

ALASKA LEGISLATURE HOUSE FILED 2005-2006

11418 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

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

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

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

Sec. 29. This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt.

Sec. 35. Eliminates a provision that is currently used by OCS to refuse placement with a relative because the child was placed in a home for adoptive purposes. Compliments due process.

Jury Trial

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

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

Sec. 50. Amends Rule 18(e) to provide for a jury trial for termination of parental rights when demanded by the parent.

Creating Transparency in the Process

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

Sec. 13(x). It opens adjudication hearings to the public unless an exception in Section 10 applies.

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

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

Sec. 20(e). provides that if the department conducts an internal; audit, a official truncated report will be prepared and will be made available to the person requesting the review.

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

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

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

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

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

Sec. 28. Provides that within 60 days after an emergency custody and temporary placement hearing the court will inform parties about the local citizen out-of-home care review panel.

Sec. 43. Requires OCS to notify a person who has made a ROH with a status report within 20 days.

Sec. 48. Repeals CINA Rule 3(f), **General Public Excluded**, and reenacts the rule to open hearings to the public and establishes a process for the court to close a hearing.

Sec. 49. Creates a new rule, Rule 3(j), prohibiting any reference to more than the child's first name. All other identifying information is to be kept confidential.

Sec. 52. Adds a new subsection to Rule 22 that allows the use of a child's name for the purposes of implementing a permanency plan and allows aggregate information to be released for statistical or other informational purposes as long as the identity of the child is not revealed. This implements Section 18 of the HB 53.

Sec. 56(a). An indirect court rule¹ amendment to open custody petition hearings, adjudication hearings, and termination hearings to the public except in certain circumstances.

Sec. 56(b). There is also an indirect court rule amendment in Section 8 and Section 11 providing for a jury trial in a termination hearing.

Sec. 56(c).

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

Videotaping

Sec. 44. Amends duties of school officials to direct schools to conduct interviews of children as provided for with trained interviewers and being videotaped or audiotaped.

Sec. 45. Creates standards for interviewing CINA children requiring audio or videotaping and requiring interviewers to be trained and competent to conduct the interview. It also limits interviews to one unless it is determined that an additional interview is necessary.

Accountability

Sec. 30. Creates a duty and standard of care.

Sec. 36. Creates a Citizens' Review Panel for Permanency Planning consisting of five members appointed by the governor to serve staggered terms of three years. There will be one panel member from each judicial district and the panel will have broad representation of people with expertise in the prevention and treatment of child abuse and neglect. The panel may employ a program manager and two assistants. Panel members are sworn to confidentiality.

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

Sec. 37. Provides for duties of the panel which include adopting policies and procedures; examine policies, procedures, and practices of state and local agencies in making or investigating a ROH; evaluate specific cases; and report annually to the governor all of their activities.

Sec. 38. Directs certain departments to cooperate with and provide records to the state panel to facilitate timely review of plans for children under the jurisdiction of the panel.

Sec. 39. Directs the court, the department, and the child's guardian cooperate with the state panel by furnishing relevant records to the panel. The state panel is required to return all documents when the panel has concluded the investigation or has completed the report. All information is confidential. The state panel is not subject to the Open Meetings Act of AS 44.62.310.

Sec. 40. Provides that when admissible, the court will review a state panel report and take it into consideration when rendering judgments and orders.

Sec. 41. Indemnifies panel members.

Sec. 58. Adds to uncodified law the process by which the governor appoints the initial members of the review panel so that the terms of serving will be staggered.

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

LEGAL SERVICES

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MEMORANDUM

February 25, 2005

SUBJECT: Children's Services Omnibus Bill (Work Order No. 24-LS0251\Y)

TO: Representative John Coghill
Attn: Rynnieva Moss

FROM: Jean M. Mischel
Legislative Counsel

Enclosed is the Children's Services Omnibus Bill merging three governor's bills with your bill and tying in a federal act. We drafted this bill to duplicate, to the extent possible, the merged bills with a few exceptions that require your careful consideration.

With respect to grandparent rights, the reference to a grandparent having special access to termination hearings was removed from section 7 since the grandparent has access under the open hearings provisions in this and other sections of the bill. The bill retains, however, the direct court rule amendment on this issue.

The reestablishment of citizen review panels in sections 36 through 42 of the bill has been significantly rewritten to more closely reflect the minimum federal requirements as requested. The existence of local panels has been deleted but the establishment of three state panels is now required in this draft. Since the minimum number of panels is set at three for a certain benefit level in the federal act, I used that number. The support material did not provide the benefit level and three panels will satisfy any benefit level. Other changes pertaining to duties and reporting have been made that need to be reviewed to determine whether I captured your intent.

The originating bills for this draft contained some errors with respect to the indirect court rule effect that were corrected in this draft. These changes appear in sections 53 and 54 of this draft. I encourage you to have these reviewed by the governor's office or the Department of Law since they vary significantly from the governor's drafts.

An additional potential court rule effect appears to be raised in this bill that I have not included in this draft. Since this bill (following the originating bills) opens child-in-need-of-aid hearings and those hearings can be consolidated with adoption hearings that are closed under Adoption Rules 11 and 13, a potential conflict exists between sections 9 and 10 of the bill and the Adoption Rules. I do not know, however, whether a court can reconcile this conflict without amending the court rules. A court, could, for example, hold the CINA portion of the consolidated hearing as an open hearing and close the

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adoption portion of the hearing. While this may defeat the purpose of closing an adoption hearing, I am unable to make this policy and procedural decision and therefore have left the potential effect out of this draft.

The applicability of relevant portions of the bill has also been carefully redrafted in section 56 to incorporate all court hearing and document disclosure changes in order to avoid future litigation. Although the basis for the applicability language is the originating bill language, additional sections were included as deemed necessary.

Finally, the conditional effect and the effective dates in sections 59 through 62 should reflect those of the originating bills. The bill, as a whole, retains an immediate effective date with significant exceptions and contingencies. Please review those sections carefully to determine whether all of the sections are given their intended effective dates.

If I may be of further assistance, please advise.

JMM:jad
05-124.jad

Enclosure

24-LS0251\Y
Mischel
2/25/05

CS FOR HOUSE BILL NO. 53()

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

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

22 (j) In a relinquishment of parental rights executed under (a) of this section, a
23 parent may retain privileges with respect to the child, including the ability to have
24 future contact, communication, and visitation with the child. A retained privilege
25 must be stated with specificity in writing, and, if a termination order is entered
26 following the relinquishment, the court shall incorporate a retained privilege into the
27 termination order. A relinquishment may not be withdrawn or invalidated, nor may a

1 termination order be vacated, on the grounds that a retained privilege has been
2 withheld from the relinquishing parent or that the relinquishing parent has been
3 unable, for any reason, to act upon a retained privilege.

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

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

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

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

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

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

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

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

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

25 (4) benefit future generations;

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) In a proceeding initiated under (a) of this section, the court shall presume
30 that awarding custody to a biological grandparent is in the best interest of the child. A
31 presumption under this subsection may be overcome by evidence of abuse, neglect, or

1 other harm to the child attributable to the biological grandparent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 party to the case who is a victim of domestic violence. Access to testimony heard in
2 camera under this subsection is limited to the court and authorized court personnel.

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

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

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

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

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

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

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

31 (B) an additional one-year period of state custody past [AGE]

1 19 years of age if the continued state custody is in the best interests of the
2 person and the person consents to it;

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

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

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

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

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

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

1 custody of the department. The court may require the department to file a visitation
2 plan with the court. The department may deny visitation to the parents, guardian, or
3 family members if there is clear and convincing evidence that visits are not in the
4 child's best interests. If the department denies visitation to a parent or family
5 member of a child, the department shall inform the parent or family member of a
6 reason for the denial and of the parent's or family member's right to request a
7 review hearing. A parent, family member, or guardian who is denied visitation may
8 request a review hearing.

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

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

15 (u) A child may not be placed in a foster home known to the department as a
16 home requesting adoption of a child before

17 (1) 30 days after the date of the first permanency hearing;

18 (2) the decision of the department is made to seek termination of
19 parental rights; and

20 (3) the court approves of the placement after a hearing.

21 (v) Within 60 days after the date a child is removed from the child's home by
22 the department, the department shall notify the appropriate citizen review panel
23 established under AS 47.14.205.

24 (w) Within 60 days after a court orders a child committed to the department
25 under (c) of this section and at a review under (f) or (l) of this section, the department
26 shall inform the parties about the citizen review panels established under
27 AS 47.14.205.

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

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

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

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

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

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

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

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

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

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

1 AS 18.66.990; and

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

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

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

17 (o) A trial or hearing conducted under this section is open to the public unless
18 an exception provided in AS 47.10.070(c) applies to make the trial or hearing closed
19 to the public.

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

21 **Sec. 47.10.089. Report of prescription drugs.** (a) When a child is in the
22 custody of the department under AS 47.10.084 and the child is prescribed a
23 psychotropic or other mental health medication, the department shall prepare a report.

24 The report must include the

- 25 (1) child's name and date of birth;
- 26 (2) name and dosage of the medication;
- 27 (3) condition or diagnosis for which the medication is prescribed;
- 28 (4) name of the prescribing physician;
- 29 (5) assessment of the child's caseworker pertaining to the child's
30 response to the medication; and
- 31 (6) assessment of the child's caregiver pertaining to the child's

1 response to the medication, if available.

2 (b) A report prepared under (a) of this section shall be distributed to the
3 statewide supervisor of the caseworker of the child, the parent or guardian of the child,
4 and, to the extent allowed under applicable federal and state law, the intervening tribal
5 or tribal custodian for the child.

