

HOUSE BILL NO. 27

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GARA

Introduced: 1/21/15

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 permanent placement of a child in need of aid; relating to school**
3 **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; relating**
6 **to transitional living arrangements for children in foster care; and amending Rules 17.2**
7 **and 18, Alaska Child in Need of Aid Rules of Procedure."**

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

9 * **Section 1.** AS 47.05.010 is amended to read:

10 **Sec. 47.05.010. Duties of department.** The Department of Health and Social
11 Services shall

12 (1) administer adult public assistance, the Alaska temporary assistance
13 program, and all other assistance programs, and receive and spend money made

1 available to it;

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

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

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

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

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

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

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

25 (9) adopt regulations, not inconsistent with law, defining need,
26 prescribing the conditions of eligibility for assistance, and establishing standards for
27 determining the amount of assistance that an eligible person is entitled to receive; the
28 amount of the assistance is sufficient when, added to all other income and resources
29 available to an individual, it provides the individual with a reasonable subsistence
30 compatible with health and well-being; an individual who meets the requirements for
31 eligibility for assistance shall be granted the assistance promptly upon application for

1 it;

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

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

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

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

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

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

30 (16) establish state policy relating to and administer federal programs
31 subject to state control as provided under 42 U.S.C. 3001 - 3058ee (Older Americans

1 Act of 1965), as amended, and related federal regulations;

2 (17) administer the older Alaskans service grants under AS 47.65.010 -
3 47.65.050 and the adult day care and family respite care grants under AS 47.65.100;

4 **(18) recruit foster parents and adoptive parents when a shortage**
5 **of foster parents or adoptive parents exists.**

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

7 (f) A child found to be a child in need of aid is a ward of the state while
8 committed to the department or the department has the power to supervise the child's
9 actions. For an order made under (c)(1) of this section, the court shall hold a
10 permanency hearing as required by (l) of this section [AND AT LEAST ANNUALLY
11 THEREAFTER DURING THE CONTINUATION OF FOSTER CARE] to determine
12 **whether** [IF] continued placement, as it is being provided, is in the best interest of the
13 child. The department, the child, and the child's parents, guardian, and guardian ad
14 litem are entitled, when good cause is shown, to a permanency hearing on application.
15 If the application is granted, the court shall afford these persons and their counsel
16 reasonable advance notice and hold a permanency hearing where these persons and
17 their counsel shall be afforded an opportunity to be heard. The persons entitled to
18 notice under AS 47.10.030(b) and the grandparents entitled to notice under
19 AS 47.10.030(d) are entitled to notice of a permanency hearing under this subsection
20 and are also entitled to be heard at the hearing. The child shall be afforded the
21 opportunity to be present and to be heard at the permanency hearing. After the
22 permanency hearing, the court shall make the written findings that are required under
23 (l) of this section. The court shall review an order made under (c)(2) of this section at
24 least annually to determine if continued supervision, as it is being provided, is in the
25 best interest of the child; this review is not considered to be a permanency hearing and
26 is not governed by the provisions of this subsection that relate to permanency
27 hearings. **For an order made under (c)(3) of this section, the court shall also hold**
28 **a hearing as required under (x) of this section; this hearing is not a permanency**
29 **hearing and is not governed by the provisions of this subsection that relate to**
30 **permanency hearings.**

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

1 (l) Within 12 months after the date a child enters foster care as calculated
 2 under AS 47.10.088(f), the court shall hold a permanency hearing, **and, if the**
 3 **permanent plan is for the child to remain in out-of-home care and the**
 4 **department has not found a permanent placement for the child within two years**
 5 **after the date the court approves the permanent plan, the court shall hold a**
 6 **hearing at least once every six months.** The hearing and permanent plan developed
 7 in the hearing are governed by the following provisions:

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

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

12 (A) and when the child should be returned to the parent or
 13 guardian;

14 (B) the child should be placed for adoption or legal
 15 guardianship and whether a petition for termination of parental rights should be
 16 filed by the department; [AND]

17 (C) there is a compelling reason that the most appropriate
 18 placement for the child is in another planned, permanent living arrangement
 19 and the department has recommended the arrangement under AS 47.14.100(p);
 20 the findings under this paragraph must include the steps that are necessary to
 21 achieve the new arrangement; **and**

22 **(D) the child should be permanently placed with a fit and**
 23 **willing relative;**

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

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

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

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

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

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

8 (ii) the department is taking all feasible steps to find
 9 a permanent placement for the child;

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

12 (5) the court shall hold a hearing to review the permanent plan at least
 13 annually until successful implementation of the plan; if the plan approved by the court
 14 changes after the hearing, the department shall promptly apply to the court for another
 15 permanency hearing, and the court shall conduct the hearing within 30 days after
 16 application by the department;

17 (6) if the court finds, under (4)(C)(ii) of this subsection, that the
 18 department is not taking all feasible steps to find a permanent placement for the
 19 child, the court shall order the department to take all feasible steps to find a
 20 permanent placement for the child unless the current placement is in the best
 21 interests of the child.

22 * **Sec. 4.** AS 47.10.080(s) is amended to read:

23 (s) The department may transfer a child, in the child's best interests, from one
 24 placement setting to another, and the child, the child's parents or guardian, the child's
 25 foster parents or out-of-home caregiver, the child's guardian ad litem, the child's
 26 attorney, and the child's tribe are entitled to advance notice of a nonemergency
 27 transfer. A party opposed to the proposed transfer may request a hearing and must
 28 prove by clear and convincing evidence that the transfer would be contrary to the best
 29 interests of the child for the court to deny the transfer. A foster parent or out-of-home
 30 caregiver who requests a nonemergency change in placement of the child shall provide
 31 the department with reasonable advance notice of the requested change. When the

1 department transfers a child from one out-of-home placement to another, the
 2 department shall search for an appropriate placement with an adult family
 3 member or a family friend who meets the foster care licensing requirements
 4 established by the department.

