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Bergerud
5/13/25

SENATE CS FOR HOUSE BILL NO. 36()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GRAY, Fields, Burke, Jimmie, Foster, Tomaszewski, Story, Mina, Eischeid, Bynum, Galvin, Hannan, Josephson, Stutes, Ruffridge, Schrage, Costello, Mears, Saddler

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to treatment foster homes; relating to the placement of foster children**
2 **in hospitals and residential psychiatric treatment centers for psychiatric care; relating to**
3 **the duties of the Department of Family and Community Services; relating to the care of**
4 **children in state custody placed in psychiatric residential treatment facilities outside the**
5 **state; and amending Rule 12.1(b), Alaska Child in Need of Aid Rules of Procedure."**

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

7 *** Section 1.** AS 12.62.400(a)(25) is amended to read:

8 (25) licensure, license renewal, certification, or certification renewal
9 by the Department of Family and Community Services of an individual or entity, or
10 payment from the Department of Family and Community Services to an individual or
11 entity, subject to the requirements for a criminal history check under AS 47.05.310 for
12 **an entity** [A FOSTER HOME, CHILD PLACEMENT AGENCY, AND RUNAWAY
13 SHELTER] listed in AS 47.32.010(c), including an owner, officer, director, member,

partner, employee, volunteer, or contractor of an entity.

* **Sec. 2.** AS 47.07.020(b) is amended to read:

(b) In addition to the persons specified in (a) of this section, the following optional groups of persons for whom the state may claim federal financial participation are eligible for medical assistance:

(1) persons eligible for but not receiving assistance under any plan of the state approved under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act, Supplemental Security Income) or a federal program designated as the successor to the aid to families with dependent children program;

(2) persons in a general hospital, skilled nursing facility, or intermediate care facility, who, if they left the facility, would be eligible for assistance under one of the federal programs specified in (1) of this subsection;

(3) persons under 21 years of age who are under supervision of the department, for whom maintenance is being paid in whole or in part from public funds, and who are in foster homes, treatment foster homes, or private child-care institutions; in this paragraph, "treatment foster home" has the meaning given in AS 47.32.900;

(4) aged, blind, or disabled persons, who, because they do not meet income and resources requirements, do not receive supplemental security income under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act), and who do not receive a mandatory state supplement, but who are eligible, or would be eligible if they were not in a skilled nursing facility or intermediate care facility to receive an optional state supplementary payment;

(5) persons under 21 years of age who are in an institution designated as an intermediate care facility for persons with intellectual and developmental disabilities and who are financially eligible as determined by the standards of the federal program designated as the successor to the aid to families with dependent children program;

(6) persons in a medical or intermediate care facility whose income while in the facility does not exceed 300 percent of the supplemental security income benefit rate under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) but who

1 would not be eligible for an optional state supplementary payment if they left the
2 hospital or other facility;

3 (7) persons under 21 years of age who are receiving active treatment in
4 a psychiatric hospital and who are financially eligible as determined by the standards
5 of the federal program designated as the successor to the aid to families with
6 dependent children program;

7 (8) persons under 21 years of age and not covered under (a) of this
8 section, who would be eligible for benefits under the federal program designated as
9 the successor to the aid to families with dependent children program, except that they
10 have the care and support of both their natural and adoptive parents;

11 (9) pregnant women not covered under (a) of this section and who
12 meet the income and resource requirements of the federal program designated as the
13 successor to the aid to families with dependent children program;

14 (10) persons under 21 years of age not covered under (a) of this section
15 who the department has determined cannot be placed for adoption without medical
16 assistance because of a special need for medical or rehabilitative care and who the
17 department has determined are hard-to-place children eligible for subsidy under
18 AS 25.23.190 - 25.23.210;

19 (11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title
20 XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom
21 a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title
22 XVI, Social Security Act) because they meet all of the following criteria:

23 (A) they are 18 years of age or younger and qualify as disabled
24 individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