6 (c) A summary of the reports prepared under (a) of this section, excluding
7 identifying information of a child, shall be distributed to members of the Senate and
8 House Health and Social Service Committees by March 1 of each year.

9 (d) In this section, "caregiver" includes a parent, grandparent, foster parent,
10 relative, teacher, or child care provider.

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

12 (c) Within 30 days after [OF] the date of a child's [MINOR'S] 18th birthday
13 or, if the court retains jurisdiction of a child [MINOR] past the child's [MINOR'S]
14 18th birthday, within 30 days after [OF] the date on which the court releases
15 jurisdiction over the child [MINOR], the court shall order all the court's official
16 records pertaining to that child [MINOR] in a proceeding under this chapter sealed. A
17 person may not use these sealed records unless authorized by order of [FOR ANY
18 PURPOSE EXCEPT THAT] the court upon a finding of [MAY ORDER THEIR
19 USE FOR] good cause [SHOWN].

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

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

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

30 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member
31 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005

1 - 47.10.142 may disclose confidential or privileged information about the child or the
2 child's family, including information that has been lawfully obtained from agency or
3 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
4 appointed under AS 24.55, the attorney general, and the commissioner
5 [COMMISSIONERS] of health and social services, administration, or public safety, or
6 an employee of these persons, for review or use in their official capacities. The
7 department shall disclose additional confidential or privileged information and make
8 copies of documents available for inspection about the child or the child's family to
9 these state officials or employees for review or use in their official capacities upon
10 request of the official or employee and submission of satisfactory evidence that an
11 adult family member [A PARENT] or legal guardian of the child has requested the
12 state official's assistance in the case as part of the official's duties. A person to whom
13 disclosure is made under this section may not disclose confidential or privileged
14 information about the child or the child's family to a person not authorized to receive
15 it.

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

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

25 (e) If, in response to a requirement of federal law or a request made by an
26 official identified in (a) of this section, the department initiates an internal review or
27 evaluation of its activities under this chapter, notwithstanding AS 47.10.090 and
28 47.10.093, the department shall either provide a copy of a report resulting from that
29 internal review or evaluation to the official or prepare a report of that internal review
30 and evaluation when requested to do so by an official identified in (a) of this section.
31 The report must contain a summary of the complaint, the review or evaluation process

1 used, and the outcome of the review or evaluation, including any recommendations
2 made as a result of the review. Before being disclosed, the department shall modify a
3 report prepared or produced under this subsection to exclude all personal identifying
4 information of a child, the child's family, and witnesses.

5 (f) In this section, "adult family member" means a person who is 18 years of
6 age or older and who is related to the child as the child's biological or adoptive parent,
7 grandparent, aunt, uncle, or sibling.

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

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

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

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

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

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

23 (3) a foster parent [PARENTS] or relative [RELATIVES] with
24 whom the child is placed by the department as [MAY BE] necessary to enable the
25 foster parent [PARENTS] or relative [RELATIVES] to provide appropriate care to
26 [FOR] the child [WHO IS THE SUBJECT OF THE CASE], to protect the safety of
27 the child [WHO IS THE SUBJECT OF THE CASE], and to protect the safety and
28 property of family members and visitors of the foster parent [PARENTS] or relative
29 [RELATIVES];

30 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable
31 the school to provide appropriate counseling and support services to a [THE] child

1 who is the subject of the case, to protect the safety of the child [WHO IS THE
2 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

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

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

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

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

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

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

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

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

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

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

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

29 (f) The department may release to a person with a legitimate interest
30 confidential information relating to children [MINORS] not subject to the
31 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT

1 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
2 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 * Sec. 28. AS 47.10.142 is amended by adding a new subsection to read:

13 (i) Within 60 days after a court orders a child committed to the department
14 under this section, the department shall inform the parties about the citizen review
15 panel established under AS 47.14.205.

16 * Sec. 29. AS 47.10 is amended by adding a new section to read:

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

24 * Sec. 30. AS 47.10.960 is amended to read:

25 **Sec. 47.10.960. Duty and standard of care [NOT] created. The**
26 **department shall adopt regulations establishing [NOTHING IN THIS TITLE**
27 **CREATES] a duty and [OR] standard of care for services to children and their**
28 **families being served under this chapter [AS 47.10]. The regulations must be**
29 **consistent in all relevant respects with the code of professional ethics and the**
30 **standards of practice for social workers adopted by the Board of Social Work**
31 **Examiners under AS 08.95.**

1 * Sec. 31. AS 47.10.990(16) is amended to read:

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

8 * Sec. 32. AS 47.10.990 is amended by adding a new paragraph to read:

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

11 * Sec. 33. AS 47.12.990(10) is amended to read:

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

18 * Sec. 34. AS 47.14.100(e) is amended to read:

19 (e) A child may not be placed in a foster home or in the care of an agency or
20 institution providing care for children if a relative by blood or marriage, family
21 friend, or neighbor requests placement of the child in the [RELATIVE'S] home of
22 the relative, family friend, or neighbor and the parent or guardian of the child
23 agrees to the placement. However, the department may retain custody of the child
24 and provide for its placement in the same manner as for other children if the
25 department

26 (1) makes a determination, supported by clear and convincing
27 evidence, that placement of the child with the relative, family friend, or neighbor
28 will result in physical or mental injury; in making that determination, poverty,
29 including inadequate or crowded housing, on the part of the [BLOOD] relative, family
30 friend, or neighbor is not considered prima facie evidence that physical or emotional
31 damage to the child will occur; this determination may be appealed to the superior

1 court to hear the matter de novo;

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

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

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

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

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

19 * **Sec. 35.** AS 47.14.100(f) is amended to read:

20 (f) If a blood relative of the child specified under (e) of this section exists and
21 agrees that the child should be placed elsewhere, before placement elsewhere, the
22 department shall fully communicate the nature of the placement proceedings to the
23 relative. Communication under this subsection shall be made in the relative's native
24 language, if necessary. [NOTHING IN THIS SUBSECTION OR IN (e) OF THIS
25 SECTION APPLIES TO CHILD PLACEMENT FOR ADOPTIVE PURPOSES.]

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

27 **Sec. 47 14.205. Citizens' Review Panels for Permanency Planning.** (a)
28 There is created in the Department of Administration three Citizens' Review Panels for
29 Permanency Planning. Each state panel shall consist of five members appointed by
30 the governor from a broad representation of individuals located in the communities
31 served and including individuals with expertise in the prevention and treatment of

1 child abuse and neglect. The governor shall appoint at least one state panel member
2 from each judicial district. The governor may not appoint a person who has
3 committed a felony or violated AS 11.51.130 or a law with substantially similar
4 elements. The governor may designate an existing entity established under state or
5 federal law as a state panel if the entity performs the functions set out under
6 AS 47.14.205 - 47.14.295.

7 (b) Members of the state panels serve at the pleasure of the governor for
8 staggered terms of three years or until their successors are appointed.

9 (c) The members of each state panel shall elect from among the members a
10 chair who shall serve for one year. Three members of each state panel constitute a
11 quorum for the transaction of business. A panel may not take official action without
12 the affirmative vote of at least three of its members.

13 (d) Members of the state panels are entitled to reimbursement for actual
14 expenses necessary to perform their duties as state panel members. The
15 reimbursement may not exceed the amount of per diem and expenses authorized for
16 boards and commissions under AS 39.20.180.

17 (e) The state panels shall meet not less than every three months. Meetings
18 may take place telephonically.

19 (f) The state panels may employ a program manager and two assistant
20 managers who shall serve at the pleasure of the state panels. The program manager
21 shall employ staff as necessary to carry out the program manager's duties under state
22 panel directives and to provide clerical assistance to the state panels.

23 (g) When a person is appointed to serve on a state panel, the person shall
24 swear or affirm to keep confidential all information that comes before the state panel
25 except for nonidentifying case information included in a report required under
26 AS 47.17, or as required by court order for good cause shown. A state panel member
27 may also share confidential information with other members of the state panel and
28 staff who serve a state panel.

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

30 **Sec. 47.14.215. Duties of the state panels.** The state panels shall

31 (1) by regulation adopt policies and procedures to carry out the panels'

1 duties;

2 (2) examine the policies, procedures, and practices of state and local
3 agencies involved in making or investigating a report of harm to a child;

4 (3) where appropriate, evaluate specific cases of a report of child abuse
5 or neglect to determine the extent to which the state and local child protection systems
6 are effectively discharging child protection responsibilities under

7 (A) the state plan submitted to the United States Department of
8 Health and Human Services;

9 (B) child protection standards under federal and state laws;

10 (C) any other criteria that the panel considers important to
11 ensuring the protection of children, including the level and efficiency of
12 coordination of foster care and adoption programs in the state and a review of
13 child fatalities and near fatalities; and

14 (4) report annually to the governor by the 10th day of each regular
15 legislative session, concerning the activities of the state panels during the previous
16 fiscal year; the report must include a summary of the information gathered and
17 recommendations made under paragraphs (2) and (3) of this section, the number of
18 cases reviewed by each panel, a description of the characteristics of the children
19 whose cases were reviewed by the panels, the number of children reunited with their
20 families, the number of children placed in other permanent homes, and the timeliness
21 of each review conducted under this section; the report may contain other information
22 on the experience of the panels.

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

24 **Sec. 47.14.225. Cooperation with state panels.** The department, the
25 Department of Law, the Public Defender Agency, the office of public advocacy, and
26 the court system shall cooperate with the state panels to facilitate timely review of
27 plans for children whose cases are under the jurisdiction of the panels and to facilitate
28 access to records required under AS 47.14.235.

