

HOUSE BILL NO. 10

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE WILSON

Introduced: 1/9/17

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties of the Department of Health and Social Services; relating
2 to child-in-need-of-aid proceedings; relating to child protection; and amending Rules
3 6(a), 6(b)(2) and (3), 10(c)(2) and (3), 10(e)(2), 10.1, 15(f)(2), 17(c), 17(d)(2), 17.1(b),
4 17.1(d)(3), 17.2(a), 17.2(e), 17.2(f), 17.3, 18(c), and 19.1(c), Alaska Child in Need of Aid
5 Rules of Procedure, and repealing Rules 17.1(a), 17.1(c), and 17.1(d)(2), Alaska Child in
6 Need of Aid Rules of Procedure."

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

8 * **Section 1.** AS 47.05.065 is amended to read:

9 **Sec. 47.05.065. Legislative findings related to children.** The legislature finds
10 that

11 (1) parents have the following rights and responsibilities relating to the
12 care and control of their child while the child is a minor:

13 (A) the responsibility to provide the child with food, clothing,

1 shelter, education, and medical care;

2 (B) the right and responsibility to protect, nurture, train, and
3 discipline the child, including the right to direct the child's medical care and
4 the right to exercise reasonable corporal discipline;

5 (C) the right to determine where and with whom the child shall
6 live;

7 (D) the right and responsibility to make decisions of legal or
8 financial significance concerning the child;

9 (E) the right to obtain representation for the child in legal
10 actions; and

11 (F) the responsibility to provide special safeguards and care,
12 including appropriate prenatal and postnatal protection for the child;

13 (2) it is the policy of the state to strengthen families and to protect
14 children from child abuse and neglect; the state recognizes that, in some cases,
15 protection of a child may require removal of the child from the child's home; however,

16 (A) [EXCEPT IN THOSE CASES INVOLVING SERIOUS
17 RISK TO A CHILD'S HEALTH OR SAFETY,] the Department of Health and
18 Social Services should provide remedial services and rehabilitative
19 programs [TIME-LIMITED FAMILY SUPPORT SERVICES] to the child
20 and the child's family in order to offer parents the opportunity to remedy
21 parental conduct or conditions in the home that placed the child at risk of
22 damage or harm so that a child may return home safely and permanently; and

23 (B) the state also recognizes that, when a child is removed from
24 the home, visitation between the child and the child's parents or guardian and
25 family members reduces the trauma for the child and enhances the likelihood
26 that the child will be able to return home; therefore, whenever a child is
27 removed from the parental home, the Department of Health and Social
28 Services should encourage frequent, regular, and reasonable visitation of the
29 child with the child's parent or guardian and family members;

30 (3) it is the policy of the state to recognize that, when a child is a ward
31 of the state, the child is entitled to reasonable safety, adequate care, and adequate

1 treatment and that the Department of Health and Social Services as legal custodian and
 2 the child's guardian ad litem as guardian of the child's best interests and their agents
 3 and assignees, each should make **active** [REASONABLE] efforts to ensure that the
 4 child is provided with reasonable safety, adequate care, and adequate treatment for the
 5 duration of time that the child is a ward of the state;

6 (4) it is in the best interests of a child who has been removed from the
 7 child's own home for the state to apply the following principles in resolving the
 8 situation:

9 (A) the child should be placed in a safe, secure, and stable
 10 environment **that is the least restrictive setting that most approximates a**
 11 **family home in which the child's special needs may be met and that is**
 12 **within reasonable proximity to the child's home;**

13 (B) the child should not be moved unnecessarily;

14 (C) a planning process should be followed to lead to permanent
 15 placement of the child;

16 (D) every effort should be made to encourage psychological
 17 attachment between the adult caregiver and the child;

18 (E) frequent, regular, and reasonable visitation with the parent
 19 or guardian and family members should be encouraged; and

20 (F) parents and guardians must actively participate in **remedial**
 21 **services and rehabilitative programs** [FAMILY SUPPORT SERVICES] so
 22 as to facilitate the child's being able to remain in the home; when children are
 23 removed from the home, the parents and guardians must actively participate in
 24 **remedial services and rehabilitative programs** [FAMILY SUPPORT
 25 SERVICES] to make return of their children to the home possible;

26 (5) numerous studies establish that

27 (A) children undergo a critical attachment process before the
 28 time they reach six years of age;

29 (B) a child who has not attached with an adult caregiver during
 30 this critical stage will suffer significant emotional damage that frequently leads
 31 to chronic psychological problems and antisocial behavior when the child

1 reaches adolescence and adulthood; and

2 (C) it is important to provide for an expedited placement
3 procedure to ensure that all children, especially those under the age of six
4 years, who have been removed from their homes are placed in permanent
5 homes expeditiously.

6 * **Sec. 2.** AS 47.10.011 is amended to read:

7 **Sec. 47.10.011. Children in need of aid.** Subject to AS 47.10.019, the court
8 may find a child to be a child in need of aid if it finds by a preponderance of the
9 evidence that the child has been subjected to any of the following:

10 (1) a parent or guardian has abandoned the child as described in
11 AS 47.10.013, and the other parent is absent or has committed conduct or created
12 conditions that cause the child to be a child in need of aid under this chapter;

13 (2) a parent, guardian, or custodian is incarcerated, the other parent is
14 absent or has committed conduct or created conditions that cause the child to be a
15 child in need of aid under this chapter, and the incarcerated parent has not made
16 adequate arrangements for the child;

17 (3) a custodian with whom the child has been left is unwilling or
18 unable to provide care, supervision, or support for the child, and the whereabouts of
19 the parent or guardian is unknown;

20 (4) the child is in need of medical treatment to cure, alleviate, or
21 prevent serious [SUBSTANTIAL] physical damage or harm or is in need of
22 treatment for emotional damage [MENTAL INJURY] and the child's parent,
23 guardian, or custodian has knowingly failed to provide the treatment;

24 (5) the child is habitually absent from home or refuses to accept
25 available care and the child's conduct places the child at serious [SUBSTANTIAL]
26 risk of serious emotional or physical damage [OR MENTAL INJURY];

27 (6) the child has suffered serious [SUBSTANTIAL] physical damage
28 or harm, or there is a serious [SUBSTANTIAL] risk that the child will suffer serious
29 [SUBSTANTIAL] physical damage or harm, as a result of conduct by or conditions
30 created by the child's parent, guardian, or custodian or by the failure of the parent,
31 guardian, or custodian to supervise the child adequately;

1 (7) the child has suffered sexual abuse, or there is a **serious**
2 [SUBSTANTIAL] risk that the child will suffer sexual abuse, as a result of conduct by
3 or conditions created by the child's parent, guardian, or custodian or by the failure of
4 the parent, guardian, or custodian to adequately supervise the child; if a parent,
5 guardian, or custodian has actual notice that a person has been convicted of a sex
6 offense against a minor within the past 15 years, is registered or required to register as
7 a sex offender under AS 12.63, or is under investigation for a sex offense against a
8 minor, and the parent, guardian, or custodian subsequently allows a child to be left
9 with that person, this conduct constitutes prima facie evidence that the child is at
10 **serious** [SUBSTANTIAL] risk of being sexually abused;

11 (8) conduct by or conditions created by the parent, guardian, or
12 custodian have

13 (A) resulted in **emotional damage** [MENTAL INJURY] to the
14 child; or

15 (B) placed the child at **serious** [SUBSTANTIAL] risk of
16 **emotional damage** [MENTAL INJURY] as a result of

