

HOUSE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE WILSON

Introduced: 2/22/17

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the right to demand a jury trial in cases involving termination of
2 parental rights; amending Rules 18(b), 18(e), and 18(g), Alaska Child in Need of Aid
3 Rules of Procedure."

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

5 * **Section 1.** AS 47.10 is amended by adding a new section to read:

6 **Sec. 47.10.007. Right to demand jury trial in certain cases.** A party has the
7 right to demand a jury trial for a hearing under this chapter on a petition to terminate
8 parental rights. If a hearing to adjudicate whether a child is a child in need of aid is
9 consolidated with a termination hearing, the right to trial by jury under this section
10 applies only to whether parental rights should be terminated after the court has
11 adjudicated that the child is a child in need of aid. In this section, "party" has the
12 meaning given in Rule 2, Alaska Child in Need of Aid Rules of Procedure.

13 * **Sec. 2.** AS 47.10.088(a) is amended to read:

14 (a) Except as provided in AS 47.10.080(o), the rights and responsibilities of

1 the parent regarding the child may be terminated for purposes of freeing a child for
 2 adoption or other permanent placement if the court, **or, in a jury trial, the jury,** finds
 3 by clear and convincing evidence that

4 (1) the child has been subjected to conduct or conditions described in
 5 AS 47.10.011;

6 (2) the parent

7 (A) has not remedied the conduct or conditions in the home
 8 that place the child at substantial risk of harm; or

9 (B) has failed, within a reasonable time, to remedy the conduct
 10 or conditions in the home that place the child in substantial risk so that
 11 returning the child to the parent would place the child at substantial risk of
 12 physical or mental injury; and

13 (3) the department has complied with the provisions of AS 47.10.086
 14 concerning reasonable efforts.

15 * **Sec. 3.** AS 47.10.088(b) is amended to read:

16 (b) In making a determination under (a)(2) of this section, the court, **or, in a**
 17 **jury trial, the jury,** may consider any fact relating to the best interests of the child,
 18 including

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

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

23 (3) the harm caused to the child;

24 (4) the likelihood that the harmful conduct will continue; and

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

26 * **Sec. 4.** AS 47.10.088(c) is amended to read:

27 (c) In a proceeding under this chapter involving termination of the parental
 28 right of a parent, the court, **or, in a jury trial, the jury,** shall consider the best
 29 interests of the child.

30 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

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

3 (b) **Purpose of Hearing.** The termination hearing is a disposition hearing to
4 the court, or, if demanded by a party, a jury, on the question of whether the parental
5 rights to an adjudicated child in need of aid should be terminated. Upon a showing of
6 good cause and with adequate notice to the parties, an adjudication hearing and a
7 termination hearing may be consolidated.

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

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

12 (e) **Trial.** A trial on the petition to terminate parental rights shall be held
13 within six months after the date on which the petition to terminate parental rights is
14 filed, unless the court finds that good cause is shown for a continuance. When
15 determining whether to grant a continuance for good cause, the court shall take into
16 consideration the age of the child and the potential adverse effect that the delay may
17 have on the child. The court shall make written findings when granting a continuance.
18 A party has the right to demand a jury trial for a hearing on a petition to
19 terminate parental rights.

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

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

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

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

30 APPLICABILITY. This Act applies to trials on petitions to terminate parental rights
31 that are filed on or after the effective date of this Act.

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

3 TWO-THIRDS VOTE NOT REQUIRED. Sections 5 - 7 of this Act take effect
4 without needing to meet the two-thirds vote requirement normally applicable to changing
5 court rules under art. IV, sec. 15, Constitution of the State of Alaska because

6 (1) the provisions of Rule 18(b), 18(e), and 18(g), Alaska Child in Need of Aid
7 Rules of Procedure, that are affected by the provisions of this Act were adopted under the
8 Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of
9 the State of Alaska;

10 (2) AS 47.10.007, enacted by sec. 1 of this Act, establishes a substantive right,
11 and the changes made in secs. 2 - 7 of this Act are technical changes necessary to give effect
12 to the substantive right established in AS 47.10.007, enacted by sec. 1 of this Act.