

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 25, 2016

3:41 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 200(HSS) AM

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 200

SHORT TITLE: ADOPTION OF CHILD IN STATE CUSTODY

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/16/15	(H)	READ THE FIRST TIME - REFERRALS
04/16/15	(H)	HSS, JUD
03/29/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/29/16	(H)	Heard & Held
03/29/16	(H)	MINUTE (HSS)
03/29/16	(H)	HSS AT 6:00 PM CAPITOL 106
03/29/16	(H)	Heard & Held
03/29/16	(H)	MINUTE (HSS)
03/31/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/31/16	(H)	Moved CSHB 200(HSS) Out of Committee

03/31/16 (H) MINUTE (HSS)
 04/01/16 (H) HSS RPT CS (HSS) NT 2DP 2NR
 04/01/16 (H) DP: TALERICO, SEATON
 04/01/16 (H) NR: TARR, WOOL
 04/10/16 (H) JUD AT 2:00 PM GRUENBERG 120
 04/10/16 (H) -- MEETING CANCELED --
 04/11/16 (H) JUD AT 1:00 PM GRUENBERG 120
 04/11/16 (H) Scheduled but Not Heard
 04/12/16 (H) JUD AT 1:00 PM GRUENBERG 120
 04/12/16 (H) Moved CSHB 200(HSS) Out of Committee
 04/12/16 (H) MINUTE (JUD)
 04/13/16 (H) JUD RPT CS (HSS) NT 6DP 1NR
 04/13/16 (H) DP: MILLETT, KREISS-TOMKINS, LYNN,
 CLAMAN, FOSTER, LEDOUX
 04/13/16 (H) NR: KELLER
 04/15/16 (H) TRANSMITTED TO (S)
 04/15/16 (H) VERSION: CSHB 200(HSS) AM
 04/16/16 (S) READ THE FIRST TIME - REFERRALS
 04/16/16 (S) JUD
 05/23/16 (H) FOURTH SPECIAL SESSION BILL
 05/23/16 (S) FOURTH SPECIAL SESSION BILL - WITH
 PASSAGE OF HCR 401
 05/25/16 (S) JUD AT 3:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHRISTY LAWTON, Director
 Central Office
 Office of Children's Services
 Department of Health and Social Services (DHSS)
 Juneau, Alaska

POSITION STATEMENT: Introduced HB 200.

CARLA ERICKSON, Assistant Attorney General
 Civil Division
 Child Protection Section
 Department of Law
 Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for HB 200.

MARY SATTLER, Lobbyist
 Alaska Regional Coalition
 Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 200.

GRACE SINGH, Special Assistant to the President
 Central Council Tlingit and Haida Indian Tribes of Alaska

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 200.

NICOLE BORROMEIO, Executive Vice President and General Counsel
Alaska Federation of Natives (AFN)

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 200.

JAMES CEDENO

Alutiq Tribe of Old Harbor

Old Harbor, Alaska

POSITION STATEMENT: Testified in support of HB 200.

ANNA FRANK, Board 2nd Chief and Elder

Denakkanaaga, Inc.

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 200.

ELIZABETH MEDICINE CROW, President/CEO

First Alaskans Institute

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 200.

MELANIE BAHNKE, President

Kawerak Inc.

Nome, Alaska

POSITION STATEMENT: Testified in support of HB 200.

TRACI MCGARRY, Program Director

Children & Family Services Child Advocacy Center

Kawerak, Inc.

Nome, Alaska

POSITION STATEMENT: Testified in support of HB 200.

MARNA SANFORD

Tanana Chiefs Conference (TCC)

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 200.

LAWRENCE ARMOUR

Tribal Administrator

Klawock Cooperative Association

Klawock, Alaska

POSITION STATEMENT: Testified in support of HB 200.

NANCY MEADE, General Council

Administrative Staff

Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Provided information related to HB 200.

ACTION NARRATIVE

[3:41:16 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 3:41 p.m. Present at the call to order were Senators Costello, Coghill, Micciche, Wielechowski, and Chair McGuire.

