

**HOUSE BILL NO. 310**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE WILSON

Introduced: 2/12/16  
Referred:

**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(a)(1) and (2), 15(f)(2), 17(c), 17(d)(2),**  
4 **17.1(b), 17.1(d)(3), 17.2(a), 17.2(e), 17.2(f), 18(c), and 19.1(c), Alaska Child in Need of**  
5 **Aid Rules of Procedure, and repealing Rules 17.1(a), 17.1(c), and 17.1(d)(2), Alaska**  
6 **Child in 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;

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

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

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

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

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

24 (5) numerous studies establish that

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

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

31 (C) it is important to provide for an expedited placement

1 procedure to ensure that all children, especially those under the age of six  
 2 years, who have been removed from their homes are placed in permanent  
 3 homes expeditiously.

4 \* **Sec. 2.** AS 47.10.011 is amended to read:

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

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

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

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

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

22 (5) the child is habitually absent from home or refuses to accept  
 23 available care and the child's conduct places the child at serious [SUBSTANTIAL]  
 24 risk of physical or mental injury;

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

30 (7) the child has suffered sexual abuse, or there is a serious  
 31 [SUBSTANTIAL] risk that the child will suffer sexual abuse, as a result of conduct by

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

9 (8) conduct by or conditions created by the parent, guardian, or  
 10 custodian have

11 (A) resulted in mental injury to the child; or

12 (B) placed the child at **serious** [SUBSTANTIAL] risk of  
 13 mental injury as a result of

14 (i) a pattern of rejecting, terrorizing, ignoring, isolating,  
 15 or corrupting behavior that would, if continued, result in mental injury;  
 16 or

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

27 (iii) repeated exposure to conduct by a household  
 28 member, as defined in AS 18.66.990, against another household  
 29 member that is a crime under AS 11.41.230(a)(3) or 11.41.250 -  
 30 11.41.270 or an offense under a law or ordinance of another jurisdiction  
 31 having elements similar to a crime under AS 11.41.230(a)(3) or

1 11.41.250 - 11.41.270;

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

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

14 (11) the parent, guardian, or custodian has a mental illness, serious  
15 emotional disturbance, or mental deficiency of a nature and duration that places the  
16 child at serious [SUBSTANTIAL] risk of physical damage or harm or mental injury;

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

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

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

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

24 (a) For purposes of this chapter, the court may find abandonment of a child if  
25 a parent or guardian has shown a conscious disregard of parental responsibilities  
26 toward the child by failing to provide reasonable support, maintain regular contact, or  
27 provide normal supervision, considering the child's age and need for care by an adult.  
28 Abandonment of a child also includes instances when the parent or guardian, without  
29 justifiable cause,

30 (1) left the child with another person without provision for the child's  
31 support and without meaningful communication with the child for a period of three

1 months;

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

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

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

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

10 (6) was absent from the home for a period of time that created a  
11 serious [SUBSTANTIAL] risk of serious physical damage or harm to a child left in  
12 the home;

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

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

15 \* **Sec. 5.** AS 47.10.015 is amended to read:

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

19 (1) the child was the victim of an act described in AS 11.41.100 -  
20 11.41.250, 11.41.300, 11.41.410 - 11.41.455, or AS 11.51.100 and the physical  
21 damage or harm occurred as a result of conduct by or conditions created by a parent,  
22 guardian, or custodian; or

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

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

26 (c) If the court finds that the child [MINOR] is in such condition or  
27 surroundings that prevention of imminent physical damage or harm to the child  
28 [THE MINOR'S WELFARE] requires the immediate assumption of custody by the  
29 court, the court may order, by endorsement upon the summons, that the officer serving  
30 the summons shall at once take the child [MINOR] into custody and make the  
31 temporary placement of the child [MINOR] that the court directs.

1 \* **Sec. 7.** AS 47.10.080(f) is amended to read:

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

23 \* **Sec. 8.** AS 47.10.080(l) is amended to read:

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

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

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

31 (A) **returning the child to the child's parent or guardian is**



1            **likely to result in serious emotional or physical damage to the child** [AND  
 2            WHEN THE CHILD SHOULD BE RETURNED TO THE PARENT OR  
 3            GUARDIAN];

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

7            (C) there is a compelling reason that the most appropriate  
 8            placement for the child is in another planned, permanent living arrangement  
 9            and the department has recommended the arrangement under AS 47.14.100(p);  
 10           the findings under this paragraph must include the steps that are necessary to  
 11           achieve the new arrangement;

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

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

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

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

24           (C) if the permanent plan is for the child to remain in out-of-  
 25           home-care, whether **returning the child to the custody of the child's parent**  
 26           **or guardian is likely to result in serious emotional or physical damage to**  
 27           [THE CHILD'S OUT-OF-HOME PLACEMENT CONTINUES TO BE  
 28           APPROPRIATE AND IN THE BEST INTERESTS OF] the child; and

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

31           (5) the court shall hold a hearing to review the permanent plan at least

1 annually until successful implementation of the plan; if the plan approved by the court  
 2 changes after the hearing, the department shall promptly apply to the court for another  
 3 permanency hearing, and the court shall conduct the hearing within 30 days after  
 4 application by the department.

