465 HJ HB400 - HB 419 965

of the group's campaign treasurer, and any default or violation by the campaign treasurer also shall be considered a default or violation by the principal officers of the group.

* Sec. 11. AS 15.13.070(a), (b) and (d) are amended to read:

(a) No individual, person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more that $1,000 a year to a candidate [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by §10(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own money to his own campaign; or

(2) individuals, persons or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with §40 and 110 of this chapter.

(b) No contribution over $100 may be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate or group.

(d) No contribution may be made, and no expenditure may be made or incurred, directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name of another, to influence the election of a candidate or the outcome of an ballot proposition or question in an election. A contribution made by a person wishing to remain anonymous, and received by a candidate, or his campaign treasurer or deputy campaign treasurer, or a group may not be used or expended, but shall be returned to the donor, if his identity

is known, and if no donor is found, the contribution escheats to the state if not donated by the candidate or group to the charity of their [HIS] choice.

* Sec. 12. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, person or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign treasurer, except when a candidate is his own campaign treasurer.

* Sec. 13. AS 15.13.100 is amended to read:

Sec. 15.13.100. CONTRIBUTIONS, EXPENDITURES BEFORE FILING. Political [NO POLITICAL] campaign contributions or expenditures, [EXPENDITURE MAY BE MADE] or obligations for those expenditures, may be received or accepted and made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks [, EXCEPT FOR PERSONAL TRAVEL EXPENSES OR FOR OPINION SURVEYS OR POLLS]. However, these contributions or [THESE] expenditures [SHALL BE CHARGED AGAINST THE SPENDING LIMITATION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND] shall be included in the first report required under this chapter [AFTER FILING FOR OFFICE].

* Sec. 14. AS 15.13.110(a)(4), (b), and (c) are amended to read:

(a)(4) December 31 [OF EACH YEAR] for expenditures made and contributions received after the report required in (3) of this section and in a non-election year those expenditures made and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within 10 days [ONE WEEK] of the election shall be reported to the commission

by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or his campaign treasurer or by a group.

(c) The reports and statements required under this chapter [OF CANDIDATES] shall be filed in accordance with sec. 20(j) of this chapter [WITH THE COMMISSION'S CENTRAL OFFICE] and shall be considered as having been received timely if postmarked no later than the due date. All statements, records and reports required by this chapter are public records and shall be kept open for [TO] public inspection. Within 30 days after each election, the commission shall prepare a summary of reports [EACH REPORT] which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 15. AS 15.13.110 is amended by [illegible] two new sections to read:

(e) Within 10 days after making a contribution or expenditure in accordance with sec. 40(c) of this chapter, every individual or person shall file a report with the commission.

(f) A candidate who does not plan to receive contributions or make any expenditures during his campaign for elective office may file an affidavit to that effect with the commission, on a form prescribed by the commission, at the time the first report is due to be filed under (a) of this section. If, after filing an affidavit, a candidate does in fact receive a contribution or make an expenditure he shall report as otherwise required by this chapter.

* Sec. 16. AS 15.13.120(a)(2) and (5) are amended to read:

(2) making a campaign contribution [OR EXPENDITURE] which exceeds the limitations of sec. 70[(f)] of this chapter.

(5) making a communication to support or defeat a candidate or ballot proposition or question without identification of sponsorship, in violation of sec. 90 of this chapter;

* Sec. 17. AS 15.13.125 is amended to read:

Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REPORTS. A person who fails to file a properly completed and certified report within the time required by sec. 50(a), 60(c), 110(a)(1), (3), (4) or 110(d) of this chapter is subject to a civil penalty of not more than $10 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by sec. 110(a)(2) or 110(b) of this chapter is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in sec. 120 of this chapter does not excuse that person from filing reports required by this chapter.

* Sec. 18. AS 15.13.130(2), (3), and (4) are amended to read:

(2) "contribution" means purchase, payment, or promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in §10(b) of this chapter for the purpose of influencing a ballot proposition or question, including the payment by a person other other than a candidate or political party of [, OR] compensation for [OF] the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services

volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

(D) a personal loan from a bona fide lending institution;

(3) "group" means every state and regional executive committee of a political party, any political action committee, and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; however, a "group" does not include

(A) a candidate's personal campaign committee; or

(B) ongoing business, trade, union, or membership associations or organizations provided that their major purpose is not to influence the outcome of an election and provided that the money for any contributions or expenditures are appropriated from the general fund of such associations or organizations;

[A GROUP THAT MAKES EXPENDITURES OR RECEIVES CONTRIBUTIONS WITH THE AUTHORIZATION OR CONSENT, EXPRESS OR IMPLIED, OR UNDER THE CONTROL, DIRECT OR INDIRECT, OF A CANDIDATE SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE; A GROUP WHOSE MAJOR PURPOSE IS TO FURTHER THE NOMINATION, ELECTION, OR CANDIDACY OF ONLY ONE PERSON, OR INTENDS TO EXPEND MORE THAN 50 PER CENT OF ITS MONEY ON A SINGLE CANDIDATE, SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE AND ITS ACTIONS DONE WITH HIS KNOWLEDGE AND CONSENT UNLESS, WITHIN 10 DAYS FROM THE DATE THE CANDIDATE LEARNS OF THE EXISTENCE OF THE GROUP HE FILES WITH THE COMMISSION, ON A FORM PROVIDED BY THE COMMISSION, AN AFFIDAVIT THAT THE GROUP IS OPERATING WITHOUT HIS CONTROL; A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR

MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE; HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF §70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

(4) "expenditure" means a purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for (A) the purpose of [(A)] influencing the nomination or election of a candidate or any individual who files for nomination at a later date and becomes a candidate; [OR] (B) use by a political party; [OR] (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; or (D) the purpose of influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

* Sec. 19. AS 15.13.030 is amended by adding two new subsections to read:

(8) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska Housing Authority;

(9) "political committee" means a candidate's campaign committee or any group under the control of the candidate as defined in sec. 50 of this chapter.

* Sec. 20. AS 15.13.070(f) and (g) and AS 15.13.080 are repealed.

HB
405

4/25/77

~~SB~~ ~~SB~~
AB 405

Brown

address situation in FAI
not personal ~~fr~~ friendship

says very ~~exp~~ experienced magistrate
may be considered for district court
judgeships.

Snowden
Supreme Court opposes the bill

should increase the requirements

California -
non-lawyer trained judges
can't sentence people to jail

AK

~~a~~ right to waive magistrate

1610
Miles appears ~~[illegible]~~ Takes over ~~B~~ chair

Fred moves the bill Fails.
For 3 Against 3

House Judiciary
April 25, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Rudd and Brown. Miles came late. Mr. Specking is no longer a member of the Judiciary Committee.

HB 174 Right of persons to bring criminal accusations to the attention of the grand jury. HB 174

Dan Hickey from the Criminal Division of the A.G.'s office was here to testify. He indicated his feeling that the access to the grand jury on the part of the citizens in Alaska is adequate. He indicated that the problem with this bill is that it would encourage people to go directly to the grand jury... it is felt that this is not necessary; and such public access could cause for several ambiguous relationships. Hickey indicated a further problem with the bill in that it doesn't explain how a person would have access to the grand jury. Hickey feels that person to person contact with a grand jury could lead to all sorts of problems.If public access to the grand jury is going to be approved, Hickey feels that it should be very specific.

Larry Weeks, District Attorney, also testified in oppostion to the bil
He expecially objects to section (b).

Mr. Dankworth, who is a cosponsor for this bill, spoke about it. He feels that a major complaint of the public is the lack of input that they have. He feels that this bill would open a door for people who would like to appear before the grand jury.(Rather than being referred from policeman to D.A. to attorney, etc., etc.) Dankworth feels that if the D.A. doesn't want to take the case before the grand jury, the individual is out of luck.

Fred Brown mentioned some ideas that he would propose as amendments when the committee got around to marking up the bill.

This bill will be considered again at a later date.

HB 405 Providing for the qualification of district judges HB 405

Fred Brown spoke regarding this bill for which he is a sponsor. He explained what the bill would do.

Art Snowden from the Court System was here to testify in opposition to the bill. The court system feels that the qualifications of district court judges should be increased..Apparently this bill originated as a result of a magistrate in Brown's district who probably would be qualified to serve as a district court judge. Although this may be true of this particular magistrate, it is

probably not true of all magistrates. In light of the fact that the court system is trying to improve the judiciary, they feel that this bill would be a step in the wrong direction in that it would be a lessening of the qualifications.

In response to a question by Rudd, Snowden indicated that the present requirements for a magistrate are that he be picked by the presiding judge; the present requirements for a district court judge are that he be a member of the bar.

Brown moved that HB 405 be moved out of committee. The vote was 3-3 so the motion failed on a tie vote. The bill will remain in committee.

The meeting was adjourned at 4:30 p.m.

HB
419

Peggy Burke

1. Object to changing 20.15.060
2. Section 4
3. Section 11 – Move

LAW OFFICES OF
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JUNEAU, ALASKA 99801
TELEPHONE 586-6425

MEMORANDUM

TO: Hon, Terry Gardiner, Chairman, and Members of (H) Judiciary Committee

FROM: Peggy Berck, ALSC

DATE: March 27, 1978

RE: H.B. 419, "An Act Relating to Adoption and Voluntary Reglinquishment of Parental Rights."

1. Summary

H.B. 419, in essence, provides for three basic statutory changes to current Alaska law.[1] First, it revises and clarifies the method for consenting to the adoption of a minor. The most significant change in this area is that the period for withdrawing such consent has been lengthened from 10 days to at least 30 days. Second, it amends the provisions requiring notice of the adoption petition by deleting the prohibition against employing publication as a means of notice. Third, it clarifies and revises the procedure by which one may relinquish his or her parental rights and responsibilities. Although further amendments are necessary to accomplish the intent of H.B. 419, ALSC supports the objectives sought in this Legislation.

II. Rationale for Statutory Changes Embodied in H.B. 419

Section 2 of H.B. 419 specifies how consent to adoption may be executed and what must be contained in such a consent instrument. Consents are valid whether or not they identify the adopting parent, however, the consenting person is provided with the right to demand such identification. A small faction of ALSC clients desire the ability to execute blank consents. They do not wish to know by whom their child is to be adopted.[2]

1
I have not included any discussion pertaining to the Adoption Assistance provisions contained in Sections 6 -9 of H.B. 419.

2
This fact is evident from the some 200 Adoption cases handled by ALSC last year.

The Children's Code Task Force took the position that all consents must identify the adoptive parent in order to be valid. The basis for this position was that the consenting person might have the opportunity to determine the suitability of the adopting parent. Obviously this rationale is only valid in those cases where the consenting person knows the adopting parent. Even in Alaska, this element would not be present in every case.

A similar position was espoused by the National Association of Social Workers at the (H) Judiciary Committee hearing on this bill. The rationale for their position was that blank consents foster private adoptions which are recognized in Alaska.

If abuses are occurring in the private adoption situation, it would seem that a better approach would be to illegalize[3] such adoptions rather than curtail the individual right to grant a blank consent.

The provisions establishing what must be contained in the consent instrument are good since persons frequently do not understand their rights in the adoption process or the meaning of their consent. However under current Alaska law (see Sec 20.1 .050(b) and Sec.20.15.100(a)(2)) once a person has consented to an adoption he is no longer entitled to notice of the hearing on the adoption. Without some provision for notice, the consenting person will not be able to effect his right to appear at the Adoption Hearing. Furthermore should the consenting person desire to withdraw his consent prior to the hearing, unless he is informed of the hearing date he will be unaware of that actual time frame other than the 30 day period set forth in H.B. 419. Additionally it seems that unless the consenting party is informed at the time of consent as to how he or she might withdraw his or her consent it is in reality a meaningless right. The consenting person at the time of consent should be informed of his or her ability to withdraw consent by means of writing a letter to the court prior to the hearing or petitioning the court upon good cause shown once the hearing has commenced. It is equally apparent that the consenting person must be informed as to which court the adoption petition has been filed in or is contemplated to be filed in if this right is to be of any substance.

[3] The vast majority of states have taken this direction.

Section 3 of H.B. 419 amends the procedure by which one may withdraw his or her consent. This provision allows the consenting person to withdraw his or her consent for any reason prior to the first adoption hearing.

Because this hearing cannot be scheduled until at least 30 days have lapsed since the consent was granted, the effect of this provision is to lengthen the time period for retraction of consent from 10 days to 30 days. Since the adoption degree terminates the consenting person's rights to the child, this extention is a desirable statutory change. It is particularly important for those persons residing in the bush who may find it difficult to retract their consent within the current 10 day time period.

Additionally, this provision permits the consenting person to petition the Court to withdraw his or her consent even after the adoption hearing has commenced. Here, however, the consenting person must show good cause for withdrawing his or her ocnsent.

Since it is the intent of H.B. 419 that the consenting person be able to withdraw his or her consent for any reason prior to the hearing, clarification of this fact is probably desirable. For that reason it is suggested that line 1 and line 14 on page two (2) of the bill be amended to read: "...draw his consent at any time for any reason before the adoption hearing or after com- ..." and "(b) A consent to adoption may be withdrawn for any reason before the first..." [4]

Sec. 4 of H.B. 419 deletes the prohibition with respect to accomplishing notice by means of publication. The Children's Code Task Force advocated this change for two reason. First, since adoption proceedings drastically alter parent-child relationships due process of law necessitates those persons affected with as much notice as possible. It would seem that the due process rights involved here would outweigh any intrusion on the persons privacy rights.

