

ALASKA LEGISLATURE COMMITTEE FILES, 2000-2000 80 / 2

11655 HOUSE STATE AFFAIRS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

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

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

Order Regarding Fees and Costs

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

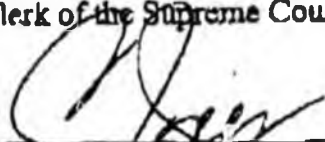
Supreme Court No. S-11450

Date of Order: 3/4/05

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

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

Clerk of the Supreme Court


Cheryl Jones, Deputy Clerk

cc: Authoring Justice
Trial Court Appeals Clerk/Anchorage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Effective date (Section 8):

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

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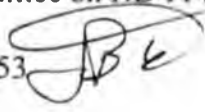
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 4, 2005

To: Representative Gatto, Chairman, HSS Subcommittee on HB 114

From: Representative John Coghill, Sponsor of SSHB 53 

Re: HB 114

The following is an index to the portions of SSHB 53 that are the language incorporated from HB 114. I would appreciate being kept in the loop during your discussions of the bill.

Sec. 2. Provides for relinquishment of parental rights with retained privileges for future contact, communication, and visitation. A relinquishment cannot be withdrawn and termination cannot be vacated on the grounds that a retained privilege has been withheld or relinquishing parent has been unable to act upon privileges. **(HB 114, Sec. 1)**

Sec. 3. Amends the allowable absence for the permanent fund dividend allowing the Commissioner of Revenue to waive the requirement for a resident to be present in the State at least 72 hours in the two prior years if that person was in the custody of the State under a CINA or juvenile justice order and was outside of the state for medical or behavioral treatment. **(HB 114, Sec. 2)**

Sec. 5. This section allows the court to on its own motion appoint a competent person or agency to make a preliminary inquiry. Currently a party has to petition the court for an inquiry. It also clarifies that when a court appoints an inquirer or if OCS is conducting an investigation, the court may issue orders necessary to aid the person, agency, or department in their investigation. **(HB 114, Sec. 3)**

Sec. 6. Clarifies that OCS does not have to get prior permission from the court to start a CINA investigation or file a petition for custody. **(HB 114, Sec. 4)**

Sec. 29. This allows for an expert witness to determine that there is clear and convincing evidence that a parent, guardian, or custodian cannot be located. There is some discussion about this meeting the standard of proof in ICWA cases, but legal points out that there must be proof beyond a reasonable doubt. **(HB 114, Sec. 5)**

Sec. 31. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.
(HB 114, Sec. 6)

Sec. 33. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment. **(HB 114, Sec. 7)**

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REPRESENTATIVE JOHN COGHILL

FAMILY RIGHTS ACT

HB 53

Sponsor Statement

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

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

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

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

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

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

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REPRESENTATIVE JOHN COGHILL

THE FAMILY RIGHTS ACT (SSH B 53)

Sectional

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

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

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

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

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

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

Sec. 7. Provides for grandparents to petition special proceedings to obtain custody of a grandchild when the grandchild is found to be a child in need of aid and one or both parents are dead and the child has been abandoned by the other parent; creates a presumption that the awarding custody to biological grandparent(s) is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the grandparents; and puts in statute provisions that grandparents will be contacted by written notice of the procedures to obtain custody and the grandparents will sign a receipt of the notice.

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

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

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

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

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

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

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

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

(t) The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

(u) A child cannot be placed in a foster home known as a home requesting adoption before certain three things occur, including the decision to terminate parental rights and a court hearing approving the placement.

(v) The court shall notify the local citizen out-of-home care review panel within 60 days of a child being removed from his or her home.

(w) The court shall notify all parties about the citizens review panel within 60 days after it orders custody of a child to the State.

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

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

Sec. 15. This section sets out three reasons the department could deny the adoption of a child by a blood relative. The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents.

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

Sec. 16. Requires the Department to maintain information about the use of psychotropic or other mental health medication on children in state custody and supply a report to the Legislature annually.

Sec. 17. Language cleanup by the legislative legal.

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

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

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

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

An "adult family member" is defined as a person who is 18 years of age or older and who is related to the child as the child's biological or adoptive parent, grandparent, aunt, uncle, or sibling.

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

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

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

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

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

Sec. 24. The regulatory language is deleted because it has been added to Section 26.

Sec. 25. Cleanup language by legislative legal.

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

Gives department authority to promulgate regulations.

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

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

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

Sec. 31. Defines "mental health professional" in CINA statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 32. Defines "near fatality" in CINA statutes.

Sec. 33. Defines "mental health professional" in Delinquent minor statutes to include a person who is licensed in another state and caring for a child placed in the state by OCS for treatment.

Sec. 34. Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member, friend, or neighbor has an issue that is not in the best interest of the child.