5 \* **Sec. 9.** AS 47.10.080(p) is amended to read:

6 (p) If a child is removed from the parental home, the department shall **make**  
 7 **active efforts to** provide **opportunities for and facilitate** reasonable visitation  
 8 between the child and the child's parents, guardian, and family. When determining  
 9 what constitutes reasonable visitation with a family member, the department shall  
 10 consider the nature and quality of the relationship that existed between the child and  
 11 the family member before the child was committed to the custody of the department.  
 12 The court may require the department to file a visitation plan with the court. The  
 13 department may deny visitation to the parents, guardian, or family members if there is  
 14 clear and convincing evidence that visits are not in the child's best interests. If the  
 15 department denies visitation to a parent or family member of a child, the department  
 16 shall inform the parent or family member of a reason for the denial and of the parent's  
 17 or adult family member's right to request a review hearing as an interested person. A  
 18 parent, adult family member, or guardian who is denied visitation may request a  
 19 review hearing. A non-party adult family member requesting a review hearing under  
 20 this subsection is not eligible for publicly appointed legal counsel.

21 \* **Sec. 10.** AS 47.10.080 is amended by adding a new subsection to read:

22 (x) An order issued under this section may not allow removal of a child from  
 23 the child's home or continued placement of the child outside the child's home unless  
 24 there is, at the time the order is issued, clear and convincing evidence, including the  
 25 testimony of a qualified expert witness who is not employed by the department, that  
 26 the child is likely to suffer serious emotional or physical damage if left with or  
 27 returned to the child's parent or guardian.

28 \* **Sec. 11.** AS 47.10.081(b) is amended to read:

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

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

4 (2) if removal from the home is recommended, a description of  
 5 **whether continued custody of the child by the child's parent or guardian is likely**  
 6 **to result in serious emotional or physical damage** [THE REASONS THE CHILD  
 7 CANNOT BE PROTECTED OR REHABILITATED ADEQUATELY IN THE  
 8 HOME, INCLUDING A DESCRIPTION OF ANY PREVIOUS EFFORTS TO  
 9 WORK WITH THE PARENTS AND THE CHILD IN THE HOME AND THE  
 10 PARENTS' ATTITUDE TOWARD PLACEMENT OF THE CHILD];

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

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

15 \* **Sec. 12.** AS 47.10.086(a) is amended to read:

16 (a) Except as provided in (b) [, (c), AND (g)] of this section, the department  
 17 shall make timely, **active** [REASONABLE] efforts to provide **remedial services and**  
 18 **rehabilitative programs** [FAMILY SUPPORT SERVICES] to the child and to the  
 19 parents or guardian of the child that are designed to prevent out-of-home placement of  
 20 the child or to enable the safe return of the child to the family home, when appropriate,  
 21 if the child is in an out-of-home placement. **The remedial services and rehabilitative**  
 22 **programs may include services and programs provided by the community, a**  
 23 **church, or other service organizations.** The department's duty to make **active**  
 24 [REASONABLE] efforts under this subsection includes the duty to

25 (1) identify **remedial services and rehabilitative programs,**  
 26 **including counseling, substance abuse treatment, mental health services,**  
 27 **assistance to address domestic violence, visitation with family members,**  
 28 **parenting classes, in-home services, temporary child care services, and**  
 29 **transportation** [FAMILY SUPPORT SERVICES] that will assist the parent or  
 30 guardian in remedying the conduct or conditions in the home that made the child a  
 31 child in need of aid;

1 (2) [ACTIVELY OFFER THE PARENT OR GUARDIAN, AND]  
 2 refer the parent or guardian to and actively assist the parent or guardian in  
 3 obtaining [,] the services identified under (1) of this subsection; the department shall  
 4 refer the parent or guardian to community-based remedial services and  
 5 rehabilitative programs [FAMILY SUPPORT SERVICES] whenever community-  
 6 based services are available and desired by the parent or guardian; and

7 (3) document the department's actions that are taken under (1) and (2)  
 8 of this subsection.