[4] Similar language is contained in the "Indian Child Welfare Bill," s1214, currently before the U.S. Congress

Second, some Alaska Courts have not given any effect to the sentence sought to be deleted. Thus, some courts have in fact required publication. The basis for avoiding this statutory provision is that the legislative bill(H.B. 70) which became the present adoption law in 1974 did not expressly state that this sentence would change children's Rule 10 (g) which mandates publication in certain circumstances. Thus pursuant to Rule 40 (e) of the Uniform Rules of the Alaska State Legislature the sentence is without effect.

ALSC agrees with the rationale of the Task Force on this point and supports this statutory change.

Current Alaska law on the relinquishment of parental rights is contained in AS 20.15.180. Those provisions are confusing in that they intermingle discussion of involuntary termination of parental rights and furthermore imply that relinquishment must occur in conjunction with a adoption proceeding. Because of these problems, the revision contained in Sec 12 of H.B. 419 is desirable.

The first portion of Sec. 12 of H.B. 419 provides that a parent may petition the court or its duly authorized representative to voluntarily relinquish his or her parental rights and responsibilities. The phrase, "duly authorized representative" was intened by the Children's Code Task Force to refer to magistrates so that persons in rural areas would have access to this procedure.

As H.B. 419 currently reads, it does not seem that this goal will be accomplished. First, the functions and powers of magistrates are contained in AS 22.15.100, AS 22.15.110. and AS 22.15.120. It would not appear to be proper to enlarge those duties without some amendment to those provisions.[5] Additionally pursuant to AS 22.10.020 the Superior Court would seem to have exclusive jurisdiction over matters of this kind, However, once the Superior Court has received the petition it could appoint the local magistrate to act as a master and to hear the petition and to make findings of fact and conclusions of law. This is specifically provided for in Alaska Rule of Court, Rule 53. Since this

5 Undoubtedly certain court rules would also be affected and thereby would have to be addressed as well.

procedure is generally obtained by a specific motion raised by one of the parties, it seems that a person would in effect have little chance to successfully get past this procedural morass without an attorney.

111. Miscelloneous Concerns of the Committee.

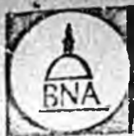
1. Applicable federal law in the adoption area has been recently enunciated in Quilloin v Walcott, __ U.S. __, 46 LW 4055, (Jan. 10,1978). In essence this Supreme Court decision held that is was not a violation of due process or equal protection for a state to preclude the necessity of consent to an adoption by an unwed father. Although the case was limited to a narrow set of facts, i.e., the unwed father had never sought or had legal custody of the child and the proposed adoption would not place the child with a new set of parents with whom the child had not lived, it would not appear to require any revision of current Alaska Law or H.B. 419. A copy of that decision is attached hereto for your information.

2. Putative father is defined in Black's Law Dictionary as : "the alleged or reputed father of an illegitimate child."

3. The Indian Child Welfare Bill is currently being considered by the U.S. Congress and will drastically affect adoptions of Alaska Native children. Although I understand the bill has been revised, I have attached a copy of the original bill hereto.

MB/lp

Enclosures



The United States
LAW WEEK

Supreme Court
Opinions

January 10, 1978 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 46, No. 26

OPINIONS ANNOUNCED JANUARY 10, 1978

The Supreme Court decided:

CRIMINAL LAW AND PROCEDURE—Appeals

District court's reliance on state court record in ruling on habeas corpus petition discharges its duty under 28 U.S.C. §2243 to hear and determine facts, and its failure to hold evidentiary hearing does not render its judgment on such petition nonfinal for purposes of appeal under 28 U.S.C. §2253; Fed.R.Civ.P. 52 (b) and 59, which establish 10-day time limit for filing of motions for amended or additional findings and for new trial or amended judgment are applicable to habeas corpus proceedings; untimely motion requesting district court to stay execution of writ of habeas corpus and to conduct evidentiary hearing does not toll Fed.R.App. 4 (a)'s 30-day time limit for filing notice of appeal in civil case. (Browder v. Director, Department of Corrections, No. 76-5325) .... page 4058

DOMESTIC RELATIONS—Adoption

Unwed father's substantive due process rights were not violated by Georgia court's grant, over father's objection and without finding that he was unfit parent, of adoption petition brought by mother's husband on ground that adoption was in "best interests of child"; Georgia statutory scheme that gives fit fathers of legitimate children authority to veto adoption without giving same veto authority to fathers of illegitimate children does not violate Equal Protection Clause. (Quilloin v. Walcott, No. 76-6372) .... page 4055

ENVIRONMENTAL LAW—Air

Clean Air Act Section 307 (b), which limits judicial review of emission standards promulgated under Section 112 to Court of Appeals for D.C. Circuit and precludes challenge to validity of such standards in civil or criminal enforcement proceedings, does not bar defense to Section 113 criminal prosecution that clean air regulation allegedly violated is not "emission standard" within meaning of Section 112 (c), even though "emission standard" in question has not been previously reviewed under provisions of Section 307 (b); EPA regulation specifying procedures to be followed in connection with building demolition but not establishing quantitative levels for asbestos emissions occurring during demolition is not "emission standard" within meaning of Section 112 (c) and thus its violation is not criminal offense under Section 113. (Adamo Wrecking Co. v. U.S., No. 76-911) .... page 4063

Full Text of Opinions

No. 76-6372

Leon Webster Quilloin, Appellant, *v.* Ardell Williams Walcott et al. | On Appeal from the Supreme Court of Georgia,

[January 10, 1978]

Syllabus

Under Georgia law no adoption of a child born in wedlock is permitted without the consent of each living parent (including divorced or separated parents) who has not voluntarily surrendered rights in the child or been adjudicated an unfit parent. In contrast, §§ 74-403 (3) and 74-203 of the Georgia Code provide that only the mother's consent is required for the adoption of an illegitimate child. However, the father may acquire veto authority over the adoption if he has legitimated the child pursuant to § 74-103 of the Code. These provisions were applied to deny appellant, the father of an illegitimate child, authority to prevent the adoption of the child by the husband of the child's mother. Until the adoption petition was filed, appellant had not attempted to legitimate the child, who had always been in the mother's custody and was then living with the mother and her husband, appellees. In opposing the adoption appellant, seeking to legitimate the child but not to secure custody, claimed that §§ 74-203 and 74-403 (3), as applied to his case, violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The trial court, granting the adoption on the ground that it was in the "best interests of the child" and that legitimation by appellant was not, rejected appellant's constitutional claims, and the Georgia Supreme Court affirmed. *Held:*

1. Under the circumstances appellant's substantive rights under the Due Process Clause were not violated by application of a "best interests of the child" standard. This is not a case in which the unwed father at any time had, or sought, custody of his child or in which the proposed adoption would place the child with a new set of parents with whom the child had never lived. Rather, the result of adoption here is to give full recognition to an existing family unit.

2. Equal protection principles do not require that appellant's authority to veto an adoption be measured by the same standard as is applied to a divorced father, from whose interests appellant's interests are readily distinguishable. The State was not foreclosed from recognizing the difference in the extent of commitment to a child's welfare between that of appellant, an unwed father who has never shouldered any significant responsibility for the child's rearing, and that of a divorced father who at least will have borne full responsibility for his child's rearing during the period of marriage.

238 Ga. 230, 232 S. E. 2d 246, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is the constitutionality of Georgia's adoption laws as applied to deny an unwed father authority to prevent adoption of his illegitimate child. The child was born in December 1964 and has been in the custody and control of his mother, appellee Ardell Williams Walcott, for his entire life. The mother and the child's natural father, appellant Leon Webster Quilloin, never married each other or established a home together, and in September 1967 the mother married appellee Randall Walcott.[1] In March 1976, she consented to adoption of the child by her husband, who immediately filed a petition for adoption. Appellant attempted to block the adoption and to secure visitation rights, but he

[1] The child lived with his maternal grandmother for the initial period of the marriage, but moved in with appellees in 1969 and lived with them thereafter.

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did not seek custody or object to the child's continuing to live with appellees. Although appellant was not found to be an unfit parent, the adoption was granted over his objection.

In *Stanley* v. *Illinois*, 405 U. S. 645 (1972), this Court held that the State of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. The Court concluded, on the one hand, that a father's interest in the "companionship, care, custody and management" of his children is "cognizable and substantial," *id.*, at 651–652, and, on the other hand, that the State's interest in caring for the children is "*de minimis*" if the father is in fact a fit parent, *id.*, at 657–658. *Stanley* left unresolved the degree of protection a State must afford to the rights of an unwed father in a situation, such as that presented here, in which the countervailing interests are more substantial.

I

Generally speaking, under Georgia law a child born in wedlock cannot be adopted without the consent of each living parent who has not voluntarily surrendered rights in the child or been adjudicated an unfit parent.[2] Even where the child's parents are divorced or separated at the time of the adoption proceedings, either parent may veto the adoption. In contrast, only the consent of the mother is required for adoption of an illegitimate child. Ga. Code Ann. § 74-403 (3) (1973).[3] To acquire the same veto authority possessed by other parents, the father of a child born out of wedlock must legitimate his offspring, either by marrying the mother and acknowledging the child as his own, § 74-101, or by obtaining a court order declaring the child legitimate and capable of inheriting from the father, § 74-103.[4] But unless and until the child is legitimated, the mother is the only recognized parent and is given exclusive authority to exercise all parental prerogatives, § 74-203,[5] including the power to veto adoption of the child.

Appellant did not petition for legitimation of his child at any time during the 11 years between the child's birth and the filing of Randall Walcott's adoption petition.[6] However, in response to Walcott's petition, appellant filed an application for a writ of habeas corpus seeking visitation rights, a petition for legitimation, and an objection to the adoption.[7] Shortly thereafter, appellant amended his pleadings by adding the claim that §§ 74-203 and 74-403 (3) were unconstitutional as applied to his case, insofar as they denied him the rights granted to married parents, and presumed unwed fathers to be unfit as a matter of law.

The petitions for adoption, legitimation, and writ of habeas corpus were consolidated for trial in the Superior Court of Fulton County, Ga. The court expressly stated that these matters were being tried on the basis of a consolidated record to allow "the biological father . . . a right to be heard with respect to any issue or other thing upon which he desire[s] to be heard, including his fitness as a parent. . . ."[8] After receiving extensive testimony from the parties and other witnesses, the trial court found that, although the child had never been abandoned or deprived, appellant had provided support only on an irregular basis.[9] Moreover, while the child previously had visited with appellant on "many occasions," and had been given toys and gifts by appellant "from time to time," the mother had recently concluded that these contacts were having a disruptive effect on the child and on appellees' entire family.[10] The child himself expressed a desire to be adopted

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[2] See Ga. Code Ann. §§ 74-403 (1), (2) (1973). Section 74-403 (1) sets forth the general rule that "no adoption shall be permitted except with the written consent of the living parents of a child." Section 74-403 (2) provides that consent is not required from a parent who (1) has surrendered rights in the child to a child-placing agency or to the adoption court; (2) is found by the adoption court to have abandoned the child, or to have willfully failed for a year or longer to comply with a court-imposed support order with respect to the child; (3) has had his or her parental rights terminated by court order, see Ga. Code Ann. § 24A-3201; (4) is insane or otherwise incapacitated from giving consent; or (5) cannot be found after a diligent search has been made.

[3] Section 74-403 (3), which operates as an exception to the rule stated in § 74-403 (1), see n. 2, *supra*, provides:

"Illegitimate children—If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the Department of Human Resources."

Sections of Ga. Code Ann. (1973) will hereinafter be referred to merely by their numbers.

[4] Section 74-103 provides in full:

"A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, and sex of such child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known."

[5] Section 74-203 states:

"The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal [*sic*] power."

In its opinion in this case, the Georgia Supreme Court indicated that the word "paternal" in the second sentence of this provision is the result of a misprint, and was instead intended to read "parental." See *Quilloin* v. *Walcott*, 238 Ga. 230, 231, 232 S. E. 2d 246, 247 (1977).

[6] It does appear that appellant consented to entry of his name on the child's birth certificate. See § 88-1709 (d)(2). The adoption petition gave the name of the child as "Darrell Webster Quilloin," and appellant alleges in his brief that the child has always been known by that name, see Brief of Appellant, at 11.

[7] Appellant had been notified by the State's Department of Human Resources that an adoption petition had been filed.

[8] *In re: Application of Randall Walcott for Adoption of Child*, Adoption Case No. 8466 (Ga. Super. Ct., July 12, 1976), App. 70.

Sections 74-103, 74-203, and 74-403 (3) are silent as to the appropriate procedure in the event that a petition for legitimation is filed after an adoption proceeding has already been initiated. Prior to this Court's decision in *Stanley* v. *Illinois*, 405 U. S. 645 (1972), and without consideration of potential constitutional problems, the Georgia Supreme Court had concluded that an unwed father could not petition for legitimation after the mother had consented to an adoption. *Smith* v. *Smith*, 224 Ga. 442, 445-446, 162 S. E. 2d 379, 383-384 (1968). But cf. *Clark* v. *Buttry*, 226 Ga. 687, 177 S. E. 2d 89, aff'g 121 Ga. App. 492, 174 S. E. 2d 356 (1970). However, the Georgia Supreme Court had not had occasion to reconsider this conclusion in light of *Stanley*, and, in the face of appellant's constitutional challenge to §§ 74-203, 74-403 (3), the trial court evidently concluded that concurrent consideration of the legitimation and adoption petitions was consistent with the statutory provisions. See also Tr. of Hearing before Superior Ct., App. 34, 51; n. 12, *infra*.

