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Glover
3/17/16

CS FOR SENATE BILL NO. 112(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that, because of the number of Alaska Native children in state custody, there is a need to provide an individual seeking immediate permanent placement of an Indian child in state custody with additional flexibility to preserve and apply the placement preferences outlined in the Indian Child Welfare Act (25 U.S.C. 1901 - 1963) with respect to that individual.

(b) It is the intent of the legislature to create mechanisms to achieve permanency for a child in state custody by incorporating adoption, guardianship, or civil custody into ongoing

child-in-need-of-aid proceedings. 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

(1) the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or

(2) the judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceeding and no party objects.

* **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 either the court where the child-in-need-of-aid proceedings are pending or the judicial district in which the petitioner resides, as required under AS 47.10.111 and AS 13.26.050(b).

* **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

(1) the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or

(2) the judicial district in which the petitioner resides if the petitioner provides notice to all of the parties to the child-in-need-of-aid proceeding and no party objects.

* **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 either the court where the child-in-need-of-aid proceedings are pending or the judicial district in which the petitioner resides, as required under AS 47.10.111 and AS 25.23.030(d).

* **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 25.24.150(a) is amended to read:

(a) In an action for divorce or for legal separation, [OR] for placement of a child when one or both parents have died, **or as part of a child-in-need-of-aid proceeding for a child in state custody under AS 47.10,** the court may, if it has jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child. **The court shall hear custody proceedings related to a child in state custody under AS 47.10 as part of the child-in-need-of-aid proceedings, as provided under AS 47.10.113, unless notice is provided to all parties to the child-in-need-of-aid proceedings and no party objects to hearing the custody proceedings in another appropriate forum.**

* **Sec. 8.** 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) or 47.10.112(c), the court shall make written findings related to whether

(A) 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; and

(B) if 25 U.S.C. 1915(a) applies, the current placement is in compliance with or whether there is good cause to deviate from the placement preferences.

* **Sec. 9.** AS 47.10 is amended by adding new sections to read:

Sec. 47.10.111. Petition for adoption or guardianship of a child in state custody. (a) Except as provided under AS 13.26.050(b)(2) and AS 25.23.030(d)(2), 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 as part of 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 a petition

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

(2) to be appointed legal guardian that meets the requirements of AS 13.26.060.

(b) If a person files a petition 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 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 for adoption or legal guardianship of a child who is in out-of-home placement, and the child is not placed with the person who files the

petition at the time the person files the petition, the department shall, not more than 60 days after the petition 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 is filed.

(d) A person who files a petition 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 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.

(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 for adoption filed under this section, and the requirements of AS 13.26.030 - 13.26.085 apply to a petition for legal guardianship filed under this chapter.

Sec. 47.10.112. Proxy for a formal petition for adoption or legal guardianship. (a) A person seeking the immediate permanent placement of an Indian child in state custody under this chapter may file a proxy for a formal petition for adoption or legal guardianship of the child. A proxy for a formal petition for adoption preserves the placement preferences of 25 U.S.C. 1915(a) with respect to the person who files the proxy. A proxy for a formal petition for legal guardianship preserves the placement preferences of 25 U.S.C. 1915(b) with respect to the person who files the proxy. The court shall hear proceedings related to the proxy as part of the child-in-need-of-aid proceedings relating to the child.

(b) A proxy filed under this section does not initiate proceedings for adoption or legal guardianship. A person seeking to adopt a child in state custody must file a petition for adoption as required under AS 25.23. A person seeking to be appointed legal guardian of a child in state custody must file a petition for appointment as required under AS 13.26.030 - 13.26.085.

(c) If a person files a proxy for a formal petition for adoption or legal guardianship of an Indian child who is in out-of-home placement, and the child is not placed with the person who files the proxy at the time the person files the proxy, the department shall, not more than 60 days after the 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(I) not more than 90 days after the proxy is filed.

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

(e) A person who files a proxy for a formal petition for adoption or legal guardianship of an Indian child is not entitled to the appointment of a lawyer at public expense.

(f) A person who receives a proxy for a formal petition for adoption or legal guardianship shall file the proxy with the court.

(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 other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child made at any court hearing;

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

(C) request by the Indian child's tribe, or a tribe in which the Indian child is eligible for enrollment, or a tribe in which the Indian child's

biological parent is a member, made to the department on behalf of an extended family member, member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child;

(D) request by the Indian child's biological parent, individually or through counsel, made to the department on behalf of an extended family member, member of the Indian child's tribe, or other Indian family member interested in immediate permanent placement and adoption or legal guardianship of an Indian child; or

(E) proxy for a formal petition as established by the department in regulation.