9 \* **Sec. 13.** AS 47.10.086(b) is amended to read:

10 (b) If the court makes a finding at a hearing conducted under AS 47.10.080(I)  
 11 that a parent or guardian has not sufficiently remedied the parent's or guardian's  
 12 conduct or the conditions in the home despite active [REASONABLE] efforts made  
 13 by the department in accordance with this section, the court may conclude that  
 14 continuation of active [REASONABLE] efforts of the type described in (a) of this  
 15 section are not in the best interests of the child. The department shall then make active  
 16 [REASONABLE] efforts to place the child in a timely manner in accordance with the  
 17 permanent plan and to complete whatever steps are necessary to finalize the  
 18 permanent placement of the child.

19 \* **Sec. 14.** AS 47.10.086(d) is amended to read:

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

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

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

27 \* **Sec. 15.** AS 47.10.086(e) is amended to read:

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

31 \* **Sec. 16.** AS 47.10.086(f) is amended to read:

1 (f) In making determinations and **active** [REASONABLE] efforts under this  
 2 section, **the department and the court shall apply the standards of 25 U.S.C. 1901**  
 3 **- 1963 (Indian Child Welfare Act of 1978) regardless of whether the child is an**  
 4 **Indian child** [THE PRIMARY CONSIDERATION IS THE CHILD'S BEST  
 5 INTERESTS].

6 \* **Sec. 17.** AS 47.10.088(a) is amended to read:

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

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

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

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

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

17 **(ii)** [(B)] has failed, within a reasonable time, to remedy  
 18 the conduct or conditions in the home that place the child in **serious**  
 19 [SUBSTANTIAL] risk so that returning the child to the parent would  
 20 place the child at **serious** [SUBSTANTIAL] risk of **emotional or**  
 21 physical **damage** or mental injury; and

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

24 **(2) by evidence beyond a reasonable doubt, including the**  
 25 **testimony of a qualified expert witness who is not employed by the department,**  
 26 **that continued custody of the child by the parent or guardian is likely to result in**  
 27 **serious physical or emotional damage to the child.**

28 \* **Sec. 18.** AS 47.10.088(b) is amended to read:

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

31 (1) the likelihood of returning the child to the parent within a

1 reasonable time based on the child's age or needs;

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

4 (3) the **damage or** harm caused to the child;

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

6 and

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

8 \* **Sec. 19.** AS 47.10.088(d) is amended to read:

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

13 [(1) THE CHILD HAS BEEN IN FOSTER CARE FOR AT LEAST  
14 15 OF THE MOST RECENT 22 MONTHS;

15 (2) THE COURT HAS DETERMINED THAT THE CHILD IS  
16 ABANDONED UNDER AS 47.10.013 AND THE CHILD IS YOUNGER THAN  
17 SIX YEARS OF AGE;

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

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

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

30 \* **Sec. 20.** AS 47.10.088(g) is amended to read:

31 (g) This section does not preclude the department from filing a petition to

1 terminate the parental rights and responsibilities to a child for other reasons [, OR AT  
 2 AN EARLIER TIME THAN THOSE SPECIFIED IN (d) OF THIS SECTION,] if the  
 3 department determines that **continued custody of the child by the child's parent or**  
 4 **guardian is likely to result in serious emotional or physical damage to** [FILING A  
 5 PETITION IS IN THE BEST INTERESTS OF] the child.

6 \* **Sec. 21.** AS 47.10.142(a) is amended to read:

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

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

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

16 (3) the child has been subjected to physical **damage or** harm by a  
 17 person responsible for the child's welfare, and the department determines that  
 18 immediate removal from the child's surroundings is necessary to **prevent imminent**  
 19 **physical damage or harm to the child** [PROTECT THE CHILD'S LIFE OR THAT  
 20 IMMEDIATE MEDICAL ATTENTION IS NECESSARY]; or

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

23 \* **Sec. 22.** AS 47.10.142(b) is amended to read:

24 (b) The department shall offer available counseling services to the person  
 25 having legal custody of a minor described in AS 47.10.141 and to the members of the  
 26 minor's household if it determines that counseling services would be appropriate in the  
 27 situation. If, after assessing the situation, offering available counseling services to the  
 28 legal custodian and the minor's household, and furnishing appropriate social services  
 29 to the minor, the department considers it necessary, the department may take  
 30 emergency custody of the minor, **except that, if the person having legal custody of**  
 31 **the minor is the minor's parent or guardian, the department may take emergency**

1           **custody of the minor only if necessary to prevent imminent physical damage or**  
 2           **harm to the child.**

3           \* **Sec. 23.** AS 47.10.142(d) is amended to read:

