

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 27
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Muñoz, Ortiz, Tuck

Introduced: 2/11/15

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the duties of the Department of Health and Social Services; relating**
2 **to hearings on and plans for permanent placement of a child in need of aid; relating to**
3 **school placement and transportation for children in foster care; relating to foster care**
4 **transition programs; relating to emergency and temporary placement of a child in need**
5 **of aid; relating to the confidentiality of information regarding child protection; and**
6 **amending Rule 17.2, Alaska Child in Need of Aid Rules of Procedure."**

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

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

10 **SHORT TITLE.** This Act may be known as the Child Protection and Opportunity Act.

11 * **Sec. 2.** AS 47.05.010 is amended to read:

12 **Sec. 47.05.010. Duties of department.** The Department of Health and Social
13 Services shall

1 (1) administer adult public assistance, the Alaska temporary assistance
2 program, and all other assistance programs, and receive and spend money made
3 available to it;

4 (2) adopt regulations necessary for the conduct of its business and for
5 carrying out federal and state laws granting adult public assistance, temporary cash
6 assistance, diversion payments, or self-sufficiency services for needy families under
7 the Alaska temporary assistance program, and other assistance;

8 (3) establish minimum standards for personnel employed by the
9 department and adopt necessary regulations to maintain those standards;

10 (4) require those bonds and undertakings from persons employed by it
11 that, in its judgment, are necessary, and pay the premiums on them;

12 (5) cooperate with the federal government in matters of mutual
13 concern pertaining to adult public assistance, the Alaska temporary assistance
14 program, and other forms of public assistance;

15 (6) make the reports, in the form and containing the information, that
16 the federal government from time to time requires;

17 (7) cooperate with the federal government, its agencies, or
18 instrumentalities in establishing, extending, and strengthening services for the
19 protection and care of homeless, dependent, and neglected children in danger of
20 becoming delinquent, and receive and expend funds available to the department by the
21 federal government, the state, or its political subdivisions for that purpose;

22 (8) cooperate with the federal government in adopting state plans to
23 make the state eligible for federal matching in appropriate categories of assistance, and
24 in all matters of mutual concern, including adoption of the methods of administration
25 that are found by the federal government to be necessary for the efficient operation of
26 welfare programs;

27 (9) adopt regulations, not inconsistent with law, defining need,
28 prescribing the conditions of eligibility for assistance, and establishing standards for
29 determining the amount of assistance that an eligible person is entitled to receive; the
30 amount of the assistance is sufficient when, added to all other income and resources
31 available to an individual, it provides the individual with a reasonable subsistence

1 compatible with health and well-being; an individual who meets the requirements for
2 eligibility for assistance shall be granted the assistance promptly upon application for
3 it;

4 (10) grant to a person claiming or receiving assistance and who is
5 aggrieved because of the department's action or failure to act, reasonable notice and an
6 opportunity for a fair hearing by the office of administrative hearings (AS 44.64.010),
7 and the department shall adopt regulations relative to this;

8 (11) enter into reciprocal agreements with other states relative to
9 public assistance, welfare services, and institutional care that are considered advisable;

10 (12) establish the requirements of residence for public assistance,
11 welfare services, and institutional care that are considered advisable, subject to the
12 limitations of other laws of the state, or law or regulation imposed as conditions for
13 federal financial participation;

14 (13) establish the divisions and local offices that are considered
15 necessary or expedient to carry out a duty or authority assigned to it and appoint and
16 employ the assistants and personnel that are necessary to carry on the work of the
17 divisions and offices, and fix the compensation of the assistants or employees, except
18 that a person engaged in business as a retail vendor of general merchandise, or a
19 member of the immediate family of a person who is so engaged, may not serve as an
20 acting, temporary, or permanent local agent of the department, unless the
21 commissioner of health and social services certifies in writing to the governor, with
22 relation to a particular community, that no other qualified person is available in the
23 community to serve as local welfare agent; for the purposes of this paragraph, a
24 "member of the immediate family" includes a spouse, child, parent, brother, sister,
25 parent-in-law, brother-in-law, or sister-in-law;

26 (14) provide education and health-related services and referrals
27 designed to reduce the number of out-of-wedlock pregnancies and the number of
28 induced pregnancy terminations in the state;

29 (15) investigate reports of abuse, neglect, or misappropriation of
30 property by certified nurse aides in facilities licensed by the department under
31 AS 47.32;

1 (16) establish state policy relating to and administer federal programs
 2 subject to state control as provided under 42 U.S.C. 3001 - 3058ee (Older Americans
 3 Act of 1965), as amended, and related federal regulations;

4 (17) administer the older Alaskans service grants under AS 47.65.010 -
 5 47.65.050 and the adult day care and family respite care grants under AS 47.65.100;

6 **(18) actively seek to recruit quality foster parents and adoptive**
 7 **parents when a shortage of quality foster parents or adoptive parents exists.**

8 * **Sec. 3.** AS 47.10.080(c) is amended to read:

9 (c) If the court finds that the child is a child in need of aid, the court shall