25 (B) the department has determined that

26 (i) they require a level of care provided in a hospital,
27 nursing facility, or intermediate care facility for persons with
28 intellectual and developmental disabilities;

29 (ii) it is appropriate to provide their care outside of an
30 institution; and

31 (iii) the estimated amount that would be spent for

1 medical assistance for their individual care outside an institution is not
2 greater than the estimated amount that would otherwise be expended
3 individually for medical assistance within an appropriate institution;

4 (C) if they were in a medical institution, they would be eligible
5 for medical assistance under other provisions of this chapter; and

6 (D) home and community-based services under a waiver
7 approved by the federal government are either not available to them under this
8 chapter or would be inappropriate for them;

9 (12) disabled persons, as described in 42 U.S.C.
10 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
11 applicable federal regulations or guidelines, is less than 250 percent of the official
12 poverty line applicable to a family of that size according to the United States
13 Department of Health and Human Services, and who, but for earnings in excess of the
14 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
15 individuals with respect to whom a supplemental security income is being paid under
16 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is
17 not eligible under another provision of this section shall pay a premium or other cost-
18 sharing charges according to a sliding fee scale that is based on income as established
19 by the department in regulations;

20 (13) persons under 19 years of age who are not covered under (a) of
21 this section and whose household income does not exceed 175 percent of the federal
22 poverty line as defined by the United States Department of Health and Human
23 Services and revised under 42 U.S.C. 9902(2);

24 (14) pregnant women who are not covered under (a) of this section and
25 whose household income does not exceed 225 percent of the federal poverty line as
26 defined by the United States Department of Health and Human Services and revised
27 under 42 U.S.C. 9902(2);

28 (15) persons who have been diagnosed with breast or cervical cancer
29 and who are eligible for coverage under 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII).

30 * **Sec. 3.** AS 47.10.087 is amended to read:

31 **Sec. 47.10.087. Placement in [SECURE] residential psychiatric treatment**

1 **center.** (a) The court may authorize the department to place a child who is in the
2 custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142 in a
3 [SECURE] residential psychiatric treatment center if the court finds, based on the
4 testimony of a mental health professional, that

5 (1) the child is gravely disabled or is suffering from mental illness and,
6 as a result, is likely to cause serious harm to the child or to another person;

7 (2) there is no reasonably available, appropriate, and less restrictive
8 alternative for the child's treatment or that less restrictive alternatives have been tried
9 and have failed; and

10 (3) there is reason to believe that the child's mental condition could be
11 improved by the course of treatment or would deteriorate if untreated.

12 (b) A court shall review a placement made under this section at least once
13 every 90 days. The court may authorize the department to continue the placement of
14 the child in a [SECURE] residential psychiatric treatment center if the court finds,
15 based on the testimony of a mental health professional, that the conditions or
16 symptoms that resulted in the initial order have not ameliorated to such an extent that
17 the child's needs can be met in a less restrictive setting and that the child's mental
18 condition could be improved by the course of treatment or would deteriorate if
19 untreated.

20 (c) The department shall transfer a child from a [SECURE] residential
21 psychiatric treatment center to another appropriate placement if the mental health
22 professional responsible for the child's treatment determines that the child would no
23 longer benefit from the course of treatment or that the child's treatment needs could be
24 met in a less restrictive setting. The department shall notify the child, the child's
25 parents or guardian, [AND] the child's guardian ad litem, **and any other parties** of a
26 determination and transfer made under this subsection.

27 (d) In this section,

28 **(1)** "likely to cause serious harm" has the meaning given in
29 AS 47.30.915;

30 **(2)** "residential psychiatric treatment center" has the meaning
31 **given in AS 47.32.900.**

* **Sec. 4.** AS 47.10 is amended by adding a new section to read:

Sec. 47.10.105. Short-term psychiatric care. (a) The department may seek services for a child who is in the custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142 at a hospital that is not a residential psychiatric treatment center to receive psychiatric care if the person in charge of admittance to the hospital finds that

(1) the child is suffering from a mental illness and, as a result, may cause serious harm to the child or another person; and

(2) there is no reasonably available, appropriate, and less restrictive alternative for the child to receive treatment.