[9] Under § 74-202, appellant had a duty to support his child, but for reasons not appearing in the record the mother never brought an action to enforce this duty. Since no court ever ordered appellant to support his child, denial of veto authority over the adoption could not have been justified on the ground of willful failure to comply with a support order. See n. 2, *supra*.

[10] In addition to Darrell, appellees' family included a son born several years after appellees were married. The mother testified that Darrell's visits with appellant were having unhealthy effects on both children.

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by Randall Walcott and to take on Walcott's name." and the court found Walcott to be a fit and proper person to adopt the child.

On the basis of these findings, as well as findings relating to appellees' marriage and the mother's custody of the child for all of the child's life, the trial court determined that the proposed adopti- -s in the "best interests of [the] child." The court concluded, further, that granting either the legitimation or the visitation rights requested by appellant would not be in the "best interests of the child," and that both should consequently be denied. The court then applied §§ 74-203 and 74-403 (3) to the situation at hand, and, since appellant had failed to obtain a court order granting legitimation, he was found to lack standing to object to the adoption. Ruling that appellant's constitutional claims were without merit, the court granted the adoption petition and denied the legitimation and visitation petitions.

Appellant took an appeal to the Supreme Court of Georgia, claiming that §§ 74-203 and 74-403 (3), as applied by the trial court to his case, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In particular, appellant contended that he was entitled to the same power to veto an adoption as is provided under Georgia law to married or divorced parents and to unwed mothers, and, since the trial court did not make a finding of abandonment or other unfitness on the part of appellant, see n. 2, *supra*, the adoption of his child should not have been allowed.

Over a dissent which urged that § 74-403 (3) was invalid under *Stanley* v. *Illinois*, the Georgia Supreme Court affirmed the decision of the trial court. 238 Ga. 230, 232 S. E. 2d 246 (1977).[12] The majority relied generally on the strong state policy of rearing children in a family setting, a policy which in the court's view might be thwarted if unwed fathers were required to consent to adoptions. The Court also emphasized the special force of this policy under the facts of this case, pointing out that the adoption was sought by the child's stepfather, who was part of the family unit in which the child was in fact living, and that the child's natural father had not taken steps to support or legitimate the child over a period of more than 11 years. The Court noted in addition that, unlike the father in *Stanley*, appellant had never been a *de facto* member of the child's family unit.

Appellant brought this appeal pursuant to 28 U. S. C. § 1257 (2), continuing to challenge the constitutionality of §§ 74-203 and 74-403 (3) as applied to his case, and claiming that he was entitled as a matter of due process and equal protection to an absolute veto over adoption of his child, absent a finding of his unfitness as a parent. In contrast to appellant's somewhat broader statement of the issue in the Georgia Supreme Court, on this appeal he focused his equal protection claim solely on the disparate statutory treatment of his case and that of a married father.[13] We noted probable jurisdiction, — U. S. — (1977), and we now affirm.

II

At the outset, we observe that appellant does not challenge the sufficiency of the notice he received with respect to the adoption proceeding, see n. 7, *supra*, nor can he claim that he was deprived of a right to a hearing on his individualized interests in his child, prior to entry of the order of adoption. Although the trial court's ultimate conclusion was that appellant lacked standing to object to the adoption, this conclusion was reached only after appellant had been afforded a full hearing on his legitimation petition, at which he was given the opportunity to offer evidence on any matter he thought relevant, including his fitness as a parent. Had the trial court granted legitimation, appellant would have acquired the veto authority he is now seeking.

The fact that appellant was provided with a hearing on his legitimation petition is not, however, a complete answer to his attack on the constitutionality of §§ 74-203 and 74-403 (3). The trial court denied appellant's petition, and thereby precluded him from gaining veto authority, on the ground that legitimation was not in the "best interests of the child"; appellant contends that he was entitled to recognition and preservation of his parental rights absent a showing of his "unfitness." Thus, the underlying issue is whether, in the circumstances of this case and in light of the authority granted by Georgia law to married fathers, appellant's interests were adequately protected by a "best interests of the child" standard. We examine this issue first under the Due Process Clause and then under the Equal Protection Clause.

A

Appellees suggest that due process was not violated, regardless of the standard applied by the trial court, since any constitutionally protected interest appellant might have had was lost by his failure to petition for legitimation during the 11 years prior to filing of Randall Walcott's adoption petition. We would hesitate to rest decision on this ground, in light of the evidence in the record that appellant was not aware of the legitimation procedure until after the adoption petition was filed.[14] But in any event we need not go that far, since under the circumstances of this case appellant's substantive rights were not violated by application of a "best interests of the child" standard.

We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. See, *e. g.*, *Wisconsin* v. *Yoder*, 406 U. S. 205, 231-233 (1972); *Stanley* v. *Illinois*, *supra*; *Meyer* v. *Nebraska*, 262 U. S. 390, 399-401 (1923). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince* v.

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[11] The child also expressed a desire to continue to visit with appellant on occasion after the adoption. The child's desire to be adopted, however, could not be given effect under Georgia law without divesting appellant of any parental rights he might otherwise have or acquire, including visitation rights. See § 74-414.

[12] The Supreme Court addressed itself only to the constitutionality of the statutes as applied by the trial court and thus, at least for purposes of this case, accepted the trial court's construction of §§ 74-203, 74-403 (3), as allowing concurrent consideration of the adoption and legitimation petitions. See n. 8, *supra*.

Subsequent to the Supreme Court's decision in this case, the Georgia Legislature enacted a comprehensive revision of the State's adoption laws, which became effective January 1, 1978. [1977] Georgia Laws, p. 201. The new law expressly gives an unwed father the right to petition for legitimation subsequent to the filing of an adoption petition concerning his child. See Ga. Code Ann. § 74-406 (Cum. Supp. 1977). The revision also leaves intact §§ 74-103 and 74-203, and carries forward the substance of § 74-403 (3), and thus appellant would not have received any greater protection under the new law than he was actually afforded by the trial court.

[13] In the last paragraph of his brief, appellant raises the claim that the statutes make gender-based distinctions that violate the Equal Protection Clause. Since this claim was not presented in appellant's Jurisdictional Statement, we do not consider it. S. Ct. Rule 15 (1)(c); see, *e. g.*, *Phillips Chem. Co.* v. *Dumas Indep. School Dist.*, 361 U. S. 376, 386, and n. 12 (1960).

[14] At the hearing in the trial court, the following colloquy took place between appellees' counsel and appellant:

"Q Had you made any effort prior to this time [prior to the instant proceedings], during the eleven years of Darrell's life to legitimate hi[m]

"A . . . I didn't know that was process even you went through [ ]

App. 58.

Massachusetts, 321 U. S. 158, 166 (1944). And it is now firmly established that "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974).

We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Smith* v. *Organization of Foster Families for Equality and Reform*, — U. S. —, — (1977) (STEWART, J., concurring). But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, was in the "best interests of the child."

B

Appellant contends that even if he is not entitled to prevail as a matter of due process, principles of equal protection require that his authority to veto an adoption be measured by the same standard that would have been applied to a married father. In particular, appellant asserts that his interests are indistinguishable from those of a married father who is separated or divorced from the mother and is no longer living with his child, and therefore the State acted impermissibly in treating his case differently. We think appellant's interests are readily distinguishable from those of a divorced father, and accordingly believe that the State could permissively give appellant less veto authority than it provides to a married father.

Although appellant was subject, for the years prior to these proceedings, to essentially the same child support obligation as a married father would have had, compare § 74-202 with § 74–105 and § 30-301, he has never exercised actual or legal custody over his child, and thus has never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child. Appellant does not complain of his exemption from these responsibilities and, indeed, he does not even now seek custody of his child. In contrast, legal custody of children is of course a central aspect of the marital relationship, and even a father whose marriage has broken apart will have borne full responsibility for the rearing of his children during the period of the marriage. Under any standard of review, the State was not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child.

For these reasons, we conclude that §§ 74-203, 74-403 (3), as applied in this case, did not deprive appellant of his asserted rights under the Due Process and Equal Protection Clauses. The judgment of the Supreme Court of Georgia is, accordingly,

Affirmed.

WILLIAM L. SKINNER, Decatur, Ga., for appellant; THOMAS F. JONES, Atlanta, Ga. (S. RALPH MARTIN, JR., with him on the brief) for appellees.

No. 76–5325

Ben Earl Browder, Petitioner, *v.* Director, Department of Corrections of Illinois.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[January 10, 1978]

Syllabus

After unsuccessful efforts to overturn his state-court conviction on direct appeal and state collateral attack, petitioner sought a writ of habeas corpus in a Federal District Court, which on October 21, 1975, ordered his release from respondent Corrections Director's custody unless the State retried him within 60 days. The court held no evidentiary hearing, but based its order on the habeas corpus petition, respondent's "motion to dismiss," and the state-court record. Twenty-eight days after entry of the order, respondent moved for a stay of the conditional release order and for an evidentiary hearing. The District Court granted the motion, but after a hearing ruled on January 26, 1976, that the writ of habeas corpus was properly issued. Respondent immediately filed a notice of appeal seeking review of both the October 21 and January 26 orders, and the Court of Appeals reversed. Federal Rule App. Proc. 4 (a) and 28 U. S. C. § 2107 require that a notice of appeal in a civil case be filed within 30 days of entry of the judgment or order from which the appeal is taken, but under Rule 4 (a) the running of time for filing an appeal may be tolled by a timely motion filed in the district court pursuant to Fed. Rule Civ. Proc. 52 (b) or 59. *Held:* The Court of Appeals lacked jurisdiction to review the original October 21 order because respondent's motion for a stay and an evidentiary hearing (in essence a motion for rehearing or reconsideration) was untimely under Rule 52 (b) or 59 and hence could not toll the running of the "mandatory and jurisdictional" 30-day time limit of Rule 4 (a).

(a) The October 21 order was final for purposes of 28 U. S. C. § 2253, which provides for an appeal in a habeas corpus proceeding from a "final order." The District Court discharged its duty under 28 U. S. C. § 2243 "summarily [to] hear and determine the facts" by granting the habeas corpus petition on the state-court record, and the absence of an evidentiary hearing, whether error or not, did not render the release order nonfinal.

(b) Habeas corpus is a civil proceeding, and Rules 52 (b) and 59 were applicable. While the procedures set forth in the habeas corpus statutes apply during the pendency of such a proceeding and Fed. Rule Civ. Proc. 81 (a)(2) recognizes the supremacy of such procedures over the Federal Rules, the habeas corpus statutes say nothing about the proper method for obtaining correction of asserted errors after judgment, whether on appeal or in the district court. Accordingly, the timeliness of respondent's post-judgment motion was governed by Rule 52 (b) or 59.

534 F. 2d 331, reversed.

POWELL, J., delivered the opinion for a unanimous Court. BLACKMUN, J., filed a concurring opinion, in which REHNQUIST, J., joined.

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide whether the Court of Appeals lacked jurisdiction to review an order directing petitioner's discharge from respondent's custody because respondent's appeal was untimely. In order to resolve this question, we must consider the applicability of Federal Rules of Civil Procedure 52 (b) and 59 in habeas corpus proceedings. Because we conclude that the Court of Appeals lacked jurisdiction, we reverse.[1]

[1] In light of this disposition, it is unnecessary to reach any of the other questions presented. In addition to his jurisdictional point, petitioner contended that the Court of Appeals erred in finding the facts *de novo* on the issue of probable cause and in concluding that petitioner's arrest was lawful. On the latter point, petitioner maintained that the arrest of four youths in the Browder home violated the Fourth and Fourteenth Amendments' requirement of probable cause, *Davis* v. *Mississippi*, 394 U. S. 721 (1969), and, even assuming the existence of probable cause, that the Fourth and Fourteenth Amendments required the police to

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95TH CONGRESS
1ST SESSION

S. 1214

IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, FEBRUARY 21), 1977

Mr. ABOUREZK (for himself, Mr. HUMPHREY, and Mr. MCGOVERN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Indian Child Welfare
4 Act of 1977".
5 FINDINGS
6 SEC. 2. Recognizing the special relations of the United
7 States with the Indian and Indian tribes and the Federal
8 responsibility for the care of the Indian people, the Congress
9 finds that:

II

1 (a) An alarmingly high percentage of Indian children.
2 living within both urban communities and Indian reserva-
3 tions, are separated from their natural parents through the
4 actions of nontribal government agencies or private individ-
5 uals or private agencies and are placed in institutions
6 (including boarding schools), or in foster or adoptive homes,
7 usually with non-Indian families.