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

30 **Sec. 47.14.235. Records; communications.** (a) Notwithstanding
31 AS 47.10.090, at the request of a state panel, the department, the child's guardian ad

1 litem, and the court shall furnish to the state panel relevant records concerning a child
2 and the child's family who are the subjects of a state panel review. At the conclusion
3 of a review, all copies of records provided to a state panel under this section shall be
4 returned to the staff that serves the state panel or to the agency from which the original
5 copy was obtained, unless the panel members need the copies to prepare the reports
6 required under AS 47.14.215. Copies retained for preparation of the reports shall be
7 returned to the staff that serves the state panel or to the originating agency upon
8 completion of the reports. Notwithstanding AS 44.62.310, records and reports of the
9 state panel, testimony before the state panel, and deliberations of the state panel are
10 confidential under AS 47.10.090.

11 (b) A state panel member may not reveal to another person, other than another
12 member of the state panel or the staff serving the state panel, a communication made
13 to the member while performing the member's duties under AS 47.14.205 - 47.14.295,
14 except as required under AS 47.17 or as required by court order for good cause shown.
15 A state panel member may disclose information related to the state panel member's
16 performance of official duties if the state panel member omits identifying information.

17 (c) A state panel proceeding is not governed by AS 44.62.310.

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

19 **Sec. 47.14.245. Court review of report.** (a) When a report is admissible
20 under court rules, the court may consider the report of the state panel in its review
21 under AS 47.10.080(f) and at other disposition hearings other than hearings related to
22 delinquency proceedings.

23 (b) The court may refer to the state panel a case called for a special review
24 under AS 47.10.080(f).

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

26 **Sec. 47.14.255. Liability and indemnification of panel members.** (a) A
27 state panel member shall be indemnified by the state for civil liability for a negligent
28 act or omission of the panel member that occurs in the performance of the member's
29 duties under AS 47.14.205 - 47.14.295, unless the civil liability results from the panel
30 member's violation of

31 (1) AS 47.14.235(b); or

1 (2) the oath or affirmation required under AS 47.14.205(g).

2 (b) A violation of (a)(1) or (2) of this section is subject to a civil penalty of up
3 to \$2,500 for each violation.

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

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

6 (1) "state panel" or "state panels" means one or all of the Citizens'
7 Review Panels for Permanency Planning established under AS 47.14.205;

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

9 * **Sec. 43.** AS 47.17.025 is amended by adding a new subsection to read:

10 (c) Within 20 days after receiving a report of harm, whether or not the matter
11 is referred to a local government agency, the department shall notify the person who
12 made the report about the status of the investigation, without disclosing any
13 confidential information.

14 * **Sec. 44.** AS 47.17.027(a) is amended to read:

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

1 guardian, or custodian would endanger the child.

2 * **Sec. 45.** AS 47.17.033 is amended by adding new subsections to read:

3 (c) An investigation by the department of child abuse or neglect reported
4 under this chapter shall be conducted by a person trained to conduct a child abuse and
5 neglect investigation and without subjecting a child to more than one interview about
6 the abuse or neglect except when new information is obtained that requires further
7 information from the child.

8 (d) An interview of a child conducted as a result of a report of harm may be
9 audiotaped or videotaped. However, if an interview of a child is to be electronically
10 recorded and the interview concerns a report of sexual abuse of the child, the interview
11 shall be videotaped, except that an interview of a child may not be videotaped if
12 videotaping the interview is impracticable or will, in the opinion of the investigating
13 agency, result in trauma to the child.

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

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

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

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

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

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

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

30 * **Sec. 46.** AS 47.35.015 is amended by adding a new subsection to read:

31 (j) If a person operates a foster home to provide care only for a relative and the

1 department requires licensure under an agreement for services, the department shall
2 issue a temporary license to an eligible person while an application for a license under
3 this section is pending. The department shall issue the temporary license to the
4 applicant within five days after receiving a complete application for a foster care
5 license under AS 47.35.017. A temporary license is valid for 90 days or until a license
6 is either issued under AS 47.35.017 or denied under AS 47.35.019, whichever is
7 sooner.

8 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

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

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

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

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

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

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

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

31 (A) the initial court hearing after the filing of a petition that

1 begins the child-in-need-of-aid case;

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

5 (C) a hearing, or a part of a hearing, for which the court issues
6 a written order finding that allowing the hearing, or part of the hearing, to be
7 open to the public would reasonably be expected to stigmatize or be
8 emotionally damaging to a child; inhibit a child's testimony in the hearing;
9 disclose matters otherwise required to be kept confidential by state or federal
10 statute or regulation, court order, or court rule; or interfere with a criminal
11 investigation or proceeding or a criminal defendant's right to a fair trial in a
12 criminal proceeding.

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

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

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

30 (6) A party to the proceeding may move the court to close to the public
31 a hearing, or part of the hearing, to avoid the harm specified in (2)(C) of this

1 paragraph. A member of the public may request in writing to be served with a motion
2 filed under this subparagraph. If such a request has been filed in advance of the filing
3 of the motion, the party filing the motion must also serve the member of the public
4 who requested notice under this subparagraph. The court may waive the service
5 required under this subparagraph to a member of the public if a motion to close the
6 hearing, or part of the hearing, is made under this subparagraph immediately before or
7 during the hearing and the court finds that

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

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

13 (C) whatever notice is practicable under the circumstances has
14 occurred.

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

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

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

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

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

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

30 (1) shall be held within six months after the date on which the petition
31 to terminate parental rights is filed, unless the court finds that good cause is shown for

1 a continuance; when [. WHEN] determining whether to grant a continuance for good
2 cause, the court shall take into consideration the age of the child and the potential
3 adverse effect that the delay may have on the child; the [. THE] court shall make
4 written findings when granting a continuance;

5 (2) shall be by jury when a jury trial has been demanded and not
6 waived by a party as provided in Rules 38 and 39, Alaska Rules of Civil
7 Procedure.

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

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

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

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

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

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

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

28 INDIRECT COURT RULE AMENDMENT. (a) Sections 9 and 10 of this Act
29 AS 47.10.080(x), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 15 of
30 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure,
31 by allowing members of the public to attend court hearings except in certain circumstances.

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

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

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

10 TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.
11 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
12 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
13 enactment and amendments provide a right to a jury trial on a petition to terminate parental
14 rights, affect a substantive right, secs. 8, 11, 50, 51, and 53 of this Act do not require a two-
15 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
16 parental rights.

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

19 INITIAL MEMBERS OF STATE PANEL. (a) Notwithstanding AS 47.14.205(b),
20 enacted by sec. 36 of this Act, the governor shall appoint the initial public members of each of
21 the Citizens' Review Panel for Permanency Planning so that one member of each panel serves
22 a one-year term, two members of each panel serve two-year terms, and two members of each
23 panel serve three-year terms.

24 (b) The initial public members must be persons who have experience, special
25 knowledge, or a demonstrated interest in the welfare of children.

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

28 APPLICABILITY. (a) AS 47.10.065, enacted by sec. 8 of this Act, 47.10.080(c), as
29 amended by sec. 11 of this Act, and Rules 18(e) and 18(g), Alaska Child in Need of Aid Rules
30 of Procedure, as amended by secs. 50 and 51 of this Act, apply to petitions to terminate
31 parental rights that are filed on or after the effective date of secs. 8, 11, 50, and 51 of this Act.

1 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
2 made by secs. 47 - 49 of this Act, apply to hearings that are conducted on or after the effective
3 date of secs. 47 - 49 of this Act.

4 (c) Sections 9 - 11, 13, 15, 17, 18, 21 - 27, 32, 47 - 49, and 52 of this Act apply to all
5 proceedings and hearings conducted on or after the effective date of those sections.

6 (d) Sections 9, 10, 13, 15, and 18 - 27 of this Act apply to all information, records,
7 and files created on or after the effective date of those sections; however, if a file contains
8 information and records that were created before the effective date of secs. 9, 10, 13, 15, and
9 18 - 27 of this Act, that information and those records retain the confidentiality status that
10 they had under the law on the day before the effective date of secs. 9, 10, 13, 15, and 18 - 27
11 of this Act.

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

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

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

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

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

25 **CONDITIONAL EFFECT.** (a) That portion of Rule 18(e)(2), Alaska Child in Need
26 of Aid Rules of Procedure, added by sec. 50 of this Act, that reads "and not waived by a party
27 as provided in Rules 38 and 39, Alaska Rules of Civil Procedure," takes effect only if sec. 50
28 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
29 Constitution of the State of Alaska.

30 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
31 made by secs. 47 - 49 of this Act, take effect only if secs. 47 - 49 of this Act receive the two-

1 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
2 Alaska.

3 (c) The amendments to Rule 22(c), Alaska Child in Need of Aid Rules of Procedure,
4 made by sec. 52 of this Act take effect only if sec. 52 of this Act receives the two-thirds
5 majority vote of each house required by Art. IV, sec. 15, Constitution of the State of Alaska.

6 (d) Sections 9 and 10 of this Act, AS 47.10.080(x), enacted by sec. 13 of this Act,
7 AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 - 27 of this Act, take
8 effect only if secs. 47 - 49, 52, and 53(a) and (c) of this Act receive the two-thirds majority
9 vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

10 * Sec. 60. AS 47.10.960, as amended by sec. 30 of this Act, takes effect 180 days after the
11 effective date of sec. 1 of this Act.