10 (1) order the child committed to the department for placement in an
 11 appropriate setting for a period of time not to exceed two years or in any event not to
 12 extend past the date the child becomes 19 years of age, except that the department, the
 13 child, or the child's guardian ad litem may petition for and the court may grant in a
 14 hearing

15 (A) one-year extensions of commitment that do not extend
 16 beyond the child's 19th birthday if the extension is in the best interests of the
 17 child; and

18 (B) additional one-year extensions of commitment past 19
 19 years of age that do not extend beyond the person's 21st birthday if the
 20 continued state custody is in the best interests of the person and the person
 21 consents to it;

22 (2) order the child released to a parent, adult family member, or
 23 guardian of the child or to another suitable person, and, in appropriate cases, order the
 24 parent, adult family member, guardian, or other person to provide medical or other
 25 care and treatment; if the court releases the child, it shall direct the department to
 26 supervise the care and treatment given to the child, but the court may dispense with
 27 the department's supervision if the court finds that the adult to whom the child is
 28 released will adequately care for the child without supervision; the department's
 29 supervision may not exceed two years or in any event extend past the date the child
 30 reaches 19 years of age, except that the department or the child's guardian ad litem
 31 may petition for and the court may grant in a hearing

1 (A) one-year extensions of supervision that do not extend
 2 beyond the child's 19th birthday if the extensions are in the best interests of the
 3 child; and

4 (B) an additional one-year period of supervision past 19 years
 5 of age if the continued supervision is in the best interests of the person and the
 6 person consents to it; or

7 (3) order, under the grounds specified in (o) of this section or
 8 AS 47.10.088, the termination of parental rights and responsibilities of one or both
 9 parents and commit the child to the custody of the department; ~~], AND]~~ the
 10 department shall report quarterly to the court **and shall demonstrate in its report**
 11 **that the department is making all reasonable** [ON] efforts [BEING MADE] to find
 12 a permanent placement for the child.

13 * **Sec. 4.** AS 47.10.080(l) is amended to read:

14 (l) Within 12 months after the date a child enters foster care as calculated
 15 under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and
 16 permanent plan developed in the hearing are governed by the following provisions:

17 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of
 18 this section are also entitled to be heard at the hearing held under this subsection;

19 (2) when establishing the permanent plan for the child, the court shall
 20 make appropriate written findings, including findings related to whether

21 (A) and when the child should be returned to the parent or
 22 guardian;

23 (B) the child should be placed for adoption or legal
 24 guardianship and whether a petition for termination of parental rights should be
 25 filed by the department; and

26 (C) there is a compelling reason that the most appropriate
 27 placement for the child is in another planned, permanent living arrangement
 28 and the department has recommended the arrangement under AS 47.14.100(p);
 29 the findings under this paragraph must include the steps that are necessary to
 30 achieve the new arrangement;

31 (3) if the court is unable to make a finding required under (2) of this

1 subsection, the court shall hold another hearing within a reasonable period of time;

2 (4) in addition to the findings required by (2) of this subsection, the
3 court shall also make appropriate written findings related to

4 (A) whether the department has made the reasonable efforts
5 required under AS 47.10.086 to offer appropriate family support services to
6 remedy the parent's or guardian's conduct or conditions in the home that made
7 the child a child in need of aid under this chapter;

8 (B) whether the parent or guardian has made substantial
9 progress to remedy the parent's or guardian's conduct or conditions in the home
10 that made the child a child in need of aid under this chapter;

11 (C) if the permanent plan is for the child to remain in out-of-
12 home care [OUT-OF-HOME-CARE], whether

13 (i) the child's out-of-home placement continues to be
14 appropriate and in the best interests of the child; and

15 (ii) the department is making all reasonable efforts
16 to find a permanent placement for the child; and

17 (D) whether the department has made reasonable efforts to
18 finalize the permanent plan for the child;

19 (5) the court shall hold a hearing to review the permanent plan at least
20 annually until successful implementation of the plan; if the plan approved by the court
21 changes after the hearing, the department shall promptly apply to the court for another
22 permanency hearing, and the court shall conduct the hearing within 30 days after
23 application by the department;

24 (6) if the court finds, under (4)(C)(ii) of this subsection, that the
25 department is not making all reasonable efforts to find a permanent placement
26 for the child, the court shall order the department to make all reasonable efforts
27 to find a permanent placement for the child unless the current placement is in the
28 best interests of the child.

29 * **Sec. 5.** AS 47.10.080(s) is amended to read:

30 (s) The department may transfer a child, in the child's best interests, from one
31 placement setting to another, and the child, the child's parents or guardian, the child's

1 foster parents or out-of-home caregiver, the child's guardian ad litem, the child's
 2 attorney, and the child's tribe are entitled to advance notice of a nonemergency
 3 transfer. A party opposed to the proposed transfer may request a hearing and must
 4 prove by clear and convincing evidence that the transfer would be contrary to the best
 5 interests of the child for the court to deny the transfer. A foster parent or out-of-home
 6 caregiver who requests a nonemergency change in placement of the child shall provide
 7 the department with reasonable advance notice of the requested change. **When the**
 8 **department transfers a child from one out-of-home placement to another, the**
 9 **department shall search for an appropriate placement with an adult family**
 10 **member or a family friend who meets the foster care licensing requirements**
 11 **established by the department.**