4                   (d) The court shall immediately, and in no event more than 48 hours after  
 5 being notified unless prevented by lack of transportation, hold a temporary custody  
 6 hearing at which the child, if the child's health permits, and the child's parents or  
 7 guardian, if they can be found, shall be permitted to be present. If present at the  
 8 hearing, a parent or guardian of the child may request a continuance of the hearing for  
 9 the purpose of preparing a response to the allegation that the child is a child in need of  
 10 aid. The court may grant the request on a showing of good cause for why the parent or  
 11 guardian is not prepared to respond to the allegation. During a continuance, the child  
 12 remains in the temporary legal custody of the department, except as otherwise  
 13 provided in this subsection. At the first hearing under this subsection, regardless of  
 14 whether a continuance is granted, the court shall make a preliminary determination of  
 15 whether **it is necessary to continue the department's temporary legal custody of**  
 16 **the child to prevent imminent physical damage or harm to** [CONTINUED  
 17 PLACEMENT IN THE HOME OF THE CHILD'S PARENT OR GUARDIAN  
 18 WOULD BE CONTRARY TO THE WELFARE OF] the child. If a court determines  
 19 that **continuing the department's temporary legal custody of the child is no longer**  
 20 **necessary to prevent imminent physical damage or harm to** [CONTINUED  
 21 PLACEMENT IN THE HOME OF THE CHILD'S PARENT OR GUARDIAN  
 22 WOULD NOT BE CONTRARY TO THE WELFARE OF] the child, the court shall  
 23 return the authority to place the child to the child's parent or guardian pending a  
 24 temporary custody hearing under (e) of this section.

25           \* **Sec. 24.** AS 47.10.142(e) is amended to read:

26                   (e) When the temporary custody hearing is held, the court shall determine  
 27 whether probable cause exists for believing the child to be a child in need of aid, as  
 28 defined in AS 47.10.990. **If removal of the child from the child's home is**  
 29 **requested, the court shall also determine at the temporary custody hearing**  
 30 **whether (1) by a preponderance of the evidence, removal of the child is necessary**  
 31 **to prevent imminent physical damage or harm to the child, or (2) by clear and**



1 **convincing evidence, including the testimony of a qualified expert witness who is**  
 2 **not employed by the department, the child would likely suffer serious physical or**  
 3 **emotional damage if left in the child's home.** If the court finds that probable cause  
 4 exists **for believing that the child is a child in need of aid and that a sufficient**  
 5 **showing has been made under either (1) or (2) of this subsection,** it shall order the  
 6 child committed to the department for temporary placement **outside the home of the**  
 7 **child's parent or guardian. If the court finds that probable cause exists for**  
 8 **believing that the child is a child in need of aid, but that a sufficient showing has**  
 9 **not been made under (1) or (2) of this subsection, the court shall** [, OR] order the  
 10 child **to be either committed to the custody of the department with temporary**  
 11 **placement to be in the child's home or** returned to the custody of the child's parents  
 12 or guardian, subject to the department's supervision of the child's care and treatment.  
 13 The court shall inform the child, and the child's parents or guardian if they can be  
 14 found, of the reasons for finding probable cause, authorizing the child's temporary  
 15 placement, and, if applicable, **the reasons supporting the court's determination that**  
 16 **a sufficient showing has been made under (1) or (2) of this subsection** [FINDING  
 17 THAT CONTINUED PLACEMENT IN THE HOME OF THE CHILD'S PARENTS  
 18 OR GUARDIAN WOULD BE CONTRARY TO THE WELFARE OF THE CHILD].  
 19 If the court finds **that** [NO] probable cause **does not exist to believe that the child is**  
 20 **a child in need of aid, the court** [, IT] shall **dismiss the petition and** order the child  
 21 returned to the custody of the child's parents or guardian.

22 \* **Sec. 25.** AS 47.10.142(f) is amended to read:

23 (f) When a **child** [MINOR] is committed to the department for temporary  
 24 placement under (e) of this section, the court order shall specify the terms, conditions,  
 25 and duration of placement. **Except as provided in (i) of this section, the duration of**  
 26 **a temporary placement under this section may not exceed 30 days.** If the court  
 27 orders the **child** [MINOR] returned to the custody of the **child's** [MINOR'S] parents  
 28 or guardian under (e) of this section after a hearing held on a petition filed under  
 29 AS 47.10.141(f), the court shall specify the terms and conditions that must be  
 30 followed by the **child** [MINOR] and the **child's** [MINOR'S] parents or guardian. The  
 31 court shall require the **child** [MINOR] to remain in the placement provided by the

1 department and shall clearly state in the order the consequences of violating the order,  
2 including detention under AS 47.10.141(c).

