



CS HB 200(HSS) Version H Sectional Analysis

Prepared by the Alaska Department of Health and Social Services

April 4th, 2016

CS HB200(HSS) version H, "An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition;' amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

DETAILED SECTIONAL ANALYSIS

Sectional Analysis:

Section 1:

Adds a new section outlining Legislative findings and the intent, and explains that the purpose of the bill is to assist in preserving placement preferences outlined in 25 U.S.C. 1901 – 1963, and adds much-needed flexibility in the initiation of adoption, guardianship, or civil custody proceedings for a child in state custody. Clarifies the need for more appropriate adoption and legal guardianship processes for an Indian child in state custody under the Indian Child Welfare Act and allows for adoption, guardianship and civil custody matters in child-in-need-of-aid cases to be conjoined. The new section clarifies that this Act does not apply to: tribal adoptions performed under a Tribe's authority; tribal adoption proceeding transferred to the jurisdiction of the Tribe; tribal customary adoptions; or adoptions or guardianships not a part of child-in-need of aid proceedings.

Difference from Version A: adds to the legislative intent "guardianship and civil custody matters" in addition to adoptions.

Section 2:

Adds a new subsection to AS 13.26.050, which states a petition filed for adoption must comply with AS 47.10.111 and designates the venue shall be superior court where the child-in-need-of-aid proceeding is pending, or the judicial district in which the petitioner resides so long as the petitioner provides notice to all parties in the child-in-need-of-aid proceeding and no party objects.

Difference from Version A: adds language to allow petitioners in adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-a-aid case objects.

Section 3:

A new subsection is added (e) which requires that a petitioner for guardianship or adoption “shall” file the petition in the court where the child-in-need-of-aid proceedings are pending under AS 47.10.111 and AS 13.20.050(b).

Difference from Version A: adds reference to AS 13.20.050(b).

Section 4:

Adds a new subsection (d) to AS 25.23.030 which requires that the venue for adoption proceeding for a child in state custody is superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111; or in the judicial district in which the petitioner reside if the petitioner provides notice to all parties in the child-in-need-of-aid proceeding and no party objects.

Difference from Version A: adds language to allow petitioners in adoption matters to have the matter finalized in the judicial district in which they reside if no party in child in need-of-a-aid case objects.

Section 5:

Amends AS 25.23.080 by adding a new subsection (d) requiring that a petition to adopt a child in state custody under AS 47.10 “shall” be filed in the court where the child-in-need-of-aid proceedings are pending under AS 47.10.111 and AS 25.23.030(d).

Difference from Version A: changed “must” to “shall” and adds reference to AS 25.23.030(d).

Section 6:

Amends AS 25.23.100(a) to include language that allows for a petition for adoption to be held in abeyance under AS 47.10.111, when the petition is filed before the permanency goal has been changed to adoption.

Difference from Version A: no change

Section 7:

This section amends AS 25.24.150(a) to add language so that when a child is a child-in-need-of-aid under AS. 47.10 and there is an action which involves divorce or legal separation proceedings where the child’s custody is a subject of the proceeding, the court shall hear all custody proceedings under the AS 47.10 child-in-need-of-aid proceedings, as provided in AS 47.10. 113. This provision may be heard separately if notice is provided to all parties in the child-in-need-of-aid proceedings and no party objects to hearing the custody proceedings in separate forums.

Difference from Version A: This section now includes that in addition to guardianship and adoption cases needed to be heard within the child-in-need-of-aid matter, so too, shall civil custody matters where there is action which involves divorce or legal separation proceeds regarding a child in state’s custody.

Section 8:

This section requires that within 12 months after a child enters foster care, the court shall hold a hearing to determine a permanent plan for the child. As part of this proceeding, the court shall determine if the parent or guardian has made sufficient progress and if or when the child should return to the parent. If progress has not been made, the court will determine if the goal should

be changed to adoption or legal guardianship, and if parental rights should be terminated among other things. As part of this process, the court will determine whether the department has made reasonable efforts to offer appropriate family support services to remedy the parents' or guardians' conduct or condition that made this a child-in-need-of-aid case and whether the department has made reasonable efforts to finalize the permanent plan for the child. This latest version of the bill amends AS 47.10.080(l) by adding a new subsection (6) that requires the court to make written findings in a permanency review hearing, related to whether any person who may have filed a petition or proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable.