8 (b) The separation of Indian children from their biologi-
9 cal families frequently occurs in situations where one or more
10 of the following circumstances exist: (1) the natural parent
11 does not understand the nature of the documents or proceed-
12 ings involved; (2) neither the child nor the natural parents
13 are represented by counsel or otherwise advised of their
14 rights; (3) the Government officials involved are unfamiliar
15 with, and often disdainful of, Indian culture and society; (4)
16 the conditions which led to the separation are not demon-
17 strably harmful or are remediable or transitory in character;
18 and (5) responsible tribal authorities are not consulted about
19 or even informed of the nontribal government actions.

20 (c) The separation of Indian children from their nat-
21 ural parents, including especially their placement in institu-
22 tions or homes which do not meet their special needs, is
23 socially and culturally undesirable. For the child, such
24 separation can cause a loss of identity and self-esteem, and
25 contributes directly to the unreasonably high rates among

1 Indian children for dropouts, alcoholism and drug abuse,
2 suicides, and crime. For the parents, such separation can
3 cause a similar loss of self-esteem, aggravates the conditions
4 which initially gave rise to the family breakup, and leads
5 to a continuing cycle of poverty and despair. For Indians
6 generally, the child placement activities of nontribal govern-
7 ment agencies undercut the continued existence of tribes as
8 self-governing communities and, in particular, subvert tribal
9 jurisdiction in the sensitive field of domestic and family
10 relations.

11 DECLARATION OF POLICY

12 SEC. 3. The Congress hereby declares that it is the policy
13 of this Nation, in fulfillment of its special responsibilities and
14 legal obligations to the American Indian people, to establish
15 standards for the placement of Indian children in foster or
16 adoptive homes which will reflect the unique values of In-
17 dian culture, to discourage unnecessary placement of Indian
18 children in boarding schools for social rather than educa-
19 tional reasons, to assist Indian tribes in the operation of tribal
20 family development programs, and generally to promote the
21 stability and security of Indian family life.

22 DEFINITIONS

23 SEC. 4. For purposes of this Act:
24 (a) "Secretary", unless otherwise designated, means
25 the Secretary of the Interior.

1 (b) "Indian" means any person who is a member of,
2 or who is eligible for membership in, a federally recognized
3 Indian tribe, as defined in subsection (c) hereof.
4 (c) "Indian tribe" means any Indian tribe, band,
5 nation, or other organized group or community of Indians,
6 including any Alaska Native region, village, or group as
7 defined in the Alaska Native Claims Settlement Act (85
8 Stat. 688), which is recognized as eligible for the special
9 programs and services provided by the United States to
10 Indians because of their status as Indians.
11 (d) "Indian organization" means any group, associa-
12 tion, partnership, corporation, or other legal entity owned
13 and controlled by Indians, or a majority of whose members
14 are Indians.
15 (e) "Tribal court" means the Court of Indian Offenses,
16 any court operated and maintained by an Indian tribe, and
17 any other tribunal which performs judicial functions in the
18 name of an Indian tribe within an Indian reservation.
19 (f) "Nontribal government agency" means any Federal,
20 State or local government department, bureau, agency, or
21 other office, including any court, and any private agency
22 licensed by a State or local government, which has jurisdic-
23 tion or which performs functions and exercises responsibili-
24 ties in the fields of social services, welfare, and domestic
25 relations, including child placement.

1 (g) "Child placement" means any proceedings, judicial,
2 quasi-judicial, or administrative, voluntary or involuntary,
3 and public or private, under which an Indian child is removed
4 from the custody of his natural parent or parents, his Indian
5 adoptive parent or parents, or the custody of any blood
6 relative in whose care he has been left by his natural parent
7 or parents, or his Indian adoptive parent or parents, and is
8 either offered for adoption or is placed in a foster home or
9 other institution.

10 (h) "Natural parent" means the biological parent of a
11 child and also any Indian who has adopted a child.

12 (i) "Blood relative" means any grandparent, aunt or
13 uncle (whether by blood or marriage), brother or sister,
14 brother- or sister-in-law, niece or nephew, or stepparent,
15 whether by blood, marriage, or adoption, over the age of
16 eighteen or otherwise emancipated, or as defined by tribal
17 law or custom.

18 TITLE I—CHILD PLACEMENT STANDARDS

19 SEC. 101. (a) In the case of any Indian child who
20 resides within an Indian reservation, no child placement
21 shall be valid or given any legal force and effect, except
22 temporary placements after emergency removal under cir-
23 cumstances where the physical or emotional well-being of
24 the child is immediately threatened, unless made pursuant
25 to an order of the tribal court, where a tribal court exists

1 within such reservation which exercises jurisdiction over
2 child welfare matters and domestic relations.
3 (b) In the case of any Indian child who is domiciled
4 within an Indian reservation, or who resides within an
5 Indian reservation which does not have a tribal court, no
6 child placement shall be valid or given any legal force and
7 effect, except temporary placements under circumstances
8 where the physical or emotional well-being of the child is
9 immediately threatened, unless the Indian tribe occupying
10 such reservation has been accorded thirty days' written
11 notice of, and a right to intervene as an interested party in,
12 the child placement proceedings. For the purposes of this
13 Act, an Indian child shall be deemed to be domiciled where
14 his natural parent or parents, or the blood relative in whose
15 care he may have been left by his natural parent or parents,
16 is domiciled.
17 (c) In the case of any Indian child who is not a resident
18 or domiciliary of an Indian reservation, no child placement
19 shall be valid or given any legal force and effect, except tem-
20 porary placements under circumstances where the physical
21 or emotional well-being of the child is immediately threat-
22 ened, unless the Indian tribe of which the child is a member,
23 or is eligible for membership, has been accorded thirty days'
24 written notice of, and a right to intervene as an interested
25 party in, the child placement proceedings.

1 (d) No Indian child shall be removed from the custody
2 of his natural parent or parents, Indian adoptive parent or
3 parents, or blood relative in whose custody the child has been
4 placed by the private actions of any private individual, cor-
5 poration, group, or institution for a period of more than thirty
6 days without written notice served upon the tribe of which
7 the child is a member or is eligible for membership in or upon
8 whose reservation the child resides or is domiciled. The notice
9 shall be in writing signed or acknowledged by the child's
10 natural parent or parents, Indian adoptive parent or parents,
11 or blood relative, and the child's temporary guardian,
12 notarized or signed by two witnesses, stating the names of
13 all the parties, their addresses, the expected length of re-
14 moval, the purpose of removal, and the extent to which
15 custody over the child is transferred to the temporary
16 guardian. This section shall not apply if the tribe has enacted
17 or enacts its own law governing private placements. No
18 placement shall be valid or given any legal force and effect
19 if made in violation of this section.
20 (e) It shall be the duty of the party seeking a change
21 of the custody of an Indian child to notify the revelant tribal
22 governing body by mailing written notice to the chief execu-
23 tive officer or such other person as the tribe may designate:
24 *Provided further*, That the judge or hearing officer at any
25 child placement proceeding shall make a good faith deter-

1 mination of whether the child involved is Indian and, if so,
2 which tribe must be notified.

3 SEC. 102. (a) No placement of an Indian child, except
4 as provided in section 101 (d) of this Act, shall be valid or
5 given any legal force and effect, except temporary place-
6 ments under circumstances where the physical or emotional
7 well-being of the child is immediately threatened, unless (1)
8 his natural parent or parents, or the blood relative in whose
9 care the child may have been left by his natural parent or
10 parents, has been accorded thirty days' written notice of the
11 child placement proceedings and a right (A) to intervene in
12 the proceedings as an interested party through counsel or,
13 alternatively, in a tribal court, through a lay advocate, (B) to
14 submit evidence and present witnesses on his or her own be-
15 half, and (C) to examine all reports or other documents and
16 files upon which any decision with respect to child place-
17 ment may be based; and (2) the nontribal government
18 agency seeking to effect the child placement affirmatively
19 shows that alternative remedial services and rehabilitative
20 programs designed to prevent the break-up of the Indian
21 family have been made available and proved unsuccessful.

22 (b) Where the natural parent or parents of an Indian
23 child, who falls within any of three classes mentioned in sec-
24 tion 101 of this Act, or the blood relative in whose care the
25 child may have been left by his natural parent or parents,

1 opposes the loss of custody, no child placement shall be valid
2 or given any legal force and effect in the absence of a deter-
3 mination, supported by an overwhelming weight of the evi-
4 dence, including testimony by qualified professional wit-
5 nesses, that the continued custody of the child by his natural
6 parent or parents, or the blood relative in whose care the
7 child has been left, will result in serious emotional damage,
8 or in the absence of a determination, supported by clear and
9 convincing evidence, including testimony by a qualified phy-
10 sician, that the continued custody of the child by his natural
11 parent or parents, or the blood relative in whose care the
12 child has been left, will result in serious physical damage.
13 In making such determinations, poverty, including inade-
14 quate or crowded housing, misconduct, and alcohol abuse on
15 the part of either natural parent, or the blood relative, shall
16 not be deemed prima facie evidence that serious physical or
17 emotional damage to the child has occurred or will occur. The
18 standard to be applied in any proceeding covered by this Act
19 shall be the standards of the Indian community in which the
20 natural parent or parents, Indian adoptive parent or parents,
21 or blood relatives reside.
22 (c) In the event that the natural parent or parents or
23 Indian adoptive parent or parents of an Indian child consent
24 to the loss of custody, whether temporary or permanent, no
25 child placement shall be valid or given any legal force and

1 effect, unless such consent is voluntary, in writing, executed
2 before a judge of a court having jurisdiction over child place-
3 ments, and accompanied by the witnessing judge's certificate
4 that the consent was explained in detail, was translated into
5 the natural parent's native language, and was fully under-
6 stood by him or her. If the consent is to a nonadoptive
7 child placement, the natural parent or parents or Indian
8 adopti parent or parents may withdraw the consent at
9 any time for any reason, and the consent shall be deemed
10 for all purposes, except temporary custody, as having never
11 been given. If the consent is to an adoptive child placement,
12 and the child is over the age of two, the natural parent or
13 parents or Indian adoptive parent or parents may withdraw
14 the consent for any reason at any time before the final decree
15 of adoption: *Provided further*, That no final decree of
16 adoption may be entered within ninety days after the natural
17 parent or parents, Indian adoptive parent or parents, or
18 blood relative has given consent to the adoption. A final
19 decree of adoption may be set aside only upon a showing
20 that the child is again being placed for adoption, that the
21 adoption did not comply with the requirements of this Act
22 or was otherwise unlawful, or that the consent to the adoption
23 was not voluntary. Consent by the natural parent or parents
24 of an Indian child given within ninety days of the birth of
25 the child shall be presumed to be involuntary.

1 (d) No placement of an Indian child, except as pro-
2 vided by section 101 (d) of this Act, shall be valid or given
3 any legal force and effect, except temporary placements
4 under circumstances where the physical or emotional well-
5 being of the child is immediately threatened, unless the child
6 has been represented in the placement proceedings by coun-
7 sel or, alternatively, in a tribal court, by a lay advocate, and
8 unless his natural parent or parents, Indian adoptive parent
9 or parents, or the blood relative in whose care the child
10 may have been left by his natural parent or parents, or
11 Indian adoptive parent or parents, has been represented by
12 separate counsel or lay advocate.

13 SEC. 103. (a) In offering for adoption an Indian child,
14 every nontribal government agency shall grant a preference
15 to members of the child's extended Indian family, which shall
16 be defined by tribal law or custom.

17 (b) In otherwise placing an Indian child, every non-
18 tribal government agency, in the absence of good cause
19 shown to the contrary, shall grant preferences in the follow-
20 ing order: (1) to the child's extended Indian family, (2) to
21 a foster home, if any, licensed or otherwise designated by
22 the Indian tribe occupying the reservation of which the
23 child is a resident or domiciliary; (3) to a foster home, if
24 any, licensed by the Indian tribe of which the child is a
25 member or is eligible for membership; (4) to any other

1 foster home within an Indian reservation which is recom-
2 mended by the Indian tribe of which the child is a member
3 or is eligible for membership; (5) to any foster home run by
4 an Indian family; and (6) to a custodial institution for chil-
5 dren operated by an Indian tribe, a tribal organization or
6 nonprofit Indian organization: *Provided, however*, That each
7 Indian tribe may modify or amend the foregoing order of
8 preferences, and may add or delete preference categories,
9 by resolution of its government body. Every nontribal gov-
10 ernment agency shall maintain a record evidencing its efforts
11 to comply with the order of preferences provided under this
12 subsection in each case of an Indian child placement.

13 (c) Where an Indian child is placed in a foster or adop-
14 tive home, or in an institution, outside the reservation of
15 which the child is a resident, pursuant to an order of a tribal
16 court, the tribal court shall retain continuing jurisdiction over
17 such child placement until the child attains the age of
18 eighteen.

19 SEC. 104. After an Indian adoptive child attains the age
20 of eighteen, upon his or her application to the court which
21 entered the final adoption decree, and in the absence of good
22 cause shown to the contrary, the child shall have a right to
23 learn the names and last known address of his natural parent
24 or parents and siblings who also have attained the age of

1 eighteen, their tribal affiliation and the grounds for the sever-
2 ance of their family relations.

3 SEC. 105. In any proceeding within the jurisdiction of
4 this Act the United States, any Indian Reservation, State,
5 Commonwealth, territory, or possession thereof shall give full
6 faith and credit to the laws of any Indian tribe involved in a
7 proceeding under the Act and any Tribal Court orders
8 issued in such proceeding.