5 * **Sec. 5.** AS 47.10.080 is amended by adding new subsections to read:

6 (x) For an order committing the child to the custody of the department for
 7 permanent placement under (c)(3) of this section or AS 47.10.088(k), the court shall
 8 hold a hearing within 12 months after issuing the order if the department has not found
 9 a permanent placement for the child. If the department has not found a permanent
 10 placement for the child within two years after the date the court issues an order under
 11 (c)(3) of this section, the court shall hold a hearing at least once every six months. At
 12 the hearing, the department shall present evidence to establish that it is taking all
 13 feasible steps to find a permanent placement for the child. If the court finds that the
 14 department is not taking all feasible steps to find a permanent placement for the child,
 15 the court shall order the department to take all feasible steps to find a permanent
 16 placement for the child.

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

29 * **Sec. 6.** AS 47.10.093 is amended by adding new subsections to read:

30 (p) The department shall disclose appropriate information to Alaska Native
 31 villages or Native organizations if

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

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

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

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

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

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

20 * **Sec. 7.** AS 47.10.142 is amended by adding a new subsection to read:

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

26 * **Sec. 8.** AS 47.12.310 is amended by adding new subsections to read:

27 (l) The department shall release appropriate information to Alaska Native
28 villages or Native organizations if

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

31 (2) the department finds that disclosing the information is in the best

1 interests of the child; and

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

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

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

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

17 * **Sec. 9.** AS 47.14.100(a) is amended to read:

18 (a) Subject to (e), (f), and (i) - (m) of this section, the department shall arrange
19 for the care of every child committed to its custody by placing the child in a foster
20 home or in the care of an agency or institution providing care for children inside or
21 outside the state. The department may place a child in a suitable family home, with or
22 without compensation, and may place a child released to it, in writing verified by the
23 parent, or guardian or other person having legal custody, for adoptive purposes, in a
24 home for adoption in accordance with existing law. **For a child 16 years of age or**
25 **older, the department may authorize another transitional living arrangement,**
26 **including student dormitory residence at a postsecondary educational institution,**
27 **that adequately meets the child's needs and is designed to assist the child's**
28 **transition to independent living.**

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

30 (b) The department may pay the costs of maintenance that are necessary to
31 **ensure** [ASSURE] adequate care of the child, and may accept funds from the federal

1 government that are granted to assist in carrying out the purposes of this chapter, or
 2 that are paid under contract entered into with a federal department or agency. **For a**
 3 **child 16 years of age or older whom the department authorizes to live in a**
 4 **student dormitory residence at a postsecondary educational institution or other**
 5 **transitional living arrangement, the department shall pay the costs of**
 6 **maintenance, including food, lodging, and other necessities of life, to the child.** A
 7 child under the care of the department may not be placed in a family home, [OR]
 8 institution, **or other transitional living arrangement** that does not maintain adequate
 9 standards of care.

10 * **Sec. 11.** AS 47.14.100(n) is amended to read:

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

14 * **Sec. 12.** AS 47.14.100(p) is amended to read:

15 (p) The department may release from state custody a child **or person** who has
 16 been committed to the custody of the department, before the custody is ordered to end,
 17 only if

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

21 (2) the department files a motion with the court for release of state
 22 custody that describes the reasons the release is in the best interest of the child **or**
 23 **person**; [AND]

24 (3) a court makes a written finding that release from state custody is in
 25 the best interest of the child **or person**; and

26 **(4) the person, if the person is over 18 years of age, consents to**
 27 **release from state custody and a court makes written findings that the person**
 28 **received notice of:**

29 **(A) the hearing under this section;**

30 **(B) the date when custody is ordered to end; and**

31 **(C) the person's right to petition for an extension of state**

1 custody not extending beyond the person's 21st birthday under
 2 AS 47.10.080(c).

3 * **Sec. 13.** AS 47.18.320(a) is amended to read:

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

6 (1) education and vocational training;

7 (2) assistance in obtaining [BASIC] education and training **that are**

8 **consistent with the individual's work and educational potential;**

9 (3) career and employment services;

10 (4) training in basic life skills;

11 (5) housing and utility assistance;

12 (6) mentoring and counseling; and

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

15 * **Sec. 14.** AS 47.18.320 is amended by adding a new subsection to read:

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

18 (1) the extent of the insufficiency;

19 (2) the department's efforts to use existing funds efficiently; and

20 (3) the opportunities and services the department cannot provide under
 21 the existing appropriation level.

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

24 INDIRECT COURT RULE AMENDMENTS. (a) AS 47.10.080(I), as amended by
 25 sec. 3 of this Act, has the effect of amending Rule 17.2, Alaska Child in Need of Aid Rules of
 26 Procedure, relating to permanency hearings, by adding requirements for the court to hold
 27 hearings and make specific findings relating to the efforts of the Department of Health and
 28 Social Services to find a permanent placement for a child.

29 (b) AS 47.10.080(f), as amended by sec. 2 of this Act, and AS 47.10.080(x), added by
 30 sec. 5 of this Act, have the effect of amending Rule 18, Alaska Child in Need of Aid Rules of
 31 Procedure, relating to termination of parental rights proceedings, by adding requirements for

1 the court to hold hearings and make specific findings regarding the efforts of the Department
2 of Health and Social Services to find a permanent placement for a child.

3 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 CONDITIONAL EFFECT. AS 47.10.080(f) and (l), as amended by secs. 2 and 3 of
6 this Act, and AS 47.10.080(x), added by sec. 5 of this Act, take effect only if sec. 15 of this
7 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
8 State of Alaska.