Difference from Version A: previous version of this section contained only an effective date for the implementation of section seven.

Section 9:

Amends AS 47.10 by adding three new sections AS 47.10.111, AS 47.10.112 and AS 47.10.113. AS 47.10.111 will allow a person who is seeking adoption or appointment as legal guardian of a child in state custody to submit a petition, and under this new chapter the adoption or guardianship case would be heard as part of the child-in-need-of-aid proceedings. If the petition is filed under this section, prior to the establishment of the permanent plan with the court, the petition will be held in abeyance until the court has approved the permanent plan of adoption or guardianship. The language also establishes timeframes for the department to consider the petitioner as an out of home placement for the child, if the child is not currently residing in the petitioner's care. Additionally, the petitioner will not be considered a party in the child-in-need-of-aid proceedings, and may only be a parent for matters that concern the petitioner. The language further clarifies that a parent who has either consented to the adoption or relinquished parental rights, or who has had parental rights terminated by the courts, is not a party to the adoption or legal guardianship proceedings under this section.

Section 47.10.112 creates the proxy for a formal petition for adoption or legal guardianship in cases in which the Indian Child Welfare Act (ICWA) applies. The proxy will preserve the placement preferences that are outlined in ICWA for the person that is filing the proxy. The filing of the proxy does not initiate the adoption or guardianship proceedings in the child-in-need-of-aid proceedings, this will only occur when the petition for adoption or legal guardianship is filed. The provisions outline timeframes for the department and the courts for considering the out of home placement with the person filing the proxy, if the child is not currently residing with the person filing the proxy.

Subsection (g) of this section further defines extended family member within the meaning of ICWA, and proxy for formal petition as a request from the Indian child's biological parent, individually or through counsel, made to the department on behalf of an extended family member, a member of the Indian child's Tribe 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. The proxy for formal petition may be conveyed to the department via mail, facsimile, electronic mail, or in person. This new section will give the department the ability to create regulations related to the proxy for formal petition process.

Section 47.10.113, relates to the civil custody proceedings, requiring the court to make, modify or vacate an order for the custody of, or visitation with, a minor child in state custody under this chapter as a part of the child-in-need-of-aid proceedings.

Difference from Version A: Newly added section, adds reference to three newly created sections AS 47.10.111/112/113.

AS 47.10.111 provides further clarity about what happens when a petition is filed, how it will be held in abeyance until the permanent plan is reviewed by the court. It further establishes timeframes the department must meet. It further adds clarity about party status and who would be considered a party or not.

AS 47.10.112 provides the clarity and language about the use of a “proxy” and describes how the “proxy” seeks to preserve the placement preferences outlined under the Indian Child Welfare Act for those children where the Act applies. It also further defines extended family member within the meaning of ICWA, and that a biological parent individually or through counsel may also request a “proxy” made to the department on behalf of an extended family member, member of the Indian child’s Tribe, or other Indian family member.

AS 47.10.113 relates to the addition of the civil custody matters and the courts review of those matters when there is a child who is subject to a child-in-need-of-aid proceeding.

Section 10:

Amends AS 47.10.990(1) and clarifies the definition of the term “adult family member” in statute, and adding the ICWA language for extended family member.

Difference from Version A: This section is newly added in version H, and clarifies that the definition of “adult family member” is in statute, and adds the ICWA language for extended family member.

Section 11:

Amends AS 47.10.990(10) and clarifies the definition of “family member” in statute and adding the ICWA language for extended family member.

Difference from Version A: This section is newly added in version H. It clarifies that the definition of “adult family member” is in statute, and adds the ICWA language for extended family member.

Section 12:

Amends AS 47.10.990 by adding new paragraphs (33) and (34) to define “Indian child” and “Indian child’s Tribe” to have the meaning outlined in ICWA under 25 U.S.C. 1903

Difference from Version A: This section is newly added in version H, it added new paragraphs to more clearly define “Indian child” and “Indian child’s Tribe”.

Section 13:

Amends AS 47.14.100(t), adding a new paragraph which defines “family friend” to include, in the case of an Indian child, a member of Indian child’s Tribe, a member of the Tribe in which the child biological parent is a member, and another Indian family member.