9 TITLE II—INDIAN FAMILY DEVELOPMENT

10 SEC. 201. (a) The Secretary is hereby authorized, un-
11 der such rules and regulations as he may prescribe, to make
12 grants to, or enter into contracts with, Indian tribes for the
13 purpose of assisting such tribes in the establishment and
14 operation of Indian family development programs, as de-
15 scribed in section 202, and in the preparation and imple-
16 mentation of child welfare codes.

17 (b) The Secretary is further authorized, under such
18 rules and regulations as he may prescribe, to carry out,
19 or to make grants to or contracts with Indian tribes to carry
20 out, a special home improvement program to upgrade: (1)
21 the housing conditions of Indian foster and adoptive parents,
22 if such housing conditions are substandard; (2) the housing
23 conditions of Indians who seek Indian foster or adoptive
24 children, where improved housing would enable such In-

1 dians to qualify as foster or adoptive parents under tribal
2 law or regulations; and (3) the housing conditions of In-
3 dian families facing disintegration, where improved housing
4 would contribute significantly to family stability.
5 (c) The Secretary is also authorized, under such rules
6 and regulations as he may prescribe to carry out, or to
7 make grants to or contracts with Indian organizations to
8 carry out, off-reservation Indian family development pro-
9 grams, as described in section 203. In the establishment,
10 operation, and funding of off-reservation Indian family de-
11 velopment programs, the Secretary may enter into agree-
12 ments or other cooperative arrangements with the Secre-
13 tary of Health, Education, and Welfare, and the latter Secre-
14 tary is hereby authorized for such purposes to use funds
15 appropriated for similar programs of the Department of
16 Health, Education, and Welfare.
17 (d) There are authorized to be appropriated $21,-
18 792,000 during fiscal year 1978, $23,700,000 during fiscal
19 year 1979, $25,120,000 during fiscal year 1980, and such
20 sums as may be necessary during each subsequent fiscal year
21 in order to carry out the purposes of this section.
22 SEC. 202. (a) Every Indian tribe is hereby authorized
23 to establish and operate an Indian family development pro-
24 gram, which program may include some or all of the fol-
25 lowing features:

1 (1) a system for licensing or otherwise regulating
2 Indian foster and adoptive homes;
3 (2) the construction, operation, and maintenance
4 of family development centers, as defined in subsection
5 (e) (2) hereof;
6 (3) family assistance, including homemakers and
7 home counselors, day care, after-school care and employ-
8 ment, recreational activities, and respite services;
9 (4) provision for counseling Indian families and
10 Indian children;
11 (5) a special home improvement program, as de-
12 fined in section 201 (b);
13 (6) the employment of professional and other
14 trained personnel to assist the tribal court in the disposi-
15 tion of domestic relations and child welfare matters;
16 (7) education and training of Indians, including
17 tribal court judges and staff, in skills relating to child
18 welfare and family assistance programs, and the granting
19 of scholarships for such education and training; and
20 (8) a subsidy program under which Indian adop-
21 tive children are provided the same support as Indian
22 foster children.
23 (b) Where an Indian tribe has implemented a
24 licensing or other regulatory system pursuant to subsec-
25 tion 202 (a) (1), any Indian foster or adoptive home so

1 licensed or designated (1) may accept Indian child place-
2 ments by a nontribal government agency and State funds
3 in support of Indian children, (2) shall have a first pref-
4 erence in the placement of an Indian child who is a
5 resident or domiciliary of such tribe's reservation in accord-
6 ance with subsection 103 (b) (1) of this Act, and (3) shall
7 have a second preference in the placement of an Indian child
8 who is a member of, or eligible for membership in, such
9 tribe in accordance with subsection 103 (b) (2) of this Act.
10 (c) (1) The objective of every Indian family develop-
11 ment program shall be to prevent the breakup of Indian
12 families and, in particular, to insure that the permanent re-
13 moval of an Indian child from the custody of his natural par-
14 ent or parents, or the custody of any blood relative in whose
15 care he has been left by his natural parent or parents, by
16 a tribal court or nontribal government agency shall be ef-
17 fected only as a last resort.
18 (2) In furtherance of this objective, every Indian tribe
19 is authorized to construct, operate, and maintain a family
20 development center which may contain, among other
21 features:
22 (A) facilities for counseling Indian families which
23 face disintegration and, where appropriate, for the
24 treatment of individual family members;
25 (B) facilities for the temporary custody of Indian

1 children whose natural parent or parents are temporarily
2 unable or unwilling to care for them or who otherwise
3 are left temporarily without adequate adult supervision
4 by a blood relative; and
5 (C) facilities for the temporary custody of Indian
6 parents, where so ordered by a tribal court, in lieu of
7 incarceration for public intoxication or the commission
8 of any other minor offense.
9 SEC. 203. Off-reservation Indian family development
10 programs, operated either directly by the Secretary or
11 through grants and contracts with local Indian organiza-
12 tions, may include, but shall not be limited to, the follow-
13 ing features:
14 (a) a system for regulating, maintaining, and sup-
15 porting Indian foster and adoptive homes, including a
16 subsidy program under which Indian adoptive children
17 are provided the same support as Indian foster children;
18 (b) the construction, operation, and maintenance
19 of family development centers providing the facilities
20 and services set forth in paragraphs (2) (A) and (B)
21 of section 202(c) of this Act;
22 (c) family assistance, including homemakers and
23 home counselors, day care, after-school care and em-
24 ployment, recreational activities, and respite services;
25 (d) provision for counseling and treatment both of

1 Indian families which face disintegration and, where
2 appropriate, of Indian foster and adoptive children;
3 (e) an Indian child defense program, as defined in
4 section 204 (b), and other representation of Indian
5 children before the courts; and
6 (f) furnishing guidance, representation, and advice
7 to Indian families involved in child placement proceed-
8 ings before nontribal government agencies.
9 SEC. 204. (a) The Secretary is hereby authorized and
10 directed, under such rules and regulations as he may pre-
11 scribe, to undertake a study of the circumstances surrounding
12 all child placements which have occurred during the six-
13 teen years preceding the effective date of this Act, where
14 the Indian child so placed still is under the age of eighteen
15 on such date. If the Secretary has good cause to believe, on
16 the basis of this study, that a child placement was or may
17 be invalid or otherwise legally defective, and if either natural
18 parent, Indian adoptive parent or the blood relative previous-
19 ly having custody of the Indian child so requests, the Secre-
20 tary is authorized, in his discretion, to institute a habeas
21 corpus action or other appropriate legal proceeding in the
22 name of the United States on behalf of such parent, Indian
23 adoptive parent or blood relative in the United States district
24 court for the district in which the child resides for the pur-
25 pose of challenging the child placement and, if it is found

1 invalid or legally defective, of restoring custody of the Indian
2 child to its natural parent or parents, Indian adoptive parent
3 or parents, or to the blood relative in whose care the child
4 had been left.

5 (b) The Secretary is further authorized and directed,
6 under such rules and regulations as he may prescribe, to
7 operate, or to make grants or contracts with Indian tribes
8 or Indian organizations to operate, an Indian family defense
9 program which shall provide representation by an attorney
10 or, alternatively, in a tribal court, by a lay advocate for any
11 Indian child who is the subject of a child placement proceed-
12 ing, or, if appropriate, for his natural parent or parents, or
13 the blood relative in whose care the child may have been
14 left by his natural parent or parents.

15 (c) The Secretary also is authorized and directed,
16 under such rules and regulations as he may prescribe, to
17 collect and maintain records in a single, central location of
18 all Indian child placements which either are effected after
19 the date of this Act or are the subject of the study required
20 under subsection (a) hereof, which records shall show as
21 to each such placement the name and tribal affiliation of
22 the child, the names and addresses of his natural parents
23 and the blood relative, if any, in whose care he may have
24 been left by a natural parent, the names and addresses of
25 his siblings, and the names and locations of any tribal court

1 or nontribal government agency which possesses files or
2 information concerning his placement. Such records shall not
3 be open for inspection or copying pursuant to the Freedom
4 of Information Act (80 Stat. 381), as amended, but infor-
5 mation concerning a particular child placement shall be made
6 available in whole or in part, as necessary. (1) to an
7 Indian adoptive child over the age of eighteen for the pur-
8 pose of identifying the court which entered his final adoption
9 decree and furnishing such court with the information speci-
10 fied in section 104; (2) to the adoptive parent of an Indian
11 child or to an Indian tribe for the purpose of assisting in the
12 enrollment of an Indian adoptive child in the tribe of which
13 he is eligible for membership; and (3) to the adoptive
14 parent of an Indian child for the purpose of establishing or
15 continuing his tribal affiliation or a relationship with his
16 siblings. The records collected by the Secretary pursuant to
17 this section shall be privileged and confidential and shall be
18 used only for the specific purposes set forth in this Act.
19 (d) There are authorized to be appropriated $18,000,-
20 000 during fiscal year 1979, $20,000,000 during fiscal year
21 1980, $22,000,000 during fiscal year 1981, and such sums
22 as may be necessary during each subsequent fiscal year in
23 order to carry out the purposes of this section, including
24 the payment of attorney fees.
25 SEC. 205. (a) The Secretary is authorized to perform

1 any and all acts and to make such rules and regulations as
2 may be necessary and proper for the purposes of carrying out
3 the provisions of this Act.
4 (b) (1) Within six months from the date of enactment
5 of this Act, the Secretary shall consult with Indian tribes.
6 Indian organizations and Indian-interest agencies in the
7 consideration and formulation of rules and regulations to
8 implement the provisions of this Act.
9 (2) Within seven months from the date of enactment
10 of this Act, the Secretary shall present the proposed rules
11 and regulations to the Select Committee on Indian Affairs
12 of the United States Senate and the Committee on Interior
13 and Insular Affairs of the United States House of Repre-
14 sentatives, respectively.
15 (3) Within eight months from the date of enactment of
16 this Act, the Secretary shall publish proposed rules and reg-
17 ulations in the Federal Register for the purpose of receiving
18 comments from interested parties.
19 (4) Within ten months from the date of enactment of
20 this Act, the Secretary shall promulgate rules and regula-
21 tions to implement the provisions of this Act.
22 (c) The Secretary is authorized to revise and amend
23 any rules or regulations promulgated pursuant to this sec-
24 tion: *Provided*, That prior to any revision or amendment to
25 such rules or regulations, the Secretary shall present the

1 proposed revision or amendment to the Select Committee
2 on Indian Affairs of the United States Senate and the
3 Committee on Interior and Insular Affairs of the United
4 States House of Representatives, respectively, and shall,
5 to the extent practicable, consult with the tribes, organiza-
6 tions, and agencies specified in subsection (b) (1) of this
7 secti n, and shall publish any proposed revisions in the
8 Federal Register not less than sixty days prior to the
9 effective date of such rules and regulations in order to
10 provide adequate notice to, and receive comments from,
11 other interested parties.

Rudge Kleinkauf

① Sec. 11 — Move 2 front of bill

② 20.15.060 (a) — use language from original draft

③ Delete section (4)

④ delete section 6 — Amended last year
" 7 " " "
" ~~8~~ 9 " " "

SB 84 — Chapter 36

⑤ Page 6 — line 3 — Add

Such legal custody carries the right to consent to adoption

⑥ transmit instrument to court for filing and issuing an order

Why not delete (b) — go to court

Art Holmburg

Page 4, line 27 → correct statutory sections?

Page 1, line 16 → define who is authorized

Original sponsor: Judiciary Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 419

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption and voluntary relinquish-

7 ment of parental rights."

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

9 * Section 1. AS 20.15.050(a)(4) is amended to read:

10 (4) a parent who has voluntarily relinquished his right to

11 consent under AS 25.20.035 [SEC. 180 OF THIS CHAPTER];

12 * Sec. 2. AS 20.15.060 is repealed and re-enacted to read:

13 Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) A consent which

14 does not name or otherwise identify the adopting parent is valid if the

15 consent is executed at any time after the birth of the child in the

16 presence of the court or in the presence of a person authorized to take

17 acknowledgements. However, if the consenting person desires, this con-

18 sent shall specifically name the adopting person, and this consent is

19 valid only for the purpose of adoption by the named adopting parent.

20 (b) All consents to adoption shall be executed in writing and

21 shall give adequate notice that

22 (1) the person consenting to adoption has the right to con-

23 sent to a specific person adopting the child, if the consenting person

24 so desires;

25 (2) the person consenting to adoption has a right to appear

26 at the adoption hearing;

27 (3) the hearing will not take place less than 30 days after

28 the consent has been signed;

29 (4) the person consenting to adoption has the right to with-

1 draw his consent at any time before the adoption hearing or after commencement of the adoption hearing upon a showing of good cause;

(5) the consent itself does not alter the consenting person's existing rights and responsibilities toward the child;

(6) the adoption decree terminates the consenting person's rights and responsibilities toward the child;

(7) the person consenting must give his consent voluntarily; and

(8) relinquishment of parental rights under AS 25.20.035 is available as an alternative to consent to adoption and that the person obtaining the consent to adoption has the legal duty to explain the difference between the alternatives.

