

(LIMITED RUN TO REFLECT FOURTH SPECIAL SESSION)

CS FOR HOUSE BILL NO. 200(HSS) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Amended: 4/15/16

Offered: 4/1/16

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing procedures related to a petition or proxy for adoption or**
2 **guardianship of a child in state custody; adding a definition of 'proxy for a formal**
3 **petition'; amending Rules 5 and 6(a), Alaska Adoption Rules, and adding Rule 17.3,**
4 **Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."**

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 LEGISLATIVE FINDINGS AND INTENT. The legislature finds that

9 (1) all children in state custody should be close to home and with extended
10 family members whenever possible; and

11 (2) because of the number of Alaska Native children in state custody, there is
12 a need to provide an individual seeking immediate permanent placement of an Indian child in
13 state custody with additional flexibility to preserve and apply the placement preferences
14 outlined in the Indian Child Welfare Act (25 U.S.C. 1901 - 1963) with respect to that

1 individual.

2 * **Sec. 2.** AS 13.26.050 is amended by adding a new subsection to read:

3 (b) The venue for a guardianship proceeding for a child in state custody under
4 AS 47.10 is the

5 (1) superior court where the child-in-need-of-aid proceeding is pending
6 as provided under AS 47.10.111; or

7 (2) judicial district in which the petitioner resides if the petitioner
8 provides notice to all of the parties to the child-in-need-of-aid proceeding and no party
9 objects.

10 * **Sec. 3.** AS 13.26.060 is amended by adding a new subsection to read:

11 (e) A petitioner seeking appointment as the guardian of a minor in state
12 custody under AS 47.10 shall file the petition in either the court where the child-in-
13 need-of-aid proceedings are pending or the judicial district in which the petitioner
14 resides, as required under AS 13.26.050(b) and AS 47.10.111.

15 * **Sec. 4.** AS 25.23.030 is amended by adding a new subsection to read:

16 (d) The venue for an adoption proceeding for a child in state custody under
17 AS 47.10 is the

18 (1) superior court where the child-in-need-of-aid proceeding is pending
19 as provided under AS 47.10.111; or

20 (2) judicial district in which the petitioner resides if the petitioner
21 provides notice to all of the parties to the child-in-need-of-aid proceeding and no party
22 objects.

23 * **Sec. 5.** AS 25.23.080 is amended by adding a new subsection to read:

24 (d) A petitioner petitioning to adopt a child in state custody under AS 47.10
25 shall file the petition for adoption in either the court where the child-in-need-of-aid
26 proceedings are pending or the judicial district in which the petitioner resides, as
27 required under AS 25.23.030(d) and AS 47.10.111.

28 * **Sec. 6.** AS 25.23.100(a) is amended to read:

29 (a) After the filing of a petition to adopt a minor, the court shall fix a time and
30 place for hearing the petition **unless the petition is held in abeyance under**
31 **AS 47.10.111.** At least 20 days before the date of hearing, the petitioner shall give

1 notice of the filing of the petition and of the time and place of hearing to (1) the
 2 department, unless the adoption is by a stepparent of the child; (2) any agency or
 3 person whose consent to the adoption is required by this chapter, but who has not
 4 consented; and (3) a person whose consent is dispensed with upon any ground
 5 mentioned in AS 25.23.050(a)(1) - (3), (6), (8), and (9), but who has not consented.
 6 The notice to the department shall be accompanied by a copy of the petition.

7 * **Sec. 7.** AS 25.24.150(a) is amended to read:

8 (a) In an action for divorce or for legal separation, [OR] for placement of a
 9 child when one or both parents have died, **or as part of a child-in-need-of-aid**
 10 **proceeding for a child in state custody under AS 47.10,** the court may, if it has
 11 jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under
 12 AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing
 13 or at any time thereafter during the minority of a child of the marriage, make, modify,
 14 or vacate an order for the custody of or visitation with the minor child that may seem
 15 necessary or proper, including an order that provides for visitation by a grandparent or
 16 other person if that is in the best interests of the child. **The court shall hear custody**
 17 **proceedings related to a child in state custody under AS 47.10 as part of the**
 18 **child-in-need-of-aid proceedings, as provided under AS 47.10.113, unless notice is**
 19 **provided to all parties to the child-in-need-of-aid proceedings and no party**
 20 **objects to hearing the custody proceedings in another appropriate forum.**

21 * **Sec. 8.** AS 47.10.080(*l*) is amended to read:

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

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

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

29 (A) and when the child should be returned to the parent or
 30 guardian;