3 \* **Sec. 26.** AS 47.10.142(h) is amended to read:

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

7 \* **Sec. 27.** AS 47.10.142 is amended by adding a new subsection to read:

8 (i) The court may only order a child committed to the department for  
9 temporary placement under (e) and (f) of this section for more than 30 days if the  
10 court determines

11 (1) by clear and convincing evidence, including the testimony of a  
12 qualified expert witness who is not employed by the department, that custody of the  
13 child by the child's parent or guardian is likely to result in imminent physical damage  
14 or harm to the child; or

15 (2) that extraordinary circumstances exist.

16 \* **Sec. 28.** AS 47.10.990 is amended by adding new paragraphs to read:

17 (33) "active efforts" means consistent attempts of the type described  
18 under AS 47.10.086;

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

21 (35) "remedial services and rehabilitative programs" means family  
22 support services and activities provided to assist a parent or guardian in developing the  
23 skills and resources necessary to prevent removal of a child from the home or to  
24 facilitate the safe return of the child to the home.

25 \* **Sec. 29.** AS 47.14.100(r) is amended to read:

26 (r) The department shall make **active** [REASONABLE] efforts to place  
27 siblings in the same placement if the siblings are residing in the same home when  
28 taken into the custody of the department. If siblings are not placed together after  
29 **active** [REASONABLE] efforts have been made, the case supervisor for the division  
30 with responsibility over the custody of children shall document in the file the efforts  
31 that were made and the reason separating the siblings for placement purposes is in the

1 best interest of the children. In this subsection, "sibling" means two or more persons  
2 who are related by blood, adoption, or marriage as a child of one or both parents.

3 \* **Sec. 30.** AS 47.17.290(3) is amended to read:

4 (3) "child abuse or neglect" means the physical injury, damage, or  
5 harm, or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of  
6 a child under the age of 18 by a person under circumstances that indicate that the  
7 child's health or welfare is harmed or threatened thereby [; IN THIS PARAGRAPH,  
8 "MENTAL INJURY" MEANS AN INJURY TO THE EMOTIONAL WELL-BEING,  
9 OR INTELLECTUAL OR PSYCHOLOGICAL CAPACITY OF A CHILD, AS  
10 EVIDENCED BY AN OBSERVABLE AND SUBSTANTIAL IMPAIRMENT IN  
11 THE CHILD'S ABILITY TO FUNCTION];

12 \* **Sec. 31.** AS 47.17.290(10) is amended to read:

13 (10) "mental injury" means a serious injury to the emotional well-  
14 being or intellectual or psychological capacity of a child as evidenced by an  
15 observable and substantial impairment in the child's ability to function in a  
16 developmentally appropriate manner and the existence of that impairment is supported  
17 by the opinion of a qualified expert witness;

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

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

22 (a) **Emergency Custody Without Court Order.** The Department may take  
23 emergency custody of a child pursuant to AS 47.10.142 without a court order. If the  
24 Department does not release the child to the child's parent or guardian within 24  
25 hours after taking the child into custody [DETERMINES THAT CONTINUED  
26 CUSTODY IS NECESSARY TO PROTECT THE CHILD], the Department shall  
27 notify the court of the emergency custody by filing, within 24 hours after custody was  
28 assumed, a petition alleging that the child is a child in need of aid and that continued  
29 custody by the Department and placement of the child outside the child's home is  
30 necessary either (1) to prevent imminent physical damage or harm to the child,  
31 or (2) because the child would likely suffer serious emotional or physical damage

1 **if returned to the parent or guardian.** If the Department releases the child within 24  
 2 hours after taking the child into custody and does not file a petition, the Department  
 3 shall, within 24 hours after releasing the child, file with the court a report explaining  
 4 why the child was taken into custody, why the child was released, and to whom the  
 5 child was released.

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

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

10 (2) Form, Contents of Motion. The petition must be supported by a  
 11 statement of facts sufficient to show that the child is a child in need of aid [AND IS] in  
 12 a condition **that** [WHICH] requires the immediate assumption of custody pursuant to  
 13 AS 47.10.142 **and that removal of the child from the home is either (A) necessary,**  
 14 **by a preponderance of the evidence, to prevent imminent physical damage or**  
 15 **harm to the child, or (B) necessary, by clear and convincing evidence, including**  
 16 **the testimony of a qualified expert witness who is not employed by the**  
 17 **Department, because the child would likely suffer serious emotional or physical**  
 18 **damage if left with the parent or guardian.** If a child is believed to be an Indian  
 19 child, the statement of facts must show the tribal affiliation of the child, if known [,  
 20 AND MUST BE SUFFICIENT TO SHOW THAT REMOVAL OF THE CHILD  
 21 FROM THE HOME IS NECESSARY TO PREVENT IMMINENT PHYSICAL  
 22 DAMAGE OR HARM TO THE CHILD]. The statement of facts must be made under  
 23 oath, either in a petition, by affidavit, or orally on the record.