12 * Sec. 61. If, under sec. 59 of this Act, secs. 9 and 10 of this Act, AS 47.10.080(x), enacted
13 by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 -
14 27 of this Act take effect, they take effect July 1, 2005.

15 * Sec. 62. Except as provided in secs. 60 and 61 of this Act, this Act takes effect
16 immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HB-53 hearing
 Committee on CINA Committee Name
 Dated 31 March
 Bill / Subject

I have wanted & worked to promote this Bill 6 years. I have never had opportunity to testify. I refuse to remain & listen to the same tired monologue of AGENCY personnel who have your law 29/7

I am a busy person & do NOT have time to waste to come to a meeting & ~~listen to~~ not be allowed to provide input. I had things to do today but took time to attend

SIGNED: Betty Rollins
 Testifier
ALL Kids Count
 Representing
P.O. Box 55163, 488-6614
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (M) M.E.S.S.
 Committee on CSSS HB 53 Committee Name Dated 3-31-05
Bill / Subject

I SUPPORT CHAPTER 117, SLA 1990.
 CITIZENS MAKING TIME
 TO TESTIFY ON THIS BILL
 WERE GREATLY DISAPPOINTED
 TO LEARN, SHORTLY AFTER THIS
 COMMITTEE CONVENED TODAY
 THAT THEY WOULD NOT BE HEARD.
 ETHICAL LEGISLATORS SHOULD
 ALWAYS EXCUSE AND ZEALOUSLY
REPRESENT CITIZENS, AND THEIR
INTERESTS, WHEN THEY BECOME
ANXIOUS ABOUT OTHER UNETHICAL
LEGISLATORS, WHO EXEMPLIFY HOSTILE
IGNORANCE TOWARD MEMBERS
OF THE PUBLIC [REP. ANDERSON], PLEASE.

SIGNED: SCOTT TRAFFORD CALDER

Testifier

P.O. 75011 FBKS, AK. 99707

Representing

(907) 474-0174

Address / Phone Number



Municipality of Anchorage

P.O. Box 190650 • Anchorage, Alaska 99519-0650 • 825 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Department of Health and Human Services

March 18, 2005

MAR 30 2005

The Honorable Peggy Wilson
Chair, State House Health, Education and Social Services Committee
Alaska State House of Representatives
State Capitol, Room 108
Juneau, AK 99811
VIA fax: 465-3175

Dear Representative Wilson:

I write to comment on behalf of the Municipality of Anchorage on the Family Rights Act, CSSHB (HESS) ("HB 53"). We thank you for the concern for the children of this state which HB 33 articulates. We want to bring to your attention our view that the bill should more clearly give child care licensing entities in Alaska greater access to the records of the Office of Children's Services (OCS) for purposes of licensing and investigating child care facilities. We believe all children of this state will benefit if OCS and child care licensing entities share information.

I. Introduction

The Municipality of Anchorage, Department of Health and Human Services, Child & Adult Care Program (CAC) now has full responsibility for licensing all child care facilities in Anchorage. Its duties include issuing licenses as well as restricting and removing these licenses. As you are aware, many children in Alaska now spend their most formative years in the care of licensed child care providers. Many of these young children are infants who are unable to talk. Therefore, it is the responsibility of CAC and other licensing entities in Alaska to ensure that these young children are safe and well-cared for in child care entities.

II. Background

Before the CAC issues a license, it conducts an investigation which consists of checking criminal backgrounds and fingerprinting applicants, in addition to other investigation.¹ It also asks child care providers to sign releases so that it may check the provider's child protection background.²

When CAC receives complaints about child care facilities, it must investigate those complaints and take licensing action if the complaints have merit. Unfortunately, the CAC's ability to license and investigate child care facilities in Anchorage has been compromised in recent years by the inability of its workers to gain access to OCS files of child care providers. For example,

¹ See, AMC16.55.100.

² See, AMC 16.55.100 D. 15. a. ii.

Community, Security, Prosperity

in one instance, after receiving several complaints about a child care facility, CAC initiated proceedings to revoke the facility's license. During the course of preparing the case for hearing, CAC learned that the child care provider at issue had an extensive file at OCS, with serious allegations relating to the health and safety of children which spanned a 10-year period. None of these episodes had been reported to CAC, and line workers at OCS had been afraid to tell CAC of these episodes because of the restriction on disclosure of child protection records.³ In other instances, CAC has been concerned that home-based child care providers had children of their own in the home who had serious behavioral problems and who thus posed a threat to the children in their care.

Therefore, in addition to wanting to protect children in care from adults who may pose a threat to their well being, CAC wants to be able to protect children in care from potential abuse or neglect by other children.⁴ If CAC is allowed greater access to OCS records, it could then make a better determination as to whether some applicants should be awarded a license in the first place. In addition, if CAC receives complaints about a child care facility after it has been licensed, it will have a better means of investigating those complaints.

III. Discussion of HB33

As you know, AS 47.10.093 currently states as follows:

- (a) Except as specified in 47.10.092 and (b) – (g) of this section, all information and social records pertaining to a minor who is subject to this chapter or AS 47.17 prepared by or in the possession of a federal, state, or municipal agency or employee in the discharge of the agency's or employee's official duty are privileged and may not be disclosed directly or indirectly without a court order.

Section 22 of HB 33, adds a new exception to the prohibition on disclosure, which appears to give OCS the authority to provide records to licensing agencies like CAC. It provides as follows:

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

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

...

- (11) a caregiver of a child or entity responsible for ensuring the safety of children as necessary to protect the safety of a child

Subsection (11) as drafted appears to relate to agencies like CAC, as CAC is "an entity responsible for ensuring the safety of children." However, to clarify the fact that child care licensing authorities have access to child protection records of providers, we request that you substitute "of children" for "a child" at the end of subsection 11. If this phrase "of children" is

³ See, AS 47.10.093.

added, the legislation will more clearly indicate the intent that agencies such as CAC have the ability to review child protection records so that it can better protect all children in a child care facility from potentially harmful child care providers and individuals who have contact with children in child care entities.

CAC will agree to keep information it receives from OCS confidential. Indeed, AS 47.10.093 (m) as drafted states that:

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

Moreover, CAC is bound by the confidentiality requirements of its own regulations.⁵

IV. Conclusion

If agencies such as the CAC have greater access to OCS records of providers, they can better serve the young children of this state. CAC's goals are so closely aligned with the goals of OCS that this access should not create a conflict for either agency, as long as both agencies agree to maintain confidentiality. We therefore request that you clarify HB 33 so that child care licensing entities have greater access to State child protection records.

If you have questions or would like to speak with me about this matter further, please call me at (907) 343-4676.

Sincerely,



Martha M. Anderson
Child and Adult Care Program Manager

cc: Senator Fred Dyson
Representative Sharon Cissna
Representative John Coghill Jr., House Majority Leader
Beverly K. Wooley, Director
Mary Pinkel, Assistant Municipal Attorney

⁵ See, AMC 16.55.160.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Department of Health and Human Services

March 14, 2005

Representative Peggy Wilson
House Health, Education and Social Services Committee Chairperson
Alaska Legislature
Juneau, Alaska

MAR 21 2005

Representative Wilson:

This letter is in response to revisions to the Alaska Statutes regarding confidentiality of Child Protection information. It is a pleasure to see proposed language to improve some of the child protection concerns.

The Municipality of Anchorage (MOA), Department of Health and Human Services is responsible for conducting child protection investigations for allegations made against all licensed child care facilities. The State investigates allegations when the parent or family member has been accused of harming a relative.

The inability of the Municipality to receive records from the State Child Protection files creates a major danger for children. With the proposed revisions to the statute, we strongly advise language be included to grant permission for MOA licensing to have access to this information.

Information was available when State Licensing and Child Protection services were both under the same Division, DFYS. It is commonly available in other states.

Licensing has strict requirements to protect children's identities, as does Child Protection. So any new systems to share information will continue to protect children's anonymity. Both agencies need to be able to exchange information.

Licensing needs information from the Child Protection files that relates in any way to licensing statutes, regulations and Anchorage Municipal code, AMC 16.55. Licensing needs to review and copy any and all reports of concerns filed with Child Protection and findings whether or not they were substantiated. It needs to know the type of investigation already performed. It also needs information on all cases associated with the names submitted to the Child Protection office by licensing including all "persons in contact with children" as defined in licensing code, AMC 16.55, and children of providers who will be in the facility and have been accused of harming others, for example the child of a license applicant who has sexually assaulted or threatened to kill others. It is important to know the degree and frequency of the allegation of harm in order to protect children in care.

Licensing has many tools to protect children including denial or removal of a license or more minor protections such as restricting hours of operation or the ages served. It does not remove children from parent's custody. So while a Child Protection office may not be able to act or may

Community, Security, Prosperity

not classify the allegation at a level requiring an investigation, licensing must consider all the allegations before allowing other children to be cared for by the potential abuser.

There has been more than one case where Child Protection staff were aware of dangers to children if the facility was licensed, but have not been allowed to inform us. In one case recently, a provider was licensed in the Municipality to do child care after licensing received clearance from Child Protection. Several years later, licensing found the Child Protection files had had approximately 14 abuse allegations over a ten year period that was not reported to licensing. When Child Protection removed a child because of abuse they were not sure they could tell licensing, they required a court order before licensing could obtain information to accurately determine whether a license should continue, and weren't sure they could even testify at a licensing hearing.

Both Child Protection and MOA Licensing share a mandate to protect children and although each agency plays a specific role, inadequacies in the current law should not be an impediment to partnership. Any revised statutes that do not support the sharing of information between State Child Protection and local Licensing puts children at grave risk.