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

Sec. 47.10.113. Civil custody proceedings. (a) Except as provided in AS 25.24.150(a), a court shall hear a request to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter as part of the child-in-need-of-aid proceedings relating to the child.

(b) A person who files a request for an order to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter is not entitled to the appointment of a lawyer at public expense under this section.

(c) Except as provided in this section, the requirements of AS 25.24.010 - 25.24.180 apply to a request under this section to make, modify, or vacate an order for the custody of or visitation with a minor child in state custody under this chapter.

* **Sec. 10.** AS 47.10.990(1) is amended to read:

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

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

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

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

1 * **Sec. 11.** AS 47.10.990(10) is amended to read:

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

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

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

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

8 * **Sec. 12.** AS 47.10.990 is amended by adding new paragraphs to read:

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

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

11 * **Sec. 13.** AS 47.14.100(t) is amended by adding a new paragraph to read:

12 (3) "family friend," as used in (e) of this section, includes, in the case
13 of an Indian child, a member of the Indian child's tribe, a member of the tribe in which
14 the child's biological parent is a member, and another Indian family member.

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

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

19 (d) A petition to adopt a child in state custody under AS 47.10 must be
20 brought in the superior court where the child-in-need-of-aid proceeding is pending or
21 in the judicial district in which the petitioner resides as provided under AS 47.10.111
22 and AS 25.23.030(d).

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

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

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

1 * **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

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

5 (4) A proceeding to adopt a child in state custody under AS 47.10 must
6 comply with AS 47.10.111. A proceeding to adopt a child in state custody under
7 AS 47.10 shall be heard either

8 (A) as part of the child-in-need-of-aid proceeding; or

9 (B) in the judicial district in which the petitioner resides if the
10 petitioner provides notice to all of the parties to the child-in-need-of-aid
11 proceedings and no party objects.

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

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

16 **Rule 17.3. Petition or proxy for adoption or legal guardianship of a child**
17 **under AS 47.10.111.** (a) A petitioner may file a petition for adoption or legal
18 guardianship of a child who is the subject of a pending child-in-need-of-aid
19 proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for
20 adoption or legal guardianship of a child before the court approves adoption or legal
21 guardianship as the permanent plan for the child, the court shall hold the petition for
22 adoption or legal guardianship in abeyance until the court approves adoption or legal
23 guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(l).
24 If the child is in an out-of-home placement but is not placed with the petitioner at the
25 time the petition is filed, the court shall hold a hearing within 90 days to review the
26 permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in
27 addition to the findings required under Rule 17.2 and AS 47.10.080(l), make findings
28 related to whether the petitioner is entitled to placement preference under
29 AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable. If 25 U.S.C. 1915(a)
30 applies, the court shall make written findings related to whether the current placement
31 is in compliance with or whether there is good cause to deviate from the placement

1 preferences.

2 (b) A person may file a proxy for a formal petition for adoption or legal
3 guardianship of an Indian child who is the subject of a pending child-in-need-of-aid
4 proceeding under AS 47.10 as part of the same case. If a person files a proxy for a
5 formal petition for adoption or legal guardianship of an Indian child who is in out-of-
6 home placement, and the child is not placed with the person who files the proxy at the
7 time the person files the proxy, the court shall hold a hearing within 90 days to review
8 the permanent plan for the child as required under AS 47.10.112(c). At the hearing,
9 the court shall, in addition to the findings required under Rule 17.2 and
10 AS 47.10.080(l), make findings related to whether the person who filed the proxy is
11 entitled to placement preference under 25 U.S.C. 1915(a), and whether the current
12 placement complies with 25 U.S.C. 1915(a) or whether there is good cause to deviate
13 from the placement preferences under 25 U.S.C. 1915(a).

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

16 APPLICABILITY. AS 13.26.050(b), added by sec. 2 of this Act, AS 13.26.060(e),
17 added by sec. 3 of this Act, AS 25.23.030(d), added by sec. 4 of this Act, AS 25.23.080(d),
18 added by sec. 5 of this Act, AS 25.23.100(a), as amended by sec. 6 of this Act,
19 AS 25.24.150(a), as amended by sec. 7 of this Act, AS 47.10.080(l), as amended by sec. 8 of
20 this Act, AS 47.10.111, 47.10.112, and 47.10.113, added by sec. 9 of this Act, and secs. 14 -
21 17 of this Act apply to proceedings for adoption or legal guardianship of a child in state
22 custody under AS 47.10 filed on or after the effective date of secs. 2 - 17 of this Act.

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

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

29 * **Sec. 20.** The uncoded law of the State of Alaska is amended by adding a new section to
30 read:

31 CONDITIONAL EFFECT. This Act takes effect only if secs. 14 - 17 of this Act

1 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
2 the State of Alaska.

3 * **Sec. 21.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

4 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2017.