

# MEMORANDUM

State of Alaska  
Department of Law

To: Honorable Loren Leman  
Lieutenant Governor

Date: April 20, 2004

File No.: 663-04-0191

Tel. No.: 465-3600

From: Sarah J. Felix  
Assistant Attorney General  
Labor and State Affairs - Juneau

Re: Initiative application re: rights  
of children and their families  
where children are in state  
custody

## I. INTRODUCTION AND SUMMARY

You have asked us to review an application for an initiative petition that appears to have two titles: "Family and Children's Rights Bill" and "An Initiative requiring the State of Alaska to vote on an Act providing children and their family specific rights when children are in the custody of State Children services."<sup>1</sup> We have completed our review and find that the application does not comply with the constitutional and statutory provisions governing the use of the initiative. Under these circumstances we recommend that you do not certify the application.

## II. SUMMARY OF THE PROPOSED BILL

The bill proposed by this initiative application appears to be divided into five parts, marked by Roman numerals I-V. Part I of the bill contains six sections. Section one of this part would amend AS 47.10 concerning Children's Proceedings in cases of Children in Need of Aid (CINA). The bill proposes to add the right to demand a jury trial on a petition to terminate parental rights, impose a time-limit on when the trial would be held, and to direct the legislature to amend the court rules to implement these requirements.

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<sup>1</sup> The first page of the proposed bill contains the following language in bold print at the top of the page:

FAMILY AND CHILDREN'S RIGHTS BILL

AN INITIATIVE REQUIRING THE STATE OF ALASKA TO VOTE ON AN ACT  
PROVIDING CHILDREN AND THEIR FAMILY SPECIFIC RIGHTS WHEN  
CHILDREN ARE IN THE CUSTODY OF STATE CHILDREN SERVICES

However, the Alaska Constitution and the Alaska Statutes clearly prohibit the use of the initiative to amend court rules. The Alaska Constitution, art. XI, sec. 7 provides that “the initiative shall not be used to...create courts, define the jurisdiction of courts or prescribe their rules.” Similarly, AS 15.45.010 provides that “an initiative may not be proposed to...create courts, to define the jurisdiction of courts, or prescribe their rules.”

Sections two and three of part I of the bill also propose to amend AS 47.10, on Children’s Proceedings in CINA cases. Section four of the bill proposes to amend AS 47.14.100(e) on the powers and duties of the department of health and social services over the care of a child, and add a new section to AS 47.14.100. Section six of the bill proposes a definition for the terms “party”, “Care giver,” “qualifications,” “Emergency situation,” “Prospective Adoptive Home,” and “Sanitized.”

Part II of the bill sets out a severability clause. Part III of the bill attempts to address competing initiatives. Part IV sets out a “purpose and construction” clause. Part V sets out an effective date clause.

We have provided a copy of the proposed bill to the supervising attorney of the Human Services section of the Attorney General’s office for review and comment as the bill relates to matters handled by that section. The section supervisor supplied the following comments on the bill proposed by this initiative application. This proposed bill, if enacted, would impact a very complex and detailed regulatory system already in place for CINA proceedings, and for placement of children in foster homes. The bill would also significantly expand the group of people the Department of Health and Social Services must consider for placement of children. There would be a significant fiscal impact because of the right to demand a jury trial and the necessity of videotaping most interviews of children. It would impose significant new duties on social workers and give more power to the courts to determine the adoptive placement of children.

### **III. ANALYSIS**

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either “certify it or notify the initiative committee of the grounds for denial.” The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080.

#### **A. The Form of the Application**

The form of an initiative application is prescribed in AS 15.45.030, which provides:

The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

The application is somewhat unusual, as it was submitted on a State of Alaska, Division of Election, Referendum Petition Application Form. (Emphasis added.) However, it appears from the accompanying documents that the application is an application for an initiative. There is a copy of the proposed bill to be initiated included with the application. There are three people designated to be “Referendum Committee Sponsors,” and again, from the context, these appear to be the initiative committee sponsors. The signature pages for the application contain the following statement at the top of each page: “The following registered Alaskan voters sign as sponsors for the “Family and Children’s Rights Bill” and have signed with proposed initiative attached or with initiate included on the back side of this signature page.” Staff of your office has made a handwritten note on the first page of the signature pages providing: “Note – text of Act was printed on back of each signature page.”

