

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

MEMORANDUM

DATE: February 24, 2009
TO: Representative Paul Seaton, Chair, House Education Committee
FROM: Representative Les Gara
RE: CS for HB 126 – Foster Care

Here is the list of changes in the committee substitute (26-LS0309\S).

- Section 4 – The definition of “out-of-home care” was changed to be consistent with the definition already in law under AS 47.14.400(e)(4). This change is reflected throughout the bill.
- Section 5 – This new section also applies “out-of-home” in lieu of “foster” care.
- Section 9 – This new section also applies “out-of-home” in lieu of “foster” care.
- Section 10 – New language to the previous Section 8 adds legal immunity for social workers relating to the monthly visit issue.
- Section 11 from the original bill was deleted because it unnecessarily affected juvenile prosecutions.
- Section 13 rewrites the original Section 12. The proposal in this section of the original HB126 could have been interpreted to mean that the program would apply only to those individuals that, at the time that the training efforts related to independent living skills were initiated, were identified as being likely to remaining in foster care until age 21. That would mean that if the training efforts were initiated when the individual was 16, and at that time it was believed that foster care would end shortly after the individual’s 18th birthday, the program would not apply to that person, even if it later turns out that the individual needs to remain in foster care until age 21. If that interpretation was used, the proposed change to statute would be more restrictive than the current statute. The CS adopts changes requested by OCS to mitigate this concern.

- Section 14 – This new section adds language that reflects the broadened definition of youth in state custody, from “foster care” to “out-of-home care”, for application to independent living programs.
- Section 16 – This new section also applies “out-of-home” in lieu of “foster” care.
- Section 17 – This revises the old Section 13, adding the language “living expense” to the title of the stipend and making more flexible the amount given to the youth to give more discretion to the department.

26-LS0309\S
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2/24/09

CS FOR HOUSE BILL NO. 126()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GARA, Crawford, Kerttula

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to continuing the secondary public education of a homeless student;**
2 **relating to the purpose of certain laws as they relate to children; relating to tuition**
3 **waivers, loans, and medical assistance for a child placed in out-of-home care by the**
4 **state; relating to foster care; relating to children in need of aid; and relating to out-of-**
5 **home care transition to independent living."**

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

7 *** Section 1.** AS 14.03 is amended by adding a new section to read:

8 **Sec. 14.03.096. Continuing the public education of a homeless student. (a)**

9 Except as provided in (b) of this section, the governing body of a school district shall
10 comply with the requirements for continuing the public education of a homeless
11 student in the student's school of origin and for providing comparable education and
12 transportation services during the homelessness under 42 U.S.C. 11431 - 11435
13 (McKinney-Vento Homeless Education Assistance Improvement Act of 2001).

(b) The requirements in (a) of this section do not apply if

(1) the student moves to a school district other than the school district in which the student's school of origin is located; or

(2) the superintendent of the school district makes a written finding that a waiver of the requirements is in the student's best academic interest and the finding is mailed to the school board and to the person in charge of children's services for the Department of Health and Social Services.

(c) If a homeless student is transferred to a school other than the student's school of origin, the school of origin shall provide a copy of the student's records to the student's new school within 7 school days after notification of the transfer. The student's new school shall allow the student to attend school while awaiting the transfer of records under this subsection.

(d) In this section,

(1) "homeless student" has the meaning given in 42 U.S.C. 11434a for "homeless child or youth," and the phrase "awaiting foster care placement" in that definition shall be interpreted to include all students who are placed in out-of-home care and in the custody of the Department of Health and Social Services under AS 47.10.080(c) or who are committed to the custody of the Department of Health and Social Services under AS 47.12.120(b)(1) or (3);

(2) "school of origin" means the school that the student attended when permanently housed or the school in which the student was last enrolled.

* Sec. 2. AS 14.43 is amended by adding a new section to read:

Article 3A. Free Tuition for a Person Who Was in Out-of-Home Care.