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

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

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

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

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

Sec. 39. Directs the court, the department, and the child's guardian cooperate with the state panel by furnishing relevant records to the panel. The state panel is required to return all documents when the panel has concluded the investigation or has completed the report. All information is confidential.

The state panel is not subject to the Open Meetings Act of AS 44.62.310.

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

Sec. 41. Indemnifies panel members.

Sec. 42. Definitions for "state panel" and "near fatality" in the Juvenile Programs and Institutions Title 47.14.

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

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

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

Sec. 46. Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.

Sec. 47. Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.

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

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

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

Sec. 51. Language cleanup by legal services.

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

Sec. 53. Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.

Sec. 54. Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.

Sec. 55. An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

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

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

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

Sec. 57. This section outlines the section of the bill, which is and can, therefore, be adopted without a two-thirds vote on the court rule. An example is the right to a jury trial is substantive. It is something the legislature can implement without a two-thirds vote. Supreme Court governs procedural changes and procedural changes in the bill require a two-thirds vote.

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

Sec. 59. Applicability language.

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

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

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

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

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

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

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

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REPRESENTATIVE JOHN COGHILL

SSHB 53 THE FAMILY RIGHTS ACT

SUBJECT SECTIONAL

Childrens' Rights

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

Sec. 16. Requires the Department to maintain information about the use of psychotropic or other mental health medication on children in state custody and supply a report to the Legislature annually.

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

Sec. 34. Provides that a child cannot be placed in a foster home if there is a family member, friend, or neighbor unless that family member, friend, or neighbor has an issue that is not in the best interest of the child.

Family Preservation

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

Sec. 13(u). A child cannot be placed in a foster home known as a home requesting adoption before certain three things occur, including the decision to terminate parental rights and a court hearing approving the placement.

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Sec. 15. This section sets out three reasons the department could deny the adoption of a child by a blood relative. The department is required to conduct a criminal background check on the relative's in the household of the adoptive parents. If a relative is denied adoption they are entitled to a review hearing and that hearing is open to the public.

Sec. 20(f). An "adult family member" is defined as a person who is 18 years of age or older and who is related to the child as the child's biological or adoptive parent, grandparent, aunt, uncle, or sibling.

Sec. 46. Provides that when a relative takes placement as a foster home, OCS will issue a temporary license to the relative within five days of placement until a permit license application is processed.

Parents' Rights

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

Sec. 13(t). The court may not terminate parental rights solely on the basis the parent did not get required treatment if the treatment was not available and OCS did not provide the treatment.

Sec. 13(v). The court shall notify the local citizen out-of-home care review panel within 60 days of a child being removed from his or her home.

Sec. 13(w). The court shall notify all parties about the citizens review panel within 60 days after it orders custody of a child to the State.

Sec. 53. Accommodates Section 2 language in Alaska Adoption Rule 9(a) recognizing there may be other privileges retained besides visitation.

Sec. 54. Amends Alaska Adoption Rule 13(a) to accommodate Section 2 of HB 53. It provides for a decree of termination after relinquishment of parental rights with retained privileges for future contact, communication, and visitation.

Sec. 55. An indirect amendment to Alaska Adoption Rules 9 and 13 requires retained privileges to be set out in a relinquishment form and order.

Grandparents' Rights

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

Sec. 7. Provides for grandparents to petition special proceedings to obtain custody of a grandchild when the grandchild is found to be a child in need of aid and one or both parents are dead and the child has been abandoned by the other parent; creates a presumption that the awarding custody to biological grandparent(s) is in the best interest of the child unless the presumption can be overcome by evidence of abuse, neglect, or other harm attributed to the grandparents; and puts in statute provisions that grandparents will be contacted by written notice of the procedures to obtain custody and the grandparents will sign a receipt of the notice.

Sec. 10(g). Finally, this section clarifies that the right of a grandparent to attend hearings under AS 10.070(a) does not affect their right to intervene in a proceeding under CINA nor the rights of a grandparent under Title 47.

Sec. 47. Amends CINA Court Rule 3(c), **Presence of Foster Parent**, to include grandparents as being entitled to be heard at any hearings.

Improving the Judicial Process

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

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

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

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

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

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

Jury Trial

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

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

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

Creating Transparency in the Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 56(c).

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

Videotaping

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

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

Accountability

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

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

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

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

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

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

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

Sec. 41. Indemnifies panel members.

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

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

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

BY REPRESENTATIVES COGHILL, Ramras, Rokeberg, Kelly

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) benefit future generations;

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

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

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

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

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

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

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

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

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

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

22 (2) filing a petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) 30 days after the date of the first permanency hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (6) assessment of the child's caregiver pertaining to the child's
2 response to the medication, if available.