HB 200-ADOPTION OF CHILD IN STATE CUSTODY

[3:41:34 PM](#)

CHAIR MCGUIRE announced the consideration of HB 200. [CSHB 200(HSS)am is before the committee.]

She noted the committee heard the companion bill, SB 112.

[3:42:39 PM](#)

CHRISTY LAWTON, Director, Central Office, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), said the differences between HB 200 and the Senate companion are minor but significant. She reminded the committee that the bills addressed a U.S. Supreme Court decision and an Alaska Supreme Court ruling for cases covered under the Indian Child Welfare Act (ICWA). It changed the way relatives or certain others seeking adoption of a Native child had to be recognized by the courts. Previously, a person could express interest in adopting to the social worker and OCS would begin the procedure to evaluate them for immediate placement. With the legal decisions, the law first required a formal petition to adopt be filed, and the placement preferences for adoption had to be mapped out under ICWA and recognized and preserved for the record.

The Alaska Supreme Court, in its decision in the Tununak case, suggested using a proxy in lieu of a formal petition. HB 200 provides that less formal process at the beginning of a case, although all people identified as the adoptive parents would eventually have to file a formal petition. The original version said the proxy provision was only available to those who qualify under ICWA. The current version of HB 200 expands the proxy to all family members, Native and non-Native alike. They simply have to let OCS know and that will begin a process for the

parties to be formally notified and assessed, and the court will recognize them as relatives. This will bring more transparency to the process and will make all legal parties immediately aware of the relatives. This will be good for all Alaskans; it will provide a smoother process, increased access, be less confusing process for relatives, and help identify relatives that are interested in immediate and permanent placement.

MS. LAWTON said both versions of the bill have the one judge, one family model, which will reduce the need for multiple court hearings for a child in state custody. This will create efficiencies for the legal parties and will help ensure more timely achievement of permanency for children in foster care. She listed the entities that worked on the bill, all of which have been very supportive.

[3:49:02 PM](#)

CHAIR MCGUIRE asked if she would speak to any of the concerns expressed by Senate members and how OCS worked through the process.

MS. LAWTON cited the concern that the proxy provision should be available to all Alaskans and noted that HB 200 alleviates that concern. Another concern related to ICWA and painful late stage adoptions. She opined that the bill likely would reduce the chance of late stage competing adoption petitions from being battled out because relatives will be identified early on.

[3:50:52 PM](#)

SENATOR MICCICHE asked her to define child in need of aid.

MS. LAWTON explained that it is the legal proceeding when a child is in state custody.

SENATOR MICCICHE asked the scope of the definition of "relative."

MS. LAWTON replied it's generally out to the fifth degree, although in ICWA cases the tribe can identify someone as a relative and it may be somewhat different. OCS also recognizes kin. Those are people who may not be biologically related but they've been a part of the child's life and the family recognizes them as such.

SENATOR COGHILL expressed support for the one judge, one family provision and then asked about the exceptions in Section 9 under AS 13.26.050 and AS 25.23.030.

CHAIR MCGUIRE suggested she provide an answer during the next meeting.

MS. LAWTON deferred to Carla Erickson with the Department of Law.

SENATOR COGHILL asked for the timeline when a proxy has to come in front of a judge.

MS. LAWTON said there isn't a specific timeframe, but the sooner the better for the child to get into a permanent secure home.

SENATOR COGHILL asked if there is a downside to filing a proxy. "Does that put someone in an awkward spot with a family member? Does it create a legal entanglement that is going to create other problems?"

MS. LAWTON replied those dynamics already exist for family members who are asked to work on behalf of OCS to care for the child. They have to follow OCS's rules and visitation standards with the parent.

SENATOR COGHILL asked if team decision-making fits into this process.

MS. LAWTON advised that team decision-making is not statewide, but it will be complementary in those locations.

[3:59:50 PM](#)

SENATOR COGHILL asked how tribal courts view this bill.