12 * **Sec. 6.** AS 47.10.080 is amended by adding a new subsection to read:

13 (x) If the department transfers a child from one placement setting to another
 14 and it is reasonable and in the child's best educational interests, the department shall
 15 immediately, and in advance of the transfer if possible, coordinate with the school the
 16 child is attending to ensure the child is permitted to attend that school through the end
 17 of the school term if the child's new placement is in the same municipality and
 18 connected by road to the school. If federal funds and school district transportation
 19 funds are not available to pay for the cost of transportation for the child, the
 20 department shall pay the costs of transporting the child to school. The department shall
 21 work with the family or agency where the child is placed to arrange for transportation.
 22 The department shall consult with the school district regarding the child's best
 23 interests, but the school district may not override the department's decision to allow a
 24 child to remain in the current school through the end of the school term.

25 * **Sec. 7.** AS 47.10.093 is amended by adding new subsections to read:

26 (p) The department shall adopt regulations requiring the disclosure of
 27 appropriate information to Alaska Native villages or Native organizations. The
 28 regulations adopted under this subsection must require the department to disclose
 29 appropriate information to Alaska Native villages or Native organizations if

30 (1) the department has entered into a confidentiality agreement with
 31 the Alaska Native village or Native organization under AS 47.14.100(g);

1 (2) the department finds that disclosing the information is in the best
2 interests of the child; and

3 (3) disclosing the information is necessary to protect the child's safety
4 and to help meet the child's potential for a healthy and successful childhood and
5 adulthood.

6 (q) The department shall adopt regulations requiring the department to
7 disclose, in addition to the information disclosed under (p) of this section, relevant
8 information to an Alaska Native village or Native organization to assist the Alaska
9 Native village or Native organization in evaluating whether a family should be
10 licensed for foster care or whether placing a child with a family is in the best interests
11 of the child. The regulations must require the department, if the criteria in (p)(1) and
12 (2) are met, to disclose to the Alaska Native village or Native organization relevant
13 information regarding the department's

14 (1) denial of a foster care license under AS 47.32 to a family member
15 of a child subject to 25 U.S.C. 1901 - 1963 (Indian Child Welfare Act); or

16 (2) decision not to place a child subject to 25 U.S.C. 1901 - 1963
17 (Indian Child Welfare Act), with a person who has requested placement of the child
18 under AS 47.14.100.

19 * **Sec. 8.** AS 47.10.142 is amended by adding a new subsection to read:

20 (i) When the department takes emergency custody of a child under this section
21 or a court orders a child committed to the department for temporary placement under
22 this section, the department shall, to the extent feasible and consistent with the best
23 interests of the child, place the child according to the criteria specified under
24 AS 47.14.100(e).

25 * **Sec. 9.** AS 47.14.100(n) is amended to read:

26 (n) Except as provided in (o) and (p) of this section, the department shall
27 continue to search for a suitable adoptive or permanent legal guardianship for a child
28 **or person** who is in the custody of the state and who is under **21** [18] years of age.

29 * **Sec. 10.** AS 47.14.100(p) is amended to read:

30 (p) The department may release from state custody a child **or person** who has
31 been committed to the custody of the department, before the custody is ordered to end,

1 only if **the person, if the person is 19 years of age or older, consents, or**

2 (1) the child **or person**, if the child **or person** is over 16 years of age
3 and available, and the guardian ad litem are notified not less than 30 days before a
4 motion for release is filed unless the parties agree to a shorter notice period;

5 (2) the department files a motion with the court for release of state
6 custody that describes the reasons the release is in the best interest of the child **or**
7 **person**; and

8 (3) a court makes a written finding that release from state custody is in
9 the best interest of the child **or person**.

10 * **Sec. 11.** AS 47.18.320(a) is amended to read:

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

13 (1) education and vocational training;

14 (2) assistance in obtaining **educational** [BASIC EDUCATION] and
15 **vocational** training;

16 (3) career and employment services;

17 (4) training in basic life skills;

18 (5) housing and utility assistance;

19 (6) mentoring and counseling; and

20 (7) other appropriate services to complement the efforts of former state
21 foster care recipients to achieve self-sufficiency.

22 * **Sec. 12.** AS 47.18.320 is amended by adding a new subsection to read:

23 (c) If appropriations to meet the purposes of this section are insufficient, the
24 department shall submit a written report to the legislature advising the legislature of

25 (1) the department's efforts to use existing funds efficiently; and

26 (2) the opportunities and services the department cannot provide under
27 the existing appropriation level.

28 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 INDIRECT COURT RULE AMENDMENTS. AS 47.10.080(l), as amended by sec. 4
31 of this Act, has the effect of amending Rule 17.2, Alaska Child in Need of Aid Rules of

- 1 Procedure, relating to permanency hearings, by adding a requirement for the court to make
- 2 findings relating to the permanent placement of a child in need of aid and to the efforts of the
- 3 Department of Health and Social Services to find a permanent placement for a child.