

HOUSE BILL NO. 54

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA AND THOMPSON, Millett, Tuck

Introduced: 1/16/13

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the identification, location, and notification of specified family
2 members of a child who is in state custody."

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

4 * **Section 1.** AS 47.10.030(b) is amended to read:

5 (b) In all cases under this chapter, the child, each parent, the tribe, foster
6 parent or other out-of-home care provider, guardian, and guardian ad litem of the child
7 and, subject to (d) and (e) of this section, each **adult family member**
8 **[GRANDPARENT]** of the child shall be given notice **as provided under (f) of this**
9 **section** [ADEQUATE TO GIVE ACTUAL NOTICE OF THE PROCEEDINGS AND
10 THE POSSIBILITY OF TERMINATION OF PARENTAL RIGHTS AND
11 RESPONSIBILITIES, TAKING INTO ACCOUNT EDUCATION AND
12 LANGUAGE DIFFERENCES THAT ARE KNOWN OR REASONABLY
13 ASCERTAINABLE BY THE PETITIONER OR THE DEPARTMENT. THE
14 NOTICE OF THE HEARING MUST CONTAIN ALL NAMES BY WHICH THE

1 CHILD HAS BEEN IDENTIFIED]. Notice shall be given in the manner appropriate
 2 under rules of civil procedure for the service of process in a civil action under Alaska
 3 law or in any manner the court by order directs. Proof of the giving of the notice shall
 4 be filed with the court before the petition is heard. The court may also subpoena the
 5 parent of the child, or any other person whose testimony may be necessary at the
 6 hearing. A subpoena or other process may be served by a person authorized by law to
 7 make the service, and, where personal service cannot be made, the court may direct
 8 that service of process be in a manner appropriate under rules of civil procedure for
 9 the service of process in a civil action under Alaska law or in any manner the court
 10 directs.

11 * **Sec. 2.** AS 47.10.030(d) is amended to read:

12 (d) Except as provided in (e) of this section, the department shall give advance
 13 written notice of all court hearings in a child's case to **each adult family member** [A
 14 GRANDPARENT] of the child [IF]

15 (1) **identified through due diligence exercised under AS 47.10.035;**

16 (2) **who** [THE GRANDPARENT] has contacted the department,
 17 provided evidence acceptable to the department of being the child's **adult family**
 18 **member** [GRANDPARENT], requested notice about the hearings in the child's case,
 19 and provided the department with a current mailing address; or

20 (3) **whom** [(2)] the department **otherwise knows to be an adult**
 21 **family member of the child and whose** [IS AWARE THAT THE CHILD HAS A
 22 GRANDPARENT AND THE GRANDPARENT'S] mailing address is on file with the
 23 department.

24 * **Sec. 3.** AS 47.10.030(e) is amended to read:

25 (e) Notwithstanding (d) of this section, the department is not required to give
 26 advance notice to **an adult family member** [A GRANDPARENT] about hearings in a
 27 child's case if the **adult family member** [GRANDPARENT]

28 (1) has been convicted of a crime in which the child was the victim;

29 [OR]

30 (2) is prohibited by a court order from having contact with the child;

31 **or**

1 **(3) has requested that the department refrain from providing the**
 2 **notice.**

3 * **Sec. 4.** AS 47.10.030 is amended by adding a new subsection to read:

4 (f) Notice provided under (d) of this section must

5 (1) be adequate to give actual notice of the proceedings and the
 6 possibility of termination of parental rights and responsibilities, taking into account
 7 education and language differences that are known or reasonably ascertainable by the
 8 petitioner or the department;

9 (2) contain all names by which the child has been identified;

10 (3) specify that the child has been or is being removed from the
 11 custody of the parent or parents of the child;

12 (4) explain the options the adult family member has under federal,
 13 state, and local law to participate in the care and placement of the child, including any
 14 options that may be lost by failing to respond to the notice;

15 (5) describe the requirements under state law to become a foster home
 16 for the child and the additional services and support that are available for children
 17 placed in foster care;

18 (6) if available, describe financial assistance available to support the
 19 child in the adult family member's home.

20 * **Sec. 5.** AS 47.10 is amended by adding a new section to read:

21 **Sec. 47.10.035. Placement of a child with noncustodial parent or adult**
 22 **family member; due diligence.** (a) Within 30 days after removal of a child from the
 23 child's home and placement of the child in out-of-home care under this chapter, and as
 24 necessary, the department shall exercise due diligence to identify and locate
 25 noncustodial parents and all adult family members who might provide an appropriate
 26 home for the child. Due diligence must include use of available electronic search
 27 technology, including interstate and intrastate communications networks.

28 (b) The department shall include the names of noncustodial parents and adult
 29 family members who are identified under (a) of this section in the department's report
 30 to the court at all hearings concerning placement in or transfer of a child to out-of-
 31 home care for any reason, including an emergency, temporary, permanent, or adoptive

1 placement under this chapter.

2 (c) A supervisor of the division of the department with jurisdiction over
3 children in need of aid shall certify in writing the due diligence of the department
4 exercised under (a) of this section. The information provided under this subsection
5 shall be submitted to the court for consideration before a hearing concerning the
6 placement of a child.