17 (i) a pattern of rejecting, terrorizing, ignoring, isolating,
18 or corrupting behavior that would, if continued, result in **emotional**
19 **damage** [MENTAL INJURY]; or

20 (ii) exposure to conduct by a household member, as
21 defined in AS 18.66.990, against another household member that is a
22 crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or
23 11.41.410 - 11.41.432, an offense under a law or ordinance of another
24 jurisdiction having elements similar to a crime under AS 11.41.100 -
25 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an attempt
26 to commit an offense that is a crime under AS 11.41.100 - 11.41.220 or
27 11.41.410 - 11.41.432, or an attempt to commit an offense under a law
28 or ordinance of another jurisdiction having elements similar to a crime
29 under AS 11.41.100 - 11.41.220 or 11.41.410 - 11.41.432; or

30 (iii) repeated exposure to conduct by a household
31 member, as defined in AS 18.66.990, against another household

1 member that is a crime under AS 11.41.230(a)(3) or 11.41.250 -
 2 11.41.270 or an offense under a law or ordinance of another jurisdiction
 3 having elements similar to a crime under AS 11.41.230(a)(3) or
 4 11.41.250 - 11.41.270;

5 (9) conduct by or conditions created by the parent, guardian, or
 6 custodian have subjected the child or another child in the same household to neglect;

7 (10) the parent, guardian, or custodian's ability to parent has been
 8 substantially impaired by the addictive or habitual use of an intoxicant, and the
 9 addictive or habitual use of the intoxicant has resulted in a serious [SUBSTANTIAL]
 10 risk of emotional or physical damage or harm to the child; if a court has previously
 11 found that a child is a child in need of aid under this paragraph, the resumption of use
 12 of an intoxicant by a parent, guardian, or custodian within one year after rehabilitation
 13 is prima facie evidence that the ability to parent is substantially impaired and the
 14 addictive or habitual use of the intoxicant has resulted in a serious [SUBSTANTIAL]
 15 risk of emotional or physical damage or harm to the child as described in this
 16 paragraph;

17 (11) the parent, guardian, or custodian has a mental illness, serious
 18 emotional disturbance, or mental deficiency of a nature and duration that places the
 19 child at serious [SUBSTANTIAL] risk of emotional or physical damage or harm
 20 [OR MENTAL INJURY];

21 (12) the child has committed an illegal act as a result of pressure,
 22 guidance, or approval from the child's parent, guardian, or custodian.

23 * **Sec. 3.** AS 47.10.011 is amended by adding a new subsection to read:

24 (b) In making determinations regarding emotional or physical damage or harm
 25 under this chapter, the court shall apply the standards of 25 U.S.C. 1901 - 1963 (Indian
 26 Child Welfare Act of 1978) regardless of whether the child is an Indian child.

27 * **Sec. 4.** AS 47.10.013(a) is amended to read:

28 (a) For purposes of this chapter, the court may find abandonment of a child if
 29 a parent or guardian has shown a conscious disregard of parental responsibilities
 30 toward the child by failing to provide reasonable support, maintain regular contact, or
 31 provide normal supervision, considering the child's age and need for care by an adult.

1 Abandonment of a child also includes instances when the parent or guardian, without
2 justifiable cause,

3 (1) left the child with another person without provision for the child's
4 support and without meaningful communication with the child for a period of three
5 months;

6 (2) has made only minimal efforts to support and communicate with
7 the child;

8 (3) failed for a period of at least six months to maintain regular
9 visitation with the child;

10 (4) failed to participate in a suitable plan or program designed to
11 reunite the parent or guardian with the child;

12 (5) left the child without affording means of identifying the child and
13 the child's parent or guardian;

14 (6) was absent from the home for a period of time that created a
15 **serious** [SUBSTANTIAL] risk of serious **emotional or physical damage or** harm to
16 a child left in the home;

17 (7) failed to respond to notice of child protective proceedings; or

18 (8) was unwilling to provide care, support, or supervision for the child.

19 * **Sec. 5.** AS 47.10.015 is amended to read:

20 **Sec. 47.10.015. Physical damage or harm.** For the purposes of this chapter,
21 the court may find physical **damage or** harm to a child or **serious** [SUBSTANTIAL]
22 risk of physical **damage or** harm to a child if

23 (1) the child was the victim of an act described in AS 11.41.100 -
24 11.41.250, 11.41.300, 11.41.410 - 11.41.455, or AS 11.51.100 and the physical
25 **damage or** harm occurred as a result of conduct by or conditions created by a parent,
26 guardian, or custodian; or

27 (2) a negligent act or omission by a parent, guardian, or custodian
28 creates a **serious** [SUBSTANTIAL] risk of injury to the child.

29 * **Sec. 6.** AS 47.10.030(c) is amended to read:

30 (c) If **the court finds that** the **child** [MINOR] is in such condition or
31 surroundings that **prevention of imminent physical damage or harm to the child**

1 [THE MINOR'S WELFARE] requires the immediate assumption of custody by the
 2 court, the court may order, by endorsement upon the summons, that the officer serving
 3 the summons shall at once take the **child** [MINOR] into custody and make the
 4 temporary placement of the **child** [MINOR] that the court directs.

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

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

7 (1) order the child committed to the department for placement in an
 8 appropriate setting **as provided under AS 47.14.100 or 25 U.S.C. 1915(b)** for a
 9 period of time not to exceed two years or in any event not to extend past the date the
 10 child becomes 19 years of age, except that the department, the child, or the child's
 11 guardian ad litem may petition for and the court may grant in a hearing

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

15 (B) additional one-year extensions of commitment past 19
 16 years of age that do not extend beyond the person's 21st birthday if the
 17 continued state custody is in the best interests of the person and the person
 18 consents to it;

19 (2) order the child released to a parent, adult family member, or
 20 guardian of the child or to another suitable person, and, in appropriate cases, order the
 21 parent, adult family member, guardian, or other person to provide medical or other
 22 care and treatment; if the court releases the child, it shall direct the department to
 23 supervise the care and treatment given to the child, but the court may dispense with
 24 the department's supervision if the court finds that the adult to whom the child is
 25 released will adequately care for the child without supervision; the department's
 26 supervision may not exceed two years or in any event extend past the date the child
 27 reaches 19 years of age, except that the department or the child's guardian ad litem
 28 may petition for and the court may grant in a hearing

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

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

4 (3) order, under the grounds specified in (o) of this section or
 5 AS 47.10.088, the termination of parental rights and responsibilities of one or both
 6 parents and commit the child to the custody of the department; the department shall
 7 report quarterly to the court and shall demonstrate in its report that the department is
 8 making **active** [REASONABLE] efforts to find a permanent placement for the child.

9 * **Sec. 8.** AS 47.10.080(f) is amended to read:

10 (f) A child found to be a child in need of aid is a ward of the state while **the**
 11 **child is** committed to the department or the department has the power to supervise the
 12 child's actions. For an order made under (c)(1) of this section, the court shall hold a
 13 permanency hearing as required by (l) of this section and at least annually thereafter
 14 during the continuation of foster care to determine if continued placement, as it is
 15 being provided, is in the best interest of the child **and whether the child should be**
 16 **returned to the custody of the child's parent or guardian**. The department, the
 17 child, and the child's parents, guardian, and guardian ad litem are entitled, when good
 18 cause is shown, to a permanency hearing on application. If the application is granted,
 19 the court shall afford these persons and their counsel reasonable advance notice and
 20 hold a permanency hearing where these persons and their counsel shall be afforded an
 21 opportunity to be heard. The persons entitled to notice under AS 47.10.030(b) and the
 22 grandparents entitled to notice under AS 47.10.030(d) are entitled to notice of a
 23 permanency hearing under this subsection and are also entitled to be heard at the
 24 hearing. The child shall be afforded the opportunity to be present and to be heard at
 25 the permanency hearing. After the permanency hearing, the court shall make the
 26 written findings that are required under (l) of this section. The court shall review an
 27 order made under (c)(2) of this section at least annually to determine if continued
 28 supervision, as it is being provided, is in the best interest of the child; this review is
 29 not considered to be a permanency hearing and is not governed by the provisions of
 30 this subsection that relate to permanency hearings.