MS. LAWTON said nothing in the bill is applicable when a case is in tribal jurisdiction; ICWA doesn't apply to tribes, just state courts.

SENATOR COGHILL asked for an explanation of the difference between the extended family under state law and the Indian Child Welfare Act. He opined that it would make a difference in the proxy.

MS. LAWTON explained that placement preferences under ICWA first look at relatives of the Native child, then other tribal members, and finally other tribes.

SENATOR COGHILL asked if there is a different petition process under ICWA than Alaska civil law.

MS. LAWTON replied they would be the same. She added clarification that ICWA doesn't distinguish between Indian and non-Indian relatives. A relative is given preference regardless of whether or not they are Native or non-Native.

SENATOR COGHILL commented on blended families and asked the criteria for a child to be covered under ICWA.

MS. LAWTON explained that a child is covered under ICWA if they identify as Alaska Native or American Indian and the tribe has to intervene in court to demonstrate the child's eligibility for enrollment in the tribe.

[4:04:11 PM](#)

SENATOR MICCICHE asked her to comment on whether or not the bill changes parental rights.

MS. LAWTON replied this bill doesn't change parental rights. Federal law clearly outlines the efforts that must be applied to give the parent every chance to be successfully reunited with their child.

SENATOR MICCICHE opined there should be a fiscal note from Department of Law because the bill should result in some savings. He asked if the chair could request that.

MS. LAWTON said the agencies that worked on the bill believe it will result in some savings but it was difficult to quantify. For example, a judge will be able to make multiple decisions in one hearing rather than over a number of hearings.

SENATOR MICCICHE suggested the Department of Law submit an indeterminate fiscal note.

[4:08:33 PM](#)

CHAIR MCGUIRE said she'd make that request because she sees value and potential savings. She asked Ms. Lawton if the same team that is evaluating the child-in-need-of-aid circumstances will take on the vetting process and make a recommendation to the judge.

[4:10:59 PM](#)

MS. LAWTON said she believes so. A number of different groups will come together to contemplate the different decisions and it will take some work to ensure that they all interface and blend.

CHAIR MCGUIRE thanked Ms. Lawton for her work and expressed hope that some of the potential savings could be directed to OCS.

She asked Ms. Erickson to comment on HB 200 and respond to the questions posed by Senator Coghill and Senator Micciche.

[4:13:25 PM](#)

CARLA ERICKSON, Assistant Attorney General, Civil Division, Child Protection Section, Department of Law, Anchorage, Alaska, said Ms. Lawton explained the bill very well. One clarification is that it is not necessary for the tribe to intervene in order for the case to be considered under the Indian Child Welfare Act (ICWA) as long as the child is either a member of an Indian tribe or is eligible for membership because they are the biological child of a tribe member.

She agreed with Ms. Lawton that it is difficult to quantify the bill's potential cost savings but there definitely will be time savings due to the streamlined process. She offered to work with Ms. Lawton and the other parties to reevaluate whether or not additional savings could be articulated.

CHAIR MCGUIRE asked if she had anything to add.

MS. ERICKSON clarified that civil custody cases will also be brought into the child-in-need-of-aid case and the intent is for them to be heard by the same judge that is hearing the child-in-need-of-aid case. "These are not new proceedings, but rather just an expansion of the types of orders that the child-in-need-of-aid judge would be able to issue." She voiced appreciation for the work with Nancy Meade.

[4:16:57 PM](#)

SENATOR MICCICHE asked how difficult it is for a parent to reverse the adoption process and get their child back.

MS. ERICKSON explained that once a child is adopted the law recognizes that relationship as if the child was born biologically to that family. However, guardianships do have a way for the parent to get back full and complete custody. It doesn't happen often and there is a legal mechanism by which it can happen.

SENATOR COGHILL asked what the process is when a tribal court get involved.