31 (B) the child should be placed for adoption or legal

1 guardianship and whether a petition for termination of parental rights should be
2 filed by the department; and

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

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

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

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

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

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

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

24 (5) the court shall hold a hearing to review the permanent plan at least
25 annually until successful implementation of the plan; if the plan approved by the court
26 changes after the hearing, the department shall promptly apply to the court for another
27 permanency hearing, and the court shall conduct the hearing within 30 days after
28 application by the department;

29 **(6) in a hearing to review the permanent plan under**
30 **AS 47.10.111(c) or 47.10.112(c), the court shall make written findings related to**
31 **whether**

1 **(A) the person who filed the petition or proxy is entitled to**
 2 **placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a),**
 3 **whichever is applicable; and**

4 **(B) if 25 U.S.C. 1915(a) applies, the current placement is in**
 5 **compliance with or whether there is good cause to deviate from the**
 6 **placement preferences.**

7 * **Sec. 9.** AS 47.10 is amended by adding new sections to read:

8 **Sec. 47.10.111. Petition for adoption or guardianship of a child in state**
 9 **custody.** (a) Except as provided under AS 13.26.050(b)(2) and AS 25.23.030(d)(2), if
 10 a person seeks adoption or appointment as legal guardian of a child in state custody
 11 under this chapter, the court shall hear the adoption or guardianship proceedings as
 12 part of the child-in-need-of-aid proceedings relating to the child. A person may initiate
 13 proceedings for the adoption or legal guardianship of a child in state custody under
 14 this chapter by filing with the court a petition

15 (1) for adoption that meets the requirements of AS 25.23.080; or

16 (2) to be appointed legal guardian that meets the requirements of
 17 AS 13.26.060.

18 (b) If a person files a petition for adoption or legal guardianship of a child
 19 under (a) of this section before the court approves adoption or legal guardianship as
 20 the permanent plan for the child under AS 47.10.080(l)(2), the court shall hold the
 21 petition in abeyance until after the court has approved adoption or legal guardianship
 22 as the permanent plan for the child under AS 47.10.080(l).

23 (c) If a person files a petition for adoption or legal guardianship of a child who
 24 is in out-of-home placement, and the child is not placed with the person who files the
 25 petition at the time the person files the petition, the department shall, not more than 60
 26 days after the petition is filed, submit a permanent plan to the court. The court shall
 27 hold a hearing to review the permanent plan for the child under AS 47.10.080(l) not
 28 more than 90 days after the petition is filed.

29 (d) A person who files a petition for adoption or legal guardianship of a child
 30 under this section does not become a party to the child-in-need-of-aid proceedings. A
 31 person who files a petition for adoption or legal guardianship of a child under this

1 section may only participate in proceedings under this chapter that concern the
2 person's petition.

3 (e) A parent who has consented to adoption under AS 25.23.060, who has
4 relinquished parental rights under AS 47.10.089, or whose parental rights have been
5 terminated under AS 47.10.080(o) or 47.10.088, is not a party to the adoption or
6 guardianship proceedings under this section.

7 (f) Except as provided in this section, the requirements of AS 25.23.005 -
8 25.23.240 apply to a petition for adoption filed under this section, and the
9 requirements of AS 13.26.030 - 13.26.085 apply to a petition for legal guardianship
10 filed under this chapter.

11 **Sec. 47.10.112. Proxy for a formal petition for adoption or legal**
12 **guardianship.** (a) A person seeking the immediate permanent placement of a child in
13 state custody under this chapter may file a proxy for a formal petition for adoption or
14 legal guardianship of the child. The court shall hear proceedings related to the proxy
15 as part of the child-in-need-of-aid proceedings relating to the child. In the case of an
16 Indian child, a proxy for a formal petition for

17 (1) adoption preserves the placement preferences of 25 U.S.C. 1915(a)
18 with respect to the person who files the proxy; and

19 (2) legal guardianship preserves the placement preferences of 25
20 U.S.C. 1915(b) with respect to the person who files the proxy.

21 (b) A proxy filed under this section does not initiate proceedings for adoption
22 or legal guardianship. A person seeking to adopt a child in state custody must file a
23 petition for adoption as required under AS 25.23. A person seeking to be appointed
24 legal guardian of a child in state custody must file a petition for appointment as
25 required under AS 13.26.030 - 13.26.085.

