



CS HB200 (HSS) Version H Summary of Changes

Prepared by the Alaska Department of Health and Social Services

April 4th, 2016

HB 200, "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."

Summary of Changes between version (A) and current version (H):

Section 1:

This section's original version outlined Legislative findings and the intent, and explained the need for preserving placement preferences outlined in 25 U.S.C. 1901 – 1963, it sought to add much-needed flexibility in the initiation of adoption proceedings. It clarified the need for more appropriate adoption processes for an Indian child in state custody under the Indian Child Welfare Act and allowed for adoption and child-in-need-of-aid cases to be conjoined. It also clarified 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. The most recent version added to the legislative intent and broadened this section to also include "guardianship and civil custody matters in addition to adoption.

Section 2:

Section two initially required that any adoption petition filed for a child in states custody subject to a child-in-need-of-aid case must comply with AS 47.10.111 and must be filed in superior court where the child-in-need-of-aid proceeding is pending. The current version added language allowing petitioners in adoption matters to have the matter finalized in 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.

Section 3:

This section again references the requirement 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 the only change from the earlier version is that a reference to AS 13.20.050(b) is added.

Section 4:

This section originally added 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; The latest version allows petitioners in the adoption to have the matter finalized in the judicial district in which they reside if petitioner provides notice to all parties in the child-in-need-of-aid proceeding and not party objects.

Section 5:

Minor changes were made in this section including changing “must” to “shall” providing a more rigid legal meaning, and adding a reference to AS25.23.030(d). This section still requires 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).

Section 6:

No changes were made to this section. This section still 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.

Section 7:

The earlier version of the bill sought only to join the adoption and child-in-need-of-aid proceedings, the latest version now includes that in addition to guardianship and adoption cases needing 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 originally indicated an immediate effective date. The effective date has been changed, and can now be found in section twenty through twenty two. The current version now contains a requirement for the court to hold a permanency hearing within twelve months of the child entering foster care. This section now requires the court to make appropriate written findings regarding whether the parents of the child have made adequate progress and if the child shall be returned or whether a petition shall be filed for termination of parental rights. The court is also assess whether the department has made reasonable efforts to assist the parents in rectifying the problems that led to their intervention and assess their efforts to establish a plan for permanency if the need exists for the child to remain in out-of-home-care.

Section 9:

This is a new section and was added to this version for the purpose of creating three new subsections to AS 47.10. The newly created subsections are; AS 47.10.111, AS 47.10.112, and AS 47.10.113.

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 furthers 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:

This section is new and was added to this version because it clarifies that the definition of “adult family member” is in statute, and adds the ICWA language for extended family member.

Section 11:

This section is new, and was added to version in order to clarify that the definition of “adult family member” is in statute, and adds the ICWA language for extended family member.

Section 12:

This section is new and was added to this version in order to add new paragraphs to more clearly define “Indian child” and “Indian child’s Tribe”.

Section 13:

This section is new and was added to this version to add 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:

This section is new and was added to this version in order to amend the Direct Court Rule 5 of the Alaska Adoption Rules. It added 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. The most recent version adds language indicating the petition to adoption can also be brought in the district where the petitioner resides.

Section 15:

This section is new and was added to this version to amend Rule 6(a)(1) of the Alaska Adoption rules in order to include exclusionary language referenced in subsection (a)(4) of this rule.

Section 16:

This section is new and was added to this version in order to amend Direct Court Rule 6(a) Alaska Adoption Rules to read in subsection (4), to require that an adoption 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. It adds language to the Alaska Adoption Rules to now indicate that a proceed 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:

This section is new and was added to this version in order to amended 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. The most recent version adds clarity and specifies that 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).

Section 18:

This section is new and was added to this version for the purpose of amending uncodified law pertaining to all adoption or legal guardianship proceedings on or after the effective date. In this version AS 13.26, AS 25.23 and AS 47.10 are all referenced for applicability.

Section 19:

This section is new and was added to this version to establish the authority for 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.

Section 20:

This section is new and was added to this version in order 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:

This section is new and was added to this version in order 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:

This section is new and was added in this version to establish that all provisions of this act go into effect On January 1, 2017 except as provided in Section 21, which goes into effect upon the bills signing.