

CS FOR SENATE BILL NO. 112(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 2/24/16

Referred: Judiciary

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing procedures related to a petition or proxy for adoption or**
2 **guardianship of a child in state custody; adding a definition of 'proxy for a formal**
3 **petition'; amending Rules 5 and 6(a), Alaska Adoption Rules, and adding Rule 17.3,**
4 **Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."**

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

6 *** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that, because of
9 the number of Alaska Native children in state custody and the need to preserve the placement
10 preferences outlined in the Indian Child Welfare Act (25 U.S.C. 1901 - 1963) for purposes of
11 adoption or legal guardianship of an Indian child, there is a need to provide the petitioners in
12 adoption and guardianship proceedings with additional flexibility in the initiation of adoption
13 or guardianship proceedings for a child in state custody.

14 (b) It is the intent of the legislature to authorize a more appropriate adoption or legal

guardianship process for an Indian child who is in state custody under the Indian Child Welfare Act and to allow adoption proceedings to take place as part of an ongoing child-in-need-of-aid proceeding. The legislature does not intend to affect, nor do the provisions of this Act apply to,

- (1) a tribal adoption proceeding performed under a tribe's inherent authority;
- (2) a tribal adoption proceeding following a transfer of jurisdiction to the tribe of a foster care placement, termination of parental rights, or adoption of a child under 25 U.S.C. 1911(b);
- (3) an adoption under tribal customary adoption; or
- (4) adoptions or guardianships not a part of child-in-need-of-aid proceeding.

*** Sec. 2.** AS 13.26.050 is amended by adding a new subsection to read:

(b) The venue for a guardianship proceeding for a child in state custody under AS 47.10 is the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111.

*** Sec. 3.** AS 13.26.060 is amended by adding a new subsection to read:

(e) A petitioner seeking appointment as the guardian of a minor in state custody under AS 47.10 shall file the petition in the court where the child-in-need-of-aid proceedings are pending as required under AS 47.10.111.

*** Sec. 4.** AS 25.23.030 is amended by adding a new subsection to read:

(d) The venue for an adoption proceeding for a child in state custody under AS 47.10 is the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111.

*** Sec. 5.** AS 25.23.080 is amended by adding a new subsection to read:

(d) A petitioner petitioning to adopt a child in state custody under AS 47.10 shall file the petition for adoption in the court where the child-in-need-of-aid proceedings are pending, as required under AS 47.10.111.

*** Sec. 6.** AS 25.23.100(a) is amended to read:

(a) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition unless the petition is held in abeyance under AS 47.10.111. At least 20 days before the date of hearing, the petitioner shall give notice of the filing of the petition and of the time and place of hearing to (1) the

department, unless the adoption is by a stepparent of the child; (2) any agency or person whose consent to the adoption is required by this chapter, but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in AS 25.23.050(a)(1) - (3), (6), (8), and (9), but who has not consented.

The notice to the department shall be accompanied by a copy of the petition.

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

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

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

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

(A) and when the child should be returned to the parent or guardian;

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

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

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

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

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

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

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

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

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

(6) in a hearing to review the permanent plan under AS 47.10.111(c), the court shall make written findings related to whether the person who filed the petition or proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable.

* **Sec. 8.** AS 47.10 is amended by adding a new section to read:

Sec. 47.10.111. Petition or proxy for adoption or guardianship of a child in state custody. (a) If a person seeks adoption or appointment as legal guardian of a child in state custody under this chapter, the court shall hear the adoption or guardianship proceedings in the child-in-need-of-aid proceedings relating to the child. A person may initiate proceedings for the adoption or legal guardianship of a child in state custody under this chapter by filing with the court

(1) a petition for adoption that meets the requirements of AS 25.23.080;

(2) a petition to be appointed legal guardian that meets the requirements of AS 13.26.060; or

(3) in a case involving an Indian child, a proxy for a formal petition under this section.

(b) If a person files a petition or proxy for adoption or legal guardianship of a

child under (a) of this section before the court approves adoption or legal guardianship as the permanent plan for the child under AS 47.10.080(l)(2), the court shall hold the petition or proxy in abeyance until after the court has approved adoption or legal guardianship as the permanent plan for the child under AS 47.10.080(l).

(c) If a person files a petition or proxy for adoption or legal guardianship of a child who is in out-of-home placement, and the person who files the petition or proxy does not have custody of the child at the time the person files the petition or proxy, the department shall, not more than 60 days after the petition or proxy is filed, submit a permanent plan to the court. The court shall hold a hearing to review the permanent plan for the child under AS 47.10.080(l) not more than 90 days after the petition or proxy is filed.

(d) A person who files a petition or proxy for adoption or legal guardianship of a child under this section does not become a party to the child-in-need-of-aid proceedings. A person who files a petition or proxy for adoption or legal guardianship of a child under this section may only participate in proceedings under this chapter that concern the person's petition or proxy.

(e) A parent who has consented to adoption under AS 25.23.060, who has relinquished parental rights under AS 47.10.089 or whose parental rights have been terminated under AS 47.10.080(o) or 47.10.088, is not a party to the adoption or guardianship proceedings under this section.

(f) Except as provided in this section, the requirements of AS 25.23.005 - 25.23.240 apply to a petition or proxy for adoption filed under this section, and the requirements of AS 13.26.030 - 13.26.085 apply to a petition or proxy for legal guardianship filed under this chapter.