31 * **Sec. 9.** AS 47.10.080(l) is amended to read:

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

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

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

8 (A) **returning the child to the child's parent or guardian is**
 9 **likely to result in serious emotional or physical damage to the child** [AND
 10 WHEN THE CHILD SHOULD BE RETURNED TO THE PARENT OR
 11 GUARDIAN];

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

15 (C) there is a compelling reason that the most appropriate
 16 placement for the child is in another planned, permanent living arrangement
 17 and the department has recommended the arrangement under AS 47.14.100(o);
 18 the findings under this paragraph must include the steps that are necessary to
 19 achieve the new arrangement;

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

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

24 (A) whether the department has made the **active**
 25 [REASONABLE] efforts required under AS 47.10.086 to offer appropriate
 26 **remedial services and rehabilitative programs** [FAMILY SUPPORT
 27 SERVICES] to remedy the parent's or guardian's conduct or conditions in the
 28 home that made the child a child in need of aid under this chapter;

29 (B) whether **the active efforts of the department have been**
 30 **successful and** the parent or guardian has made substantial progress to remedy
 31 the parent's or guardian's conduct or conditions in the home that made the child

1 a child in need of aid under this chapter;

2 (C) if the permanent plan is for the child to remain in out-of-
3 home care, whether

4 (i) the child's out-of-home placement continues to be
5 appropriate under AS 47.14.100 and in the best interests of the child;
6 and

7 (ii) the department is making active [REASONABLE]
8 efforts to find a permanent placement for the child; and

9 (D) whether the department has made active [REASONABLE]
10 efforts to finalize the permanent plan for the child;

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

16 (6) if the court finds, under (4)(C)(ii) of this subsection, that the
17 department is not making active [REASONABLE] efforts to find a permanent
18 placement for the child, the court shall order the department to make active
19 [REASONABLE] efforts to find a permanent placement for the child unless the
20 current placement is in the best interests of the child;

21 (7) in a hearing to review the permanent plan under AS 47.10.111(c) or
22 47.10.112(c), the court shall make written findings related to whether

23 (A) the person who filed the petition or proxy is entitled to
24 placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever
25 is applicable; and

26 (B) [IF 25 U.S.C. 1915(a) APPLIES,] the current placement is
27 in compliance with or whether there is good cause to deviate from the
28 placement preferences.

29 * **Sec. 10.** AS 47.10.080(p) is amended to read:

30 (p) If a child is removed from the parental home, the department shall make
31 active efforts to provide opportunities for and facilitate reasonable visitation

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

14 * **Sec. 11.** AS 47.10.080 is amended by adding a new subsection to read:

15 (z) An order issued under this section may not allow removal of a child from
 16 the child's home or continued placement of the child outside the child's home unless
 17 there is, at the time the order is issued, clear and convincing evidence, including the
 18 testimony of a qualified expert witness, that the child is likely to suffer serious
 19 emotional or physical damage if left with or returned to the child's parent or guardian.
 20 The social worker regularly assigned to the child may not serve as a qualified expert
 21 witness for purposes of this subsection.

22 * **Sec. 12.** AS 47.10.081(b) is amended to read:

23 (b) Before the disposition hearing of a child in need of aid, the department
 24 shall submit a predisposition report to aid the court in its selection of a disposition.
 25 This report must include [, BUT IS NOT LIMITED TO,] the following:

26 (1) a statement of changes in the child's or parent's behavior, which
 27 will aid the court in determining that supervision of the family or placement is no
 28 longer necessary;

29 (2) if removal from the home is recommended, a description of
 30 **whether continued custody of the child by the child's parent or guardian is likely**
 31 **to result in serious emotional or physical damage** [THE REASONS THE CHILD

1 CANNOT BE PROTECTED OR REHABILITATED ADEQUATELY IN THE
 2 HOME, INCLUDING A DESCRIPTION OF ANY PREVIOUS EFFORTS TO
 3 WORK WITH THE PARENTS AND THE CHILD IN THE HOME AND THE
 4 PARENTS' ATTITUDE TOWARD PLACEMENT OF THE CHILD];

5 (3) a description of the potential harm to the child that may result from
 6 removal from the home and any efforts that can be made to minimize **that** [SUCH]
 7 harm; and

8 (4) any further information that the court may request.

9 * **Sec. 13.** AS 47.10.086(a) is repealed and reenacted to read:

10 (a) Except as provided in (b) of this section, the department shall make timely,
 11 active efforts to provide remedial services and rehabilitative programs to the child and
 12 to the parents or guardian of the child that are intended primarily to prevent out-of-
 13 home placement of the child or to enable the safe return of the child to the child's
 14 family. The department's duty to make active efforts under this subsection includes
 15 the duty to assist the child's parent or guardian through the steps of a case plan and
 16 with accessing or developing the resources necessary to satisfy the case plan. The
 17 department shall tailor its active efforts to the facts and circumstances of the case.
 18 Active efforts may include

19 (1) conducting a comprehensive assessment of the circumstances of
 20 the child's family, with a focus on safe reunification as the most desirable goal;

21 (2) identifying appropriate services and helping the child's parent or
 22 guardian to overcome barriers, including actively assisting the parent or guardian to
 23 obtain the identified services; the department shall refer the parent or guardian to, and
 24 distribute to the parent or guardian information on, community-based family support
 25 services whenever community-based services are available and desired by the parent
 26 or guardian; the information may include the use of a power of attorney under
 27 AS 13.26.066 to select an individual to care for the child temporarily;

28 (3) identifying, notifying, and inviting members of the child's family to
 29 participate in providing support and services to the child's parent or guardian and to
 30 participate in family team meetings, permanency planning, and resolution of
 31 placement issues;

1 (4) conducting or causing to be conducted a diligent search for the
 2 child's family members, and contacting and consulting with family members to assist
 3 family members in providing family structure and support for the child and the child's
 4 parent or guardian;

5 (5) offering and employing all available and culturally appropriate
 6 family preservation strategies and facilitating the use of remedial and rehabilitative
 7 services by the child's family;

8 (6) taking steps to keep siblings together whenever possible;

9 (7) supporting regular visits with the child's parent or guardian in the
 10 most natural setting possible as well as trial home visits during any period of removal,
 11 consistent with the need to ensure the health, safety, and welfare of the child;

12 (8) identifying community resources including housing, financial,
 13 transportation, mental health, substance abuse, and peer support services and actively
 14 assisting the child's parent or guardian, or when appropriate, the child's family, in
 15 utilizing and accessing these resources;

16 (9) monitoring the progress of the child's parent or guardian and the
 17 parent's or guardian's participation in services;

18 (10) considering alternative ways to address the needs of the child's
 19 parent or guardian and, where appropriate, the child's family, if the optimum services
 20 are not available;

21 (11) providing postreunification services and monitoring.