In House Bill 53, Section 22 amending AS 47.10.093 (b) adds subsection (11) including the phrase "entity responsible for ensuring the safety of children as necessary to protect the safety of a child;" If this section is designed to allow Licensing access of Child Protection files, we urge that the language more clearly address licensing and the protection of all the children. The last word child suggests it is the one child who was harmed rather than a protection for all children who may be in care. There are other sections in the Bill also that seem to apply to licensing that may also need clarifying. We need the Bill to address all the issues identified in this letter.

The Municipality has been working for years to try to resolve these issues and will be glad to continue to assist you in this important revision. Please contact me at 343-4758, 343-6536 with further questions or suggestions.

Thanks you for your attention to this important matter.

Sincerely,

Martha M. Anderson
Child & Adult Care Program Manager

cc: Sharon Cissna, House Representative
Ken Takakuwa, Division Manager
Mary Pinkel, Assistant Municipal Attorney

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

March 3, 2015

Honorable Peggy Wilson, Chair
House Health, Education and
Social Services Committee
Alaska State Capitol; Rm. 108
Juneau, AK 99801

Dear Representative Wilson,

The Department of Health and Social Services respectfully requests a hearing in the House Health, Education, and Social Services Committee on House Bill 193 "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

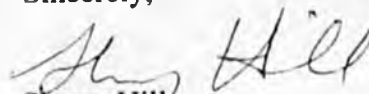
The proposed bill will streamline the department's licensing processes by consolidating virtually all of the licensing functions related to standards, enforcement, and appeal rights into a single chapter of the Alaska Statutes.

The Governor's transmittal letter providing additional information about the bill and a fiscal note should be on file with the committee. The department will provide the committee with a sectional analysis of the bill in the next several days.

Honorable Peggy Wilson
Page 2

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill
Special Assistant

cc: Kevin Jardell, Legislative Director
Office of the Governor

Dr. Richard Mandsager, Director
Division of Public Health

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110300
DIMOND COURT HOUSE, 5TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

April 19, 2005

APR 21 2005

The Honorable Peggy Wilson
House of Representatives
Alaska State Capital—Room 108
Mail stop: 3100

Dear Representative Wilson:

At a hearing on HB 53, you asked me to give you a form notice that we provide to grandparents and foster parents. Enclosed is this form. I apologize for the delay.

You will notice that we try to use plain language. Please let me know if you wish any additional information.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:



Jan A. Rutherford
Assistant Attorney General

JAR:aeo

The following are the DOL/OSC comments to the proposed amendments to HB 53, along with additional suggestions. Note: OCS has not reviewed this document, and both DOL and OSC may have further comments or proposed amendments to this large bill in the future.

Page 1, line 6: proposed amendment is OK.

Page 1, line 2: we were unsure of this proposal since the deleted word is not at this place.

Page 2, line 9, following "Adoption Rules": we are not sure if there is there still an amendment to CINA Rule22. If so the amendment should read:

Insert: “, and Rules 17.2 , 18 and 22, Alaska Child in Need of Aid Rules”

Page 2, line 13:

Insert:

*Section 1. AS 13.26.055 is amended to read:

Sec. 13.26.055. Court appointment of guardian of minor; qualifications; priority of minor's nominee and an adult family member. The court may appoint as guardian any person whose appointment would be in the best interests of the minor, subject to the following requirments. The court shall appoint

- (a) a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor; or
- (b) , unless in conflict with subsection (a), an adult family member, unless the court finds the appointment contrary to the best interests of the minor.

Renumber the following bill sections accordingly.

Page 2, line 16:

Delete: “, including a grandparent,” [since the definition of “adult family member” in sec. 31 of the bill (AS 47.10.990(28) includes grandparents]

Page 2, line 17:

Delete: “two consecutive years”

Insert: “twelve consecutive months” or “one continuous year”

Page 2, line 18:

After “AS 47.10.080(c)(3)”

Insert: “,”

Page 2, line 19:

After the word "person"

Insert: ","

Delete: "that the adult family member is not fit to raise"

Insert: "good cause not to grant the petition" [good cause is an accepted legal term]

Page 2, line 22, through page 3, line 4: All changes to HB 114, which should pass out of House State Affairs on 3/22/05, need to be included.

Page 3, lines 25-28: The construction language does not track the changes made in this bill. We need to revisit this section once all the other changes are set.

Page 4, line 22 through page 5, line 2:

Delete all material [(a) moved to page 2, line 13 (amending AS 13.26.055), (b) is unnecessary and part of (c) moved to Page 9, line 31 (amending AS 47.10.088(i))]

Page 4, line 27: The proposed amendment is moot due our suggested changes to AS 13.26.055 (see page 2, line 13).

Page 4, line 24: (this should be Page 4, Line 25); proposed amendment also moot.

Page 5, line 14:

Delete: "under this chapter"

Page 5, line 15:

After the word "rights"

Insert: "under 47.10.080(o) or AS 47.10.088"

Page 7, lines 22-23:

After "members"

Delete: ", including grandparents,"

Page 8, line 19:

After "past"

Delete: "age"

After "19"

Insert: "years of age,"

Page 8, line 22:

After "(3)"

Delete: "unless a jury trial has been requested by a party," [unnecessary due to suggested changes on page 5, line 15]

Page 8, lines 26-28:

After "child"

Delete all material except the period

Page 8, line 29: proposed amendment is OK (but remove "and" at end of (4)(B))

Page 9, lines 11-13:

After "hearing"

Delete all material

Insert: "A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 9, lines 11 & 12: proposed amendment is moot due our suggested changes to this section.

Page 9, lines 17 & 18: proposed amendment is OK

Page 9, lines 23:

After "and"

Insert: "encourage foster parents"

Page 9, line 28: Insert new section

AS 47.10.084(c) is amended to read:

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 25.20.025, and the responsibility for support, except if by court order any residual

right and responsibility has been delegated to a guardian under (b) of this section. “Major medical treatment” includes medication used to treat a diagnosed mental health disorder.

Page 9, line 31:

After “filed.”

Insert: The department shall attempt to locate all living adult family members of a child and to investigate the adult family member’s ability to care for the child before placing the child for adoption or approving an adoption of the child under this chapter. The department shall provide written notice to all located adult family members of their rights under this chapter and of the procedures necessary to gain custody of the child.

Page 10, line 1:

After “child”

Delete: “by blood”

Page 10, line 3:

After “adoption”

Insert: “,”

Page 10, lines 11-12:

After “by”

Delete: “a person related to the child by blood”

Insert: “an adult family member”

Page 10, line 16:

After second “the”

Delete: “person related to the child by blood”

Insert: “adult family member”

Page 11, line 13:

After “(n)”

Delete: “A person related to a child by blood”

Insert: “An adult family member”

Page 11, line 13: proposed amendment is moot due our suggested changes to this section.

Page 11, line 15:

After first "by"

Delete: "a person related to a child by blood"

Insert: "an adult family member"

Page 11, line 18: we would propose the following language:

After the word "hearing."

Insert: "A non-party adult family member requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 11, line 24: See comments re Page 2, line 22 (be sure all changes to HB 114 are incorporated in this version).

Page 11, lines 24-28:

Delete all material.

Page 12, lines 17 & 18:

Delete: "an adult family member"

Re-insert: "parent"

Page 12, line 25: proposed amendment is OK

Page 12, line 25: we propose the following:

After "information"

Insert: "excluding privileged attorney/client communications and the names and other identifying information of mandatory reporters under AS 47.17."

Page 12, lines 28 & 29: proposed amendment is OK

Page 13, line 4:

After "The"

Delete: "duty imposed on"

Insert: "requirements of"

Page 13, lines 4-7:

After "section"

Delete all material

Insert: "remain in effect throughout the time the child is in the custody of the department, including after the"

Page 13, lines 89:

After "child"

Delete: ". However, the duty does lapse after termination of the parent's parent rights if"

Insert. "unless"

Page 13, line 17:

After "section,"

Insert: "and as provided to all parties in a child-in-need-of-aid proceeding under court rules,"

Page 13, line 25:

After "(1)"

Delete: "A guardian ad litem appointed by the court;"

Page 13, line 30:

After "or"

Delete: "adult family member:"

Re-insert: "relatives"

Page 14, line 30:

After "department"

Insert: ", the governor, or the legislature"

Page 16, lines 16 - 19: proposed amendment is OK

Page 16 through 18 (Section 28): we propose a new section to establish the grievance procedure along with provisions that require OCS to notify parents of their rights under this statute. We would prefer to keep the process in regulation, which is where it is currently. As such we propose adding a new section to Title 47 that reads something like:

Sec. 47.10.098. **Grievance Procedure.** (a) The department shall develop, through regulation, a grievance procedure that provides parents a process to file complaints with respect to the

1. Application of a departmental policy or procedure;
2. Compliance with this chapter or a regulation adopted under this chapter; or
3. An act or failure to act by the department.

(b) the department shall develop a handout that explains this procedure, which shall be offered to each parent involved with the department.

[If our proposal is accepted, Page 16, line 21 – page 18 – line 30 should be deleted]

Page 19, lines 1 - 8:

Delete all language.

Insert:

Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title does not constitute a basis for civil liability for damages.

Page 19, line 18: proposed amendment is OK

Page 19, line 31:

After first "a"

Delete: "relative by blood or marriage"

Insert: "adult family member"

Page 20, line 1:

After third "the"

Delete: "relative"

Insert: "adult family member"

Page 20, line 2:

After "placement"

Insert: "Nothing in this section waives the requirement that a non-relative be licensed as a foster home prior to any child being placed in their care."