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

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

28 (3) Order. If the court determines that there is probable cause to  
 29 believe that the child is a child in need of aid and is in such condition or surroundings  
 30 that [THE CHILD'S WELFARE] requires the immediate assumption of custody  
 31 **under AS 47.10.142 and the court determines either (A) by a preponderance of**

1 the evidence, that removal of the child from the home is necessary to prevent  
 2 imminent physical damage or harm to the child, or (B) by clear and convincing  
 3 evidence, including the testimony of a qualified expert witness who is not  
 4 employed by the Department, that the child would likely suffer serious emotional  
 5 or physical damage if left with the child's parent or guardian, the court may  
 6 immediately issue an emergency custody order. [IN A CASE INVOLVING AN  
 7 INDIAN CHILD, THE COURT MAY NOT ORDER EMERGENCY REMOVAL  
 8 UNLESS IT FINDS THAT REMOVAL IS NECESSARY TO PREVENT  
 9 IMMEDIATE PHYSICAL DAMAGE OR HARM TO THE CHILD.] The order must  
 10 be directed to a peace officer or other person specifically designated by the court, and  
 11 shall require that the child be taken into custody immediately.

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

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

16 (2) The court shall order the child committed to [PLACED IN] the  
 17 temporary custody of the Department with placement in the home or order the child  
 18 returned to the home with supervision by the Department if the court finds probable  
 19 cause to believe that the child is a child in need of aid under AS 47.10.011 but does  
 20 not find either (A) by a preponderance of the evidence, that removal of the child  
 21 from the home is necessary to prevent imminent physical damage or harm to the  
 22 child, or (B) by clear and convincing evidence, including the testimony of a  
 23 qualified expert witness who is not employed by the Department, that the child  
 24 would likely suffer serious emotional or physical damage if left with the child's  
 25 parent or guardian.

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

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

30 (3) The court may approve the removal of the child from the child's  
 31 home only if the court finds one of the following [THAT CONTINUED

1 PLACEMENT IN THE HOME IS CONTRARY TO THE WELFARE OF THE  
 2 CHILD; AND, IN CASES INVOLVING AN INDIAN CHILD, EITHER]: (A) that  
 3 **there is a preponderance of the evidence that** removal from the child's parent or  
 4 Indian custodian is necessary to prevent imminent physical damage or harm to the  
 5 child; or (B) that there is clear and convincing evidence, including testimony of **a**  
 6 **qualified expert witness who is not employed by the Department** [WITNESSES],  
 7 that the child is likely to suffer serious emotional or physical damage if left in the  
 8 custody of the parent or Indian custodian.

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

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

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

17 (A) IN CASES INVOLVING A NON-INDIAN CHILD, THE  
 18 COURT SHALL RETURN THE CHILD TO THE HOME UNLESS THE  
 19 DEPARTMENT PROVES BY A PREPONDERANCE OF THE EVIDENCE  
 20 THAT RETURN TO THE HOME IS CONTRARY TO THE WELFARE OF  
 21 THE CHILD;

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

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

28 **(B)** [(ii)] by clear and convincing evidence, including the  
 29 testimony of **a** qualified expert **witness who is not employed by the**  
 30 **Department** [WITNESSES], that the child is likely to suffer serious emotional  
 31 or physical damage if returned to the custody of the parent or Indian custodian.

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

3             DIRECT COURT RULE AMENDMENT. Rule 10.1(a)(1), Alaska Child in  
4 Need of Aid Rules of Procedure, is amended to read:

5                     (1) Findings.

6                             (A) If the Department has taken emergency custody of a non-  
7 Indian child under AS 47.10.142, the court shall inquire into and determine at  
8 the temporary custody hearing whether the Department has made **active**  
9 **[REASONABLE]** efforts **to provide remedial services and rehabilitative**  
10 **programs** as required by AS 47.10.086(a) to prevent out-of-home placement [,  
11 OR WHETHER IT WAS NOT POSSIBLE UNDER THE  
12 CIRCUMSTANCES TO MAKE EFFORTS THAT WOULD HAVE  
13 PREVENTED REMOVAL OF THE CHILD].