Sec. 14.43.086. Free tuition and fees for a person who was in out-of-home care. (a) A person who enrolls as a student in good standing in a state-supported educational institution in the state is entitled to a waiver of tuition, fees, and room and board expenses if the person provides adequate proof that the person

(1) was in the custody of the state under AS 47.10 or AS 47.14;

(2) was placed in out-of-home care for a period of not less than six consecutive months on or after the person became 16 years of age;

(3) has applied for educational loans, grants, or scholarships that the

1 person is otherwise eligible for as recommended by the educational institution; and

2 (4) is under 29 years of age.

3 (b) The educational institution may require an eligible recipient to apply for a
4 loan under AS 14.43.112.

5 (c) The proceeds of an education loan, including a loan under AS 14.43.112,
6 grant, or scholarship received by a person eligible for a waiver under this section must
7 be paid to the educational institution to offset the person's tuition, fees, and room and
8 board expenses.

9 * **Sec. 3.** AS 14.43 is amended by adding a new section to read:

10 **Sec. 14.43.112. Education loans for a child who was in out-of-home care.**

11 (a) The commission may, subject to the loan conditions under AS 14.43.120 and the
12 eligibility requirements under AS 14.43.125, make a loan in a school year to a person
13 who is eligible for a tuition waiver under AS 14.43.086 to offset the person's tuition,
14 fees, and room and board expenses as provided under that section. Notwithstanding
15 the limits under AS 14.43.120(d), a loan made under this section may not exceed
16 \$4,000 annually for a full-time undergraduate or graduate student or \$2,000 annually
17 for a half-time undergraduate or graduate student attending a state-supported
18 educational institution in the state.

19 (b) The commission may not require repayment of or assess interest on a loan
20 made under this section before six months after the completion of the program for
21 which the loan was paid unless the borrower fails to complete the program in five
22 years.

23 * **Sec. 4.** AS 14.43.160 is amended by adding a new paragraph to read:

24 (7) "out-of-home care" has the meaning given in AS 47.14.400.

25 * **Sec. 5.** AS 36.30.850(b)(42) is amended to read:

26 (42) grants and contracts with qualified entities for services under
27 AS 47.18.330 for the out-of-home [FOSTER] care transition program;

28 * **Sec. 6.** AS 47.05.060 is amended to read:

29 **Sec. 47.05.060. Purpose and policy relating to children.** The purpose of this
30 title as it relates to children is to secure for each child the care and guidance,
31 preferably in the child's own home, as well as an adequate education, that will serve

1 the moral, emotional, mental, intellectual, and physical welfare of the child and the
2 best interests of the community; to preserve and strengthen the child's family ties
3 unless efforts to preserve and strengthen the ties are likely to result in physical or
4 emotional damage to the child, removing the child from the custody of the parents
5 only as a last resort when the child's welfare or safety or the protection of the public
6 cannot be adequately safeguarded without removal; and, when the child is removed
7 from the family, to secure for the child adequate custody, education, and care and
8 adequate planning for permanent placement of the child.

9 * **Sec. 7.** AS 47.05.065 is amended to read:

10 **Sec. 47.05.065. Legislative findings related to children.** The legislature finds
11 that

12 (1) parents have the following rights and responsibilities relating to the
13 care and control of their child while the child is a minor:

14 (A) the responsibility to provide the child with food, clothing,
15 shelter, education, and medical care;

16 (B) the right and responsibility to protect, nurture, train, and
17 discipline the child, including the right to direct the child's medical care and
18 the right to exercise reasonable corporal discipline;

19 (C) the right to determine where and with whom the child shall
20 live;

21 (D) the right and responsibility to make decisions of legal or
22 financial significance concerning the child;

23 (E) the right to obtain representation for the child in legal
24 actions; and

25 (F) the responsibility to provide special safeguards and care,
26 including appropriate prenatal and postnatal protection for the child;

27 (2) it is the policy of the state to strengthen families and to protect
28 children from child abuse and neglect; the state recognizes that, in some cases,
29 protection of a child may require removal of the child from the child's home; however,

30 (A) except in those cases involving serious risk to a child's
31 health or safety, the Department of Health and Social Services should provide

1 time-limited family support services to the child and the child's family in order
 2 to offer parents the opportunity to remedy parental conduct or conditions in the
 3 home that placed the child at risk of harm so that a child may return home
 4 safely and permanently; and