Page 20, lines 6, 8, 12, 15 & 19:

Substitute "adult family member" in place of "relative"

Page 20 line 14:

After "AS 47.17;

Delete: "or"

Page 20 line 27:

After "elements."

Insert:

(4) determines that placement under this section, with a family friend or relative is the best interest of the child over the objection of the parent of guardian; or

(5) determines that the parent or guardians preference is not appropriate because placement of the child would not be in the child's best interest because the child would not be located near parents for purposes of visitation or reunification.

Page 20 line 29:

After "If"

Delete: "a blood relative"

Insert: "adult family member"

Page 21 line 1:

Delete: "relative" and "relative's"

Insert: "adult family member" and "adult family member's"

Page 22, line 13: proposed amendment is OK

Page 22, line 16:

After "report"

Insert: "is released"

Page 22, line 17:

After "section"

Delete: "is submitted to the governor"

After "submit"

Insert: "to the governor"

Page 22, line 18:

After "report"

Delete: "to the governor"

Page 24, line 24: OCS proposes that the following provision be included in this bill:

Insert: AS 47.18.300(a) is amended to read:

(a) The department, in coordination with local public and private agencies, shall design, develop, and implement a foster care transition program to provide support and services to individuals who

(1) reach or have reached the age of 16 or older while in state foster care and have not yet reached the age of 23[21] and

(2) meet other eligibility criteria established by the department under (b) of this section.

Page 24, line 24 through Page 25, line 1: proposed amendment is OK

Page 29, line 3: proposed amendment is OK

Page 29, line 8: proposed amendment is OK

Page 29, line 10: proposed amendment is OK

Page 29, line 11: proposed amendment is OK

Page 29, line 22: proposed amendment is OK

Page 29, line 24: proposed amendment is OK

Page 31, lines 12-14: proposed amendment is OK

Page 32, line 5: proposed amendment is OK

Page 32, line 8: proposed amendment is OK

Page 32, line 8: proposed amendment is OK

(3) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(8) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Nov. 8, 1978, P. L. 95-608, § 2, 92 Stat. 3089.)

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families, by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Nov. 8, 1978, P. L. 95-608, § 3, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this Act [25 USCS §§ 1901 et seq.], except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive

placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689) [49 USCS § 1606];

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended [49 USCS § 1602(o)];

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a



✚ Sec. ~~47.10.960~~. Duty and standard of care not created.

Nothing in this title creates a duty or standard of care for services to children and their families being served under AS 47.10.



Must be served by certified mail or personal service (Trooper)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT *

In the Matter of)
)
 *)
)
)
 A Child Under the Age)
 of Eighteen (18) Years.)
 Date of Birth: *) No. 1 CP
 _____)

NOTICE OF ADJUDICATION HEARING TO FOSTER PARENTS/
OUT-OF-HOME CARE PROVIDER/GRANDPARENTS

TO:
Name and capacity (Foster
parent/caregiver/grandparent)

This notice is to inform you that a petition has been filed in state court to decide whether [name of child/ren] is/are [a] child/ren in need of aid under Alaska Statute 47.10.011. An adjudication hearing about this child/these children will be held on *, 2005, at * a.m./p.m., a pretrial hearing will be held on *, 2005, at * a.m./p.m., and a case conference is scheduled for *, 2005, at * a.m./p.m., in the Superior Court, First Judicial District, [Dimond Courthouse, Courtroom 'C'/'D', 123 4th Street, Juneau, Alaska; 17 Nordic Drive, Petersburg, Alaska; 415 Main Street, Courtroom 'A'/'D', Ketchikan, Alaska; 304 Lake Street, Room 203, Sitka, Alaska; Public Safety Building, Mile Zero, Zimovia Hwy., Wrangell, Alaska]. At the hearing the court may find that [name of child/ren] is/are [a] child/ren in need of aid. If

the court does so it may also order the child/ren committed to the custody of the Department of Health and Social Services for up to two years or it may permanently terminate the parental rights and responsibilities of the child/ren's parents.

This letter is being sent to you because of Alaska laws (AS 47.10.030(b), AS 47.10.070(a), AS 47.10.090, and AS 47.10.093). These laws say that a child's foster parent, other out-of-home care provider, or grandparent must be told whenever a hearing is held to decide whether a child is a child in need of aid. This will be the only notice you will receive from the Attorney General's Office, but the Office of Children's Services (OCS) is required to send notice of later hearings. You can also call OCS at (907) 465-1650 to learn when the later hearings are scheduled.

You do not have to go to the hearing. If you do go to the hearing you may tell the court what you think. The court may allow you to attend the entire hearing, or the court may allow you to be present only while you are testifying if the court finds that this would be in the child/ren's best interest, or that this is necessary to protect a party's privacy interest and will not harm the child/ren.

You have the right to be told when any other hearings are going to be held about this child/ren. Please let us know if your address changes.

If you are a relative of this/these child/ren by blood

or marriage, you may be entitled to have the child/ren placed with you pursuant to AS 47.14.100(e). If the child/ren is/are [an] Indian child/ren under the terms of the Indian Child Welfare Act, and you are a member of the child/ren's extended family, you may be considered a priority placement for the child/ren pursuant to 25 U.S.C. § 1915.

This is a confidential proceeding pursuant to AS 47.10.090 and .093. Failure to maintain that confidentiality is a class B misdemeanor pursuant to AS 47.10.093(i).

[If you live out of town and cannot appear in person, you may be present by calling the court at the start of the hearing at (907) 463-4741/2(juno); 772-3824 (ptsbg); 225-3141/9876 (ket); 747-6271 (sitka); 874-2311 (wrangell). If a teleconference is set up due to multiple telephonic participation, you will be billed for an equitable portion of the teleconference cost.]

DATED: _____

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:

*
Assistant Attorney General
Alaska Bar No. *

CERTIFICATION

This is to certify that on * ____, 2005, a true and correct copy of the foregoing document was mailed/placed in the court box to the following attorneys or parties of record:

*, Law Office Assistant

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.

THE SUPREME COURT OF THE STATE OF ALASKA

JOHNNY McGREW and MARY)	
McGREW,)	Supreme Court No. S-10699
)	
Appellants,)	Superior Court No. 3AN-01-9334 CI
)	
v.)	<u>OPINION</u>
)	
STATE OF ALASKA, DEPART-)	[No. 5866 - February 4, 2005]
MENT OF HEALTH AND SOCIAL)	
SERVICES, DIVISION OF FAMILY)	
AND YOUTH SERVICES,)	
)	
Appellee.)	
)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Mark Rindner, Judge.

Appearances: James Alan Wendt, Law Offices of James Alan Wendt, Anchorage, for Appellants. Gail T. Voigtlander, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee.

Before: Eastaugh, Fabe, and Carpeneti, Justices. [Bryner, Chief Justice, and Matthews, Justice, not participating.]

EASTAUGH, Justice.

I. INTRODUCTION

Grandparents of an orphaned child sued the State of Alaska, claiming that it prevented them from adequately litigating their interests in child-in-need-of-aid (CINA) and adoption proceedings relating to their grandchild. We consider here whether it was error to grant the state's Alaska Civil Rule 12(b)(6) motion to dismiss their claims of negligence, intentional infliction of emotional distress (IIED), and violation of constitutional rights. We affirm the dismissal of their negligence claim, because the state owed them no actionable duty. We also affirm the dismissal of their constitutional claim, because they had alternative litigation remedies available. But because their complaint adequately pleaded an IIED claim, we reverse the Rule 12(b)(6) dismissal of that claim and remand.

II. FACTS AND PROCEEDINGS

The Alaska Division of Family and Youth Services (DFYS) took emergency custody of Johnny and Mary McGrews' infant granddaughter, Lucy M.,¹ after the sudden deaths of the infant's parents and twin sibling in July 1999. According to the McGrews, Lucy's father shot and killed Lucy's mother, and then shot and killed himself. Lucy's twin sister died when Lucy's mother fell on the infant and smothered her. DFYS filed a petition for an adjudication that Lucy was a child in need of aid under AS 47.10.011. The superior court granted DFYS's petition and placed Lucy with Elsa C., who had been a friend of Lucy's mother and a babysitter for Lucy and her twin sister. In September 1999 the McGrews filed a motion to intervene in the CINA proceedings. In November 1999 Elsa and her husband, Dillon C., also moved to intervene in the CINA proceedings. The superior court granted both intervention motions. After

¹ Pseudonyms have been used for all persons other than the appellants.

conducting a hearing in February 2000, the superior court released Lucy from DFYS's custody and continued Lucy's pre-adoptive placement with the C. family.

In August 2001 Johnny and Mary McGrew filed a tort complaint against the Alaska Department of Health and Social Services, Division of Family and Youth Services. We refer to the defendants as the "state" or "DFYS." The complaint alleged that Mary McGrew had notified DFYS that she was a licensed foster care provider and that she and her husband, and other family members, were willing to take custody of Lucy. The complaint alleged that DFYS refused to provide the McGrews with any information about their granddaughter's placement, and that any information DFYS provided was "false and misleading."

The complaint alleged that even though DFYS had been advised that the McGrews were interested in obtaining custody of Lucy, DFYS appeared ex parte at Lucy's CINA hearing and failed to inform the court of the McGrews' interest in caring for their granddaughter. The complaint also alleged that DFYS failed to notify the court that one of the adults with whom Lucy had been placed, Dillon C., had a criminal history. The complaint alleged that in placing Lucy, DFYS failed to abide by applicable statutes, rules, and its own policies and procedures.

