertise in the prevention and treatment of
2 child abuse and neglect. The governor shall appoint at least one state panel member
3 from each judicial district. The governor may not appoint a person who has
4 committed a felony or violated AS 11.51.130 or a law with substantially similar
5 elements. The governor may designate an existing entity established under state or
6 federal law as a state panel if the entity performs the functions set out under
7 AS 47.14.205 - 47.14.295.

8 (b) Members of the state panels serve at the pleasure of the governor for
9 staggered terms of three years or until their successors are appointed.

10 (c) The members of each state panel shall elect from among the members a
11 chair who shall serve for one year. Three members of each state panel constitute a
12 quorum for the transaction of business. A panel may not take official action without
13 the affirmative vote of at least three of its members.

14 (d) Members of the state panels are entitled to reimbursement for actual
15 expenses necessary to perform their duties as state panel members. The
16 reimbursement may not exceed the amount of per diem and expenses authorized for
17 boards and commissions under AS 39.20.180.

18 (e) The state panels shall meet not less than every three months. Meetings
19 may take place telephonically.

20 (f) The state panels may employ a program manager and two assistant
21 managers who shall serve at the pleasure of the state panels. The program manager
22 shall employ staff as necessary to carry out the program manager's duties under state
23 panel directives and to provide clerical assistance to the state panels.

24 (g) When a person is appointed to serve on a state panel, the person shall
25 swear or affirm to keep confidential all information that comes before the state panel
26 except for nonidentifying case information included in a report required under
27 AS 47.17, or as required by court order for good cause shown. A state panel member
28 may also share confidential information with other members of the state panel and
29 staff who serve a state panel.

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

31 **Sec. 47.14.215. Duties of the state panels.** The state panels shall

1 (1) by regulation adopt policies and procedures to carry out the panels'
2 duties;

3 (2) examine the policies, procedures, and practices of state and local
4 agencies involved in making or investigating a report of harm to a child;

5 (3) where appropriate, evaluate specific cases of a report of child abuse
6 or neglect to determine the extent to which the state and local child protection systems
7 are effectively discharging child protection responsibilities under

8 (A) the state plan submitted to the United States Department of
9 Health and Human Services;

10 (B) child protection standards under federal and state laws;

11 (C) any other criteria that the panel considers important to
12 ensuring the protection of children, including the level and efficiency of
13 coordination of foster care and adoption programs in the state and a review of
14 child fatalities and near fatalities; and

15 (4) report annually to the governor by the 10th day of each regular
16 legislative session, concerning the activities of the state panels during the previous
17 fiscal year; the report must include a summary of the information gathered and
18 recommendations made under paragraphs (2) and (3) of this section, the number of
19 cases reviewed by each panel, a description of the characteristics of the children
20 whose cases were reviewed by the panels, the number of children reunited with their
21 families, the number of children placed in other permanent homes, and the timeliness
22 of each review conducted under this section; the report may contain other information
23 on the experience of the panels.

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

25 **Sec. 47.14.225. Cooperation with state panels.** The department, the
26 Department of Law, the Public Defender Agency, the office of public advocacy, and
27 the court system shall cooperate with the state panels to facilitate timely review of
28 plans for children whose cases are under the jurisdiction of the panels and to facilitate
29 access to records required under AS 47.14.235.

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

31 **Sec. 47.14.235. Records; communications.** (a) Notwithstanding

1 AS 47.10.090, at the request of a state panel, the department, the child's guardian ad
 2 litem, and the court shall furnish to the state panel relevant records concerning a child
 3 and the child's family who are the subjects of a state panel review. At the conclusion
 4 of a review, all copies of records provided to a state panel under this section shall be
 5 returned to the staff that serves the state panel or to the agency from which the original
 6 copy was obtained, unless the panel members need the copies to prepare the reports
 7 required under AS 47.14.215. Copies retained for preparation of the reports shall be
 8 returned to the staff that serves the state panel or to the originating agency upon
 9 completion of the reports. Notwithstanding AS 44.62.310, records and reports of the
 10 state panel, testimony before the state panel, and deliberations of the state panel are
 11 confidential under AS 47.10.090.

12 (b) A state panel member may not reveal to another person, other than another
 13 member of the state panel or the staff serving the state panel, a communication made
 14 to the member while performing the member's duties under AS 47.14.205 - 47.14.295,
 15 except as required under AS 47.17 or as required by court order for good cause shown.
 16 A state panel member may disclose information related to the state panel member's
 17 performance of official duties if the state panel member omits identifying information.

18 (c) A state panel proceeding is not governed by AS 44.62.310.