22 * **Sec. 14.** AS 47.10.086(b) is amended to read:

23 (b) If the court makes a finding at a hearing conducted under AS 47.10.080(I)
 24 that a parent or guardian has not sufficiently remedied the parent's or guardian's
 25 conduct or the conditions in the home despite **active** [REASONABLE] efforts made
 26 by the department in accordance with this section, the court may conclude that
 27 continuation of **active** [REASONABLE] efforts of the type described in (a) of this
 28 section are not in the best interests of the child. The department shall then make **active**
 29 [REASONABLE] efforts to place the child in a timely manner in accordance with the
 30 permanent plan and to complete whatever steps are necessary to finalize the
 31 permanent placement of the child.

1 * **Sec. 15.** AS 47.10.086(d) is amended to read:

2 (d) If the court determines under (b) [OR (c)] of this section that **active**
3 [REASONABLE] efforts under (a) of this section are not required to be provided,

4 (1) the court shall hold a permanency hearing for the child within 30
5 days after the determination; and

6 (2) the department shall make **active** [REASONABLE] efforts to place
7 the child in a timely manner in accordance with the permanency plan, and complete
8 whatever steps are necessary to finalize the permanent placement of the child.

9 * **Sec. 16.** AS 47.10.086(e) is amended to read:

10 (e) The department may develop and implement an alternative permanency
11 plan for the child while the department is also making **active** [REASONABLE] efforts
12 to return the child to the child's family under (a) of this section.

13 * **Sec. 17.** AS 47.10.086(f) is amended to read:

14 (f) In making determinations and **active** [REASONABLE] efforts under this
15 section, **the department and the court shall apply the standards of 25 U.S.C. 1901**
16 **- 1963 (Indian Child Welfare Act of 1978) regardless of whether the child is an**
17 **Indian child** [THE PRIMARY CONSIDERATION IS THE CHILD'S BEST
18 INTERESTS].

19 * **Sec. 18.** AS 47.10.088(a) is amended to read:

20 (a) Except as provided in AS 47.10.080(o), the rights and responsibilities of
21 the parent regarding the child may be terminated for purposes of freeing a child for
22 adoption or other permanent placement if the court finds

23 **(1)** by clear and convincing evidence that

24 **(A)** [(1)] the child has been subjected to conduct or conditions
25 described in AS 47.10.011;

26 **(B)** [(2)] the parent

27 **(i)** [(A)] has not remedied the conduct or conditions in
28 the home that place the child at **serious** [SUBSTANTIAL] risk of
29 **damage or** harm; or

30 **(ii)** [(B)] has failed, within a reasonable time, to remedy
31 the conduct or conditions in the home that place the child in **serious**

1 [SUBSTANTIAL] risk so that returning the child to the parent would
 2 place the child at serious [SUBSTANTIAL] risk of emotional or
 3 physical damage [OR MENTAL INJURY]; and

4 (C) [(3)] the department has complied with the provisions of
 5 AS 47.10.086 concerning active [REASONABLE] efforts; and

6 (2) by evidence beyond a reasonable doubt, including the
 7 testimony of a qualified expert witness, that continued custody of the child by the
 8 parent or guardian is likely to result in serious physical or emotional damage to
 9 the child; the social worker regularly assigned to the child may not serve as a
 10 qualified expert witness for purposes of this paragraph.

11 * **Sec. 19.** AS 47.10.088(b) is amended to read:

12 (b) In making a determination under (a)(1)(B) [(a)(2)] of this section, the court
 13 may consider any fact relating to the best interests of the child, including

14 (1) the likelihood of returning the child to the parent within a
 15 reasonable time based on the child's age or needs;

16 (2) the amount of effort by the parent to remedy the conduct or the
 17 conditions in the home;

18 (3) the damage or harm caused to the child;

19 (4) the likelihood that the damaging or harmful conduct will continue;

20 and

21 (5) the history of conduct by or conditions created by the parent.

22 * **Sec. 20.** AS 47.10.088(d) is amended to read:

23 (d) The [EXCEPT AS PROVIDED IN (e) OF THIS SECTION, THE]
 24 department shall petition for termination of a parent's rights to a child, without making
 25 further active [REASONABLE] efforts, when a child is under the jurisdiction of the
 26 court under AS 47.10.010 and 47.10.011, and

27 [(1) THE CHILD HAS BEEN IN FOSTER CARE FOR AT LEAST
 28 15 OF THE MOST RECENT 22 MONTHS;

29 (2) THE COURT HAS DETERMINED THAT THE CHILD IS
 30 ABANDONED UNDER AS 47.10.013 AND THE CHILD IS YOUNGER THAN
 31 SIX YEARS OF AGE;

1 (3) the court has made a finding under AS 47.10.086(b) [OR A
 2 DETERMINATION UNDER AS 47.10.086(c)] that the best interests of the child do
 3 not require further **active** [REASONABLE] efforts by the department **unless the**
 4 **department has documented a compelling reason for determining that filing the**
 5 **petition would not be in the best interests of the child. A compelling reason under**
 6 **this subsection may include care by a relative for the child** [;

7 (4) A PARENT HAS MADE THREE OR MORE ATTEMPTS
 8 WITHIN A 15-MONTH PERIOD TO REMEDY THE PARENT'S CONDUCT OR
 9 CONDITIONS IN THE HOME WITHOUT LASTING CHANGE; OR

10 (5) A PARENT HAS MADE NO EFFORT TO REMEDY THE
 11 PARENT'S CONDUCT OR THE CONDITIONS IN THE HOME BY THE TIME OF
 12 THE PERMANENCY HEARING UNDER AS 47.10.080(l)].

13 * **Sec. 21.** AS 47.10.088(g) is amended to read:

14 (g) This section does not preclude the department from filing a petition to
 15 terminate the parental rights and responsibilities to a child for other reasons [, OR AT
 16 AN EARLIER TIME THAN THOSE SPECIFIED IN (d) OF THIS SECTION,] if the
 17 department determines that **continued custody of the child by the child's parent or**
 18 **guardian is likely to result in serious emotional or physical damage to** [FILING A
 19 PETITION IS IN THE BEST INTERESTS OF] the child.

20 * **Sec. 22.** AS 47.10.142(a) is amended to read:

21 (a) The Department of Health and Social Services may take emergency
 22 custody of a child upon discovering any of the following circumstances:

23 (1) the child has been abandoned as abandonment is described in
 24 AS 47.10.013;

25 (2) the child has been neglected by the child's parents or guardian, as
 26 "neglect" is described in AS 47.10.014, and the department determines that immediate
 27 removal from the child's surroundings is necessary to **prevent imminent physical**
 28 **damage or harm to the child** [PROTECT THE CHILD'S LIFE OR PROVIDE
 29 IMMEDIATE NECESSARY MEDICAL ATTENTION];

30 (3) the child has been subjected to physical **damage or** harm by a
 31 person responsible for the child's welfare, and the department determines that

1 immediate removal from the child's surroundings is necessary to **prevent imminent**
 2 **physical damage or harm to the child** [PROTECT THE CHILD'S LIFE OR THAT
 3 IMMEDIATE MEDICAL ATTENTION IS NECESSARY]; or

4 (4) the child or a sibling has been sexually abused under circumstances
 5 listed in AS 47.10.011(7).