* Sec. 3. AS 20.15.070(b) is amended to read:

(b) A consent to adoption may be withdrawn before the <u>first evidenciary adoption hearing</u> [ENTRY OF A DECREE OF ADOPTION, WITHIN 10 DAYS,] by delivering written notice to the <u>court. After commencement of the hearing and before entry of a decree, a consenting person must petition the court in order to withdraw his consent. The petition shall be granted only upon a showing of good cause</u> [PERSON OBTAINING THE CONSENT, OR AFTER THE 10-DAY PERIOD, IF THE COURT FINDS, AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS AFFORDED TO PETITIONER, THE PERSON SEEKING THE WITHDRAWAL, AND THE AGENCY PLACING A CHILD FOR ADOPTION, THAT THE WITHDRAWAL IS IN THE BEST INTEREST OF THE PERSON TO BE ADOPTED AND THE COURT ORDERS THE WITHDRAWAL].

* Sec. 4. AS 20.15.100(b) is amended to read:

(b) Notice to persons specified in sec. 50 <u>of this chapter</u> shall include a statement of the grounds under which consent to the adoption is not required. Notice given under this section shall be adequate to give actual notice of the proceedings, taking into account education and

language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of hearing shall contain all names by which the minor has been identified and shall state in summary form the effect of a decree of adoption. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law [IN THIS STATE] or in any manner the court by order directs. [NOTICE BY PUBLICATION MAY NOT BE GIVEN.] Proof of the giving of the notice shall be filed with the court before the petition is heard, subject to the time limitation in (e) of this section. Childrens Rule 10(g)

* Sec. 5. AS 20.15 is amended by adding a new section to read:

Sec. 20.15.205. INFORMATION. The department shall disseminate information throughout the state with special emphasis to rural communities regarding the availability of adoptable children and financial assistance to adoptive families under this chapter.

* Sec. 6. AS 25.20 is amended by adding new sections to read:

Sec. 25.20.032. SEVERANCE OF PARENT AND CHILD RELATIONSHIP. The parent and child relationship may be severed either in an adoption proceeding under AS 20.15, in a voluntary relinquishment proceeding under sec. 35 of this chapter, or in a juvenile court proceeding under AS 47.10.010(a)(2).

Sec. 25.20.035. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND RESPONSIBILITIES. (a) A parent may petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities.

(1) The petition for relinquishment shall state

(A) the date and place of birth, if known, of the child;

(B) the full name, date of birth, and place and duration

of residence of the petitioner; and

(C) the relationship of the petitioner to the child.

(2) The court shall conduct a hearing on the petition. The court shall ascertain whether the parent relinquishing his rights and responsibilities understands the meaning of relinquishment, and, if necessary, the court shall explain to the parent the meaning and consequences of relinquishment and the right to withdraw the relinquishment under (5) of this subsection. If the court finds that the parent does not adequately understand the meaning of relinquishment, then it may continue the matter and order the parent to be counseled regarding the relinquishment.

(3) If the court finds that voluntary relinquishment is in the best interests of the petitioner and the child, it shall enter an order of voluntary relinquishment terminating the parent and child relationship, and order guardianship of the person and legal custody of the child to be transferred to the Department of Health and Social Services, a licensed child placement agency, or a willing and able relative of the child, whichever is in the best interests of the child. A copy of the court's order shall be given to the parent, and it shall also state the relinquishing parent's right to withdraw his relinquishment under (5) of this subsection.

(4) For the purpose of a proceeding under this subsection, an order of relinquishment terminating all rights and responsibilities of a parent with reference to his child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights and responsibilities or parent and child relationship are terminated by the relinquishment order and with any required notice of an adoption proceeding. However, a person or agency granted guardian-

ship and custody of a child by court order under (3) of this subsection must consent to the adoption of the child and be furnished with notice of adoption.

(5) The relinquishing parent may petition the court for vacation of the order of voluntary relinquishment within 10 days of issuance of the order upon a showing of good cause.

(b) As an alternative to a court order of relinquishment under (a) of this section, a parent may voluntarily relinquish his rights and responsibilities by signing a written instrument in the presence of a Department of Health and Social Services representative or a representative of an agency licensed under AS 47.35.100. A copy of the relinquishment instrument shall be given to the relinquishing parent and it shall state the meaning of relinquishment of parental rights and responsibilities. Upon signature of the instrument the department or agency shall take custody of the child and shall be responsible for the care and custody of the child. The relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later, and the relinquishment is invalid unless it states that the parent has this right of withdrawal.

* Sec. 7. AS 20.15.180 and 20.15.240(7) are repealed.

ALASKA CHAPTER
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.
Box 3-3794
Anchorage, Alaska 99501

ISSUES '78

Revision of Alaska's Adoption and Relinquishment of Parental Rights Statutes

The Alaska Chapter, National Association of Social Workers believes that present Alaska Statutes governing Adoption do not adequately protect the legal rights of children, natural parents nor prospective adoptive parents.

ACTION REQUESTED

Legislative support is requested for revision of Alaska's statutes as follows:

1. Enactment of legislation providing for the voluntary relinquishment of parental rights and insuring the jurisdiction of the court over the child until an adoption is finalized.

2. Amendment of present adoption laws to require that the Consent to Adoption form be utilized only in cases where the prospective adoptive parent is known to the natural parent and the natural parent is consenting to that person's (and no other) adoption of the child.

3. That the jurisdiction of the court be required to protect every child to be adopted and that the individual or agency serving as legal guardian until the adoption of the child be identified.

4. That termination of parental rights within the adoption hearing be permitted only in cases where the natural parent knows and is specifically consenting to the adoption of the child by the prospective adoptive individual(s) (and no others).

Note: Parental rights can now be terminated by court order after the court has adjudicated a child as a Child in Need of Aid (AS.47.10.080(c)(3).

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   November 8, 1976

SUBJECT: The Adoption Bill

TO: Legislative Council

FROM: Andrew M. Brown

Alaska's current adoption statutes were enacted in 1974, based on the Revised Uniform Adoption Act. Although the statutes are of recent vintage, the Task Force saw some changes were necessary in order to better protect both parents' and children's rights.

Section 1 of the bill repeals and re-enacts AS 20.15.060 on how consent is executed. §.060(a) requires the consent to state the name of the person who is to adopt the child. This would allow the consenting parent to decide whether the adopting person would be a suitable parent for the child. §.060(b) would require that the consenting to adoption procedure be more informative of the parental rights involved. It was felt that persons who consent to adoption often do not fully understand their rights concerning the adoption process or the meaning of their consent. By requiring the consent to state specific things, it is hoped that consenting persons do not mistake the consent itself as relieving them of their rights and responsibilities toward the child, but that only the adoption decree terminates those rights and responsibilities. By specifying the consenting person can attend the adoption hearing and stating that the hearing will not take place less than 30 days after the consent has been signed, the consenting person has a chance for greater involvement in the adoption process and has more time to make sure that he really wants to consent to adoption. The current §.060(b) would be deleted, because it deals with permitting disclosure of the adopting person's name, while the proposed bill seeks to require disclosure.

Section 2 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to

the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting person's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 3 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be all right if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires that the parents be entitled to as much notice as possible. Recent U.S. Supreme Court and Alaska Supreme Court decisions uphold the right to notice when one's interests are at stake. By deleting this sentence, the option of publication or posting is left for the court if other means of notice, such as personal service or certified mail, fail. The second reason for the deletion is that the sentence has no effect, because the legislative bill (HB 70) which became the present adoption law in 1974 did not expressly state that this sentence would change Children's Rule 10(g), which mandates publication in certain instances. Therefore, under Rule 40(e) of the Uniform Rules of the Alaska State Legislature the sentence would be ineffective. The added last sentence would require that the rights of notice applicable to adoption hearings also apply to termination proceedings under AS 47.10. Since both involve the termination of the parent-child relationship, the due process rights of notice should be applicable to both.

Sections 4 through 8 deal with the present adoption assistance law. AS 20.15.190 is the introductory section on adoption assistance. The Task Force has amended it so it reflects the purpose and extent of adoption assistance. The term "handicapped" has been replaced by "eligible for adoption," because "handicapped" implies a physical or mental condition of the child, while the Task Force thought that adoption assistance ought to apply not only to children with physical or mental problems, but also to those children whose adoptability is dependent on conditions of race, ethnic background, age, membership in a sibling group, color, or language. This assistance would also be applicable in cases where financial limitations impede families from adopting children. The Task Force found that the applicability of adoption assistance should be broadened, especially in view of the fact that for Fiscal Year 1976 assistance was given for only one child's adoption and for Fiscal Year 1977 assistance is being given for only eight "handicapped" children's adoptions.

Section 5 of the adoption bill eliminates some wording which is ambiguous. The deletion of "are caring for a handicapped minor on a foster parent basis and who" is to clarify that the assistance investigations shall apply to all applicants and not just those who are foster parents. This deletion also eliminates the implication that only foster parents are entitled to the adoption assistance. The word "handicapped" is deleted, because it is no longer relevant.

Section 6 involves a new section on information about availability of adoptable children and financial assistance to adoptive families. This amendment would require the Department of Health and Social Services to convey the information. The "special emphasis to rural communities" is inserted, because the Task Force felt that there could and should be more opportunities of adoption by Natives, but that a lack of information about the current assistance law thwarts the chances of the effective use of the law in rural areas.

Section 7 amends AS 20.15.210 by requiring the amount and duration of subsidy payments to be determined according to departmental regulations which have to be adopted. At the present time, the amount and duration is left to the department's discretion, and the Task Force thought this allowed for capacious and unregulated determinations, which were detrimental to implementing the adoption assistance law. The maximum amount of the subsidies would not be changed; it would not exceed the existing rate and benefits for foster care. There had been some concern over whether adoption assistance would affect state aid under other programs. To

remove this possibility a new sentence has been added to §.210 explicitly stating that a grant of adoption assistance subsidies would not affect eligibility or computation of resources and needs under the Aid to the Permanently and Totally Disabled Act in AS 47.25. It should be noted that adoption assistance is to help the whole family in the adoption process, while the assistance under the Aid to the Permanently and Totally Disabled Act aims to give financial aid to the disabled individual on the basis of his disability. Each kind of assistance has its own purpose and thus they should not offset each other. The final change to the adoption assistance law is repealing the definition of "handicapped child" in AS 20.15.240(7), because that term is unnecessary in light of the Task Force's recommendations on adoption assistance.

AMB:hjd

To testify on HB 419

Pudge Kleinkauf
Nat'l Assoc of Soc Workers
member Children's Code Task Fc

Art Holmburg
Div. of Soc. Serv.

Peggy Burke (may testify - call last)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M   November 8, 1976

SUBJECT: The Relinquishment of Parental Rights and Responsibilities Bill

TO: Legislative Council

FROM: Andrew M. Brown

The purpose behind this bill is to clarify the ways in which the parent and child relationship can be severed, and to specify the rights and procedures a parent is entitled to in a voluntary relinquishment proceeding. The present law in AS 20.15.180 seems to combine confusingly relinquishment with involuntary termination of parental rights and responsibilities, and there is a question whether voluntary relinquishment belongs in the adoption laws, since it does not necessarily have any connection with adoption. It would be better to put voluntary relinquishment in AS 25.20 under the chapter on parent and child, because it would then be clear that relinquishment can be done without any prospective adoption. The present law implies that relinquishment is part of the adoption process, but since that is not necessarily so, putting it in AS 25.20 clarifies the matter.

Section 1 of this bill sets out the rights and procedures pertaining to voluntary relinquishment. Subsection (a) states the rights of a parent to petition a court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities. The "duly authorized representative" refers to magistrates so persons in rural areas will have access to this procedure. Subsection (b) specifies what goes in the petition for voluntary relinquishment. Subsection (c) stipulates the court shall conduct the hearing making sure that the parent understands the meaning of relinquishment and the right of withdrawal, or the court can continue the matter and order the counseling for the parent. This is to insure that the parent comprehends the consequences and finality of relinquishment. Subsection (d) allows for the court to make an order of voluntary relinquishment, if it finds such an order is in the best interests of parent and child, and to order the guardianship of the person and legal custody of the child to be transferred to either the Department of Health and Social Services, a licensed child placement agency or a willing and able relative of the child. This reference for the court to make a

guardianship and custody order gives the court an explicit power which is only very vague in the current law in AS 20.15.180. The court's choice of guardianship and custody will be governed by the best interests of the child test. A copy of the court's order would be given to the parent and it must also state the right of the parent to withdraw his relinquishment. Subsection (e) is from the current 20.15.180(d). It explains that a relinquishment order dispenses with the right or necessity of consent by the relinquishing parent in an adoption proceeding. Subsection (f) states the relinquishing parent's right to petition for vacation of the court's order may be done only within 10 days of the court's order of relinquishment and only upon a petition showing good cause. Since Subsection (c) states that the court must ascertain the parent's understanding of the relinquishment, it is presumed that the court's granting the order is done on the basis of the relinquishing parent comprehending the consequences, and therefore any petition to vacate the court's order should be for a good reason and not a capricious change of mind. It is intended that the court explanation of the meaning of relinquishment will dispel whatever questions or doubts the relinquishing parent has about either going ahead with the proceeding or asking for dismissal of his relinquishment petition.

Section 2 of the bill amends the parent-child chapter in AS 25.20 by adding a section setting out the three methods by which the parent-child relationship can be severed. Currently, it is only by knowing the various statutes can one figure out how there can be severance. This new section 25.20.032 specifically states that the relationship can be severed either in an adoption proceeding, in a voluntary relinquishment proceeding or in a juvenile court proceeding.