The McGrews' complaint asserted three claims. Count I asserted a negligence claim for DFYS's alleged failure to abide by its own policies in placing Lucy. Count II asserted a "*Bivens* action"² for alleged failures to abide by the Alaska Constitution, applicable Alaska Statutes, the Alaska Administrative Code, and DFYS's internal policies. Count III asserted an IIED claim. The complaint sought compensatory damages, pre- and post-judgment interest, costs, and attorney's fees.

² *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

The state moved under Alaska Civil Rule 12(b)(6) to dismiss the entire action, arguing that the complaint failed to state legally cognizable claims.

The McGrews opposed the motion to dismiss, arguing that DFYS owed them an actionable duty and that no alternate remedies were available for purposes of the *Bivens* action. They asked for leave to amend their complaint under Alaska Civil Rule 15(a) if the court found the state's arguments persuasive.

The McGrews also moved in the superior court to supplement the record. The order denying their motion to supplement stated that "the issue of duty raised by the motion [to dismiss] is a legal issue, not a fact based inquiry As there is no need to consider factual issues, there is no need to allow [supplementation] of the record."

After hearing oral argument, the superior court granted the state's motion to dismiss the IED and negligence claims, ruling that the state only owed a duty to the child in need of aid, and did not owe a duty to the child's relatives, such as parents and grandparents. The court also declined to allow a *Bivens* remedy in this case.

The McGrews moved for reconsideration under Alaska Civil Rule 77(k). The superior court denied this motion and entered final judgment for the state. The McGrews appeal the dismissal of their complaint and the denial of their motion to supplement the record.

The McGrews were also parties to another appeal challenging the superior court's dismissal of their adoption petition and the award of custody of Lucy to Elsa and Dillon C.³ In *In re Adoption of L.E.K.M.*, decided after the superior court dismissed the

³ See *In re Adoption of L.E.K.M.*, 70 P.3d 1097 (Alaska 2003). That case concerned the private adoption of Lucy after the CINA proceedings ended. *Id.* at 1100.

tort claims in the present case, we affirmed the superior court's placement of Lucy with the C. family.⁴

III. DISCUSSION

A. Standard of Review

Alaska Civil Rule 12(b)(6) allows the dismissal of a complaint for "failure to state a claim upon which relief can be granted." We review the superior court's Rule 12(b)(6) dismissal of the McGrews' complaint de novo,⁵ deeming all facts in the complaint "true and provable."⁶ To survive a motion to dismiss, a complaint need only allege "a set of facts consistent with and appropriate to some enforceable cause of action."⁷ A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief.⁸

B. The Negligence Claim

The McGrews argue that because they were parties in the CINA proceeding, DFYS owed them a duty of care once it made the decision to seek and obtain temporary emergency custody of Lucy. They therefore argue that it was error to dismiss their negligence claim.

⁴ *Id.* at 1099.

⁵ *Valdez Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657, 664 (Alaska 2002).

⁶ *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000).

⁷ *Id.* (internal quotation marks omitted).

⁸ *Angnabooguk v. State*, 26 P.3d 447, 451 (Alaska 2001).

In deciding whether a defendant owes a plaintiff a duty of reasonable care, we first determine whether a duty is imposed by statute, regulation, contract, undertaking, the parties' preexisting relationship, or existing case law.⁹ If these sources do not resolve the issue, we apply the multi-factor approach discussed in *D.S.W. v. Fairbanks North Star Borough School District*¹⁰ to determine whether an actionable duty of care exists.¹¹

The McGrews argue that an actionable duty is imposed by AS 47.14.240, which specifies the responsibilities of the local review boards which review DFYS's placement decisions. It requires a review board to allow the child's relatives to participate.¹² But another statute, AS 47.10.960, states that "[n]othing in this title creates

⁹ In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services* we stated: "[T]ypical theoretical sources of actionable duties are statutes, regulations, certain contracts, express undertakings, or fiduciary relationships. . . . If one of those duty sources applied, it would not be necessary to consider the *D.S.W. [v. Fairbanks North Star Borough School District]* factors." 953 P.2d 871, 875 n.9 (Alaska 1998) (internal citations omitted). See also *Wongittilin v. State*, 36 P.3d 678, 681 (Alaska 2001); *Waskey v. Municipality of Anchorage*, 909 P.2d 342, 343-44 (Alaska 1996) (finding it "unnecessary to resort to the *D.S.W.* approach" where we had decided other cases "more closely related" to the subject duty dispute); *Estate of Day v. Willis*, 897 P.2d 78, 81 n.7 (Alaska 1995) (holding internal administrative and training manual did not impose duty of care toward fleeing suspects).

¹⁰ *D.S.W. v. Fairbanks N. Star Borough Sch. Dist.*, 628 P.2d 554, 555 (Alaska 1981).

¹¹ *Wongittilin*, 36 P.3d at 681. The *D.S.W.* factors include foreseeability of harm; degree of certainty plaintiff suffered injury; closeness of connection between defendant's conduct and injury; moral blame attached to defendant's conduct; policy of preventing future harm; extent of burden to defendant and availability; cost and prevalence of insurance for the risk involved. *D.S.W.*, 628 P.2d at 555.

¹² AS 47.14.240(d)(2).

a duty or standard of care for services to children and their families being served under AS 47.10." Lucy was a child "being served under AS 47.10." Section .960 therefore precludes the McGrews from contending in a tort suit that AS 47.14.240 can be the basis of an actionable duty.

The McGrews also assert that other statutes are sources of an actionable duty: AS 47.10.142(a), (e), and (h);¹³ AS 47.10.020(a);¹⁴ AS 47.10.080(l) and (l)(2)(B);¹⁵

¹³ AS 47.10.142(a) allows the Department of Health and Social Services to take emergency custody of a child in certain circumstances. Subsection .142(e) provides that when a temporary custody hearing is held, a court shall then determine "whether probable cause exists for believing the child to be a child in need of aid." Subsection .142(h) provides that "[w]ithin 12 months after a child is committed to the department under this section, the court shall review the placement plan and actual placement of the child under AS 47.10.080(l)."

¹⁴ AS 47.10.020(a) provides in pertinent part:

Whenever circumstances subject a child to the jurisdiction of the court under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the best interests of the child require that further action be taken. If, under this subsection, the court appoints a person or agency to make a preliminary inquiry and to report to it, then, upon the receipt of the report, the court may . . . (3) authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts.

¹⁵ AS 47.10.080(l) provides in pertinent part:

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

(continued...)

and AS 47.05.060.¹⁶ Any claim based on these statutes is likewise barred by AS 47.10.960.

In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services*, we considered whether a mother could assert tort claims arising from CINA proceedings addressing placement of a child in DFYS custody.¹⁷ The superior court there granted summary judgment to the state, DFYS, state social workers, and the child's guardians ad litem, dismissing all of the mother's claims, including her negligence claims.¹⁸ We held that the state and the social workers did not owe the

¹⁵(...continued)

provisions . . . (2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether . . . (B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department

¹⁶ AS 47.05.060 provides in pertinent part:

The purpose of this title as it relates to children is . . . to preserve and strengthen the child's family ties unless efforts to preserve and strengthen the ties are likely to result in physical or emotional damage to the child . . . and . . . to secure for the child adequate custody and care and adequate planning for permanent placement of the child.

¹⁷ *Karen L. v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Serv.*, 953 P.2d 871, 876 (Alaska 1998) (declining to impose duty of care on state and social workers because it was not reasonably foreseeable that their conduct would cause Karen L. "actionable emotional harm").

¹⁸ *Id.* at 873.

mother an actionable duty of care.¹⁹ The mother therefore could not maintain negligence claims against the state or its agencies and employees.

We recognize here, as we did in *Karen L.*, that "it is to be expected that any litigation, and certainly a CINA proceeding in which the child is taken from its [relatives] . . . will cause the [relatives] some distress. That does not mean that the distress should be actionable."²⁰ *Karen L.* establishes that DFYS does not owe a parent an actionable duty of reasonable care in a CINA proceeding.²¹ *Karen L.* therefore precludes the grandparents' negligence claim in this case.

The McGrews attempt to distinguish *Karen L.* on the theory there was no claim in that case that the state had bad motives. They assert that DFYS here engaged in intentional deceit and "affirmatively misled" them by making false statements about its placement plan for the child. That distinction is potentially pertinent only to the McGrews' claims alleging intentional misconduct. As to the McGrews' negligence claim, *Karen L.* controls.

The McGrews also argue that their case is distinguishable from *Karen L.* because DFYS failed to comply with the statutory requirements of AS 47.14.240, denying them their right to be "meaningfully heard in a timely fashion." They therefore argue that *Karen L.* does not apply to them because the court there held that there was no statute that imposed an actionable tort duty.

But as we saw above, AS 47.10.960 establishes that DFYS owes the McGrews no actionable duty arising out of any provision in Title 47. Therefore, *Karen*

¹⁹ *Id.* at 876, 878.

²⁰ *Id.* at 876.

²¹ *Id.* at 878.