6 * **Sec. 23.** AS 47.10.142(b) is amended to read:

7 (b) The department shall offer available counseling services to the person
 8 having legal custody of a minor described in AS 47.10.141 and to the members of the
 9 minor's household if it determines that counseling services would be appropriate in the
 10 situation. If, after assessing the situation, offering available counseling services to the
 11 legal custodian and the minor's household, and furnishing appropriate social services
 12 to the minor, the department considers it necessary, the department may take
 13 emergency custody of the minor, **except that, if the person having legal custody of**
 14 **the minor is the minor's parent or guardian, the department may take emergency**
 15 **custody of the minor only if necessary to prevent imminent physical damage or**
 16 **harm to the child.**

17 * **Sec. 24.** AS 47.10.142(d) is amended to read:

18 (d) The court shall immediately, and in no event more than 48 hours after
 19 being notified unless prevented by lack of transportation, hold a temporary custody
 20 hearing at which the child, if the child's health permits, and the child's parents or
 21 guardian, if they can be found, shall be permitted to be present. If present at the
 22 hearing, a parent or guardian of the child may request a continuance of the hearing for
 23 the purpose of preparing a response to the allegation that the child is a child in need of
 24 aid. The court may grant the request on a showing of good cause for why the parent or
 25 guardian is not prepared to respond to the allegation. During a continuance, the child
 26 remains in the temporary legal custody of the department, except as otherwise
 27 provided in this subsection. At the first hearing under this subsection, regardless of
 28 whether a continuance is granted, the court shall make a preliminary determination of
 29 whether **it is necessary to continue the department's temporary legal custody of**
 30 **the child to prevent imminent physical damage or harm to** [CONTINUED
 31 PLACEMENT IN THE HOME OF THE CHILD'S PARENT OR GUARDIAN

1 WOULD BE CONTRARY TO THE WELFARE OF] the child. If a court determines
 2 that continuing the department's temporary legal custody of the child is no longer
 3 necessary to prevent imminent physical damage or harm to [CONTINUED
 4 PLACEMENT IN THE HOME OF THE CHILD'S PARENT OR GUARDIAN
 5 WOULD NOT BE CONTRARY TO THE WELFARE OF] the child, the court shall
 6 return the authority to place the child to the child's parent or guardian pending a
 7 temporary custody hearing under (e) of this section.

8 * **Sec. 25.** AS 47.10.142(e) is amended to read:

9 (e) When the temporary custody hearing is held, the court shall determine
 10 whether probable cause exists for believing the child to be a child in need of aid, as
 11 defined in AS 47.10.990. If removal of the child from the child's home is
 12 requested, the court shall also determine at the temporary custody hearing
 13 whether (1) by a preponderance of the evidence, removal of the child is necessary
 14 to prevent imminent physical damage or harm to the child, or (2) by clear and
 15 convincing evidence, including the testimony of a qualified expert witness, the
 16 child would likely suffer serious physical or emotional damage if left in the child's
 17 home. If the court finds that probable cause exists for believing that the child is a
 18 child in need of aid and that a sufficient showing has been made under either (1)
 19 or (2) of this subsection, it shall order the child committed to the department for
 20 temporary placement outside the home of the child's parent or guardian. If the
 21 court finds that probable cause exists for believing that the child is a child in need
 22 of aid, but that a sufficient showing has not been made under (1) or (2) of this
 23 subsection, the court shall [, OR] order the child to be either committed to the
 24 custody of the department with temporary placement to be in the child's home or
 25 returned to the custody of the child's parents or guardian, subject to the department's
 26 supervision of the child's care and treatment. The court shall inform the child, and the
 27 child's parents or guardian if they can be found, of the reasons for finding probable
 28 cause, authorizing the child's temporary placement, and, if applicable, the reasons
 29 supporting the court's determination that a sufficient showing has been made
 30 under (1) or (2) of this subsection [FINDING THAT CONTINUED PLACEMENT
 31 IN THE HOME OF THE CHILD'S PARENTS OR GUARDIAN WOULD BE

1 CONTRARY TO THE WELFARE OF THE CHILD]. If the court finds **that** [NO]
 2 probable cause **does not exist to believe that the child is a child in need of aid, the**
 3 **court** [, IT] shall **dismiss the petition and** order the child returned to the custody of
 4 the child's parents or guardian.

5 * **Sec. 26.** AS 47.10.142(f) is amended to read:

6 (f) When a **child** [MINOR] is committed to the department for temporary
 7 placement under (e) of this section, the court order shall specify the terms, conditions,
 8 and duration of placement. **Except as provided in (i) of this section, the duration of**
 9 **a temporary placement under this section may not exceed 30 days.** If the court
 10 orders the **child** [MINOR] returned to the custody of the **child's** [MINOR'S] parents
 11 or guardian under (e) of this section after a hearing held on a petition filed under
 12 AS 47.10.141(f), the court shall specify the terms and conditions that must be
 13 followed by the **child** [MINOR] and the **child's** [MINOR'S] parents or guardian. The
 14 court shall require the **child** [MINOR] to remain in the placement provided by the
 15 department and shall clearly state in the order the consequences of violating the order,
 16 including detention under AS 47.10.141(c).

17 * **Sec. 27.** AS 47.10.142(h) is amended to read:

18 (h) Within **30 days** [12 MONTHS] after a child is committed to the
 19 department under this section, the court shall review the placement plan and actual
 20 placement of the child under AS 47.10.080(l).

21 * **Sec. 28.** AS 47.10.142 is amended by adding new subsections to read:

22 (j) The court may only order a child committed to the department for
 23 temporary placement under (e) and (f) of this section for more than 30 days if the
 24 court determines

25 (1) by clear and convincing evidence, including the testimony of a
 26 qualified expert witness, that custody of the child by the child's parent or guardian is
 27 likely to result in imminent physical damage or harm to the child; or

28 (2) that extraordinary circumstances exist.

29 (k) The social worker regularly assigned to the child may not serve as a
 30 qualified expert witness under (e) or (j) of this section.

31 * **Sec. 29.** AS 47.10.990 is amended by adding new paragraphs to read:

1 (35) "active efforts" means consistent attempts of the type described
2 under AS 47.10.086;

3 (36) "emotional damage" has the same meaning as interpreted under
4 the standards of 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act of 1978);

5 (37) "remedial services and rehabilitative programs" means family
6 support services and activities provided to assist a parent or guardian in developing the
7 skills and resources necessary to prevent removal of a child from the home or to
8 facilitate the safe return of the child to the home.

9 * **Sec. 30.** AS 47.14.100(r) is amended to read:

10 (r) The department shall make **active** [REASONABLE] efforts to place
11 siblings in the same placement if the siblings are residing in the same home when
12 taken into the custody of the department. If siblings are not placed together after
13 **active** [REASONABLE] efforts have been made, the case supervisor for the division
14 with responsibility over the custody of children shall document in the file the efforts
15 that were made and the reason separating the siblings for placement purposes is in the
16 best interest of the children. In this subsection, "sibling" means two or more persons
17 who are related by blood, adoption, or marriage as a child of one or both parents.