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

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

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

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

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

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

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

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

31 (a) Notwithstanding AS 47.10.090 and 47.10.093, an adult family member

1 [A PARENT] or legal guardian of a child subject to a proceeding under AS 47.10.005
 2 - 47.10.142 may disclose confidential or privileged information about the child or the
 3 child's family, including information that has been lawfully obtained from agency or
 4 court files, to the governor, the lieutenant governor, a legislator, the ombudsman
 5 appointed under AS 24.55, the attorney general, and the commissioner
 6 [COMMISSIONERS] of health and social services, administration, or public safety, or
 7 an employee of these persons, for review or use in their official capacities. The
 8 department shall disclose additional confidential or privileged information and make
 9 copies of documents available for inspection about the child or the child's family to
 10 these state officials or employees for review or use in their official capacities upon
 11 request of the official or employee and submission of satisfactory evidence that an
 12 adult family member [A PARENT] or legal guardian of the child has requested the
 13 state official's assistance in the case as part of the official's duties. A person to whom
 14 disclosure is made under this section may not disclose confidential or privileged
 15 information about the child or the child's family to a person not authorized to receive
 16 it.

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) a school official [OFFICIALS] as [MAY BE] necessary to enable

1 the school to provide appropriate counseling and support services to a [THE] child
 2 who is the subject of the case, to protect the safety of the child [WHO IS THE
 3 SUBJECT OF THE CASE], and to protect the safety of school students and staff;

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

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

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

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

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

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

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

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

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

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

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

30 (f) The department may release to a person with a legitimate interest
 31 confidential information relating to children [MINORS] not subject to the

1 jurisdiction of the court under AS 47.10.010. [THE DEPARTMENT SHALL ADOPT
2 REGULATIONS GOVERNING THE RELEASE OF INFORMATION AND
3 IDENTIFYING A SUFFICIENT LEGITIMATE INTEREST.]

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

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

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

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

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

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

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

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

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

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

1 criminal proceeding.

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

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

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

9 **Sec. 47.10.194. Immunity from liability.** A person may not bring an action
10 for damages against the state, a municipality, or state or municipal agencies, officers,
11 employees, or agents based on the disclosure or nondisclosure of information in
12 accordance with this chapter.

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

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

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

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

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

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

Examiners under AS 08.95.

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

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

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

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

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

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

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

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

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

1 damage to the child will occur; this determination may be appealed to the superior
2 court to hear the matter de novo;

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

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

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

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

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

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

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

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

28 **Sec. 47.14.205. Citizens' Review Panels for Permanency Planning.** (a)
29 There is created in the Department of Administration three Citizens' Review Panels for
30 Permanency Planning. Each state panel shall consist of five members appointed by
31 the governor from a broad representation of individuals located in the communities

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

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

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

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

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

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

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

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

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

1 (1) by regulation adopt policies and procedures to carry out the panels'
2 duties;

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

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

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

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

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

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

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

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

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

31 **Sec. 47.14.235. Records; communications.** (a) Notwithstanding

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

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

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

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

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

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

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

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

1 (1) AS 47.14.235(b); or

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

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

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

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

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

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

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

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

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

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

1 unless it appears to the department or agency that notifying the child's parent,
2 guardian, or custodian would endanger the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (6) A party to the proceeding may move the court to close to the public

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

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

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

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

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

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

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

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

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

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

31 (1) shall be held within six months after the date on which the petition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 INDIRECT COURT RULE AMENDMENT. AS 25.23.180(j), added by sec. 2 of this

1 Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set
2 out in the relinquishment form and order.

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

5 **INDIRECT COURT RULE AMENDMENT.** (a) Sections 9 and 10 of this Act
6 AS 47.10.030(x), enacted by sec. 13 of this Act, and AS 47.10.088(o), enacted by sec. 15 of
7 this Act, have the effect of changing Rule 3, Alaska Child in Need of Aid Rules of Procedure,
8 by allowing members of the public to attend court hearings except in certain circumstances.

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

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

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

18 **TWO-THIRDS VOTE NOT REQUIRED FOR CERTAIN AMENDMENTS.**
19 Because the enactment of AS 47.10.065 and the amendments to AS 47.10.080(c) and Rules
20 18(e) and 18(g), Alaska Child in Need of Aid Rules of Procedure, to the extent that the
21 enactment and amendments provide a right to a jury trial on a petition to terminate parental
22 rights, affect a substantive right, secs. 8, 11, 50, 51, and 56 of this Act do not require a two-
23 thirds vote of the legislature to confer the right to a jury trial on a petition to terminate
24 parental rights.

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

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

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

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

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

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

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

14 (d) Sections 9, 10, 13, 15, and 18 - 27 of this Act apply to all information, records,
15 and files created on or after the effective date of those sections; however, if a file contains
16 information and records that were created before the effective date of secs. 9, 10, 13, 15, and
17 18 - 27 of this Act, that information and those records retain the confidentiality status that
18 they had under the law on the day before the effective date of secs. 9, 10, 13, 15, and 18 - 27
19 of this Act.