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

20 **Sec. 47.14.245. Court review of report.** (a) When a report is admissible
 21 under court rules, the court may consider the report of the state panel in its review
 22 under AS 47.10.080(f) and at other disposition hearings other than hearings related to
 23 delinquency proceedings.

24 (b) The court may refer to the state panel a case called for a special review
 25 under AS 47.10.080(f).

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

27 **Sec. 47.14.255. Liability and indemnification of panel members.** (a) A
 28 state panel member shall be indemnified by the state for civil liability for a negligent
 29 act or omission of the panel member that occurs in the performance of the member's
 30 duties under AS 47.14.205 - 47.14.295, unless the civil liability results from the panel
 31 member's violation of

1 (1) AS 47.14.235(b); or

2 (2) the oath or affirmation required under AS 47.14.205(g).

3 (b) A violation of (a)(1) or (2) of this section is subject to a civil penalty of up
4 to \$2,500 for each violation.

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

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

7 (1) "state panel" or "state panels" means one or all of the Citizens'
8 Review Panels for Permanency Planning established under AS 47.14.205;

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

10 * Sec. 43. AS 47.17.025 is amended by adding a new subsection to read:

11 (c) Within 20 days after receiving a report of harm, whether or not the matter
12 is referred to a local government agency, the department shall notify the person who
13 made the report about the status of the investigation, without disclosing any
14 confidential information.

15 * Sec. 44. AS 47.17.027(a) is amended to read:

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

1 unless it appears to the department or agency that notifying the child's parent,
2 guardian, or custodian would endanger the child.

3 * **Sec. 45.** AS 47.17.033 is amended by adding new subsections to read:

4 (c) An investigation by the department of child abuse or neglect reported
5 under this chapter shall be conducted by a person trained to conduct a child abuse and
6 neglect investigation and without subjecting a child to more than one interview about
7 the abuse or neglect except when new information is obtained that requires further
8 information from the child.

9 (d) An interview of a child conducted as a result of a report of harm may be
10 audiotaped or videotaped. However, if an interview of a child is to be electronically
11 recorded and the interview concerns a report of sexual abuse of the child the interview
12 shall be videotaped, except that an interview of a child may not be videotaped if
13 videotaping the interview is impracticable or will, in the opinion of the investigating
14 agency, result in trauma to the child.

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

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

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

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

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

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

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

31 * **Sec. 46.** AS 47.35.015 is amended by adding a new subsection to read:

1 (j) If a person operates a foster home to provide care only for a relative and the
 2 department requires licensure under an agreement for services, the department shall
 3 issue a temporary license to an eligible person while an application for a license under
 4 this section is pending. The department shall issue the temporary license to the
 5 applicant within five days after receiving a complete application for a foster care
 6 license under AS 47.35.017. A temporary license is valid for 90 days or until a license
 7 is either issued under AS 47.35.017 or denied under AS 47.35.019, whichever is
 8 sooner.

9 * Sec. 47. 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(c), Alaska Child in Need of
 12 Aid Rules of Procedure, is amended to read:

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

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

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

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

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

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

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

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

6 (C) a hearing, or a part of a hearing, for which the court issues
7 a written order finding that allowing the hearing, or part of the hearing, to be
8 open to the public would reasonably be expected to stigmatize or be
9 emotionally damaging to a child; inhibit a child's testimony in the hearing;
10 disclose matters otherwise required to be kept confidential by state or federal
11 statute or regulation, court order, or court rule; or interfere with a criminal
12 investigation or proceeding or a criminal defendant's right to a fair trial in a
13 criminal proceeding.

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

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

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

31 (6) A party to the proceeding may move the court to close to the public

1 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this
 2 paragraph. A member of the public may request in writing to be served with a motion
 3 filed under this subparagraph. If such a request has been filed in advance of the filing
 4 of the motion, the party filing the motion must also serve the member of the public
 5 who requested notice under this subparagraph. The court may waive the service
 6 required under this subparagraph to a member of the public if a motion to close the
 7 hearing, or part of the hearing, is made under this subparagraph immediately before or
 8 during the hearing and the court finds that

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

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

14 (C) whatever notice is practicable under the circumstances has
 15 occurred.

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, Alaska Child in Need of
 19 Aid Rules of Procedure, is amended by adding a new subsection to read:

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

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

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

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

31 (1) shall be held within six months after the date on which the petition

1 to terminate parental rights is filed, unless the court finds that good cause is shown for
 2 a continuance; when [. WHEN] determining whether to grant a continuance for good
 3 cause, the court shall take into consideration the age of the child and the potential
 4 adverse effect that the delay may have on the child; the [. THE] court shall make
 5 written findings when granting a continuance;

6 (2) shall be by jury when a jury trial has been demanded and not
 7 waived by a party as provided in Rules 38 and 39, Alaska Rules of Civil
 8 Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 INDIRECT COURT RULE AMENDMENT. AS 25.23.180(j), added by sec. 2 of this

1 Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set
2 out in the relinquishment form and order.