18 * **Sec. 31.** AS 47.17.290(3) is amended to read:

19 (3) "child abuse or neglect" means the physical injury, **damage, or**
20 **harm,** or neglect, **emotional damage, or harm** [MENTAL INJURY], sexual abuse,
21 sexual exploitation, or maltreatment of a child under the age of 18 by a person under
22 circumstances that indicate that the child's health or welfare is harmed or threatened
23 thereby [; IN THIS PARAGRAPH, "MENTAL INJURY" MEANS AN INJURY TO
24 THE EMOTIONAL WELL-BEING, OR INTELLECTUAL OR PSYCHOLOGICAL
25 CAPACITY OF A CHILD, AS EVIDENCED BY AN OBSERVABLE AND
26 SUBSTANTIAL IMPAIRMENT IN THE CHILD'S ABILITY TO FUNCTION];

27 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 DIRECT COURT RULE AMENDMENT. Rule 6(a), Alaska Child in Need of
30 Aid Rules of Procedure, is amended to read:

31 (a) **Emergency Custody Without Court Order.** The Department may take

1 emergency custody of a child pursuant to AS 47.10.142 without a court order. If the
 2 Department **does not release the child to the child's parent or guardian within 24**
 3 **hours after taking the child into custody** [DETERMINES THAT CONTINUED
 4 CUSTODY IS NECESSARY TO PROTECT THE CHILD], the Department shall
 5 notify the court of the emergency custody by filing, within 24 hours after custody was
 6 assumed, a petition alleging that the child is a child in need of aid **and that continued**
 7 **custody by the Department and placement of the child outside the child's home is**
 8 **necessary either (1) to prevent imminent physical damage or harm to the child,**
 9 **or (2) because the child would likely suffer serious emotional or physical damage**
 10 **if returned to the parent or guardian.** If the Department releases the child within 24
 11 hours after taking the child into custody and does not file a petition, the Department
 12 shall, within 24 hours after releasing the child, file with the court a report explaining
 13 why the child was taken into custody, why the child was released, and to whom the
 14 child was released.

15 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 DIRECT COURT RULE AMENDMENT. Rule 6(b)(2), Alaska Child in Need
 18 of Aid Rules of Procedure, is amended to read:

19 (2) Form, Contents of Motion. The petition must be supported by a
 20 statement of facts sufficient to show that the child is a child in need of aid [AND IS] in
 21 a condition **that** [WHICH] requires the immediate assumption of custody pursuant to
 22 AS 47.10.142 **and that removal of the child from the home is either (A) necessary,**
 23 **by a preponderance of the evidence, to prevent imminent physical damage or**
 24 **harm to the child, or (B) necessary, by clear and convincing evidence, including**
 25 **the testimony of a qualified expert witness, because the child would likely suffer**
 26 **serious emotional or physical damage if left with the parent or guardian.** If a child
 27 is believed to be an Indian child, the statement of facts must show the tribal affiliation
 28 of the child, if known [, AND MUST BE SUFFICIENT TO SHOW THAT
 29 REMOVAL OF THE CHILD FROM THE HOME IS NECESSARY TO PREVENT
 30 IMMINENT PHYSICAL DAMAGE OR HARM TO THE CHILD]. The statement of
 31 facts must be made under oath, either in a petition, by affidavit, or orally on the

1 record.

2 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 6(b)(3), Alaska Child in Need
5 of Aid Rules of Procedure, is amended to read:

6 (3) Order. If the court determines that there is probable cause to
7 believe that the child is a child in need of aid and is in such condition or surroundings
8 that [THE CHILD'S WELFARE] requires the immediate assumption of custody
9 **under AS 47.10.142 and the court determines either (A) by a preponderance of**
10 **the evidence, that removal of the child from the home is necessary to prevent**
11 **imminent physical damage or harm to the child, or (B) by clear and convincing**
12 **evidence, including the testimony of a qualified expert witness, that the child**
13 **would likely suffer serious emotional or physical damage if left with the child's**
14 **parent or guardian**, the court may immediately issue an emergency custody order.
15 [IN A CASE INVOLVING AN INDIAN CHILD, THE COURT MAY NOT ORDER
16 EMERGENCY REMOVAL UNLESS IT FINDS THAT REMOVAL IS
17 NECESSARY TO PREVENT IMMINENT PHYSICAL DAMAGE OR HARM TO
18 THE CHILD.] The order must be directed to a peace officer or other person
19 specifically designated by the court, and shall require that the child be taken into
20 custody immediately.

21 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 DIRECT COURT RULE AMENDMENT. Rule 10(c)(2), Alaska Child in
24 Need of Aid Rules of Procedure, is amended to read:

25 (2) The court shall order the child **committed to** [PLACED IN] the
26 temporary custody of the Department **with placement in the home** or order the child
27 returned to the home with supervision by the Department if the court finds probable
28 cause to believe that the child is a child in need of aid under AS 47.10.011 **but does**
29 **not find either (A) by a preponderance of the evidence, that removal of the child**
30 **from the home is necessary to prevent imminent physical damage or harm to the**
31 **child, or (B) by clear and convincing evidence, including the testimony of a**

1 **qualified expert witness, that the child would likely suffer serious emotional or**
 2 **physical damage if left with the child's parent or guardian.**

3 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
 4 read:

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

7 (3) The court may approve the removal of the child from the child's
 8 home only if the court finds **one of the following** [THAT CONTINUED
 9 PLACEMENT IN THE HOME IS CONTRARY TO THE WELFARE OF THE
 10 CHILD; AND, IN CASES INVOLVING AN INDIAN CHILD, EITHER]: (A) that
 11 **there is a preponderance of the evidence that** removal from the child's parent or
 12 Indian custodian is necessary to prevent imminent physical damage or harm to the
 13 child; or (B) that there is clear and convincing evidence, including testimony of **a**
 14 qualified expert **witness** [WITNESSES], that the child is likely to suffer serious
 15 emotional or physical damage if left in the custody of the parent or Indian custodian.

16 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 10(e)(2), Alaska Child in
 19 Need of Aid Rules of Procedure, is amended to read:

20 (2) When a party seeks the return of a child to the child's home
 21 pending adjudication or disposition, if the party makes a prima facie showing that
 22 removal is no longer necessary, the burden of proof shifts to the Department. **The** [AS
 23 DESCRIBED BELOW:

24 (A) IN CASES INVOLVING A NON-INDIAN CHILD, THE
 25 COURT SHALL RETURN THE CHILD TO THE HOME UNLESS THE
 26 DEPARTMENT PROVES BY A PREPONDERANCE OF THE EVIDENCE
 27 THAT RETURN TO THE HOME IS CONTRARY TO THE WELFARE OF
 28 THE CHILD;

29 (B) IN CASES INVOLVING AN INDIAN CHILD, THE]
 30 court shall restore the child to the child's parent or Indian custodian unless the
 31 Department proves

1 **(A)** [(i)] by a preponderance of the evidence that removal from
 2 the parent or Indian custodian is still necessary to prevent imminent physical
 3 damage or harm to the child; or

4 **(B)** [(ii)] by clear and convincing evidence, including the
 5 testimony of **a** qualified expert **witness** [WITNESSES], that the child is likely
 6 to suffer serious emotional or physical damage if returned to the custody of the
 7 parent or Indian custodian.

8 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 DIRECT COURT RULE AMENDMENT. Rule 10.1, Alaska Child in Need of
 11 Aid Rules of Procedure, is repealed and reenacted to read:

12 **Rule 10.1. Out-of-Home Placement - Required Findings.**

13 (1) Findings.

14 (A) If the Department has taken emergency custody of a child
 15 under AS 47.10.142, the court shall inquire into and determine at the
 16 temporary custody hearing whether the Department has made active efforts to
 17 provide remedial services and rehabilitative programs as required by
 18 AS 47.10.086(a) or 25 U.S.C. 1912(d) to prevent out-of-home placement.

19 (B) At any other hearing at which the court is ordering a child's
 20 removal from the home, the court shall inquire into and determine whether

21 (i) the Department has made active efforts to provide
 22 remedial services and rehabilitative programs as required by
 23 AS 47.10.086(a) or 25 U.S.C. 1912(d) to prevent out-of-home
 24 placement, unless the court has previously determined under Rule 17.1
 25 that active efforts are not required; and

26 (ii) whether the Department has complied with the
 27 placement requirements of AS 47.14.100 or 25 U.S.C. 1915(b).

