

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

February 22, 2016

1:32 p.m.

**MEMBERS PRESENT**

Senator Bert Stedman, Chair  
Senator Cathy Giessel, Vice Chair  
Senator Pete Kelly  
Senator Bill Stoltze  
Senator Johnny Ellis

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 112

"An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

- MOVED CSSB 112(HSS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 112

SHORT TITLE: ADOPTION OF CHILD IN STATE CUSTODY

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/16/15	(S)	READ THE FIRST TIME - REFERRALS
04/16/15	(S)	HSS, JUD
01/25/16	(S)	HSS AT 1:30 PM BUTROVICH 205
01/25/16	(S)	Heard & Held
01/25/16	(S)	MINUTE (HSS)
02/22/16	(S)	HSS AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

CHRISTY LAWTON, Director  
Office of Child Support  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Presented version N of SB 112.

KATY LYBRAND, Assistant Attorney General  
Civil Division  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Offered to answer questions related to SB 112.

NANCY MEADE, General Counsel  
Administrative Offices  
Alaska Court System  
Juneau, Alaska

**POSITION STATEMENT:** Testified on SB 112.

### **ACTION NARRATIVE**

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**CHAIR BERT STEDMAN** called the Senate Health and Social Services Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kelly, Ellis, Stoltz, and Chair Stedman. Senator Giessel arrived shortly thereafter. He noted one item on the agenda - SB 112 - which was previously heard on January 25, 2016.

### **SB 112-ADOPTION OF CHILD IN STATE CUSTODY**

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CHAIR STEDMAN announced the consideration of SB 112.

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SENATOR ELLIS moved to adopt the CS for SB 112, labeled 29-GS1262\N, as the working document before the committee.

CHAIR STEDMAN objected for discussion purposes.

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CHRISTY LAWTON, Director, Office of Child Support, Department of Health and Social Services (DHSS), presented version N of SB 112. She said version N was drafted after conversations between the department and the Alaska Court System. She expected the bill to move forward after the remaining details were worked out. She began by going over the sectional analysis:

Section 1:

Page 1, line 6 - page 2 line 10:

Adds a new section outlining Legislative intent.

Section 2:

Page 2, line 11-14:

Adds a new subsection to AS 13.26.050, which states the venue for a guardianship proceeding for a child in state custody under 47.10 is the superior court where the child-in-need-of-aid proceeding is pending, as provided under AS 47.10.111.

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CHAIR STEDMAN asked what CINA stands for.

MS. LAWTON explained that it was the Child in Need of Aid proceedings, which is where all cases of children in state custody are heard. Probate Court is traditionally where guardianship and adoption cases are heard.

Section 3:

Page 2, line 15 - 18:

Adds new subsection to 13.26.060 which states that a petitioner seeking appointment as the guardian of a minor in state custody under AS 47.10 shall file the petition in the court where the child-in-need-of-aid proceedings are pending as required under AS 47.10.111.

Section 4:

Page 2, line 19- 22:

Adds a new subsection to AS 25.23.030 which states the venue for an adoption proceeding for a child in state custody under AS 47.10 is the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111.

Section 5:

Page 2, line 23 - 26:

Adds a new subsection to AS 25.23.080 which states an individual petitioning to adopt a child in state custody under AS 47.10 shall file the petition for adoption in the court where the child in-need-of-aid proceedings are pending as required under AS 47.10.111.

Section 6:

Page 2, line 27 Page 3, line 5:

Amends AS 25.23.100(a) to allow adoption petitions to be held in abeyance under AS 47.10.111 until the department changes the permanency from reunification to adoption or legal guardianship.

Section 7:

Page 3, line 6 - Page 4, line 17:

Adds a new subsection (6) stating that in a hearing to review the permanent plan under AS 47.10.111(c), the court shall make written findings related to whether the person who filed the petition or proxy is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is applicable.