26 (c) If a person files a proxy for a formal petition for adoption or legal
27 guardianship of a child who is in out-of-home placement, and the child is not placed
28 with the person who files the proxy at the time the person files the proxy, the
29 department shall, not more than 60 days after the proxy is filed, submit a permanent
30 plan to the court. The court shall hold a hearing to review the permanent plan for the
31 child under AS 47.10.080(I) not more than 90 days after the proxy is filed.

1 (d) A person who files a proxy for a formal petition for adoption or legal
 2 guardianship of a child under this section does not become a party to the child-in-
 3 need-of-aid proceedings. A person who files a proxy for a formal petition for adoption
 4 or legal guardianship may only participate in proceedings under this chapter that
 5 concern the person's proxy.

6 (e) A person who files a proxy for a formal petition for adoption or legal
 7 guardianship of a child is not entitled to the appointment of a lawyer at public
 8 expense.

9 (f) A person who receives a proxy for a formal petition for adoption or legal
 10 guardianship shall file the proxy with the court.

11 (g) In this section,

12 (1) "extended family member"

13 (A) means a person who is at least 18 years of age and who is
 14 the child's grandparent, aunt, uncle, sibling, brother-in-law, sister-in-law,
 15 niece, nephew, first or second cousin, or stepparent; or

16 (B) in the case of an Indian child, has the meaning given in 25
 17 U.S.C. 1903;

18 (2) "proxy for a formal petition" or "proxy" means

19 (A) a request by a person who is interested in immediate
 20 permanent placement and adoption or legal guardianship of a child, and is an
 21 extended family member, member of an Indian child's tribe, or other Indian
 22 family member made at any court hearing or conveyed to the department by
 23 telephone, mail, facsimile, electronic mail, or in person; or

24 (B) in the case of an Indian child, a request made to the
 25 department on behalf of a person described in (A) of this paragraph by

26 (i) the Indian child's biological parent, individually or
 27 through counsel; or

28 (ii) the Indian child's tribe, a tribe in which the Indian
 29 child is eligible for enrollment, or a tribe in which the Indian child's
 30 biological parent is a member; or

31 (C) a proxy for a formal petition, as established by the

1 department by regulation.

2 (h) The department may adopt regulations to implement this section.

3 **Sec. 47.10.113. Civil custody proceedings.** (a) Except as provided in
4 AS 25.24.150(a), a court shall hear a request to make, modify, or vacate an order for
5 the custody of or visitation with a minor child in state custody under this chapter as
6 part of the child-in-need-of-aid proceedings relating to the child.

7 (b) A person who files a request for an order to make, modify, or vacate an
8 order for the custody of or visitation with a minor child in state custody under this
9 chapter is not entitled to the appointment of a lawyer at public expense under this
10 section.

11 (c) Except as provided in this section, the requirements of AS 25.24.010 -
12 25.24.180 apply to a request under this section to make, modify, or vacate an order for
13 the custody of or visitation with a minor child in state custody under this chapter.

14 * **Sec. 10.** AS 47.10.990(1) is amended to read:

15 (1) "adult family member" means a person who is 18 years of age or
16 older and who is

17 (A) related to the child as the child's grandparent, aunt, uncle,
18 or sibling; [OR]

19 (B) the child's sibling's legal guardian or parent; **or**

20 **(C) in the case of an Indian child, an extended family**
21 **member as defined in 25 U.S.C. 1903;**

22 * **Sec. 11.** AS 47.10.990(10) is amended to read:

23 (10) "family member" means a person of any age who is

24 (A) related to the child as the child's grandparent, aunt, uncle,
25 or sibling; [OR]

26 (B) the child's sibling's legal guardian or parent; **or**

27 **(C) in the case of an Indian child, an extended family**
28 **member as defined in 25 U.S.C. 1903;**

29 * **Sec. 12.** AS 47.10.990 is amended by adding new paragraphs to read:

30 (33) "Indian child" has the meaning given in 25 U.S.C. 1903;

31 (34) "Indian child's tribe" has the meaning given in 25 U.S.C. 1903.

1 * **Sec. 13.** AS 47.14.100(t) is amended by adding a new paragraph to read:

2 (3) "family friend," as used in (e) of this section, includes, in the case
3 of an Indian child, a member of the Indian child's tribe, a member of the tribe in which
4 the child's biological parent is a member, and another Indian family member.

5 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 DIRECT COURT RULE AMENDMENT. Rule 5, Alaska Adoption Rules, is
8 amended by adding a new subsection to read:

9 (d) A petition to adopt a child in state custody under AS 47.10 must be
10 brought in the superior court where the child-in-need-of-aid proceeding is pending or
11 in the judicial district in which the petitioner resides as provided under AS 47.10.111
12 and AS 25.23.030(d).