28 (C) At each hearing at which the court is continuing a previous
 29 order authorizing removal of a child, the court shall inquire into and determine
 30 whether

31 (i) the Department has made active efforts to provide

1 remedial services and rehabilitative programs since the last hearing as
 2 required by AS 47.10.086(a) or 25 U.S.C. 1912(d) to permit the child's
 3 return to the home, unless the court has previously determined under
 4 Rule 17.1 that active efforts are not required; and

5 (ii) whether the Department has complied with the
 6 placement requirements of AS 47.14.100 or 25 U.S.C. 1915(b).

7 (2) Effect of a Finding that Department Failed to Make Active Efforts.

8 A finding that the Department has failed to make active efforts is not in itself a ground
 9 for returning the child to the home or dismissing a petition and does not affect the
 10 court's ability to proceed to adjudication. However, the court cannot enter a disposition
 11 order if the court finds that the Department has failed to make active efforts, unless the
 12 court has determined under Rule 17.1 that active efforts are not required. If the
 13 Department has failed to make required active efforts, the court must postpone
 14 disposition until the court finds that active efforts have been made. On motion of a
 15 party or on its own motion, the court may order the Department to comply with
 16 AS 47.10.086(a) or 25 U.S.C. 1912(d) within a reasonable time. If the Department
 17 fails to comply with the order, the court may impose appropriate sanctions.

18 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
 19 read:

20 DIRECT COURT RULE AMENDMENT. Rule 15(f)(2), Alaska Child in
 21 Need of Aid Rules of Procedure, is amended to read:

22 (2) If the court approves the child's removal, the court shall make the
 23 inquiry and findings required by CINA Rule 10.1. A finding that the Department has
 24 failed to make **active** [REASONABLE] efforts [,] or [, IN CASES INVOLVING AN
 25 INDIAN CHILD,] that the requirements of **AS 47.14.100(e) or** 25 U.S.C. 1912(d) or
 26 1915(b) have not been met [,] is not in itself a ground for returning the child to the
 27 home and does not affect the court's ability to enter an adjudication order and extend
 28 temporary custody pending adjudication.

29 * **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 17(c), Alaska Child in Need

1 of Aid Rules of Procedure, is amended to read:

2 (c) **Requirements for Disposition.** A disposition hearing may not be held
 3 before adequate information is available upon which to enter an informed disposition
 4 order. If the child has been placed outside the home, the court cannot enter a
 5 disposition order if the court finds [(1) IN CASES INVOLVING A NON-INDIAN
 6 CHILD,] that the Department has failed to make active [REASONABLE] efforts as
 7 required by AS 47.10.086(a) or 25 U.S.C. 1912(d) to permit the child's return to the
 8 home, unless the court has determined under Rule 17.1 that active [REASONABLE]
 9 efforts are not required [; OR (2) IN CASES INVOLVING AN INDIAN CHILD,
 10 THAT THE REQUIREMENTS OF 25 U.S.C. 1912(d) (ACTIVE EFFORTS) HAVE
 11 NOT BEEN MET]. If the court finds that the Department has failed to make required
 12 active [REASONABLE] efforts [OR THAT THE REQUIREMENTS OF 25 U.S.C.
 13 1912(d) HAVE NOT BEEN MET], the court must postpone entering a disposition
 14 order until the court finds that [REASONABLE EFFORTS OR] active efforts have
 15 been made. The child should remain in temporary custody pending disposition.

16 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 17(d)(2), Alaska Child in
 19 Need of Aid Rules of Procedure, is amended to read:

20 (2) The court may approve the removal of the child from the child's
 21 home only if the court finds that there is clear and convincing evidence, including
 22 testimony of a qualified expert witness, that continued placement in the home [IS
 23 CONTRARY TO THE WELFARE OF THE CHILD; AND, IN CASES INVOLVING
 24 AN INDIAN CHILD, THAT THERE IS CLEAR AND CONVINCING EVIDENCE,
 25 INCLUDING THE TESTIMONY OF QUALIFIED EXPERT WITNESSES, THAT
 26 CUSTODY OF THE INDIAN CHILD BY THE PARENT OR INDIAN
 27 CUSTODIAN] is likely to result in serious emotional or physical damage to the child.

28 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 DIRECT COURT RULE AMENDMENT. Rule 17.1(b), Alaska Child in Need
 31 of Aid Rules of Procedure, is amended to read:

1 (b) **Proceeding to Determine that Active [REASONABLE] Efforts May**
 2 **Be Discontinued.** At the permanency hearing required under AS 47.10.080(l), the
 3 court may find that a continuation of active [REASONABLE] efforts is not in the best
 4 interests of the child under AS 47.10.086(b). Any party recommending such a finding
 5 must include that recommendation, specifying the factual basis for it, in its report for
 6 permanency hearing required by CINA Rule 17.2(c) or in a separate motion.

7 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
 8 read:

9 DIRECT COURT RULE AMENDMENT. Rule 17.1(d)(3), Alaska Child in
 10 Need of Aid Rules of Procedure, is amended to read:

11 (3) Child's Best Interests. In determining whether active
 12 [REASONABLE] efforts are required, the court's primary consideration is the child's
 13 best interests.

14 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

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

18 (a) **Purpose and Timing of the Hearing.** The purpose of the permanency
 19 hearing is to establish a permanency plan for each child committed to state custody
 20 under AS 47.10.080(c)(1) and to ensure that findings with respect to the plan are made
 21 as required by state and federal laws. The permanency hearing must be held: (1)
 22 within 12 months after the date the child entered foster care as calculated under
 23 AS 47.10.088(f); (2) within 30 days after the court determines pursuant to CINA Rule
 24 17.1 that active [REASONABLE] efforts are not required; [OR] (3) upon application
 25 by a party, when good cause is shown; or (4) within 30 days after a child is placed
 26 in the temporary custody of the Department under CINA Rule 10 and
 27 AS 47.10.142.

28 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

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

1 (e) **Findings.** The court shall make written findings, including findings related
2 to

3 (1) whether the child continues to be a child in need of aid;

4 (2) whether returning the child to the custody of the child's parent
5 or guardian is likely to result in serious emotional or physical damage to the child
6 [SHOULD BE RETURNED TO THE PARENT OR GUARDIAN, AND WHEN];

7 (3) whether the child should be placed for adoption or legal
8 guardianship and whether the Department is in compliance with AS 47.10.088(d)
9 relating to the filing of a petition for termination of parental rights;

10 (4) whether there is compelling reason that the most appropriate
11 placement for the child is in another planned, permanent living arrangement and the
12 department has recommended the arrangement under AS 47.14.100(o)
13 [AS 47.14.100(p)]; the findings under this subsection must include the steps that are
14 necessary to achieve the new arrangement; and

15 (5) in the case of a child who has attained age 16, the services needed
16 to assist the child to make the transition from foster care to independent living or adult
17 protective services.

18 If the court is unable to make a finding required under this subsection, the court shall
19 schedule and hold another permanency hearing within a reasonable period of time as defined
20 in AS 47.10.990(23).