Section 3 sets out other statutory changes necessary if this bill becomes effective.

Section 4 repeals AS 20.15.180. It should be noted that §.180 allows almost any person to initiate a termination proceeding. This is overbroad and could lead to unwarranted interferences into family matters. If termination is necessary it should be done under the juvenile court statutes on the basis of a child in need of aid, rather than the adoption statutes. As the present statutes read, a person, who wants to adopt a child who is not up for adoption, could start a termination proceeding which could result in the parent and child relationship being involuntarily terminated and thus the child being available for adoption. This is a loophole in the law which should be closed, and by making the voluntary relinquishment statute explicit as to who can use the statute, it forces the issue of involuntary termination into its proper place under the juvenile court laws in AS 47.10.

AMB:hjd

2751

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to relinquishment of parental rights and responsibilities."

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

* Section 1. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.035. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND RESPONSIBILITIES. (a) A parent may petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities.

(b) The petition for relinquishment shall state

(1) the date and place of birth, if known, of the child;

(2) the full name, date of birth, and place and duration of residence of the petitioner; and

(3) the relationship of the petitioner to the child.

(c) The court shall conduct a hearing on the petition. The court shall ascertain whether the parent relinquishing his rights and responsibilities understands the meaning of relinquishment, and, if necessary, the court shall explain to the parent the meaning and consequences of relinquishment and the right to withdraw the relinquishment under (f) of this section. If the court finds that the parent does not adequately understand the meaning of relinquishment, then it may continue the matter and order the parent to be counseled regarding the relinquishment.

(d) If the court finds that voluntary relinquishment is in the

LA-L 20

best interests of the petitioner and the child, it shall enter an order of voluntary relinquishment terminating the parent and child relationship, and order guardianship of the person and legal custody of the child to be transferred to the Department of Health and Social Services, a licensed child placement agency, or a willing and able relative of the child, whichever is in the best interests of the child. A copy of the court's order shall be given to the parent, and it shall also state the relinquishing parent's right to withdraw his relinquishment.

(e) For the purpose of a proceeding under this section, an order of relinquishment terminating all rights and responsibilities of a parent with reference to his child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights and responsibilities or parent and child relationship are terminated by the relinquishment order and with any required notice of an adoption proceeding.

(f) The relinquishing parent may petition the court for vacation of the order of voluntary relinquishment within 10 days of issuance of the order upon a showing of good cause.

* Sec. 2. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.032. The parent and child relationship may be severed either in an adoption proceeding under AS 20.15, in a voluntary relinquishment proceeding under sec. 35 of this chapter, or in a juvenile court proceeding under AS 47.10.010(a)(2).

* Sec. 3. AS 20.15.050(a)(4) and (5) are amended to read:

(4) a parent who has voluntarily relinquished his right to consent under AS 25.20.035 [sec. 180 OF THIS CHAPTER];

(5) a parent whose parental rights have been terminated by order of the court under AS 47.10.080(c)(3) [sec. 180 OF THIS CHAPTER];

1 * Sec. 4. AS 20.15.180 is repealed.

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TELEPHONE (907) 586-3210

JOSEPH A. MCLEAN
ATTORNEY AND COUNSELLOR AT LAW

P. O. BOX 1774
MENDENHALL BUILDING
JUNEAU, ALASKA 99802

March 25, 1977

The Honorable Terry Gardner, Chairman
House Judiciary Committee,
Alaska Legislature
Juneau, Alaska 99801

Re: Senate Bill 106 and Companion House Bill 204

Dear Mr. Chairman:

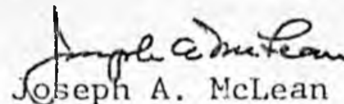
The above Senate and House Bills relating to Children's laws was discussed at the regular meeting of the Juneau Bar Association today. Many of the proposals advanced by the authors of these bills are commendable.

Section 25.20.035 however, pertaining to a mandatory court proceeding in order to establish a voluntarily relinquishment of parental rights, is most definitly not in the best interest of either the parents or the child. This section should not be enacted, as well as any other section that sets up unreasonable hurdles for unfortunate parents who already have wrestled with and concluded the best interest of the child can be accomodated with an adoption.

Those of us in the Alaska Bar Association who have handled adoptions over the years and shared with the medical doctors and natural parents the processes required of adoption, adequately understand and feel confident that the present procedures are burdensome enough. Most certainly those of us involved recognize fully the concerns of a parent and before a relinquishment form is signed, believe that a parent fully understands the meaning.

To require a duplication of all this process and another ordeal in the court room for the natural mother will obstruct, rather than advance the best interest of the child.

Respectively yours,



Joseph A. McLean

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 28, 1977

Hon. Terry Gardiner
Alaska State Representative
Pouch V
Juneau, Alaska 99811

Re: S. B. 106

Dear Representative Gardiner:

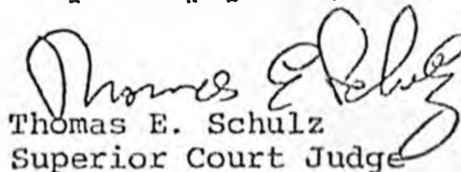
I have received a copy of S.B. 106 which relates to children's laws and related judicial proceedings. I was a member of the Task Force that worked on the report that I believe ultimately led to the introduction of this bill, and I am, generally, in agreement with that Task Force report and the contents of S.B. 106. I think my only serious quarrel with either the Task Force report or the legislation relates to the amendments to A.S. 20.15.050 which are set forth on pages 4 and 5 and amendments to A.S. 20.15.070 (b) and .100 (b) (1), and A.S. 20.15.200 and .210 which are set forth on pages 5, 6 and 7. Those amendments generally relate to adoption procedures and particularly to the manner of obtaining consent in adoptions. I think the procedure involving the consent is unduly cumbersome, particularly when one gives any consideration to the adoptions that are handled in the outlying areas in Alaska. Rather than make the procedure more cumbersome, I think our aim ought to be to simplify it as much as possible consistent with due process.

I am also opposed, as a general principle, to the parents of a child acquiring so much knowledge about who is going to adopt it. From the standpoint of the child, it is particularly important that the adoption decree be final and when natural parents know where the child is going and, indeed, have, at least in some cases,

a power to veto a prospective placement, I think we succeed only in making the adoption procedure more cumbersome, and create difficulties in rendering what can be a final decree. I think those provisions of the proposed legislation deserve very close scrutiny.

Other than that, I think the Task Force work and the bill introduced in the Senate go a long ways to clearing up some ambiguities in the Children's Code and in the Children's Rules, and I am hopeful that the legislation can be enacted this Session.

Very truly yours,



Thomas E. Schulz
Superior Court Judge

TES:ri

HB 204

League of Women Voters of Alaska

March 29, 1977

To: Sen. Sumner and other members of Senate HESS Committee
Members of House Judiciary Committee

From: Joy Jamison

Re: Sec. 18 of SB 106 and HB 204, "Children's laws and related judicial proceedings"

There has been much confusion regarding the proper interpretation of part (a) of Sec. 18 (AS 25.20.035), "Voluntary relinquishment of parental rights and responsibilities". The confusion appears to stem from the use of the word "may" in "A parent may petition the court or its duly authorized representative to voluntarily relinquish his parental rights and responsibilities with reference to his child, including residual rights and responsibilities."

The League has received conflicting legal opinions. One is that the parent would not have to go to court to relinquish the child; another that the parent would have to go to court for the relinquishment, thereby hopefully guaranteeing that the parent knows exactly what he is doing. Members of the Children's Code Revision Task Force are also confused.

The League's position is that an agency licensed to do adoption procedures should be able to make the decision as to whether or not a parent understands what he is doing.

We continue to urge the passage of the bill. If this particular section needs to be re-written or even pulled out altogether to facilitate passage of the body of the bill, we encourage you to do so. SB 106 is a much-needed piece of legislation.

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

TELEPHONE
AREA CODE 907
274-2519
272-9409

March 29, 1977

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 204

Dear Representative Gardiner:

I am the President of the Board of Directors of Catholic Social Services, Inc., and the attorney for the agency. As you know, Catholic Social Services is the only licensed, private adoption agency in the State of Alaska. Sister Mary Clare, the Director of Catholic Social Services testified on Senate Bill 106 and House Bill 204 regarding the adverse affects of certain sections of this proposed legislation on the agency. I wish to add my comments from an attorneys point of view.

As you know, Catholic Social Services opposes the repeal of AS 20.15.180 which provides for relinquishment of parental rights (Section 18 of the bill) and the repeal of the prohibition against notice of publication in AS 20.15.100(b) (Section 9 of the bill). The relinquishment of parental rights section has been used by the agency to the exclusion of other methods since its enactment in 1974. During this time I have handled approximately half of the adoptions from Catholic Social Services ranging from 15 to 20 per year. In no instance has there been any difficulty or objection arising out of the use of the non-judicial relinquishment forms. In each case the natural parent or parents are counselled and informed of their rights by representatives of the agency who are in a far better position to deal with such delicate matters than the court. The adding of another judicial hearing will provide absolutely no protection or benefit to anyone and would cause only added embarrasment, time and cost. Unless the proponents of the repeal of Section 180 can point to specific wrongs or difficulties in the operation of that section with Catholic Social Services we strongly urge that it be obtained. We have no objection to the creation of a new petition process as an option

if anyone thinks that this is necessary. We simply request that the relinquishment section with which Catholic Social Services has been operating successfully be retained so that its important work can be continued with the same confidentiality and success that it has had ever since that Section 180 was adopted.

It should be pointed out that the proposed bill in regard to the relinquishment section actually takes away the right of the natural parent to choose how the child shall be adopted. At the present time the natural parent may choose to relinquish to the State, Catholic Social Services or directly consent to an adoption by a private party. Under the proposed change, voluntary relinquishment would be allowed only if the court decided where the child was to go, not the natural parent. If this bill were to be enacted in its present form, a parent desiring Catholic Social Services to place the child could never be sure that this request would be honored since the judge may ignore that request, and upon the representations of someone else, a relative or welfare, could refuse to allow Catholic Social Services the adoption.

Another reason given for the change in Section 180 is the granting of guardianship and custody in a more specific way which is alledged to be vague in Section 180. From the viewpoint of Catholic Social Services this is an unnecessary concern. No trouble has arisen concerning this matter and in any event it seems quite obvious that a relinquishment of parental rights to an agency carries with it all aspects of those rights, including care and custody so that the agency stands in the place of the natural parent. Moreover, since it is the policy of Catholic Social Services to work swiftly though carefully, placement occurs as soon as possible after the ten day revocation period provided in the relinquishment. The child does not wait around and is not shifted from foster parent to foster parent while tedious and unnecessary legalities are sorted out before courts. Catholic Social

Services considers that to be against the best interest of the child and the adopted parents under any set of circumstances. As a practical matter, therefore, there is no need to give the agency specific custody and control rights.

Section 9 of the bill would repeal the present sentence prohibiting notice by publication. This is a gross breach of confidentiality which can cause only harm and anguish to the parties involved especially to the natural parents who are pledged secrecy by the law and by Catholic Social Services. This notice requirement contained in the statute is for persons whose consent is not required for adoption. In most cases this is the unmarried natural father. The alledged reason for this repeal is that constitutional requirements require as much notice as possible. Presumably, the Legislative Affairs Agency is referring to the Stanley case where the United States Supreme Court held that an unmarried, natural father who actually had custody of the child had to consent to an adoption. The constitutional question therefore is not notice but consent and consent has been required by the court only in cases where actual parental rights were exercised by the claimant. To add notice requirements does not meet the real issue and in any event anticipates court decisions which had not yet occurred and may never occur. In the vast majority of cases unwed natural fathers have no interest in claiming their parental rights and certainly do not scan the fine print in the legal section of the newspaper to determine if a child is being adopted. The only result of this exercise of publishing notice in the newspaper therefore, is to breach the confidentiality of the adoption proceedings letting the unwed natural mother and presumably her relatives and acquaintances and the adopted parents know the circumstances of the birth and of the adoption. Again, this serves no purpose and causes an immense amount of harm to the parties involved. Under such circumstances, I suggest that the Legislature wait until the court orders such a requirement rather than anticipating something that may never happen.

Another reason for the repeal of this section is an alledged conflict with the Childrens Rules which provide that notice of publication may be given. Adoption proceedings in the Superior Court in Anchorage are not governed by the Childrens Rules but are rather governed by the ordinary Rules of Civil Procedure. In such cases, notice by publication is provided for a complaint and summons which is not what the adoption proceeding uses. Therefore, in my opinion, there is no conflict between the Rules of Civil Procedure and the present statute. Even if there is a conflict, it is because the previous statute failed to include the stated two thirds requirement for overruling the Rules. The remedy now should be not to repeal that sentence, but rather to make it clear that the prohibition of publishing notices of adoption proceedings does supersede the Rules.

It has been noted to you before that this bill which vitally affects the operation of the state's only licensed private adoption agency and the confidentiality of persons served by that agency was never discussed with Catholic Social Services prior to its introduction. The agency was not even aware that the law under which it operated was going to be so radically changed. As a result, we were therefore forced at this late date to enter our strong objections to the bill in its present form. We wish to emphasize that it is only to this portion of the bill relating to adoptions that causes serious problem. We do not object to any other portions of the bill. In order to expedite proceedings, we suggest that adoption matters simply be dropped from the consideration of the Childrens Code revision to be dealt with separately. As a separate matter, a full understanding of all the implications of adoption proceedings can be obtained.