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

15 DIRECT COURT RULE AMENDMENT. Rule 6(a)(1), Alaska Adoption
16 Rules, is amended to read:

17 (1) An adoption petition must include the information required by
18 AS 25.23.080, **except as provided under (a)(4) of this rule.** A separate petition must
19 be filed for each person to be adopted. If the proceeding involves a minor, the petition
20 must also state whether the minor to be adopted is an Indian child and whether any
21 other court cases involving the minor are known to be pending.

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

24 DIRECT COURT RULE AMENDMENT. Rule 6(a), Alaska Adoption Rules,
25 is amended by adding a new paragraph to read:

26 (4) A proceeding to adopt a child in state custody under AS 47.10 must
27 comply with AS 47.10.111. A proceeding to adopt a child in state custody under
28 AS 47.10 shall be heard either

29 (A) as part of the child-in-need-of-aid proceeding; or

30 (B) in the judicial district in which the petitioner resides if the
31 petitioner provides notice to all of the parties to the child-in-need-of-aid

1 proceedings and no party objects.

2 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. The Alaska Child in Need of Aid
5 Rules of Procedure are amended by adding a new rule to read:

6 **Rule 17.3. Petition or proxy for adoption or legal guardianship of a child**
7 **under AS 47.10.111.** (a) A petitioner may file a petition for adoption or legal
8 guardianship of a child who is the subject of a pending child-in-need-of-aid
9 proceeding under AS 47.10 as part of the same case. If a petitioner files a petition for
10 adoption or legal guardianship of a child before the court approves adoption or legal
11 guardianship as the permanent plan for the child, the court shall hold the petition for
12 adoption or legal guardianship in abeyance until the court approves adoption or legal
13 guardianship as the permanent plan for the child under Rule 17.2 and AS 47.10.080(*l*).
14 If the child is in an out-of-home placement but is not placed with the petitioner at the
15 time the petition is filed, the court shall hold a hearing within 90 days to review the
16 permanent plan required under AS 47.10.111(c). At the hearing, the court shall, in
17 addition to the findings required under Rule 17.2 and AS 47.10.080(*l*), make findings
18 related to whether the petitioner is entitled to placement preference under
19 AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable. If 25 U.S.C. 1915(a)
20 applies, the court shall make written findings related to whether the current placement
21 is in compliance with or whether there is good cause to deviate from the placement
22 preferences.

23 (b) A person may file a proxy for a formal petition for adoption or legal
24 guardianship of a child who is the subject of a pending child-in-need-of-aid
25 proceeding under AS 47.10 as part of the same case. If a person files a proxy for a
26 formal petition for adoption or legal guardianship of a child who is in out-of-home
27 placement, and the child is not placed with the person who files the proxy at the time
28 the person files the proxy, the court shall hold a hearing within 90 days to review the
29 permanent plan for the child as required under AS 47.10.112(c). At the hearing, the
30 court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(*l*),
31 make findings related to whether the person who filed the proxy is entitled to

1 placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is
 2 applicable, and, if 25 U.S.C. 1915(a) applies, whether the current placement is in
 3 compliance or whether there is good cause to deviate from the placement preferences.

4 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 5 read:

6 APPLICABILITY. AS 13.26.050(b), added by sec. 2 of this Act, AS 13.26.060(e),
 7 added by sec. 3 of this Act, AS 25.23.030(d), added by sec. 4 of this Act, AS 25.23.080(d),
 8 added by sec. 5 of this Act, AS 25.23.100(a), as amended by sec. 6 of this Act,
 9 AS 25.24.150(a), as amended by sec. 7 of this Act, AS 47.10.080(l), as amended by sec. 8 of
 10 this Act, AS 47.10.111 - 47.10.113, added by sec. 9 of this Act, and secs. 14 - 17 of this Act
 11 apply to proceedings for adoption or legal guardianship of a child in state custody under
 12 AS 47.10 filed on or after the effective date of secs. 2 - 17 of this Act.

13 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 TRANSITION: REGULATIONS. The Department of Health and Social Services may
 16 adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62
 17 (Administrative Procedure Act), but not before the effective date of the law implemented by
 18 the regulation.

19 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 CONDITIONAL EFFECT. This Act takes effect only if secs. 14 - 17 of this Act
 22 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
 23 the State of Alaska.

24 * **Sec. 21.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

25 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect January 1, 2017.