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

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

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

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

31 * **Sec. 62.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

7 (b) The amendments to Rule 3, Alaska Child in Need of Aid Rules of Procedure,
8 made by secs. 47 - 49 of this Act, take effect only if secs. 47 - 49 of this Act receive the two-
9 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
10 Alaska.

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

14 (d) Sections 9 and 10 of this Act, AS 47.10.080(x), enacted by sec. 13 of this Act,
15 AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 - 27 of this Act, take
16 effect only if secs. 47 - 49, 52, and 56(a) and (c) of this Act receive the two-thirds majority
17 vote of each house as required by art. IV, sec. 15, Constitution of the State of Alaska.

18 (e) Rule 9(a), Alaska Adoption Rules, as amended by sec. 53 of this Act, takes effect
19 only if sec. 53 of this Act receives the two-thirds majority vote of each house required by art.
20 IV, sec. 15, Constitution of the State of Alaska.

21 (f) Rule 13(a), Alaska Adoption Rules, as amended by sec. 54 of this Act, takes effect
22 only if sec. 54 of this Act receives the two-thirds majority vote of each house required by art.
23 IV, sec. 15, Constitution of the State of Alaska.

24 (g) AS 25.23.180(j), added by sec. 2 of this Act, takes effect only if sec. 55 of this Act
25 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
26 of the State of Alaska.

27 * **Sec. 63.** AS 47.10.960, as amended by sec. 30 of this Act, takes effect 180 days after the
28 effective date of sec. 1 of this Act.

29 * **Sec. 64.** If, under sec. 62 of this Act, secs. 9 and 10 of this Act, AS 47.10.080(x), enacted
30 by sec. 13 of this Act, AS 47.10.088(o), enacted by sec. 15 of this Act, and secs. 18 and 21 -
31 27 of this Act take effect, they take effect July 1, 2005.

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

HB

116

24-LS0379\G
Luckhaupt
2/9/05

CS FOR HOUSE BILL NO. 116()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MEYER

A BILL

FOR AN ACT ENTITLED

Title tightened

1 "An Act relating to the liability of certain persons for certain violations of alcoholic
2 beverages laws."

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

4 * Section 1. AS 04.16.049 is amended by adding a new subsection to read:

5 (f) A person under 21 years of age does not violate this section if the person
6 enters or remains on premises licensed under this title at the request of a peace officer,
7 if the peace officer accompanies the person or otherwise observes the person's entry or
8 remaining on premises, and the purpose for the entry or remaining on premises is to
9 assist in the enforcement of this section.

10 * Sec. 2. AS 04.16.060 is amended by adding a new subsection to read:

11 (f) A person does not violate this section if the person performs an act
12 proscribed under this section, the person performs that act at the request of a peace
13 officer, the peace officer accompanies the person or otherwise observes the person's
14 act, and the purpose of the act is to assist in the enforcement of this section.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 25, 2005
TO: Representative Paul Seaton
FROM: Mike Pawlowski
RE: Sectional Analysis for CSHB 116
(Version No. 24 - LS0379\G)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

- Section 1.** Creates an exemption from the liability specified in AS 04.16.049(e) for persons under 21 years of age assisting a peace officer in the enforcement of AS 04.16.049.
- Section 2.** Clarifies that a person cooperating with law enforcement does not violate AS 04.16.060.

Changes to HB 116 in CS HB 116 version 24-LS 0379\G

HB 116

CSHB 116

- Page 1, line 10-14:
Adds a new section clarifying that a person does not violate the provisions of 04.16.060 if they perform the act at the request of a peace officer with certain provisions.

Rationale:

Persons are subject to civil liability for violations of both AS 04.16.049, and AS 04.16.060. The addition to HB 116 protects volunteers from civil liability under both provisions.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 25, 2005
TO: Representative Paul Seaton
FROM: Mike Pawlowski
RE: Sectional Analysis for CSHB 116
(Version No. 24 – LS0379\G)

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Changes to HB 116 in CS HB 116 version 24-LS 0379\G

HB 116

CSHB 116

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Persons are subject to civil liability for violations of both AS 04.16.049, and AS 04.16.060. The addition to HB 116 protects volunteers from civil liability under both provisions.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB116-DPS-ABC-2-28-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Minors On Licensed Premises RDU Statewide Support
 Component Alcoholic Beverage Control Board
 Sponsor Representative Meyer ABC Board
 Requester House State Affairs Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will aid the Alcoholic Beverage Control Board and law enforcement agencies that conduct compliance checks and other investigations to reduce underage access to alcohol.