5 (B) the state also recognizes that when a child is removed from
 6 the home, visitation between the child and the child's parents or guardian and
 7 family members reduces the trauma for the child and enhances the likelihood
 8 that the child will be able to return home; therefore, whenever a child is
 9 removed from the parental home, the Department of Health and Social
 10 Services should encourage frequent, regular, and reasonable visitation of the
 11 child with the child's parent or guardian and family members;

12 (3) it is the policy of the state to recognize that, when a child is a ward
 13 of the state, the child is entitled to reasonable safety, adequate care, and adequate
 14 treatment and that the Department of Health and Social Services as legal custodian and
 15 the child's guardian ad litem as guardian of the child's best interests and their agents
 16 and assignees, each should make reasonable efforts to ensure that the child is provided
 17 with reasonable safety, adequate care, and adequate treatment for the duration of time
 18 that the child is a ward of the state;

19 (4) it is in the best interests of a child who has been removed from the
 20 child's own home for the state to apply the following principles in resolving the
 21 situation:

22 (A) the child should be placed in a safe, secure, and stable
 23 environment;

24 (B) the child should not be moved unnecessarily;

25 (C) a planning process should be followed to lead to permanent
 26 placement of the child;

27 (D) every effort should be made to encourage psychological
 28 attachment between the adult caregiver and the child;

29 (E) frequent, regular, and reasonable visitation with the parent
 30 or guardian and family members should be encouraged; [AND]

31 (F) parents and guardians must actively participate in family

1 support services so as to facilitate the child's being able to remain in the home;
2 when children are removed from the home, the parents and guardians must
3 actively participate in family support services to make return of their children
4 to the home possible; **and**

5 **(G) the child should continue to attend the child's school of**
6 **origin as provided under AS 14.03.096;**

7 (5) numerous studies establish that

8 (A) children undergo a critical attachment process before the
9 time they reach six years of age;

10 (B) a child who has not attached with an adult caregiver during
11 this critical stage will suffer significant emotional damage that frequently leads
12 to chronic psychological problems and antisocial behavior when the child
13 reaches adolescence and adulthood; and

14 (C) it is important to provide for an expedited placement
15 procedure to ensure that all children, especially those under the age of six
16 years, who have been removed from their homes are placed in permanent
17 homes expeditiously.

18 * **Sec. 8.** AS 47.07.020(b) is amended to read:

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

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

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

29 (3) persons under 21 years of age who are under supervision of the
30 department, for whom maintenance is being paid in whole or in part from public
31 funds, and who are in **out-of-home care** [FOSTER HOMES] or private child-care

1 institutions;

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

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

12 (6) persons in a medical or intermediate care facility whose income
13 while in the facility does not exceed \$1,656 a month but who would not be eligible for
14 an optional state supplementary payment if they left the hospital or other facility;

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

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

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

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

31 (11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title

1 XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom
2 a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title
3 XVI, Social Security Act) because they meet all of the following criteria:

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

6 (B) the department has determined that

7 (i) they require a level of care provided in a hospital,
8 nursing facility, or intermediate care facility for the mentally retarded;

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

11 (iii) the estimated amount that would be spent for
12 medical assistance for their individual care outside an institution is not
13 greater than the estimated amount that would otherwise be expended
14 individually for medical assistance within an appropriate institution;

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

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

20 (12) disabled persons, as described in 42 U.S.C.
21 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
22 applicable federal regulations or guidelines, is less than 250 percent of the official
23 poverty line applicable to a family of that size according to the United States
24 Department of Health and Human Services, and who, but for earnings in excess of the
25 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
26 individuals with respect to whom a supplemental security income is being paid under
27 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is
28 not eligible under another provision of this section shall pay a premium or other cost-
29 sharing charges according to a sliding fee scale that is based on income as established
30 by the department in regulations;

31 (13) persons under 19 years of age who are not covered under (a) of

1 this section and whose household income does not exceed 175 percent of the federal
2 poverty line as defined by the United States Department of Health and Human
3 Services and revised under 42 U.S.C. 9902(2);

4 (14) pregnant women who are not covered under (a) of this section and
5 whose household income does not exceed 175 percent of the federal poverty line as
6 defined by the United States Department of Health and Human Services and revised
7 under 42 U.S.C. 9902(2);

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

10 **(16) persons under 21 years of age who were in the custody of the**
11 **department under AS 47.10 or AS 47.14 and who were placed in out-of-home**
12 **care for a period of not less than six consecutive months on or after reaching 16**
13 **years of age.**

14 * **Sec. 9.** AS 47.07.020 is amended by adding a new subsection to read:

15 (o) In this section, "out-of-home care" has the meaning given in AS 47.14.400.