The agency would be glad to furnish any information you would find necessary concerning its position on the proposed legislation. We believe that Catholic Social Services is providing a vital need in Alaska in a very sensitive area and providing it without a penny of the taxpayers money. We hope to continue to do so

but we do believe that the changes drafted by the task force would adversely affect this ability to serve.

Thank you for your consideration of our objections.

Very truly yours,

WOHLFORTH & FLINT

By [signature]
Robert B. Flint

Ch. Code

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
JUNEAU COURT and OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF.
ALLEN T. COMPTON, JUDGE

December 6, 1976

Ms. Betsey W. McGuire
Executive Director, Office of Child Advocacy
Pouch AL
Juneau, Alaska 99811

Dear Ms. McGuire:

Recently I received a copy of the legislative proposals prepared on behalf of the Children and Family Code Task Force. Although I have not had an opportunity to review them in detail, several items did catch my attention that I feel compelled to comment on.

(1) I am particularly concerned with matters identified in Sections 1 and 2 of Mr. Brown's explanatory notes regarding amendments to Alaska's adoption laws. I don't know who feels "that persons who consent to adoption do not fully understand their rights concerning the adoption process or the meaning of their consent". Certainly I would concur in the thought that persons who do consent ought to both be completely informed and that they fully comprehend the information they have received. However, I fail to see any justification whatsoever for permitting the person who gives consent to be permitted to attend the adoption hearing. Presumably this is to enable the consenting person to have a "greater involvement in the adoption process", but the explanatory materials do not offer any suggestion as to why this is either necessary or desirable. Presumably the required disclosure of the identity of the adoptive parents, in place of the permissive disclosure, is an aid of such greater involvement. Again, I fail to see justification for such a requirement.

As I view the effect of the proposed amendments, a person who desires that their child be adopted could, upon seeing the consent form with the names of the adoptive parties there included, simply state that they think they know who the adoptive parties are and don't like them and therefore will not give consent. A person who has consented presumably could appear at the "first evidentiary hearing", and upon identifying the adoptive persons immediately prior to commencement of the hearing, preclude its ever commencing by simply delivering a handwritten note to the court that consent was revoked, even though the only reason for revoking the consent being that the consenting person did not happen to like the looks of the adoptive persons. Of course, since the consenting person would be advised of the names of the adoptive persons at the time the consent was signed, the consenting person could simply on his or her own determine the whereabouts of the adoptive persons, seek them out at their homes or places of business, determine from their looks or the places where they worked or lived that they were not acceptable adoptive parents and revoke consent. It takes little imagination to readily come up with similar scenarios. And what of the consenting person in Anchorage who gives consent to a child being adopted by persons living in Ketchikan? The consenting person has a right to be at the first evidentiary hearing, and apparently any other hearings as well. If the consenting person is impoverished, does that mean that the consenting person will be paid travel expenses to Ketchikan to attend the hearing? After all, the consenting person has a right to attend and it's certainly through no fault of the consenting person that the adoptive persons reside elsewhere. How are the adoptive persons affected by all of this? Are their footsteps going to be dogged by a consenting person who simply wishes to know how his or her natural child is being treated in life?

Perhaps these and other similar questions are simply too simpleminded to merit attention. If they do not merit consideration, I would of course wonder why not. If they have been considered, the explanatory notes certainly do not give any answers regarding their

resolution. There seems to be a shift from what is in the best interests of a child with respect to an adoption to whether the consenting person finds it to be in the best interests of the child that the child be adopted by certain persons. The consenting person seems to be in the position of saying that for whatever reason it is their desire that their child be adopted, but only if the adoptive persons are acceptable to the consenting person. While the consenting person is certainly entitled to every assurance that those persons who become the adoptive parents are decent, suitable people, whom a court would be inclined to find are proper parents for an adoption, as the proposal now stands it seems to me that it is totally unjustified.

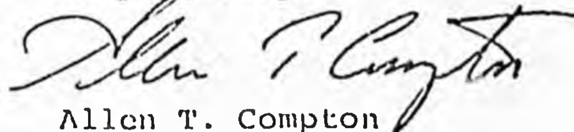
(2) The second aspect of the adoption proposals I find somewhat troublesome is found in Section 3 of the explanatory notes and is in particular regard to deletion of the sentence "notice by publication may not be given". Certainly no one would quarrel with the statement that parents are entitled to "as much notice as possible". However, service of notice by publication is probably the least effective means of giving a person notice imaginable. A return to publication of notice would seem to be contrary to the legislative intention to protect the rights of all parties, "including but not limited to the right of privacy and the right to be notified." That statement is found in AS 20.15.100(c), which requires either the petitioner or the Department of Health and Social Services to conduct an investigation to assure that all persons required to be given notice are in fact located and given notice if at all possible. It would appear that the notice provisions of Section 100 were carefully drawn to assure that more than just a passing glance at the giving of notice is made. Certainly the contents of the notice are such in a given case that their disclosure could be extremely embarrassing to all persons concerned, including the child to be adopted. By not permitting publication as an easy out and requiring affirmative steps to locate the person to whom notice is required to be given, the legislature has seen fit to exact a higher notice standard than in many other matters. Of course, if it is the objective of the authors

Publishing notice

of this proposal to let a given community know that little Johnny Jones is in fact the illegitimate child of Mary Smith and that fellow who worked at the grocery store a few years ago, deletion of this proscription will lend itself thereto admirably. If that grocery store clerk left Haines, or Sitka, or Ketchikan, or Fairbanks, or probably even Anchorage, wherever it was he was living when the "event" occurred, a year or two ago, and the petitioner, presumably often the now husband of the natural mother, cannot locate the person through his known acquaintances or his family, publication of the notice in whatever town it was he was living in is no more than an expensive, useless gesture. (I am reminded of a recent case in which a taxing authority in a small community needed to give notice to a property owner regarding taxes due. The property owner's address did not appear on the deed by which the owner had gained title to the property, and since the property was unimproved land, there was obviously no one residing thereon to receive the notice. After having assured itself that the owner owned no other property in the community bearing any address, and not finding the owner listed in any city directory of that community, telephone or otherwise, and its agents were found to know of no such person in the community, the notice was published in the community's newspaper and a certified letter, return receipt requested, was sent to the person care of general delivery at that community's post office. Predictably, the person never got any notice, since the authority had already determined that the person wasn't there anyway. Catch 22.)

Thank you for giving me the opportunity to review these proposals and comment thereon.

Respectfully,



Allen T. Compton

ATC/bt

cc: Honorable Thomas B. Stewart
Honorable Thomas E. Schulz
Honorable Duane Craske
Andrew Brown, Esquire
Susan Burke, Esquire

Members file

TELEGRAM

ALASKA COMMUNICATIONS
PHONE 586-6440
JUNEAU, ALASKA 99801

#

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PMS REP 1636 GARDINER

JUN

RE HB204. ADOPTION RELINQUISHMENT PROCEDURES. PLEASE VOTE AGAINST THIS BILL - 1. FEEL UNDUE HARDSHIPS TO MOTHER TO APPEAR IN COURT INSTEAD OF NOTARY FOR RELINQUISHMENT.

2. AGAINST MOTHERS CIVIL RIGHTS FOR JUDGE TO CHOOSE AGENCY INSTEAD OF MOTHER.

3. PUBLIC NOTICE IN NEWSPAPERS IS CRUEL.

MR AND MRS R W ROBINSON BOX 309 CHUGIAK ALASKA 99567

3/15/77

To: Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: HB201 (Reguarding the revision of the adoption code)
We understand that this bill requires that relinquishments be taken in court, rather than in front of a notary.

We are adamently against this change. What kind of emotional hardship, would be inflicted on the natural parents? What about the rights of the natural parents, and the child to privacy.

It is very difficult for a parent to relinquish a child for adoption. But possibly made bearable through counseling and privacy. What happens to the child through the waiting period, from birth to scheduled court hearing? Is not a Judges function to interpet the law? What kind qualifications will be used to decide which agency recievies custody? We understand that regardless of the natural parents wishes, they would have absolutely no voice in which agency their child would be placed. Further that public notice of the birth and relinquishment would be required. What about confidentiality!!!!!

If a change is to be made, then lets make it positive. We suggest, if you wish to have protection for all parties concerned' that you might consider allowing relinquishment only to an Agency Licensed by , the State of Alaska as an Adoption Agency, with provisions that such agency provide counseling for the natural parent, licensed foster care for the child for the 10 day waiting period between relinquishment and any adoption proceedings, and follow up services until adoption is finalized.

We do hope you give much considdration to this matter.

We would be most greatful if you would keep us informed on the status of this bill.

Sincerely,

Margaret M. Lesgaard
3154 E 19th Ct.
Anchorage, Alaska 99504

Mary Talley
De Ette Goff
Diane Owens
1511 Nunaka
Anchorage 99504
Nancy J Yates
Lonna Sorden

ch orl.

Members files

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

April 5, 1977

Hon. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Children and Family Code

Dear Representative Gardiner:

I understand that the adoption and voluntary relinquishment provisions in H. B. 204 are being taken out and covered in separate legislation H. B. 419. I just wanted to write and let you know that I had some concerns with the adoption provisions and relinquishment provisions in H. B. 204, but generally, that Bill and S.B. 106 are good pieces of legislation, and I am hopeful that they can be passed this Session. If I can answer any specific questions for you, please don't hesitate to contact me.

Very truly yours,

Thomas E. Schulz

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Glenn Hackney

file HB204 (907) 272-5522

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

March 24, 1977

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Terry:

With regard to the children's code, it is my recollection that the Subcommission had decided not to include existing AS 11.15.110(1) in the Revised Code as the "doing any lawful act, by lawful means, with usual and ordinary caution and without lawful intent" would not be a criminal homicide under any circumstances as the defendant had not acted with a culpable mental state.

It seems that the bill is particularly concerned with the specific reference to "correcting a child" and wishes to eliminate that provision. I agree with your observation that you should withdraw sec. 4 from the Act as all of AS 11.15.110 (not just the section covering children) will be repealed under the Revised Code.

Sincerely,

Barry Stern

BS:pb

file members HB204

March 24, 1977

Mr. Gardiner:

It has been brought to my attention that there is a bill before the House, HB204, which will revise the current adoption code. Being an unwed mother who has just recently given her child up for adoption this bill will have no effect on myself, but I have compassion for those unwed mothers this bill would effect.

I understand that relinquishment of the child would have to take place in court rather than in front of a notary. It is difficult enough to give up a child whom one has carried for nine months without having to go down to the courthouse. My adoption proceedings were with Catholic Charities in which I signed the relinquishment papers in front of a notary. This can be a great deal easier for the unwed mother. If I had had to go to court to sign, it is very questionable whether or not I would have made it. Taking it to court makes the fact stand out, even more so than before a notary, that one has just given up her child. For most that is a hard enough fact to accept.

Secondly, I understand that the biological parent, or parents, will have no say as to what agency will be put in charge of the adoption proceedings. I have very strong feelings against this. I know that I myself chose Catholic Charities as the best agency to take care of my child. I believe that the parent should have the right of choice re agencies. Parents want to know their child has the best, and you can't know that if the judge makes the decision.

Thirdly, I do not believe the birth of the child need be made public unless the parents do not mind. The public need not know, it doesn't concern them, and they would probably pay little heed anyway. -148- It's an invasion of privacy in the true sense.

Thank you for your time. I hope this bill does not pass.

Sincerely,
Celeste Sozoff

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

March 31, 1977

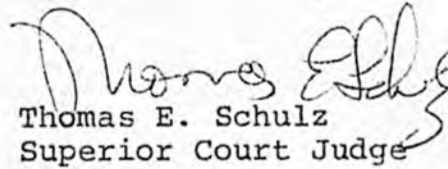
Hon. Terry Gardiner
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

Please excuse the delay in my reply to your letter of March 11. I have taken the long look H. B. 204 as well as other legislation regarding children proceedings. I was a member of the Children's Code Task Force although I was only able to attend one meeting, the only reservations I have about the legislation concern the provisions on adoption and particularly the methods on obtaining parental consent or relinquishment of parental rights in adoption proceedings. I believe there was some confusion on the part of some of the Task Force members in that there appeared to be some question about whether a parent could ever consent to adoption by a particular adoptive parent or parents. It has always been possible to do this and I have had several cases in my court where that was done. However, the proposed legislation appears to me to make the procedures for obtaining either relinquishments to parental rights or consents to adoption unnecessarily cumbersome, particularly in those matters arising in rural or outlying areas in Alaska. I am further concerned that the length of time to withdraw consent to an adoption is probably too long. Usually by the time an adoption proceeding reaches the point of a petition being filed or parental rights being relinquished, the adoptive child has been in the custody of the adoptive parents for some time and attachments have begun to form both as far as the adoptive parents are concerned and

as far as the child is concerned. It seemed to me at the time of the Task Force meetings and it seems to me now, that the present time frame for withdrawal of consent is adequate given the circumstances of the usual adoption cases we have. Other than that, I have no particular comments on this legislation.

Very truly yours,



Thomas E. Schulz
Superior Court Judge

TES:ri