Prepared by: Douglas B. Griffin, Director Phone 269-0350
 Division Alcoholic Beverage Control Board Date/Time 2/28/05 10:12 AM
 Approved by: Commissioner William Tandeske Date 2/28/2005
 Agency Department of Public Safety

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 2nd, 2004
TO: Representative Paul Seaton
FROM: Mike Pawlowski
RE: Sectional Analysis for HB 116
(Version No. 24 – LS0379\A)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Creates an exemption from the liability specified in AS 04.16.049(e) for persons under 21 years of age assisting a peace officer in the enforcement of AS 04.16.049.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

House Bill 116

“An Act relating to the liability of certain persons for entry and remaining on licensed premises.”

Volunteers under the age of 21 cooperate with law enforcement officials in investigating and enforcing compliance with the state's alcoholic beverage laws. Under current statutes, persons under 21 years of age can be sued by license holders for up to \$1000 for being on the premises. No exemption exists in the law for young people working with law enforcement officials. Recently a liquor license holder sued a volunteer, who was cooperating in an active investigation.

House Bill 116 creates an exception to AS 04.16.049 to protect young volunteers cooperating with law enforcement from retributive action and liability. Keeping alcoholic beverages out of the hands of people under 21 years of age is a cooperative effort. Young people working with law enforcement should not be subjected to lawsuits for participating in an investigation.

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Web posted Thursday, July 26, 2001

Stings show drop in alcohol sales to kids

Purchasing rate of undercover agent fell from 40 to 26 percent

By KATHY DYE
 THE JUNEAU EMPIRE

Liquor vendors in Juneau were less willing to sell alcohol to minors in 2001 during a second year of sting operations to crack down on underage drinking.

Although an 18-year-old working undercover was able to buy liquor 40 percent of the time last year, the agent's purchase rate dropped to 26 percent this year, according to data from the state Alcoholic Beverage Control Board, which led the effort with the Juneau Police Department.

The data show liquor vendors are getting the message, said Ed Kalwara, Juneau investigator for the alcohol board.

"That tells me the licensees in Juneau have become more conscientious," Kalwara said. "They're certainly trying harder, and they're a good bunch of people. They want to do the right thing."

Liquor vendors sold alcohol to the underage agent in 14 of 35 attempts in 2000, compared to four of 15 attempts in 2001, Kalwara said. The sting operation was one of three strategies used this year to bust people for liquor offenses. Investigators also did storefront surveillance to catch adults buying alcohol for minors, and they crashed some parties where kids were drinking.

Authorities this year issued a total of 54 warnings to adults and minors and cited 18 people: 11 minors for underage drinking, three adults for buying liquor for kids and four employees for selling it to them at the Breakwater Inn, Goldbelt Hotel, The Liquor Barrel and DeHarts. The maximum penalty for the employees is one year in jail and a \$5,000 fine, said Kalwara, who added liquor vendors could lose their licenses for multiple offenses.

An employee of DeHarts also was cited last year. However, the store was purchased after the incident, and new owner Lillian Harris said a clerk mistakenly sold alcohol to the agent because he entered the store during its busiest hours.

"You're behind the counter, people are shoving stuff at you from both sides, and he just slipped through," Harris said. "You try to look at everybody and make sure you ask them for the IDs, but it happens."

Eleven Juneau stores refused to sell alcohol to the agent, including Kmart, Kenny's Liquor, Liquor Cache, Percy's, Imperial Bar, Douglas Breeze In, Valley Breeze In, Fred Meyer, Fisherman's Bend, Carrs and Duck Creek Market.

State and local investigators launched the effort in 2000 with funding from a federal grant - about \$100,000 doled out statewide each fiscal year. Juneau's share the past two years was \$11,000 and \$14,000, said Kalwara, noting police officers volunteer for overtime to help in the effort.

Juneau investigators are renewing the grant for the fiscal year that began July 1 and tentatively plan to start a new rash of undercover operations in August. Kalwara said the next round could include a follow-the-keg program, meaning undercover officers posted outside stores would follow people who buy kegs to see if minors consume the beer.

They also might do more storefront stakeouts in which the underage agent, usually an 18-year-old, would ask adults to buy alcohol for him. Officers would cite adults who agree to the illegal transaction.

In addition, officers might pose as store clerks to catch minors who try to buy alcohol and adults who buy it for them, said Kalwara, who added they would first get permission from store owners.

Kathy Dye can be reached at kdye@juneauempire.com.

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YIA survey shows adults willing to buy alcohol for minors

Actual violations could result in \$10,000 fine, 1 year in jail

January 14, 2005

Mothers Against Drunk Driving

legal consequences of actually buying for someone underage. An ABC officer stood nearby to ensure the teens' safety and to assure people of the legality of the survey.

One pair of teens, which included a 14-year-old with braces on his teeth, had to wait only eight minutes before a young man said he would buy for them. Another pair of teens had to wait only about a minute before a middle-aged woman agreed. Overall, the teens spent one hour in two different locations downtown and found that four out of the 24 parties they asked were willing to buy.