16 * **Sec. 10.** AS 47.10.080 is amended by adding a new subsection to read:

17 (v) A social worker employed by or under contract with the department shall,
18 not less than monthly, conduct visits with a child committed to the custody of the
19 department under (c) of this section. The visits must be of sufficient substance and
20 duration to address issues pertinent to case planning and service delivery to ensure the
21 child's safety, permanency, and well-being. The majority of the visits conducted under
22 this subsection must be at the location of the child's current placement. Nothing in this
23 paragraph creates a private right of action against the department or the department's
24 contractors. In this subsection, "visit" means face-to-face contact between social
25 worker and child.

26 * **Sec. 11.** AS 47.10.990(3) is amended to read:

27 (3) "child" means a person **who is**

28 **(A)** under 18 years of age;

29 **(B)** [AND A PERSON] 19 years of age if that person was
30 under 18 years of age at the time that a proceeding under this chapter was
31 commenced; **and**

(C) under 21 years of age if that person is living in out-of-home care;

* **Sec. 12.** AS 47.10.990 is amended by adding a new paragraph to read:

(33) "out-of-home care" has the meaning given in AS 47.14.400.

* **Sec. 13.** AS 47.18.300(a) is amended to read:

(a) The department, in coordination with local public and private agencies, shall design, develop, and implement **an out-of-home care** [A FOSTER CARE] transition program to provide support and services to individuals who

(1) reach or have reached the age of 16 or older while in state **custody and placed in out-of-home** [FOSTER] care and have not yet reached 23 years of age; and

(2) meet other eligibility criteria established by the department under (b) of this section.

* **Sec. 14.** AS 47.18.310 is amended to read:

Sec. 47.18.310. Program design. The department, in coordination with local public and private agencies, shall design the program as a continuation of the training efforts related to independent living skills that were initiated **for a child in state custody who was placed in out-of-home care and** [WHEN THE STATE FOSTER CARE RECIPIENTS WERE] identified as being likely to remain in **out-of-home** [STATE FOSTER] care until reaching **not less than** the age of 18. The program design must require that program participants are directly involved in identifying the program activities that will prepare them for independent living.

* **Sec. 15.** AS 47.18.320(a) is amended to read:

(a) Subject to the availability of an appropriation made for the purposes of AS 47.18.300 - 47.18.390, the program may provide

- (1) education and vocational training;
- (2) assistance in obtaining basic education and training;
- (3) career and employment services;
- (4) training in basic life skills;
- (5) housing and utility assistance;
- (6) mentoring and counseling; and

1 (7) other appropriate services to complement the efforts of former state
2 foster care recipients or a child who was in state custody and placed in out-of-
3 home care to achieve self-sufficiency.

4 * **Sec. 16.** AS 47.18.390(1) is amended to read:

5 (1) "program" means the out-of-home [FOSTER] care transition
6 program authorized under AS 47.18.300 - 47.18.390;

7 * **Sec. 17.** AS 47.18 is amended by adding a new section to read:

8 **Sec. 47.18.335. Monetary living expense stipend.** The department shall
9 provide to an individual receiving services under the program a monthly stipend in an
10 amount set by the department that is not less than the daily rate provided to a licensed
11 foster parent for necessary living expenses. The stipend shall continue for a period of
12 not more than one year after the individual leaves out-of-home care. The department
13 may adopt regulations to implement this section.

14 * **Sec. 18.** AS 47.18.390(3) is repealed and reenacted to read:

15 (3) "out-of-home care" has the meaning given in AS 47.14.400.