(g) In this section,

(1) "extended family member" has the meaning given in 25 U.S.C. 1903;

(2) "proxy for a formal petition" or "proxy" means a

(A) request by an extended family member, a member of the Indian child's tribe, or a family friend interested in immediate permanent placement and adoption or legal guardianship of an Indian child made at any

1 court hearing;

2 (B) request by an extended family member, a member of the
3 Indian child's tribe, or a family friend interested in immediate permanent
4 placement and adoption or legal guardianship of an Indian child, conveyed to
5 the department by telephone, mail, facsimile, electronic mail, or in person;

6 (C) request by the Indian child's tribe, or a tribe in which the
7 Indian child is eligible for enrollment, made to the department on behalf of a
8 relative or tribal member; or

9 (D) proxy for a formal petition as established by the department
10 in regulation.

11 (h) The department may adopt regulations to implement this section.

12 * **Sec. 9.** AS 47.10.990(1) is amended to read:

13 (1) "adult family member" means a person who is 18 years of age or
14 older and who is

15 (A) related to the child as the child's grandparent, aunt, uncle,
16 or sibling; [OR]

17 (B) the child's sibling's legal guardian or parent; **or**

18 **(C) in the case of an Indian child, an extended family**
19 **member as defined in 25 U.S.C. 1903;**

20 * **Sec. 10.** AS 47.10.990(10) is amended to read:

21 (10) "family member" means a person of any age who is

22 (A) related to the child as the child's grandparent, aunt, uncle,
23 or sibling; [OR]

24 (B) the child's sibling's legal guardian or parent; **or**

25 **(C) in the case of an Indian child, an extended family**
26 **member as defined in 25 U.S.C. 1903;**

27 * **Sec. 11.** AS 47.10.990 is amended by adding new paragraphs to read:

28 (33) "family friend" includes, in the case of an Indian child, a member
29 of the Indian child's tribe;

30 (34) "Indian child" has the meaning given in 25 U.S.C. 1903;

31 (35) "Indian child's tribe" has the meaning given in 25 U.S.C. 1903.

1 * **Sec. 12.** AS 47.14.100(t) is amended by adding a new paragraph to read:

2 (3) "family friend" has the meaning given in AS 47.10.990.

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

5 DIRECT COURT RULE AMENDMENT. Rule 5, Alaska Adoption Rules, is
6 amended by adding a new subsection to read:

7 (d) A petition to adopt a child in state custody under AS 47.10 must be
8 brought in the superior court where the child-in-need-of-aid proceeding is pending as
9 provided under AS 47.10.111.

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

12 DIRECT COURT RULE AMENDMENT. Rule 6(a)(1), Alaska Adoption
13 Rules, is amended to read:

14 (1) An adoption petition must include the information required by
15 AS 25.23.080, except as provided under (a)(4) of this rule. A separate petition must
16 be filed for each person to be adopted. If the proceeding involves a minor, the petition
17 must also state whether the minor to be adopted is an Indian child and whether any
18 other court cases involving the minor are known to be pending.

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

21 DIRECT COURT RULE AMENDMENT. Rule 6(a), Alaska Adoption Rules,
22 is amended by adding a new paragraph to read:

23 (4) A proceeding to adopt a child in state custody under AS 47.10 must
24 comply with AS 47.10.111. A proceeding to adopt a child in state custody under
25 AS 47.10 shall be heard as part of the child-in-need-of-aid proceeding.

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

28 DIRECT COURT RULE AMENDMENT. The Alaska Child in Need of Aid
29 Rules of Procedure are amended by adding a new rule to read:

30 **Rule 17.3. Petition or proxy for adoption or legal guardianship of a child**
31 **under AS 47.10.111.** A petitioner may file a petition, or, in the case of an Indian

child, a proxy, for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 47.10 in the same case. If a petitioner files a petition or proxy for adoption or legal guardianship of a child before the court approves adoption or legal guardianship as the permanent plan for the child, the court shall hold the petition or proxy for adoption or legal guardianship in abeyance until the court approves adoption or legal guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(l). If the child is in an out-of-home placement but is not in the custody of the petitioner at the time the petition or proxy is filed, the Department shall, not more than 60 days after the petition or proxy is filed, submit a permanent plan to the court, and the court shall hold a hearing within 90 days to review the permanent plan under Rule 17.2 and AS 47.10.080(l). At the hearing, the court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings related to whether the petitioner is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable.

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

APPLICABILITY. AS 13.26.050(b), added by sec. 2 of this Act, AS 13.26.060(e), added by sec. 3 of this Act, AS 25.23.030(d), added by sec. 4 of this Act, AS 25.23.080(d), added by sec. 5 of this Act, AS 25.23.100(a), as amended by sec. 6 of this Act, AS 47.10.080(l), as amended by sec. 7 of this Act, AS 47.10.111, added by sec. 8 of this Act, and secs. 13 - 16 of this Act apply to proceedings for adoption or legal guardianship of a child in state custody under AS 47.10 filed on or after the effective date of secs. 2 - 16 of this Act.

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

TRANSITION: REGULATIONS. The Department of Health and Social Services may adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

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

1 CONDITIONAL EFFECT. This Act takes effect only if secs. 13 - 16 of this Act
2 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
3 the State of Alaska.

4 * **Sec. 20.** Section 18 of this Act takes effect January 1, 2017.