"We were surprised and disappointed at how easy it was to find someone willing to buy," YIA coordinator Jessica Paris said. "However, we also had some adults who responded very admirably. One woman, not realizing it was a survey, went into the nearest liquor store and asked them to call the police. And at Kenny's Liquor Market, the clerk came out to investigate what the teens were doing."

One adult the teens asked happened to be state Rep. Kevin Meyer, who sponsored legislation last year allowing liquor stores to sue adults for buying alcohol for minors as well as the teens who solicit the alcohol. Rep. Meyer refused to buy for them, warning them he could get in big trouble.

"This survey shows us that we have to work harder to convince people they shouldn't provide alcohol to teens," Paris said. "Adults need to know about the tragedies that accompany underage drinking, as well as the serious legal consequences for providing to a minor."

ABC also conducted compliance checks over the weekend in which teen agents, aged 18 to 19, attempted to buy alcohol directly from liquor stores. Although Juneau had 100 percent compliance in last summer's checks, in 27 checks held last weekend, clerks sold to underage teens twice. Clerks, bartenders and wait staff face the same penalties for providing to an underage person that regular adults do - fines of up to \$10,000 and up to one year in jail, though a typical sentence is \$1,000 and five days in jail.

Last weekend, teens working with Mothers Against Drunk Driving's Youth In Action and state Alcohol Beverage Control officers discovered that it is not difficult to find adult strangers who will buy alcohol for teens.

Ranging in age from 14 to 19, the teens stood downtown near liquor stores and asked passing strangers to buy alcohol for them while admitting to be underage. Whether the adult answered yes or no, the teens then presented him with a card that explained this was only a survey, and the



U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Guide to Conducting Alcohol Purchase Surveys



Prepared by

Pacific Institute
FOR RESEARCH AND EVALUATION

In support of the
**OJJDP *Enforcing the
Underage Drinking Laws Program***



Introduction

People who care about youth are aware of the serious problems caused by underage drinking. They realize that:

- Alcohol is the drug most commonly used by youth—more than tobacco and far more than marijuana or any other illicit drug.
- Alcohol is one of the most common contributors to injury, death, and criminal behavior among youth.
- Underage alcohol use can have immediate and potentially tragic consequences, as well as long-range harmful consequences, such as increased risk for chronic alcohol addiction.

There is no doubt that underage alcohol use is an extremely serious problem. But there are many effective strategies for reducing the problem. Strategies that *limit access* to alcohol by youth are some of the most powerful and well-documented approaches to reducing underage drinking and related problems.

The purpose of this guide is to promote the use of an important tool for monitoring underage access to alcohol—the purchase survey. These surveys involve sending young adults who appear underage (or minors under appropriate adult and police supervision) into stores to purchase alcohol. Communities and local groups can carry out purchase surveys of retail alcohol sales outlets to find out how easily available alcohol is to young people and to identify who is selling alcohol to youth. Such surveys provide extremely valuable information that can be used in addressing the problems of underage alcohol purchase and underage drinking.

This guide gives some of the background and rationale for these surveys as well as practical, step-by-step instructions for carrying out alcohol purchase surveys. The guide also shows how the information from the survey can be used to strengthen community awareness, promote better policies, and improve merchant compliance with the law.

Safe, efficient, and valid alcohol purchase surveys can be carried out in almost any community. This guide will show how.

Alcohol: The drug of choice for youth

National surveys of young people consistently show that alcohol is the drug of choice among young people. By the 12th grade, more than 80 percent of adolescents have experimented with alcohol, more than 50 percent report drinking within the previous month, and more than 30 percent report consuming five or more drinks in a row at least once in the previous 2 weeks (Johnston, O'Malley, & Bachman, 1998).

A recent study indicates that alcohol is responsible for 69 percent of all drug-related hospital stays among 10- to 19-year-olds. In contrast, tobacco accounts for 22 percent and other drugs for 9 percent of these hospital stays. Overall, 87 percent of years of life lost between the ages of 10 and 19 are alcohol related (Xie, Rehm, Single, & Robson, 1996).

In 1996, more than 6,300 young people between 15 and 20 years old died in traffic crashes. Of these fatalities, 2,315 (37 percent) were alcohol related. More than 21 percent of drivers aged 15-20 years old who were killed in traffic crashes in 1996 had been drinking (National Highway Traffic Safety Administration [NHTSA], 1998).

How Do Kids Get Alcohol?

Underage drinkers can obtain alcohol in many different ways—they can steal it or get it from their friends or their parents. In fact, kids are frequently quite creative in their schemes to get access to alcohol. All too often, however, they simply walk into a store and buy it—no questions asked, no identification requested, no problems encountered. Cutting off this type of easy access is the most important step toward preventing underage drinking in most communities.

Surveys carried out in various areas around the country have found that youth were able to buy alcohol in between 50 percent and 97 percent of stores, bars, and restaurants where attempts were made.