Section 8:

Page 4, line 18 – page 6, line 11:

Adds new section to AS 47.10.111 establishing that the adoption and legal guardianship proceedings for a child in state custody, which is considered a child-in-need-of-aid, is initiated within child-in-need-of-aid proceedings. Proceedings to adopt a child in state custody are initiated by filing a petition under AS 25.23.080 or "proxy for a formal petition". This section defines that "proxy for formal petition" means a request by an extended family member, a member of the Indian child's tribe, a tribe the Indian child is eligible for enrolment in or a family friend interested in immediate and permanent placement and adoption or legal guardianship of an Indian child at any court hearing in a Child-in-need-of-aid proceeding. Proxy for formal petition may be conveyed to the department by telephone, mail, facsimile, electronic mail, or in person. Petitions for adoption or legal guardianship filed prior to permanency goal being changed to adoption by the court are held in abeyance until the permanency goal is changed to adoption or legal guardianship. A person who files a petition or proxy does not become a party to the child-in-need-of-aid proceedings and may only participate in proceedings under this chapter that concern the person's petition or proxy. A parent who has relinquished parental rights under AS 47.10.089 or whose parental rights have been terminated under AS 47.10.088 is not a part to the adoption or guardianship proceeding under this section. The section allows the department regulatory authority to implement this section.

Section 9:

Page 6, line 12 – 19:

Amends AS 47.10.990 clarifies the definition of "adult family member" and in the case of an Indian child, is consistent with the definition of "adult family member: as defined in 25 U.S.C. 1903

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Section 10:

Page 6, line 20 – 26:

Amends AS 47.10.990 clarifies the definition of the term "family member" and in the case of an Indian child, is consistent the definitions contained in 25 U.S.C. 1903

Section 11:

Page 6, line 27 – 31:

Amends AS47.10.990 with a new paragraph which defines "family friend" "Indian child" and Indian child's tribe" has meaning given in 25 U.S. C. 1903.

Section 12:

Page 7, line 1 – 2:

Amends AS 47.14.100(t) by adding a new paragraph to clarify the meaning of "family friend" has the meaning given in AS 47.10.990

Section 13:

Page 7, line 3 -9:

Adds to the Direct Court Rule (5) (d) requiring that a petition to adopt a child in state custody under AS 47.10 must be brought in the superior court where the child-in-need-of-aid proceeding is pending as provided under AS 47.10.111

Section 14:

Page 7, line 10– 18.

Adds to the Direct Court Rule (6) (a) (1) subsection (1) an adoption petition must include the information required by AS 25.23080, except as provided under (a) (4) of this rule.

Section 15:

Page 7, line 19 – 25:

Adds to the Direct Court Rule 6(a) (1) subsection (4) a proceeding to adopt a child in state custody under AS 47.10 must comply with AS 47.10.111. A proceeding to adopt a child in state custody under AS 47.10 shall be heard as part of the child-in-need-of-aid proceeding.

Section 16:

Page 7, line 26 – page 8, line 13:

Adds to Direct Court Rule and amends the Alaska Child in Need of Aid Rules of Procedure. Rule 17.3. Petition or proxy for adoption or legal guardianship of a child under AS 47.10.111. This subsection establishes that a petitioner may file a petition or, in the case of an Indian child, a proxy, for adoption or legal guardianship of a child who is the subject of a pending child-in-need-of-aid proceeding under AS 4710 in the same case. If a petition or proxy is filed before the court approves adoption or legal guardianship as the permanent plan for the child, the court shall hold the petition in or proxy in abeyance until the court approves adoption or legal guardianship as the permanent plan the child under Rule 17.2 and AS

47.10.080. If the child is in an out of home placement but not in the custody of the petitioner at the time of the petition or proxy is filed the court shall hold a hearing within 30 days to review the permanent plan under Rule 17.2 and AS 47.10.080. At the hearing the court shall, in addition to the findings required under 17.2 and AS 47.10.080 make findings related to whether the petitioner is entitled to placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a) whichever is applicable.

Section 17:

Page 8, line 14 - 21:

Adds uncodified law that if enacted by Sections 2 - 8 and sections 13 - 16 of this act apply to proceedings for adoption or legal guardianships of a child in state custody under AS 47.10 filed on or after the effective date of sections 2 - 16 of this Act.

Section 18:

Page 8, line 22 - 27:

Adds a new section allowing the Department of Health and Social Services authority to adopt regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

Section 19:

Page 8, line 28 - Page 9, line 1:

Adds uncodified law that takes effect only if sections 13 - 16 of this act receive the two-thirds majority vote of each house required by article IV Section 15, Constitution of the State of Alaska.

Section 20:

Page 9, line 2:

Section 18 of this Act takes effective immediately under AS 01.10.070

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CHAIR STEDMAN withdrew his objection to the adoption of the CS and version N was adopted.

