



# LAWS OF ALASKA

2016

FOURTH SPECIAL SESSION

**Source**

CSHB 200(HSS) am

**Chapter No.**

6

**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.

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

THE ACT FOLLOWS ON PAGE 1



**AN ACT**

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

5

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 of 1978 (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 apply to a  
8 petition for adoption filed under this section, and the requirements of AS 13.26.030 -  
9 13.26.085 apply to a petition for legal guardianship filed under this section.

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

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

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

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

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

31 (d) A person who files a proxy for a formal petition for adoption or legal

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

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

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

10 (g) The department may adopt regulations to implement this section.

11 (h) 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (B) in the judicial district in which the petitioner resides if the  
30 petitioner provides notice to all of the parties to the child-in-need-of-aid  
31 proceedings and no party objects.

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

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

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

22                   (b) A person may file a proxy for a formal petition for adoption or legal  
23 guardianship of a child who is the subject of a pending child-in-need-of-aid  
24 proceeding under AS 47.10 as part of the same case. If a person files a proxy for a  
25 formal petition for adoption or legal guardianship of a child who is in out-of-home  
26 placement, and the child is not placed with the person who files the proxy at the time  
27 the person files the proxy, the court shall hold a hearing within 90 days to review the  
28 permanent plan for the child as required under AS 47.10.112(c). At the hearing, the  
29 court shall, in addition to the findings required under Rule 17.2 and AS 47.10.080(*l*),  
30 make findings related to whether the person who filed the proxy is entitled to  
31 placement preference under AS 47.14.100(e) or 25 U.S.C. 1915(a), whichever is

1 applicable, and, if 25 U.S.C. 1915(a) applies, whether the current placement is in  
2 compliance with or whether there is good cause to deviate from the placement  
3 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.