Studies indicate that enforcement of underage sales laws is lax in many communities. Police cite a number of reasons for not enforcing underage sales laws; most importantly, they perceive a lack of public support for such activities. This is unfortunate because research shows that enforcement can significantly reduce alcohol sales to minors.

Why Conduct Alcohol Purchase Surveys?

Illegal sales to minors can be prevented. A variety of strategies have been shown to be very effective, but most communities need valid information in order to make the best use of these strategies and to monitor their impact. Alcohol purchase surveys can help provide this information. In addition, the data obtained from purchase surveys can be used to increase support from the public and from public officials for policy changes and for more generous allocation of resources. This process is depicted in figure 1 as circular and involves a variety of segments of the community.

How Do You Conduct Purchase Surveys?

In order to carry out a purchase survey, a representative sample of alcohol outlets is selected. At each outlet in the sample, a buyer who appears to be underage attempts to purchase alcohol without presenting age identification (ID). If the outlet sells alcohol to the buyer, it is considered noncompliant. If the outlet refuses to sell to the buyer, it is considered in compliance. Details of this procedure vary, but the basic process is similar in all alcohol purchase

surveys. A flowchart of the tasks involved in conducting an alcohol outlet purchase survey is presented in appendix 1.

Purchase surveys are extremely useful, and they can be conducted practically, efficiently, and flexibly. This guide explains how to plan and carry out surveys under a variety of circumstances. It also provides sample protocols and materials that can be adapted for use in communities across the country.

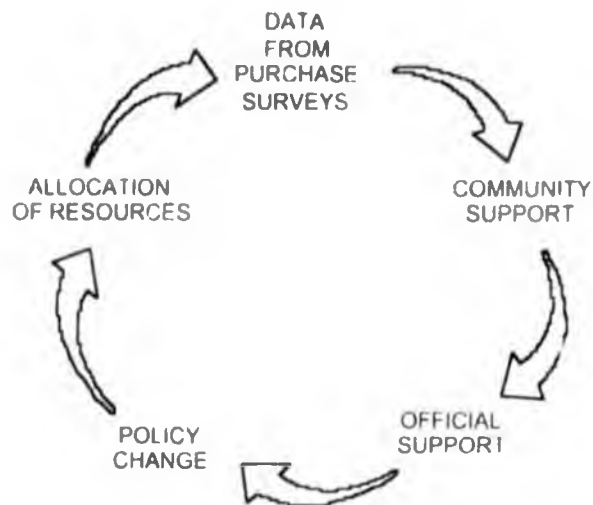


Figure 1. Survey Data and Community Process

Underage Purchase of Alcohol

Purchase surveys conducted in medium and small cities in Minnesota and Wisconsin have found youth able to purchase alcohol in about half of the attempts in both on- and off-premises outlets (Forster et al., 1994; Forster, Murray, Wolfson, & Wagenaar, 1995).

Another study surveyed communities in New York State and Washington, DC. Fully 97 percent of the Washington, DC, outlets sold to youth. Sales rates in New York varied from 44 percent to 80 percent (Preusser & Williams, 1992).

Five Reasons for Conducting Alcohol Purchase Surveys

1. Purchase surveys indicate who is selling alcohol to minors and how often. This lets a community know how large the problem of underage sales is and among which outlets. This information can be very useful in allocating scarce enforcement and prevention resources.
2. The results of surveys can be used to help raise community awareness and build support for efforts to reduce sales to minors. For example, some communities have called press conferences in which the buyers pose with all the beer they have managed to purchase from local stores. Such events can bring attention to the problem of alcohol sales to minors and make it easier for policymakers, merchants, and concerned citizens to act.
3. Purchase surveys can be an intervention. Informing merchants that they are being monitored by the community and providing them with feedback can motivate those with good policies and sales practices to continue them and motivate those with poor policies and practices to change them.
4. Purchase surveys can be an important part of enforcement. Some communities choose to issue citations to outlets who sell to minors during the surveys. Other communities use the information from the surveys to help target later enforcement efforts. *In either case, local police or Alcohol Beverage Control (ABC) authorities must always be involved when enforcement efforts are planned as part of a purchase survey.*
5. Purchase surveys can be used to measure the impact of prevention strategies. A series of surveys carried out over time can indicate whether prevention efforts are having an effect on sales to minors. This information can help communities decide whether to continue or discontinue particular policies or programs and can indicate how to modify prevention strategies to make them more effective.

OJJDP U.S. Department of Justice

STRATEGIES FOR
REDUCING
THIRD-PARTY
TRANSACTIONS

TO UNDERAGE YOUTH

Prepared by

Pacific Institute

FOR RESEARCH AND EVALUATION

In support of the
**OJJDP Enforcing the
Underage Drinking Laws Program**

community who is aware of alcohol sales to people under the age of 21 (third-party or otherwise) to pass this information along to enforcement agencies. These "tip lines" may be through the police department, liquor control agency, or a community agency/organization working closely with enforcement efforts in the area.