L. cannot be distinguished on a theory the McGrews were owed a statutory duty not addressed in *Karen L.*

C. The *Bivens*-type Claim

A "*Bivens* claim" is the cause of action sometimes permitted in federal courts for a governmental violation of the plaintiff's constitutional rights.²² We have never decided whether a *Bivens*-like remedy is available for violations of the Alaska Constitution.²³ In *Brown v. Ely* we noted that "federal courts have not permitted the *Bivens* remedy if alternative remedies are available."²⁴ The McGrews' opportunities to participate as intervenors in the CINA proceeding and to oppose the adoption decree gave them adequate alternative avenues to challenge the litigation conduct of the governmental agency, DFYS. The alleged misconduct occurred during existing judicial proceedings, during which the McGrews had opportunities to seek prompt judicial relief that might have avoided or remedied any harm they allegedly suffered. The availability of judicial remedies in the very proceedings in which the misconduct allegedly took place distinguishes the McGrews' case from federal cases in which grave governmental

²² See, e.g., *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389 (1971) (holding that Fourth Amendment violation by federal agent acting under color of his authority gave rise to cause of action for damages directly under U.S. Constitution).

²³ *Brown v. Ely*, 14 P.3d 257, 261 (Alaska 2000) ("We have neither adopted nor rejected the *Bivens* approach with respect to state constitutional violations."); *King v. Alaska State Hous. Auth.*, 633 P.2d 256, 261 (Alaska 1981).

²⁴ *Brown v. Ely*, 14 P.3d 257, 261 (Alaska 2000); *Thoma v. Hickel*, 947 P.2d 816, 824 (Alaska 1997); *Dick Fischer Dev. No. 2, Inc. v. Dep't of Admin.*, 838 P.2d 263, 268 (Alaska 1992) ("We are also hesitant to extend the *Bivens* decision, and will not allow a claim for damages except in cases of flagrant constitutional violations where little or no alternative remedies are available.").

misconduct has immediate consequences that cannot be readily avoided or corrected in existing judicial proceedings.²⁵ We see no reason why the McGrews should have an additional means of challenging, through a tort suit, the alleged unconstitutionality of that conduct.

Furthermore, the McGrews' *Bivens* claims inherently allege misconduct by persons acting for the government. At least in context of this case, the theoretical availability of an IIED claim would be an alternative remedy that obviates any need for a *Bivens* claim. We therefore do not need to approve a *Bivens* remedy here.

D. The Intentional Infliction of Emotional Distress Claim

The McGrews contend that *Karen L.* does not require dismissal of their claim that DFYS engaged in intentional misconduct. They argue that their allegations of intentional wrongdoing and deceit distinguish *Karen L.*²⁶ The state simply responds that *Karen L.* bars the "McGrews' claims for negligence and emotional distress."

To plead a claim for IIED, a plaintiff must allege these necessary elements: "(1) the conduct is extreme and outrageous, (2) the conduct is intentional or reckless, (3) the conduct causes emotional distress, and (4) the distress is severe."²⁷ The McGrews' complaint alleged that DFYS's conduct was "extreme, outrageous and atrocious"; that its conduct was "intentional and/or reckless"; that its conduct "caused emotional distress"

²⁵ See *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 73-74 (2001) (refusing to extend *Bivens* action to plaintiff "whose lack of alternative tort remedies was due solely to strategic choice").

²⁶ They also argue that their allegations of intentional wrongdoing and deceit satisfy the *D.S.W.* factors. But those factors pertain only to torts involving negligent, not intentional, acts. See *infra*.

²⁷ *Lincoln v. Interior Reg'l Hous. Auth.*, 30 P.3d 582, 589 (Alaska 2001).

to the McGrews; and that their distress was "severe" and that they "suffered personal injury, personal humiliation, mental anguish, pain and suffering." Their complaint therefore adequately pleaded all necessary elements of an IIED claim.

IIED claims require the trial court to make a "threshold determination whether the severity of the emotional distress and the conduct of the offending party warrant a claim."²⁸ We review this threshold determination for abuse of discretion,²⁹ but there was no threshold determination in this case about whether the state's alleged conduct was sufficiently outrageous or whether the McGrews' alleged emotional distress was sufficiently severe for an IIED claim. Instead, the Rule 12(b)(6) dismissal of the IIED claim seems to have been based on a conclusion that *Karen L.*'s discussion of duty also controls IIED claims against DFYS. We review that conclusion de novo because it presents an issue of law.³⁰

In *Karen L.* we considered the "narrow question" whether the state defendants owed Karen "a duty of care to protect her from emotional distress with respect to the CINA proceeding."³¹ We have usually discussed the element of "duty of care" in context of negligence claims, not intentional tort claims. For example, in *Chizmar v. Mackie*, we stated that "a plaintiff's right to recover emotional damages caused by mere negligence should be limited to those cases where the defendant owes

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Wongittilin*, 36 P.3d at 681 (stating nature and extent of duty are questions of law).

³¹ *Karen L.*, 953 P.2d at 874.

the plaintiff a preexisting duty.”³² We noted in *Hawks v. State, Department of Public Safety* that the first step in determining whether a negligence action can be maintained is determining whether the defendant owed the plaintiff a duty of care.³³ Our discussion in *Karen L.* of a duty of care and the *D.S.W.* factors pertained only to *Karen L.*’s negligence claims against the state and its agencies and employees.³⁴ That discussion does not control the McGrews’ IIED claims here.

We discussed separately in *Karen L.* the mother’s IIED claims against the state defendants. The superior court had dismissed the mother’s IIED claims on summary judgment.³⁵ We affirmed, holding that “Karen did not make the necessary threshold showing on the conduct element for an IIED claim, and the record requires the conclusion that the conduct of the social worker defendants was neither outrageous nor extreme.”³⁶ But the McGrews’ IIED claim was dismissed on the pleadings, not summary judgment, and as we noted above, the McGrews’ complaint sufficiently pleaded an IIED claim. The superior court here consequently never had to decide whether their case met the thresholds for an IIED claim.

Moreover, we discussed duty in *Karen L.* and *D.S.W.* in context of claims in which the existence of an actionable duty of care was legally and factually problematic. The legal determination whether there is an actionable duty of care has little if any conceptual relevance to an IIED claim. The concept of a “duty of care” is

³² *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995).

³³ *Hawks v. State, Dep’t of Public Safety*, 908 P.2d 1013, 1016 (Alaska 1995).

³⁴ *Karen L.*, 953 P.2d at 874-78.

³⁵ *Id.* at 873.

³⁶ *Id.* at 876 n.10.

usually identified with negligence claims,³⁷ and has no obvious bearing on a claim of intentional and outrageous conduct; the intentionality of the outrageous conduct needed for an IIED claim presupposes at least some intended relationship between the actor and the person harmed. The *D.S.W.* factors are typically applied to determine whether there is an actionable duty of care when there is no existing or intended relationship between the actor and the person harmed.³⁸

We conclude that the *D.S.W.* multi-factor duty analysis we applied in *Karen L.* does not apply to intentional tort claims.

Karen L.'s duty discussion therefore does not preclude the McGrews' IIED claim. Because that claim was dismissed on the pleadings under Rule 12(b)(6), there was no opportunity to consider whether plaintiffs' evidence could surmount the thresholds for the severity of any emotional distress and the outrageousness of the actor's conduct.³⁹ We therefore cannot affirm the dismissal of this claim on a possible alternative theory that the McGrews did not or cannot overcome the threshold for an IIED claim. We consequently reverse the dismissal of their IIED claim.

³⁷ *Silvers v. Silvers*, 999 P.2d 786, 793 (Alaska 2000) (stating that "[a]s with any negligence case, the plaintiff must establish (1) a duty of care; (2) breach of the duty; (3) causation; and (4) harm").

³⁸ The prototypical Alaska case was *Transamerica Title Insurance v. Ramsey*, 507 P.2d 492 (Alaska 1973). We there followed *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968), in which we adopted the test applied by the California Supreme Court in *Lucas v. Hamm*, 364 P.2d 685, 687 (Cal. 1961). *State v. Sandsnes*, 72 P.3d 299 (Alaska 2003), is typical of our modern cases. There was no relevant preexisting relationship between the state and the decedent, a taxicab driver shot by a state juvenile releasee. *Id.* at 300, 305.

³⁹ *Lincoln*, 30 P.3d at 589.

E. Other Issues

The parties' briefs do not discuss whether our decision in the adoption case, *L.E.K.M.*, has any effect on the McGrews' tort claims.⁴⁰ We leave it to the parties to raise on remand any question about what effect *L.E.K.M.* may have on the IIED claim, particularly with respect to the issues of liability, causation, and damages.

Our rulings on the negligence and IIED claims and the *Bivens*-type remedy make it unnecessary to consider the McGrews' argument that the superior court erred when it denied their motion to supplement the record. Their negligence claim and *Bivens* action are precluded as a matter of law and were therefore properly dismissed on the pleadings. No factual disputes, however genuine, would be material to those claims. And because we reverse the dismissal of the IIED claim, the McGrews are free on remand to offer evidence relevant to that claim.

The McGrews assert that the state is not immune from suit under the Alaska Tort Claims Act, AS 09.50.250. The state does not address the issue of statutory immunity. As to the negligence claim and the *Bivens*-remedy claim, no discussion of immunity is needed here. And because the parties have altogether failed to explain what effect AS 09.50.250, particularly subsection .250(3), might have on the IIED claim, we decline to consider whether the state is immune from the IIED claim pleaded here.⁴¹

IV. CONCLUSION

We AFFIRM the dismissal of the McGrews' negligence and constitutional violation claims. We REVERSE the dismissal of their IIED claim and REMAND for further proceedings.

⁴⁰ *In re Adoption of L.E.K.M.*, 70 P.3d 1097 (Alaska 2003).

⁴¹ AS 09.50.250 provides in part: "[A]n action may not be brought if the claim . . . (3) arises out of . . . misrepresentation, [or] deceit . . ."