7 * **Sec. 6.** AS 47.10.070(e) is amended to read:

8 (e) **An adult family member** [THE GRANDPARENTS] of the child and an
9 out-of-home care provider may attend hearings that are otherwise closed to the public
10 under (c) of this section **if the family member is not excluded for reasons provided**
11 **in AS 47.10.030(e)**. However, the court shall limit the presence of these persons in a
12 hearing closed to the public to the time during which the person's testimony is being
13 given if the court determines that the limitation is necessary under (c)(3) of this
14 section.

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

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

17 (1) order the child committed to the department for placement in an
18 appropriate setting, **after consideration of due diligence exercised by the**
19 **department to identify and locate noncustodial parents and adult family**
20 **members under AS 47.10.035,** for a period of time not to exceed two years or in any
21 event not to extend past the date the child becomes 19 years of age, except that the
22 department, the child, or the child's guardian ad litem may petition for and the court
23 may grant in a hearing

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

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

31 (2) order the child released to a parent, adult family member, or, **after**

1 **consideration of due diligence exercised by the department to identify and locate**
 2 **noncustodial parents and adult family members under AS 47.10.035,** guardian of
 3 the child or to another suitable person, and, in appropriate cases, order the parent,
 4 adult family member, guardian, or other person to provide medical or other care and
 5 treatment; if the court releases the child, it shall direct the department to supervise the
 6 care and treatment given to the child, but the court may dispense with the department's
 7 supervision if the court finds that the adult to whom the child is released will
 8 adequately care for the child without supervision; the department's supervision may
 9 not exceed two years or in any event extend past the date the child reaches 19 years of
 10 age, except that the department or the child's guardian ad litem may petition for and
 11 the court may grant in a hearing

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

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

18 (3) order, under the grounds specified in (o) of this section or
 19 AS 47.10.088, the termination of parental rights and responsibilities of one or both
 20 parents and commit the child to the custody of the department, and the department
 21 shall report quarterly to the court on efforts being made to find a permanent placement
 22 for the child.

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) and when the child should be returned to the parent or

1 guardian;

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

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

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

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

14 (A) whether the department has made the reasonable efforts
15 required under AS 47.10.086 to offer appropriate family support services to
16 remedy the parent's or guardian's conduct or conditions in the home that made
17 the child a child in need of aid under this chapter;

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

21 (C) if the permanent plan is for the child to remain in out-of-
22 home-care, whether the child's out-of-home placement continues to be
23 appropriate and in the best interests of the child; [AND]

24 (D) whether the department has made reasonable efforts to
25 finalize the permanent plan for the child; **and**

26 **(E) whether the department has exercised due diligence to**
27 **identify and locate noncustodial parents and adult family members for**
28 **permanent placement under AS 47.10.035;**

29 (5) the court shall hold a hearing to review the permanent plan at least
30 annually until successful implementation of the plan; if the plan approved by the court
31 changes after the hearing, the department shall promptly apply to the court for another

1 permanency hearing, and the court shall conduct the hearing within 30 days after
2 application by the department.

3 * **Sec. 9.** AS 47.10.080 is amended by adding a new subsection to read:

4 (x) The court shall recognize a presumption that placement of a child with an
5 adult relative is in a child's best interest when the court orders placement in or transfer
6 of the child to out-of-home care.

7 * **Sec. 10.** AS 47.10.088(i) is amended to read:

8 (i) The department shall concurrently identify, recruit, process, and approve a
9 qualified person or family for an adoption whenever a petition to terminate a parent's
10 rights to a child is filed. Before identifying a placement of the child in an adoptive
11 home, the department shall **exercise due diligence under AS 47.10.035 to identify**
12 **and locate** [ATTEMPT TO LOCATE] all living adult family members of the child
13 and, if an adult family member expresses an interest in adopting the child, investigate
14 the adult family member's ability to care for the child. The department shall provide to
15 all adult family members of the child located by the department written notice of the
16 adult family members' rights under this chapter and of the procedures necessary to
17 gain custody of the child, but the department's obligation to provide written notice
18 under this subsection does not apply to a parent of the child whose parental rights are
19 being or have been terminated or to an adult family member who is known by the
20 department to be ineligible for a foster care license under AS 47.32 and regulations
21 adopted under AS 47.32. If an adult family member of the child requests that the
22 department approve the adult family member for an adoption, the department shall
23 approve the request unless there is good cause not to approve the adoption. If the court
24 issues an order to terminate under (j) of this section, the department shall report within
25 30 days on the efforts being made to recruit a permanent placement for the child if a
26 permanent placement was not approved at the time of the trial under (j) of this section.
27 The report must document recruitment efforts made for the child.

28 * **Sec. 11.** AS 47.10.142(f) is amended to read:

29 (f) When a **child** [MINOR] is committed to the department for temporary
30 placement under (e) of this section, the court order shall, **after taking into**
31 **consideration the due diligence exercised to identify and locate adult family**

1 **members and noncustodial parents under AS 47.10.035,** specify the terms,
2 conditions, and duration of placement. If the court orders the **child** [MINOR] returned
3 to the custody of the **child's** [MINOR'S] parents or guardian under (e) of this section
4 after a hearing held on a petition filed under AS 47.10.141(f), the court shall specify
5 the terms and conditions that must be followed by the **child and the child's** [MINOR
6 AND THE MINOR'S] parents or guardian. The court shall require the **child** [MINOR]
7 to remain in the placement provided by the department and shall clearly state in the
8 order the consequences of violating the order, including detention under
9 AS 47.10.141(c).