Difference from Version A: This section is newly added in version H, it adds further detail to the definition of “family friend” that now includes members of Indian child’s Tribe, a member of the Tribe in which the child’s biological parent is a member or another Indian family member.

Section 14:

Adds to the Direct Court Rule 5. Alaska Adoption Rules, is amended by adding a new subsection requiring that a petition to adopt a child in state custody under AS 47.10 must be brought in the

superior court where the child-in-need-of-aid proceeding is pending or in which the petitioner resides as provided under AS 47.10111 and AS 25.23.030(d).

Difference from Version A: This section is newly added in version H, it adds language indicating the petition to adoption can also be brought in the district where the petitioner resides.

Section 15:

Adds to the Direct Court Rule 6(a)(1) subsection (1) that an adoption petition must include information required by AS 25.23.080, except as provided under (a)(4) of this rule.

Difference from Version A: This section is newly added, but the Change to Direct Court Rule 6(a)(1) existed in Version a in another section.

Section 16:

Adds a new section to the Direct Court Rule 6(a) Alaska Adoption Rules to read in subsection (4), adding that a proceeding must comply with AS 47.10.111 and shall be heard in either as a part of the child-in-need-of-aid proceedings or in the judicial district in which the petitioner resides if notice is provided to all parties and no one objects.

Difference from Version A: This section is newly added in version H, it amends Alaska Adoption Rules to now indicate that an adoption proceeding shall be heard as a part of the child-in-need-of-aid matter or in the judicial district in which the petitioner resides if notice is provide to the parties and no one objects.

Section 17:

Amends the Alaska Child-in-need-of-aid Rules of Procedure by adding rule 17.3, which allows a petitioner to file a petition for adoption or legal guardianship, or in the case of an Indian child, a proxy for adoption or legal guardianship of a child who is the subject of a child-in-need-of-aid proceeding. This rule also allows that if a petition or proxy is filed before the court approves adoption or legal guardianship as the permanency plan, then the petition or proxy is held in abeyance until such a time as the court does approve adoption or guardianship as the permanency goal. This rule places on the department a limit of 60 days after a petition or proxy is filed to submit a permanent plan and requires the court to hold a hearing within 90 days to review the permanent plan. Also, the court shall make findings related to whether the petitioner is entitled to placement preferences under state statute or the ICWA, whichever is applicable. This new section further outlines that a person may file a proxy for formal petition for adoption or legal guardianship of an Indian child in the child-in-need-of-aid proceeding, if the child is a subject to the CINA proceedings, and the court shall make a finding related to the placement preference compliance related to placement with the proxy for formal petition; as well as determining if there is good cause to deviate from the placement preferences as outlined in 25 U.S.C 1915(a).

Difference from Version A: This section was newly added to version H, it clarifies that the court rules now include petitions for adoption or legal guardianship. Also, details about the findings the court must make about whether the petitioner is entitled to placement preferences under ICWA or state statute, whichever apply as well as the compliance of placement preferences in relation to a proxy or if there is good cause to deviate from those preferences.

Section 18:

Adds uncodified law is amended to add a new section related to applicability to AS 13.26, AS 25.23 and AS 47.10.

Difference from Version A: This section was newly added to version H and adds reference to new subsections related applicability.

Section 19:

Adds a new section, allowing the Department of Health and Social Services authority to adopt regulations to implement this Act, and establishes that those regulations will take effect not before the effective date of this regulation.

Difference from Version A: This section is newly added to version H, however the provision allowing the department to adopt regulations existed in the original version in a different section.

Section 20:

Adds uncodified law by adding a new section which describes a conditional effect, which means that this law only takes effect if sections 14 -17 of this Act receive a two-thirds majority vote of each house required by article IV section 15, Constitution of the State of Alaska.

Difference from Version A: The section is newly added in version H to clarify that regulations can be adopted upon the signing of the bill but all the other provisions are not affective until January 1, 2017 to give time for implementation.

Section 21:

Establishes that section 19 of this act would take effect immediately under As 01.10.070(c).

Difference from Version A: This section was newly added to version H to clarify that regulations can be adopted upon the signing of the bill but all the other provisions are not effective until January 1, 2017 to give time for implementation.

Section 22:

Establishes effective date of January 1, 2017 for all other components of this act.

Difference from Version A: This section was newly added to version H, to clarify the date all provisions except for section 19 would go into effect.