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

5 **INDIRECT COURT RULE AMENDMENT.** (a) Sections 9 and 10 of this Act
6 AS 47.10.030(x), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 15 of
7 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure,
8 by allowing members of the public to attend court hearings except in certain circumstances.

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

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

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

18 **TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.**
19 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
20 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
21 enactment and amendments provide a right to a jury trial on a petition to terminate parental
22 rights, affect a substantive right, secs. 8, 11, 50, 51, and 56 of this Act do not require a two-
23 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
24 parental rights.

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

27 **INITIAL MEMBERS OF STATE PANEL.** (a) Notwithstanding AS 47.14.205(b),
28 enacted by sec. 36 of this Act, the governor shall appoint the initial public members of each of
29 the Citizens' Review Panel for Permanency Planning so that one member of each panel serves
30 a one-year term, two members of each panel serve two-year terms, and two members of each
31 panel serve three-year terms.

1 (b) The initial public members must be persons who have experience, special
2 knowledge, or a demonstrated interest in the welfare of children.

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

5 **APPLICABILITY.** (a) AS 47.10.065, enacted by sec. 8 of this Act, 47.10.080(c), as
6 amended by sec. 11 of this Act, and Rules 18(e) and 18(g), Alaska Child in Need of Aid Rules
7 of Procedure, as amended by secs. 50 and 51 of this Act, apply to petitions to terminate
8 parental rights that are filed on or after the effective date of secs. 8, 11, 50, and 51 of this Act.

9 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
10 made by secs. 47 - 49 of this Act, apply to hearings that are conducted on or after the effective
11 date of secs. 47 - 49 of this Act.

12 (c) Sections 9 - 11, 13, 15, 17, 18, 21 - 27, 32, 47 - 49, and 52 of this Act apply to all
13 proceedings and hearings conducted on or after the effective date of those sections.

14 (d) Sections 9, 10, 13, 15, and 18 - 27 of this Act apply to all information, records,
15 and files created on or after the effective date of those sections; however, if a file contains
16 information and records that were created before the effective date of secs. 9, 10, 13, 15, and
17 18 - 27 of this Act, that information and those records retain the confidentiality status that
18 they had under the law on the day before the effective date of secs. 9, 10, 13, 15, and 18 - 27
19 of this Act.

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

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

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

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

31 * **Sec. 62.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 **CONDITIONAL EFFECT.** (a) That portion of Rule 18(e)(2), Alaska Child in Need
3 of Aid Rules of Procedure, added by sec. 50 of this Act, that reads "and not waived by a party
4 as provided in Rules 38 and 39, Alaska Rules of Civil Procedure," takes effect only if sec. 50
5 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
6 Constitution of the State of Alaska.

7 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
8 made by secs. 47 - 49 of this Act, take effect only if secs. 47 - 49 of this Act receive the two-
9 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
10 Alaska.

11 (c) The amendments to Rule 22(c), Alaska Child in Need of Aid Rules of Procedure,
12 made by sec. 52 of this Act take effect only if sec. 52 of this Act receives the two-thirds
13 majority vote of each house required by Art. IV, sec. 15, Constitution of the State of Alaska.

14 (d) Sections 9 and 10 of this Act, AS 47.10.080(x), enacted by sec. 13 of this Act,
15 AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 - 27 of this Act, take
16 effect only if secs. 47 - 49, 52, and 56(a) and (c) of this Act receive the two-thirds majority
17 vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

18 (e) Rule 9(a), Alaska Adoption Rules, as amended by sec. 53 of this Act, takes effect
19 only if sec. 53 of this Act receives the two-thirds majority vote of each house required by art.
20 IV, sec. 15, Constitution of the State of Alaska.

21 (f) Rule 13(a), Alaska Adoption Rules, as amended by sec. 54 of this Act, takes effect
22 only if sec. 54 of this Act receives the two-thirds majority vote of each house required by art.
23 IV, sec. 15, Constitution of the State of Alaska.

24 (g) AS 25.23.180(j), added by sec. 2 of this Act, takes effect only if sec. 55 of this Act
25 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
26 of the State of Alaska.

27 * **Sec. 63.** AS 47.10.960, as amended by sec. 30 of this Act, takes effect 180 days after the
28 effective date of sec. 1 of this Act.

29 * **Sec. 64.** If, under sec. 62 of this Act, secs. 9 and 10 of this Act, AS 47.10.080(x), enacted
30 by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 -
31 27 of this Act take effect, they take effect July 1, 2005.

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