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MS. LAWTON provided the history of the iteration of the bill. She recalled the controversial hearing of the Tununak v. State of Alaska case last year by the Alaska Supreme Court that resulted in a change law. The case involved a tribal child enrolled in the village of Tununak, the child's grandmother, and

her non-Native, non-relative foster family. The case was making its way through the Alaska Supreme Court at the same time as a case - the Baby Girl Veronica Case - in South Carolina was making its way through the U.S. Supreme Court. The U.S. Supreme Court ruling impacted the ruling of the Alaska Supreme Court. Following the Tununak ruling, the law was changed and emergency regulations were enacted.

She related that under current law, any persons seeking to adopt a child in the custody of the Department of Health and Social Services must file a formal petition for adoption. The adoption hearing would then be heard in a probate proceeding, which is separate from the CINA proceedings. This creates challenges to the adoption process because a CINA case is unique.

She stated that SB 112 seeks to align the adoption of CINA under AS 47.10 and allow the department to develop alternatives to the formal adoption petition for Indian children that are currently required under AS 25.23.080. The bill would improve department compliance with the Indian Child Welfare Act and support tribal partnerships and efforts. She concluded that the conjoining of adoption and guardianship proceedings into CINA proceedings will streamline the process, provide better access for family members and members of the tribe, and decrease costs to the state.

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KATIE LYBRAND, Assistant Attorney General, Civil Division, Department of Law, offered to answer questions related to SB 112.

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NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, testified on SB 112. She noted there remained a few issues to work out to ensure that the Court System can implement SB 112. Some changes in version N reflect those discussions between the department and the Court System, but several more changes are needed.

CHAIR STEDMAN noted it was early in the process and he expected the bill to be worked on.

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REPRESENTATIVE KELLY asked about the Tununak adoption where a child was placed in a foster care family, which later adopted the child, and no family members came forward to request adoption. He asked if there were problems with the adopting family.

MS. MEADE said there were no problems with the adopting family; the relative did not come forward and a non-native family adopted the child. The issue was whether the Native relative should have filed a petition to adopt. The U.S. Supreme Court found that there must be a filing by the Native family to adopt in order to let everyone know of their interests. This bill would allow a proxy for a petition to be filed.

REPRESENTATIVE KELLY asked what a proxy is.

MS. MEADE said it is something "short of a petition" such as a form anyone can file. The bill would allow an oral request in lieu of a piece of paper. It would allow a person with limited English proficiency or knowledge of how the court system works to express a request to adopt a Native child.

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REPRESENTATIVE KELLY questioned where the case went wrong since the relative never came forward.

MS. MEADE understood that the person was not known to the court until after the adoption occurred. The Supreme Court said that something must be filed and suggested the process be made easier for family and tribal members, which led to the bill. It is an easier way to let Natives with preference inform the court.

REPRESENTATIVE KELLY asked if the person had limited language issues.

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MS. LAWTON did not know. She said in the case of Tununak, the grandmother had informed the court and the department of her intention to adopt, but the case was in the process of deciding who should get permanent custody when the U.S. Supreme Court came out with their ruling that said the relative must file a formal petition to adopt. The foster family had filed a formal petition, but the grandmother had not. By creating a process for a proxy, the department is trying to make the process easier for Native relatives to adopt by oral request. Later on in the process, the Native relative will have to file a petition.

REPRESENTATIVE KELLY asked if a tribe can use a proxy on behalf of a family member.

MS. LAWTON said yes.

REPRESENTATIVE KELLY pointed out that it goes way beyond the grandmother.

MS. LAWTON said yes. It considers the Indian Child Welfare Act preferences for adoption and guardianships. Non-native relatives of Native children also have access to this process.

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SENATOR STOLTZE said it seems that the court is looking out for the best interests of the child and OCS is politicalizing the issue.

MS. MEADE noted the Court System is neutral on the bill and is trying to make it work. There are several concerns that remain, such as non-Native children covered by the bill and the scope of the bill.

SENATOR STOLTZE asked if they are neutral because it is an active case.

MS. MEADE said the case has been resolved by the Alaska Supreme Court.

CHAIR STEDMAN noted there was public hearing on the bill during a previous hearing.

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SENATOR GIESSEL moved to report CSSB 112(HSS), labeled 29-GS1262\N, from committee with individual recommendations and attached zero fiscal note. There being no objection, it was so ordered.

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There being no further business to come before the committee, Chair Stedman adjourned the Senate Health and Social Services Committee at 1:57 p.m.