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HOUSE CS FOR CS FOR SS FOR SENATE BILL NO. 82(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 3/23/12

Referred: Judiciary

Sponsor(s): SENATOR DAVIS

REPRESENTATIVES Gara, Kerttula, Gardner

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the procedures and jurisdiction of the Department of Health and
2 Social Services for the care of children who are in state custody; relating to court
3 jurisdiction and findings pertaining to children who are in state custody; and modifying
4 the licensing requirements for foster care."

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

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

8 SHORT TITLE. This Act may be known as the Alaska Foster Family Protection Act.

9 * **Sec. 2.** AS 47.10.080(l) is amended to read:

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

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

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

3 (A) and when the child should be returned to the parent or
4 guardian;

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

8 (C) **there is a compelling reason that the most appropriate**
9 **placement for** the child **is** [SHOULD BE PLACED] in another planned,
10 permanent living arrangement **and the department has recommended the**
11 **arrangement under AS 47.14.100(p); the findings under this paragraph**
12 **must include the steps that** [AND WHAT STEPS] are necessary to achieve
13 the new arrangement;

14 (3) if the court is unable to make a finding required under (2) of this
15 subsection, the court shall hold another hearing within a reasonable period of time;

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

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

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

25 (C) if the permanent plan is for the child to remain in out-of-
26 home-care, whether the child's out-of-home placement continues to be
27 appropriate and in the best interests of the child; and

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

30 (5) the court shall hold a hearing to review the permanent plan at least
31 annually until successful implementation of the plan; if the plan approved by the court

1 changes after the hearing, the department shall promptly apply to the court for another
 2 permanency hearing, and the court shall conduct the hearing within 30 days after
 3 application by the department.

4 * **Sec. 3.** AS 47.10.080(v) is amended to read:

5 (v) In addition to the extensions of state custody ordered by a court under
 6 (c)(1)(A) or (B) of this section, a court may grant in a hearing a resumption of state
 7 custody that does not extend beyond a person's 21st birthday if the person

8 (1) consents to it;

9 (2) was placed in out-of-home care by the department immediately
 10 before being released from state custody and the person was

11 **(A) at least 18 years of age and** released to the person's own
 12 custody; **or**

13 **(B) at least 16 years of age and released to the**

14 **(i) person's own custody after the disabilities of**
 15 **minority were removed under AS 09.55.590; or**

16 **(ii) custody of a parent or guardian because the**
 17 **person refused out-of-home care;**

18 (3) is in need of out-of-home care

19 **(A) to avoid personal harm;**

20 **(B) because of the person's severe emotional disturbance,**
 21 **mental disability, physical disability, [OR] homelessness, or a combination**
 22 **of those conditions;**

23 **(C) because the person is completing an educational or**
 24 **vocational program;** or

25 **(D) to [ENHANCE THE PERSON'S ABILITY TO**
 26 **CONTINUE THE PERSON'S EDUCATION OR TRAINING OR]** otherwise
 27 improve the person's successful transition to independent living; and

28 (4) if requested by the department, agrees to reasonable terms for
 29 resuming state custody that may include matters relating to the person's education,
 30 attainment of a job or life skills, or other terms found by the court to be reasonable and
 31 in the person's best interest.

1 * **Sec. 4.** AS 47.10.080 is amended by adding a new subsection to read:

2 (w) The court shall recognize a presumption that maintenance of a sibling
3 relationship, including with a sibling who is related by blood, marriage, or adoption
4 through one parent, is in a child's best interest.

5 * **Sec. 5.** AS 47.10.100 is amended to read:

6 **Sec. 47.10.100. Retention of jurisdiction over child [MINOR].** (a) The court
7 retains jurisdiction over the case and may at any time stay execution, modify, set
8 aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise
9 of its power of protection over the child [MINOR] and for the child's [MINOR'S] best
10 interest, for a period of time not to exceed two years or in any event extend past the
11 day the child reaches [MINOR BECOMES] 19 years of age, unless sooner
12 discharged by the court, except that the department may apply for and the court may
13 grant an additional one-year period of custody or supervision past [AGE] 19 years of
14 age and additional one-year periods of custody that do not extend beyond the
15 person's 21st birthday if continued custody or supervision is in the best interests of
16 the person and the person consents to it. An application for any of these purposes may
17 be made by the parent, guardian, or custodian acting in behalf of the child [MINOR],
18 or the court may, on its own motion, and after reasonable notice to interested parties
19 and the appropriate department, take action that it considers appropriate.

20 (b) If the court determines at a hearing authorized by (a) of this section that
21 the department has complied with the requirements for release of a child under
22 AS 47.14.100(q) and that it is in [FOR] the best interests of the child [MINOR] to be
23 released to the child's own custody, or to the care or custody of the child's
24 [MINOR'S] parent, guardian, or custodian, it shall [MAY] enter an order to that effect
25 and the child [MINOR] is discharged from the control of the department.