14                             (B) At any other hearing at which the court is ordering a non-  
15 Indian child's removal from the home, the court shall inquire into and  
16 determine whether the Department has made **active** **[REASONABLE]** efforts  
17 **to provide remedial services and rehabilitative programs** as required by  
18 AS 47.10.086(a) to prevent out-of-home placement, unless the court has  
19 previously determined under Rule 17.1 that **active** **[REASONABLE]** efforts  
20 are not required.

21                             (C) At each hearing at which the court is continuing a previous  
22 order authorizing removal of a non-Indian child, the court shall inquire into  
23 and determine whether the Department has made **active** **[REASONABLE]**  
24 efforts **to provide remedial services and rehabilitative programs** since the  
25 last hearing as required by AS 47.10.086(a) to permit the child's return to the  
26 home, unless the court has previously determined under Rule 17.1 that **active**  
27 **[REASONABLE]** efforts are not required.

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

30             DIRECT COURT RULE AMENDMENT. Rule 10.1(a)(2), Alaska Child in  
31 Need of Aid Rules of Procedure, is amended to read:

1 (2) Effect of a Finding that Department Failed to Make **Active**  
 2 [REASONABLE] Efforts. A finding that the Department has failed to make **active**  
 3 [REASONABLE] efforts is not in itself a ground for returning the child to the home or  
 4 dismissing a petition and does not affect the court's ability to proceed to adjudication.  
 5 However, the court cannot enter a disposition order if the court finds that the  
 6 Department has failed to make **active** [REASONABLE] efforts, unless the court has  
 7 determined under Rule 17.1 that **active** [REASONABLE] efforts are not required. If  
 8 the Department has failed to make required **active** [REASONABLE] efforts, the court  
 9 must postpone disposition until the court finds that **active** [REASONABLE] efforts  
 10 have been made. On motion of a party or on its own motion, the court may order the  
 11 Department to comply with AS 47.10.086(a) within a reasonable time. If the  
 12 Department fails to comply with the order, the court may impose appropriate  
 13 sanctions.

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

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

18 (2) If the court approves the child's removal, the court shall make the  
 19 inquiry and findings required by CINA Rule 10.1. A finding that the Department has  
 20 failed to make **active** [REASONABLE] efforts, or, in cases involving an Indian child,  
 21 that the requirements of 25 U.S.C. 1912(d) or 1915(b) have not been met, is not in  
 22 itself a ground for returning the child to the home and does not affect the court's ability  
 23 to enter an adjudication order and extend temporary custody pending adjudication.

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

26 DIRECT COURT RULE AMENDMENT. Rule 17(c), Alaska Child in Need  
 27 of Aid Rules of Procedure, is amended to read:

28 (c) **Requirements for Disposition.** A disposition hearing may not be held  
 29 before adequate information is available upon which to enter an informed disposition  
 30 order. If the child has been placed outside the home, the court cannot enter a  
 31 disposition order if the court finds [(1) IN CASES INVOLVING A NON-INDIAN



1 CHILD,] that the Department has failed to make **active** [REASONABLE] efforts as  
 2 required by AS 47.10.086(a) **or 25 U.S.C. 1912(d)** to permit the child's return to the  
 3 home, unless the court has determined under Rule 17.1 that **active** [REASONABLE]  
 4 efforts are not required [; OR (2) IN CASES INVOLVING AN INDIAN CHILD,  
 5 THAT THE REQUIREMENTS OF 25 U.S.C. 1912(d) (ACTIVE EFFORTS) HAVE  
 6 NOT BEEN MET]. If the court finds that the Department has failed to make required  
 7 **active** [REASONABLE] efforts [OR THAT THE REQUIREMENTS OF 25 U.S.C.  
 8 1912(d) HAVE NOT BEEN MET], the court must postpone entering a disposition  
 9 order until the court finds that [REASONABLE EFFORTS OR] active efforts have  
 10 been made. The child should remain in temporary custody pending disposition.

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

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

15 (2) The court may approve the removal of the child from the child's  
 16 home only if the court finds **that there is clear and convincing evidence, including**  
 17 **testimony of a qualified expert witness who is not employed by the Department,**  
 18 that continued placement in the home [IS CONTRARY TO THE WELFARE OF THE  
 19 CHILD; AND, IN CASES INVOLVING AN INDIAN CHILD, THAT THERE IS  
 20 CLEAR AND CONVINCING EVIDENCE, INCLUDING THE TESTIMONY OF  
 21 QUALIFIED EXPERT WITNESSES, THAT CUSTODY OF THE INDIAN CHILD  
 22 BY THE PARENT OR INDIAN CUSTODIAN] is likely to result in serious  
 23 emotional or physical damage to the child.