[4:19:16 PM](#)

MS. ERICKSON said there is a mechanism under child-in-need-of-aid Rule 23 by which a parent or a tribe can intervene and make a motion to transfer jurisdiction of a case to a tribal court. The parties are given an opportunity to express their views on the motion. Should the case transfer to the tribal court, the state would dismiss the case entirely. Motions to transfer to tribal jurisdiction can be made at any time in the case.

SENATOR COGHILL commented that's why the proxy becomes important so there is notice early on.

CHAIR MCGUIRE expressed hope for continued improvement in Alaska's adoption process.

SENATOR MICCICHE commented on his personal interest in parental rights and his experience of spending over a year and one-half to adopt a 20 year old child.

SENATOR COGHILL withdrew his question about the exceptions in Section 9. He acknowledged that they relate to Sections 2 and 4 that are new law.

MS. LAWTON clarified that the provision in Section 9 says that if the parties agree, the venue for enacting the adoption could move to a location that is more convenient for the adopting family.

[4:24:51 PM](#)

MARY SATTLER, Lobbyist, Alaska Regional Coalition, Fairbanks, Alaska, testified in support of HB 200. She related that the coalition has five regional corporations representing 100 tribes. She continued to say that HB 200 has been a priority piece of legislation for the coalition throughout the entire session. It will have a very positive impact on a lot of children and families. She expressed hope that the bill passes during the special session.

[4:26:00 PM](#)

GRACE SINGH, Special Assistant to the President, Central Council Tlingit and Haida Indian Tribes of Alaska, testified in support of HB 200. She expressed support for changing the current system and having child-in-need-of-aid and adoption proceedings held in the same courtroom. HB 200 allows family members, extended family members, and the child's tribe to initiate adoption proceedings in a child-in-need-of-aid case. She discussed the lack of resources in rural communities to initiate a formal adoption proceeding and the tendency for close family members to

delay a request for adoption because they support the family's reunification goals. The current procedure is punitive for relatives and doesn't account for language, cultural, and economic barriers. Allowing adoptions to be initiated in child-in-need-of-aid proceedings via the proxy makes the process more realistic and understandable. The hope is that HB 200 will increase the number of Alaskan children who achieve permanency with their family, culture, and traditions. She expressed appreciation for the questions the committee asked, particularly the request for definitions for family and tribal court placements. She noted that Central Council recently signed an historic IV-E placement agreement, working closely with both Ms. Lawton and Ms. Erickson.

NICOLE BORROMEO, Executive Vice President and General Counsel, Alaska Federation of Natives (AFN), Fairbanks, Alaska, testified in support of HB 200. She reported that AFN has been actively involved in the process since the Tununak litigation. She listed the top three reasons that AFN supports HB 200. First, it removes the barriers that prevent Alaska Native families from adopting Native children in state custody by better defining a proxy in lieu of a formal petition for adoption. Second, it consolidates the adoptions, guardianships, and civil child custody proceedings into a single court matter with a one judge, one family model. Finally, it furthers compliance with the Indian Child Welfare Act. She urged the committee to pass the bill immediately.

SENATOR COSTELLO recognized Ms. Borromeo's commitment to the bill and her passion for Alaska children.

[4:32:54 PM](#)

JAMES CEDENO, Alutiq Tribe of Old Harbor, testified in support of HB 200. The bill is important to Native communities and Native children and it streamlines the process of getting relatives involved in assuming care for family members. The goal is to get children into safe permanent homes and be successful in the future. "It takes a village to raise a child and our village is willing to help get that done," he said.

[4:34:13 PM](#)

ANNA FRANK, Board 2nd Chief and Elder, Denakkanaaga, Inc., Fairbanks, Alaska, testified in support of HB 200. She related that Denakkanaaga is the regional nonprofit organization that represents 42 Native villages in Interior Alaska. They serve as the Elder voice of the people in the region. She requested the committee do what is right and make it easier for family members

to adopt their relatives thereby avoiding the complicated paperwork filing under the current system. She shared that she is a foster parent and in the process of adopting a child.