26 (c) If a child [MINOR] is adjudicated a child in need of aid before the child's
27 [MINOR'S] 18th birthday, the court may retain jurisdiction over the child [MINOR]
28 after the child's [MINOR'S] 18th birthday for the purpose of supervising the child
29 [MINOR], but the court's jurisdiction over the minor under this chapter never extends
30 beyond the child's [MINOR'S] 19th birthday, except that the department may apply
31 for and the court may grant an additional one-year period of custody or supervision

1 past [AGE] 19 **years of age and additional one-year periods of custody that do not**
 2 **extend beyond the person's 21st birthday** if continued **custody or** supervision is in
 3 the best interests of the person and the person consents to it. The department may
 4 retain jurisdiction over a child [BETWEEN THE CHILD'S 18TH AND 19TH
 5 BIRTHDAYS FOR THE PURPOSE OF SUPERVISING THE CHILD,] if the child
 6 has been placed **in the custody or** under the supervision of the department before the
 7 child's 18th birthday, except that the department may apply for and the court may
 8 grant an additional one-year period of **custody or** supervision past [AGE] 19 **years of**
 9 **age and additional one-year periods of custody that do not extend beyond the**
 10 **person's 21st birthday** if continued **custody or** supervision is in the best interests of
 11 the person and the person consents to it.

12 * **Sec. 6.** AS 47.14.100(m) is amended to read:

13 (m) Prima facie evidence of good cause not to place a child with an adult
 14 family member or family friend under AS 47.10.088(i) or under (e) of this section
 15 includes the failure to meet the requirements for a foster care license under AS 47.32
 16 and regulations adopted under AS 47.32, **taking into account a waiver, variance, or**
 17 **exemption allowed under AS 47.32.030(a)(3) and 47.32.032.** Prima facie evidence
 18 of good cause not to place a child with an adult family member or adult family friend
 19 does not include poverty or inadequate or crowded housing. If the department denies a
 20 request for placement with an adult family member or a family friend, the department
 21 shall inform the adult family member or family friend of the basis for the denial and
 22 the right to request a hearing to review the decision. A non-party adult family member
 23 or family friend requesting a review hearing under AS 47.10.088(i) or under (e) of this
 24 section is not eligible for publicly appointed legal counsel.

25 * **Sec. 7.** AS 47.14.100 is amended by adding new subsections to read:

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

29 (p) The department may recommend to the court another planned permanent
 30 living arrangement for a child who is in state custody only if

31 (1) the child is 16 years of age or older;

1 (2) the department has unsuccessfully made intensive efforts to find a
2 permanent placement for the child; and

3 (3) the department, after considering reunification, adoption, legal
4 guardianship, or permanent placement with a fit and willing relative, determines that
5 there is a compelling reason that the most appropriate permanency plan for the child is
6 placement in another planned permanent living arrangement, and the department
7 documents for the court the compelling reason for the alternate plan.

8 (q) The department may release from state custody a child who has been
9 committed to the custody of the department, before the custody is ordered to end, only
10 if

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

14 (2) the department files a motion with the court for release of state
15 custody that describes the reasons the release is in the best interest of the child; and

16 (3) a court makes a written finding that release from state custody is in
17 the best interest of the child.

18 (r) When custody of a child who has been committed to the custody of the
19 department is due to expire, the department shall file a notice of release with the court
20 30 days before the date of release unless the parties agree to a shorter notice period
21 and distribute the notice to the parties, including the child if the child is 16 years of
22 age or older and available.

23 (s) The department shall make reasonable efforts to place siblings in the same
24 placement if the siblings are residing in the same home when taken into the custody of
25 the department. If siblings are not placed together after reasonable efforts have been
26 made, the case supervisor for the division with responsibility over the custody of
27 children shall document in the file the efforts that were made and the reason separating
28 the siblings for placement purposes is in the best interest of the children. In this
29 subsection, "sibling" means two or more persons who are related by blood, adoption,
30 or marriage as a child of one or both parents.

31 (t) As used in (p) of this section, "compelling reason" may include

1 circumstances in which

2 (1) the child has specifically requested that emancipation be
3 established;

4 (2) a parent and child have a significant bond, but the parent is unable
5 to care for the child because of an emotional or physical disability, and the child's
6 foster parents have committed to raising the child to the age of majority and to
7 facilitating visitation with the disabled parent.

8 (u) In this section, "another planned permanent living arrangement" means a
9 permanent living arrangement for a child who is committed to the custody of the
10 department under AS 47.10.080(c)(1) that is an alternative to permanent placement
11 with an adult family member, and to reunification, adoption, and legal guardianship.

12 * **Sec. 8.** AS 47.32 is amended by adding a new section to read:

13 **Sec. 47.32.032. Foster care license; variance.** (a) The department shall
14 streamline the application and licensing paperwork necessary for a person to be
15 approved as a foster parent or relative placement to the extent consistent with federal
16 law.

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

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

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