Although there are defects in the application, these appear to be relatively minor. The Alaska Supreme Court has held that the people’s exercise of the initiative power is to be liberally construed. *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974). Therefore, the application appears to satisfy the first three requirements of AS 15.45.030.<sup>2</sup> With respect to the fourth requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

## **B. The Form of the Proposed Bill**

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, “Be it enacted by the People of the State of Alaska”; and (4) the bill not include prohibited subjects. The prohibited subjects -- dedication of

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<sup>2</sup> However, if the sponsors decide to resubmit this initiative, we suggest that the petition signature pages contain language tracking the requirements set out in AS 15.45.030(2) (“a statement that the sponsors are qualified voters who signed the application with proposed bill attached.”) We also suggest that the sponsors use the “initiative petition” application form, rather than the referendum petition form if they resubmit this initiative.

revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation -- are listed in AS 15.45.010 and in article XI, section 7 of the Alaska Constitution. Constitutional amendments are also a prohibited subject. *Starr v. Hagglund*, 374 P.2d 316, 317 n.2 (Alaska 1962). Cf. *Whitson v. Anchorage*, 608 P.2d 759, 762 (Alaska 1980). Although *Whitson* involved a municipal initiative in conflict with a state law, we have previously taken the position that its holding is equally applicable to a proposed initiative that is plainly inconsistent with a provision of the Alaska Constitution. See e.g. 1990 Inf. Op. Att'y Gen. (Feb. 5; 663-90-0190); 1991 Inf. Op. Att'y Gen. (Nov. 7; 663-91-0527).

We do not address whether the form of the bill satisfies the first two requirements of AS 15.45.040, because it is unnecessary to address this issue given our conclusion that the application should be rejected on other grounds.<sup>3</sup> On its face, the bill satisfies the third requirement of AS 15.45.040. However, considering the fourth requirement, as the bill to be initiated concerns amendment of court rules, it raises the issue of whether or not the bill includes a prohibited subject. As you know, the lieutenant governor is obligated to assure that a proposed initiative does not violate the restrictions of article XI, section 7 of the Alaska Constitution. See, e.g., *Pullen v. Ulmer*, 923 P.2d 54 (Alaska 1996). In general, other constitutional infirmities must await passage of the initiative by the voters and review by the courts. Therefore, we must determine whether the bill to be initiated would violate the restriction against amending court rules set out in article XI, section 7, of the Alaska Constitution.

As we explained in the section on the summary of the proposed bill above, the initiative on its face proposes to require that court rules be amended. It is clear that the bill to be initiated includes a prohibited subject under the Alaska Constitution, art. XI, sec. 7, and AS 15.45.010. We have in the past rejected an initiative application that attempted to define the jurisdiction of courts. 1987 Inf. Opp. Att'y Gen. (Mar. 23; 663-87-0323). Therefore, the bill is not in the required form and we recommend that you not certify the initiative application.

### C. Conclusion

For the above reasons, we find that the proposed bill is not in the proper form, and therefore recommend that you do not certify this initiative application.

If you decide to reject the initiative, we suggest that you give notice to all interested persons and groups who may be aggrieved by your decision. AS 15.45.240.

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<sup>3</sup> However, we note that the presence of two titles on the proposed bill is confusing. If the sponsors seek to correct and resubmit this initiative application we suggest that they set out only one title for the bill.

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This notice will set in motion a 30-day appeal period during time which these persons must contest your action or be forever barred. *McAlpine v. University*, 762 P.2d 81, 86 (Alaska 1988).

Please contact me if we can be of further assistance to you on this matter.

SJF:rjg

cc: Laura Glaiser, Director  
Division of Elections  
Office of the Lieutenant Governor

Dianne Olson, Supervising Assistant Attorney General  
Human Services Section  
Attorney General's Office - Anchorage