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

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

28 (b) **Proceeding to Determine that Active [REASONABLE] Efforts May**  
 29 **Be Discontinued.** At the permanency hearing required under AS 47.10.080(l), the  
 30 court may find that a continuation of **active** [REASONABLE] efforts is not in the best  
 31 interests of the child under AS 47.10.086(b). Any party recommending such a finding

1 must include that recommendation, specifying the factual basis for it, in its report for  
2 permanency hearing required by CINA Rule 17.2(c) or in a separate motion.

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

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

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

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

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

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

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

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

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

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

31 (2) whether **returning the child to the custody of the child's parent**

1 **or guardian is likely to result in serious emotional or physical damage to** the child  
 2 [SHOULD BE RETURNED TO THE PARENT OR GUARDIAN, AND WHEN];

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

6 (4) whether there is compelling reason that the most appropriate  
 7 placement for the child is in another planned, permanent living arrangement and the  
 8 department has recommended the arrangement under AS 47.14.100(p); the findings  
 9 under this subsection must include the steps that are necessary to achieve the new  
 10 arrangement; and

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

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

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

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

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

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

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

31 (3) if the permanency plan is for the child to remain in out-of-home

1 care, whether returning the child to the custody of the child's parent or guardian  
 2 is likely to result in serious emotional or physical damage to the child [THE  
 3 CHILD'S OUT-OF-HOME PLACEMENT CONTINUES TO BE APPROPRIATE  
 4 AND IN THE BEST INTERESTS OF THE CHILD]; and

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

9 \* **Sec. 48.** 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(c), Alaska Child in Need  
 12 of Aid Rules of Procedure, is amended to read:

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

15 (1) by clear and convincing evidence that

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

18 (i) the parent has not remedied the conduct or  
 19 conditions in the home that place the child at serious  
 20 [SUBSTANTIAL] risk of damage or harm; or

21 (ii) the parent has failed, within a reasonable time, to  
 22 remedy the conduct or conditions in the home that place the child in  
 23 serious [SUBSTANTIAL] risk so that returning the child to the parent  
 24 would place the child at serious [SUBSTANTIAL] risk of emotional  
 25 or physical damage [OR MENTAL INJURY]; or

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

28 (2) by clear and convincing evidence that

29 [(A) THE DEPARTMENT HAS COMPLIED WITH THE  
 30 PROVISIONS OF AS 47.10.086 CONCERNING REASONABLE EFFORTS;  
 31 OR

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

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

8 (4) [IN THE CASE OF AN INDIAN CHILD,] by evidence beyond a  
 9 reasonable doubt, including the testimony of **a** qualified expert **witness not employed**  
 10 **by the Department** [WITNESSES], that continued custody of the child by the parent  
 11 or Indian custodian is likely to result in serious emotional or physical damage to the  
 12 child.

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

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

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

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

27 (B) IN CASES INVOLVING AN INDIAN CHILD, THE]  
 28 court shall restore the child to the child's parent or Indian custodian unless the  
 29 Department proves by clear and convincing evidence, including the testimony  
 30 of **a** qualified expert **witness not employed by the Department**  
 31 [WITNESSES], that the child is likely to suffer serious emotional or physical

1 damage if returned to the custody of the parent or Indian custodian.

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

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

6 \* **Sec. 51.** AS 47.10.086(c), 47.10.086(g), 47.10.088(e), 47.10.990(11), 47.10.990(27), and  
7 47.10.990(30) are repealed.

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

10 TWO-THIRDS VOTE NOT REQUIRED. Because the provisions of Rules 6(a),  
11 6(b)(2) and (3), 10(c)(2) and (3), 10(e)(2), 10.1(a)(1) and (2), 15(f)(2), 17(c), 17(d)(2),  
12 17.1(a), 17.1(b), 17.1(c), 17.1(d)(2) and (3), 17.2(a), and 18(c), Alaska Child in Need of Aid  
13 Rules of Procedure, that are affected by the provisions of this Act were adopted under the  
14 Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of  
15 the State of Alaska, secs. 32 - 45, 48, and 50 of this Act take effect even if secs. 32 - 45, 48,  
16 and 50 of this Act do not receive the two-thirds majority vote normally applicable to changing  
17 court rules under art. IV, sec. 15, Constitution of the State of Alaska.

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

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

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

24 CONDITIONAL EFFECT. AS 47.10.080(l), as amended by sec. 8 of this Act,  
25 AS 47.10.081(b), as amended by sec. 11 of this Act, and AS 47.10.142(d), as amended by sec.  
26 23 of this Act take effect only if secs. 8, 11, and 23 of this Act receive the two-thirds majority  
27 vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.