(b) Within 24 hours after seeking services for a child at a hospital as authorized under (a) of this section, the department shall notify the court, the child, the child's parents or guardians, the child's guardian ad litem, and any other parties to an ongoing child-in-need-of-aid case involving the child of the placement. Providing notification under this subsection does not relieve the department of the duty to promptly look to place the child in the least restrictive environment. The department is not required to provide notice under this subsection if the child is released from the hospital to a less restrictive placement within 23 hours after arriving at the hospital to seek services.

(c) A court shall review a placement made under (a) of this section within seven calendar days after the child's placement in a hospital. The court may grant one request to continue the hearing for up to seven calendar days if necessary to secure the attendance of the child, a party, or a material witness. The court may authorize the department to continue the placement of the child in a hospital if the court finds by clear and convincing evidence, based on the testimony of a mental health professional, and taking into account the length of time the child has been in the hospital, that the conditions or symptoms that resulted in the initial placement made under (a) of this section have not ameliorated to the extent that the child's needs can be met in a less restrictive setting and that the child's mental condition could be improved by the course of treatment or would deteriorate if untreated. If a court does not make the findings required under this subsection, the child shall be released from the hospital for placement in a less restrictive setting. The court may vacate a hearing scheduled as

required under this subsection if either

(1) the child is released to a less restrictive setting before the scheduled hearing; or

(2) the child and all parties agree that the initial placement under (a) of this section was reasonable and necessary, the parties submit to the court a treatment plan that will result in releasing the child to a less restrictive setting, and the court finds in writing that the treatment plan is reasonable and will result in releasing the child to a less restrictive setting.

(d) The court shall review a placement approved under (c) of this section

(1) at least once every 30 days; and

(2) when requested by the child, the child's parent or guardian, the child's guardian ad litem, or any other party, upon a showing of good cause.

* **Sec. 5.** AS 47.10.990(12) is amended to read:

(12) "foster care" means care provided by a person or household under a foster home license or treatment foster home license required under AS 47.32;

* **Sec. 6.** AS 47.14.010 is amended to read:

Sec. 47.14.010. General powers of department over juvenile facilities and institutions. The department may

(1) purchase, lease, or construct buildings or other facilities for the care, detention, rehabilitation, and education of children in need of aid or delinquent minors;

(2) adopt plans for construction of juvenile detention facilities, juvenile treatment facilities, and other juvenile institutions;

(3) adopt standards and regulations for the design, construction, repair, maintenance, and operation of all juvenile detention facilities, juvenile treatment facilities, and institutions;

(4) inspect periodically each juvenile detention facility, juvenile treatment facility, or other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse municipalities maintaining and operating juvenile detention facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of AS 47.10, AS 47.12, and this chapter;

(7) do all acts necessary to carry out the purposes of AS 47.10, AS 47.12, and this chapter;

(8) adopt the regulations necessary to carry out AS 47.10, AS 47.12, and this chapter;

(9) accept donations, gifts, or bequests of money or other property for use in construction of juvenile institutions, detention facilities, or juvenile treatment facilities;

(10) operate juvenile detention facilities when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention facility, the minor's own home, a foster home, a treatment foster home, a juvenile treatment facility, or treatment institution all minors committed to its custody under AS 47.10, AS 47.12, and this chapter.

* **Sec. 7.** AS 47.14.110(a) is amended to read:

(a) A representative of the department shall visit, as often as is considered necessary, every foster home, treatment foster home, or institution in which a child is placed, and, if not satisfied as to the care given, may remove the child from the foster home or institution and place the child elsewhere.

