

HOUSE BILL NO. 303

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KELLY

Introduced: 4/5/95

Referred: Health, Education and Social Services, State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to court review of child placement decisions of the Department
2 of Health and Social Services; and providing for an effective date."**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. PURPOSE. The purpose of this Act is to make clear that the legislature has
5 given the court the full authority to review issues relating to the placement of children in state
6 custody and that the standard for review is whether the placement is in the best interest of the
7 child. This statute is intended to change the result under State Dept. of Health and Social
8 Services v. A.C., 682 P.2d 1131 (Alaska Ct. App. 1984) by providing that the court may
9 overrule the Department of Health and Social Services' placement decision based solely on
10 the court's determination of the best interest of the child without regard to whether or not the
11 department's placement constitutes an abuse of discretion.

12 * Sec. 2. AS 47.10.080(f) is amended to read:

13 (f) A minor found to be delinquent or a child in need of aid is a ward of the
14 state while committed to the department or the department has the power to supervise

1 the minor's actions. The court shall review an order made under (b) or (c)(1) or (2)
2 of this section annually, and may review the order more frequently to determine if
3 continued placement, probation, or supervision, as it is being provided, is in the best
4 interest of the minor and the public. If annual review under this subsection would
5 arise within 90 days of the hearing required under (l) of this section, the court may
6 postpone review under this subsection until the time set for the hearing. The
7 department, the minor, the minor's parents, guardian, or custodian are entitled, when
8 good cause is shown, to a review on application. If the application is granted, the
9 court shall afford these parties and their counsel reasonable notice in advance of the
10 review and hold a hearing where these parties and their counsel shall be afforded an
11 opportunity to be heard. The minor shall be afforded the opportunity to be present at
12 the review. **The court's decision and orders following a review under this**
13 **subsection shall be based on the court's independent review of the evidence and**
14 **the court's independent determination of which placement is in the best interests**
15 **of the minor. The court may not give deference to the department's**
16 **recommendations.**

17 * Sec. 3. AS 47.10.080(l) is amended to read:

18 (l) Within 18 months after the date a child is initially taken into custody by
19 the department under AS 47.10.142(c) or committed to the custody of the department
20 under (b)(3), (c)(1), or (c)(3) of this section, or 47.10.230(c), the court shall hold a
21 hearing to review the placement and services provided and to determine the future
22 status of the minor. **The court's decision and orders following a review under this**
23 **subsection shall be based on the court's independent review of the evidence and**
24 **the court's independent determination of which placement is in the best interests**
25 **of the minor. The court may not give deference to the department's**
26 **recommendations.** The court shall make appropriate written findings, including
27 findings related to the following:

- 28 (1) whether the child should be returned to the parent;
29 (2) whether the child should remain in out-of-home care for a specified
30 period;
31 (3) whether the child should remain in out-of-home care on a

1 permanent or long-term basis because of special needs or circumstances;
2 (4) whether the child should be placed for adoption or legal
3 guardianship.

4 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).