21 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

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

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

27 (1) whether the Department has made active [REASONABLE] efforts
28 to provide remedial and rehabilitative services required under AS 47.10.086 or [,
29 IN THE CASE OF AN INDIAN CHILD, WHETHER THE DEPARTMENT HAS
30 MADE ACTIVE EFFORTS TO PROVIDE REMEDIAL SERVICES AND
31 REHABILITATIVE PROGRAMS AS REQUIRED BY] 25 U.S.C. Sec. 1912(d);

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

4 (3) if the permanency plan is for the child to remain in out-of-home
 5 care, whether returning the child to the custody of the child's parent or guardian
 6 is likely to result in serious emotional or physical damage to the child [THE
 7 CHILD'S OUT-OF-HOME PLACEMENT CONTINUES TO BE APPROPRIATE
 8 AND IN THE BEST INTERESTS OF THE CHILD]; and

9 (4) whether the Department has made active [REASONABLE] efforts
 10 to finalize the permanency plan that is in effect (whether the plan is reunification,
 11 adoption, legal guardianship, placement with a fit and willing relative, or placement in
 12 another planned permanent living arrangement).

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

15 DIRECT COURT RULE AMENDMENT. Rule 17.3, Alaska Child in Need of
 16 Aid Rules of Procedure, is amended to read:

17 **Rule 17.3. Petition or proxy for adoption or legal guardianship of a child**
 18 **under AS 47.10.111.** (a) A petitioner may file a petition for adoption or legal
 19 guardianship of a child who is the subject of a pending child-in-need-of-aid
 20 proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for
 21 adoption or legal guardianship of a child before the court approves adoption or legal
 22 guardianship as the permanent plan for the child, the court shall hold the petition for
 23 adoption or legal guardianship in abeyance until the court approves adoption or legal
 24 guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(l).
 25 If the child is in an out-of-home placement but is not placed with the petitioner at the
 26 time the petition is filed, the court shall hold a hearing within 90 days to review the
 27 permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in
 28 addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings
 29 related to whether the petitioner is entitled to placement preference under
 30 AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable, and [IF 25 U.S.C.
 31 1915(a) APPLIES, THE COURT] shall make written findings related to whether the

1 current placement is in compliance with or whether there is good cause to deviate
2 from the placement preferences.

3 (b) A person may file a proxy for a formal petition for adoption or legal
4 guardianship of a child who is the subject of a pending child-in-need-of-aid
5 proceeding under AS 47.10 as part of the same case. If a person files a proxy for a
6 formal petition for adoption or legal guardianship of a child who is in out-of-home
7 placement, and the child is not placed with the person who files the proxy at the time
8 the person files the proxy, the court shall hold a hearing within 90 days to review the
9 permanent plan for the child as required under AS 47.10.112(c). At the hearing, the
10 court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l),
11 make findings related to whether the person who filed the proxy is entitled to
12 placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is
13 applicable, and [, IF 25 U.S.C. 1915(a) APPLIES,] whether the current placement is in
14 compliance with or whether there is good cause to deviate from the placement
15 preferences.

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

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

20 (c) **Burden of Proof.** Before the court may terminate parental rights, the
21 Department must prove:

22 (1) by clear and convincing evidence that

23 (A) the child has been subjected to conduct or conditions
24 described in AS 47.10.011 and

25 (i) the parent has not remedied the conduct or
26 conditions in the home that place the child at **serious**
27 [SUBSTANTIAL] risk of **damage or** harm; or

28 (ii) the parent has failed, within a reasonable time, to
29 remedy the conduct or conditions in the home that place the child in
30 **serious** [SUBSTANTIAL] risk so that returning the child to the parent
31 would place the child at **serious** [SUBSTANTIAL] risk of **emotional**

1 or physical **damage** [OR MENTAL INJURY]; or

2 (B) a parent is incarcerated and the requirements of
3 AS 47.10.080(o) are met; and

4 (2) by clear and convincing evidence that

5 [(A) THE DEPARTMENT HAS COMPLIED WITH THE
6 PROVISIONS OF AS 47.10.086 CONCERNING REASONABLE EFFORTS;
7 OR

8 (B) IN THE CASE OF AN INDIAN CHILD, THAT] active
9 efforts have been made to provide remedial services and rehabilitative
10 programs designed to prevent the **removal of the child from the child's home**
11 [BREAKUP OF THE INDIAN FAMILY] and that these efforts have proved
12 unsuccessful; and

13 (3) by a preponderance of the evidence that termination of parental
14 rights is in the best interests of the child; and

15 (4) [IN THE CASE OF AN INDIAN CHILD,] by evidence beyond a
16 reasonable doubt, including the testimony of **a** qualified expert **witness**
17 [WITNESSES], that continued custody of the child by the parent or Indian custodian
18 is likely to result in serious emotional or physical damage to the child.

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

21 DIRECT COURT RULE AMENDMENT. Rule 19.1(c), Alaska Child in Need
22 of Aid Rules of Procedure, is amended to read:

23 (c) **Disposition Order.** Pursuant to AS 47.10.100(a), the court may review a
24 disposition order upon motion of a party or on its own motion. When a party seeks the
25 return of a child to the child's home, if the party makes a prima facie showing that
26 removal is no longer necessary, the burden of proof shifts to the Department. **The** [AS
27 DESCRIBED BELOW:

28 (A) IN CASES INVOLVING A NON-INDIAN CHILD, THE
29 COURT SHALL RETURN THE CHILD TO THE HOME UNLESS THE
30 DEPARTMENT PROVES BY A PREPONDERANCE OF THE EVIDENCE
31 THAT RETURN TO THE HOME IS CONTRARY TO THE WELFARE OF

1 THE CHILD;

2 (B) IN CASES INVOLVING AN INDIAN CHILD, THE]
 3 court shall restore the child to the child's parent or Indian custodian unless the
 4 Department proves by clear and convincing evidence, including the testimony
 5 of a qualified expert witness [WITNESSES], that the child is likely to suffer
 6 serious emotional or physical damage if returned to the custody of the parent or
 7 Indian custodian.

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

10 REPEAL OF COURT RULES. Rule 17.1(a), 17.1(c), and 17.1(d)(2), Alaska Child in
 11 Need of Aid Rules of Procedure, are repealed.

12 * **Sec. 51.** AS 47.10.086(c), 47.10.086(g), 47.10.088(e), 47.10.990(11), 47.10.990(21),
 13 47.10.990(27), and 47.10.990(30) are repealed.

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

16 TWO-THIRDS VOTE NOT REQUIRED. Because the provisions of Rules 6(a),
 17 6(b)(2) and (3), 10(c)(2) and (3), 10(e)(2), 10.1, 15(f)(2), 17(c), 17(d)(2), 17.1(a), 17.1(b),
 18 17.1(c), 17.1(d)(2) and (3), 17.2(a), 17.3, and 18(c), Alaska Child in Need of Aid Rules of
 19 Procedure, that are affected by the provisions of this Act were adopted under the Alaska
 20 Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of the
 21 State of Alaska, secs. 32 - 45, 47, 48, and 50 of this Act take effect even if secs. 32 - 45, 47,
 22 48, and 50 of this Act do not receive the two-thirds majority vote normally applicable to
 23 changing court rules under art. IV, sec. 15, Constitution of the State of Alaska.

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

26 APPLICABILITY. This Act applies to child-in-need-of-aid petitions filed or pending
 27 on or after the effective date of this Act.

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

30 CONDITIONAL EFFECT. AS 47.10.080(l), as amended by sec. 9 of this Act,
 31 AS 47.10.081(b), as amended by sec. 12 of this Act, and AS 47.10.142(d), as amended by sec.

- 1 24 of this Act, take effect only if secs. 9, 12, and 24 of this Act receive the two-thirds majority
- 2 vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.