* **Sec. 8.** AS 47.14.112(d) is amended to read:

(d) The division of the department with responsibility over the custody of children shall prepare and make available to the legislature an annual report on employee recruitment and retention, including a five-year plan, for the division. Not later than November 15 of each year, the department shall deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available. The report prepared under this subsection is separate from the annual report to the legislature required under AS 18.05.020 and must include, for the previous 12 months,

(1) the number of frontline case [SOCIAL] workers employed by the division, the annual average turnover rate of the workers, and the average caseload of

the workers on January 1 and July 1 of that year;

(2) the number of children removed from their homes;

(3) the achievement of success measured by the following:

(A) rate of family reunification with a biological parent;

(B) average length of time children spent in custody of the department;

(C) rate of placement with an adult family member or family friend;

(D) number of children placed in a permanent living arrangement with a guardian or [BIOLOGICAL OR] adoptive parent;

(E) number of children released from the custody of the department;

(4) if the department has met or exceeded the caseload standards under this chapter and, if the standards were exceeded, the number of caseworker positions in the division that could be eliminated and the amount of funding that could be reduced while continuing to meet but not routinely exceed the caseload standards;

(5) the performance of the department on federal benchmarks focused on the safety, well-being, and permanent placements of foster children compared with the previous five years;

(6) the number of children placed in psychiatric residential treatment facilities providing care for children outside the state.

* **Sec. 9.** AS 47.14.900 is amended by adding a new paragraph to read:

(13) "treatment foster home" has the meaning given in AS 47.32.900.

* **Sec. 10.** AS 47.32.010(c) is amended to read:

(c) The following entities are subject to this chapter and regulations adopted under this chapter by the Department of Family and Community Services:

(1) child placement agencies;

(2) foster homes;

(3) runaway shelters;

(4) treatment foster homes.

* **Sec. 11.** AS 47.32.032(b) is amended to read:

(b) The department shall approve a variance of the applicable building code requirements for licensure of a foster care home or treatment foster home to the extent permitted by federal law if an applicant does not meet the requirements at the time of inspection and

(1) the home design and construction is consistent with homes located in the community; and

(2) the home is otherwise a safe environment for a child.

* **Sec. 12.** AS 47.32.900(3) is amended to read:

(3) "child placement agency" means an agency that arranges for placement of a child

(A) in a foster home, treatment foster home, residential child care facility, or adoptive home; or

(B) for guardianship purposes;

* **Sec. 13.** AS 47.32.900 is amended by adding a new paragraph to read:

(22) "treatment foster home" means a place where specialized services are provided on a 24-hour continuing basis to one or more children with special behavioral, developmental, emotional, or medical needs.

* **Sec. 14.** AS 47.10.990(31) is repealed.

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

DIRECT COURT RULE AMENDMENT. Rule 12.1(b), Alaska Child in Need of Aid Rules of Procedure, is amended to read:

(b) **Appointment Types.**

(1) **Mandatory Appointments.**

(A) The court shall appoint an attorney for a child who is 10 years of age or older in any of the following circumstances:

(i) [(A)] The child does not consent to placement in a [PSYCHIATRIC HOSPITAL OR] residential treatment center;

(ii) [(B)] The child does not consent to administration of psychotropic medication;

(iii) [(C)] The child objects to disclosure of

1 psychotherapy information or records under CINA Rule 9(b);

2 (iv) [(D)] A request for a court order authorizing
3 emergency protective custody has been made under AS 47.10.141(c);
4 or

5 (v) [(E)] The child is pregnant or has custody of a minor
6 child; and

7 **(B) The court shall appoint an attorney for a child who has**
8 **been placed in a hospital as authorized under AS 47.10.105.**

9 (2) **Discretionary Appointments.** The court may appoint an attorney
10 in other circumstances including, but not limited to:

11 (A) The child's and guardian ad litem's positions are not
12 aligned on placement, family or sibling contact, permanency goal, case plan, or
13 another important issue in the case;

14 (B) The child would benefit from a confidential relationship
15 with an attorney; or

16 (C) The child is not residing in the designated placement.