[4:36:10 PM](#)

ELIZABETH MEDICINE CROW, President/CEO, First Alaskans Institute, Anchorage, Alaska, testified in support of HB 200. She stated that there is nothing more important to her people than their children and HB 200 speaks directly to one of the technical aspects that will help ensure that Native children can stay at home. She opined that that is what all Alaskans want, Native and non-Native alike. The connection to family is what helps a child be successful later in life. She specifically mentioned the importance of the one judge, one family model and the proxy as critical provisions. She urged the committee to pass the bill this session.

[4:39:33 PM](#)

MELANIE BAHNKE, President, Kawerak Inc., Nome, Alaska, testified in support of HB 200. She thanked the committee in her language and said she wanted to testify in her language. It would be confusing for members but would demonstrate how Alaska Natives feel when they're navigating the court system. She described HB 200 as a good step toward removing some of the barriers and allowing Native people to accept the responsibility for their own children. She mentioned her testimony on an earlier version of the bill and opined that the current draft is even better because it extends the proxy provision to all Alaska children, not just Alaska Native children. In a perfect world there would be no need for ICWA or laws like HB 200, but that's not the case. This legislation is needed to ensure that people do the right thing now and in the future and make it easier for families to step up and take responsibility for their children.

[4:42:37 PM](#)

TRACI MCGARRY, Program Director, Children & Family Services Child Advocacy Center, Kawerak, Inc., Nome, Alaska, testified in support of HB 200. She shared that Kawerak works with 18 tribes on child-in-need-of-aid matters. She expressed agreement with earlier testimony about the merit of combining adoption and legal guardianship proceedings with child-in-need-of-aid under the one judge, one family model. She urged the committee to pass the bill.

[4:43:55 PM](#)

MARNA SANFORD, Tanana Chiefs Conference (TCC), Fairbanks, Alaska, testified in support of HB 200. She related that TCC is

a nonprofit tribal health and social service consortium that represents 42 Interior Alaskan tribes. She echoed the positive testimony on the bill saying it is integral in keeping Alaska children with their families and in their home communities. She shared that as a former public defender and public advocate, her favorite provision is the one judge, one family concept. She opined that both OCS and the Department of Law will see a benefit in terms of the reduced workload on the people who deal with these cases on a daily basis. It will also be much easier on the families. She urged the committee to pass the bill.

[4:45:27 PM](#)

LAWRENCE ARMOUR, Tribal Administrator, Klawock Cooperative Association, Klawock, Alaska, testified in support of HB 200. He shared that he has seen too many tribal members adopted out of their family and community when there was family willing to take the child in. The proxy process and one judge, one family provisions will help. He concluded saying "It's difficult to see people in our small communities, people we love, struggling to keep their families whole." He urged the committee to pass the bill.

[4:46:25 PM](#)

NANCY MEADE, General Council, Administrative Staff, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, offered to answer questions about HB 200. She advised that she worked with both Department of Law and Ms. Lawton to ensure that the court's concerns were addressed in the bill.

CHAIR MCGUIRE asked what movement there has been to develop a dedicated family law court within the Court System.

MS. MEADE replied that hasn't been a recent priority of the Court System. In the smaller court locations it isn't feasible because there aren't enough judges to do that, and in Anchorage there is close to a family court specialization for the judges that specialize in civil law. At least 50 percent of the caseloads for judges in that arena are dedicated to domestic relations cases that includes child custody. Another 20 percent of the caseload is dedicated to child-in-need-of-aid cases. She highlighted that judges in Anchorage and other locations get regular training in the area of family law. They regularly go to the National Judicial College or attend talks where outside speakers are brought in to talk about domestic relations and child-in-need-of-aid cases. This is a focus of the Alaska Supreme Court in particular, but all judges receive the training.

CHAIR MCGUIRE commented on the importance of specialization and training and expressed hope that Alaska would follow the states that have specific family courts.

[4:50:15 PM](#)

CHAIR MCGUIRE closed public testimony on HB 200 and held the bill in committee.

[4:51:37 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 4:51 p.m.