Surveillance

Surveillance is another strategy for assessing where and when third-party transactions happen in your area. This observation within your jurisdiction can take a variety of forms and levels of intensity. If your department and community are still trying to determine where third-party sales occur, surveillance activity may involve asking officers on their routine patrol to be on the lookout for these transactions. While many third-party sales occur in open areas such as store parking lots or street corners, other exchanges happen in remote, hidden areas of the community, such as dead end streets, woods, and vacant lots. Therefore, it is important for patrol officers to include these areas in their rounds.

If you already have a sense of the "hot spots" in your area, you can conduct more specific surveillance in order to interrupt third-party transactions as they occur. Officers placed at or near locations popular for "shoulder taps" can watch for an exchange to start and address both parties as the transaction occurs. Some enforcement agencies use officers in "plain clothes" during surveillance in order to blend into the scene and not raise the suspicions of the adult purchaser or the youth.

"Shoulder tap" Enforcement Programs

"Shoulder tap" enforcement programs are similar to compliance check programs except that they target the underage drinkers and/or the non-commercial supplier of alcohol to youth instead of the vendor. Police departments or liquor control agencies carry out these programs, working closely with the community, youth, and local media to ensure their effectiveness. An example of a "shoulder tap" enforcement effort that focuses on stopping the underage purchasers is run by the Montgomery (MD) County Police.

Conducting "shoulder tap" enforcement programs using underage decoys

Some enforcement agencies have established procedures for "shoulder tap" enforcement programs using underage decoys. While each department's guidelines must conform to local and state laws, a summary of the California ABC Department's procedures is offered as an example.

Implementation

The California ABC Department finds that its Decoy Shoulder Tap Program is most effective in areas where compliance checks have already been conducted and where most licensed premises were found in compliance. Additionally, the department uses this program when it has specific information or complaints that underage youth have changed their method of gaining alcohol from attempting to purchase directly from retailers to requesting that adults purchase and furnish them with alcohol. The department obtains this information from a variety of sources, including parents, youth officers, patrol officers, and members of community groups.

Preparation

The department contacts the local District Attorney's Office to ensure that they are willing to prosecute any misdemeanor violations found during the "shoulder tap" enforcement program. It is also recommended that the Municipal Court Judge most likely to preside over criminal charges be contacted and given an overview of the program and its purpose. To educate the public and gain support of these efforts, the department sends a formal press release to all local news media to announce the "shoulder tap" enforcement program. The department uses this media contact to emphasize that the goal of the program is not necessarily to make arrests, but to inform the public about the problems related to furnishing alcohol to underage youth and the legal consequences for doing so.

The selection of the underage decoys is clearly a critical part of the department's preparation.

Requirements for the underage operatives include:

- the decoy should be under the age of 20 at the time of the operation, preferably under 19 years old
- the decoy should have the appearance of a person his or her age

Department Montgomery County police officers dress in "plain clothes" and stand in parking lots of retail establishments. The officers then wait to see if youth ask them to purchase alcohol. Often, the officers will wear clothes that allow them to blend in with a

- the decoy should be willing to wear a radio transmitter and to have his or her conversations recorded
- the decoy must be willing to testify in any criminal and administrative proceedings resulting from the operation.

As an additional preparatory step with the underage operatives, the Minneapolis Police Department photographs the decoys immediately before conducting the operations; this procedure offers proof that no attempts were made to make youth look older than their actual ages.

The California ABC Department instructs the underage volunteers to always tell the truth about their age and the fact that they cannot purchase alcohol for themselves.

Investigation and operation

The underage decoys are equipped with a radio transmitter and placed under the direct supervision of a law enforcement officer. If the approached adult does furnish alcohol to the decoy, the youth walks to a pre-designated location. To provide added security to the youth, the adult is allowed to move away from the decoy before being detained by the enforcement officers. The detained adult is then Mirandized and asked to give a verbal statement. Enforcement officers ask the adult why he or she provided alcohol to the young person and how old he or she thinks the decoy is. The suspect is then booked into the jail whenever justified; the California ABC Department, working with local law enforcement, uses the state's "misdemeanor non-release" provisions whenever possible.

This abbreviated account of the California ABC Department's procedures may offer your department a blueprint if you plan to operate a "shoulder tap" enforcement program. **However, it is important that you check your state and local statutes to ensure that the use of underage operatives is permitted and that other laws governing the distribution of alcohol to those under the age of 21 will support this strategy.**

(California ABC Department, n.d.)

neighborhood's street alcoholics, who are frequently "shoulder tapped" by underage drinkers.

Other "shoulder tap" enforcement programs use underage "decoys" to approach adults outside an alcohol outlet and request that the