

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, THOMAS, HERRON, AND GARDNER, Kerttula

Introduced: 2/25/11

Referred: Health and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the procedures and jurisdiction of the Department of Health and**
2 **Social Services for the care of children who are in state custody; relating to court**
3 **jurisdiction and findings pertaining to children who are in state custody; and modifying**
4 **the licensing requirements for foster care."**

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 **SHORT TITLE.** This Act may be known as the Alaska Foster Family Protection Act.

9 *** Sec. 2.** AS 47.10.080(l) is amended to read:

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

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

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

3 (A) and when the child should be returned to the parent or
4 guardian;

5 (B) the child should be placed for adoption or legal
6 guardianship and whether a petition for termination of parental rights should be
7 filed by the department; and

8 (C) **there is a compelling reason that the most appropriate**
9 **placement for** the child **is** [SHOULD BE PLACED] in another planned,
10 permanent living arrangement **and the department has recommended the**
11 **arrangement under AS 47.14.100(p); the findings under this paragraph**
12 **must include the steps that** [AND WHAT STEPS] are necessary to achieve
13 the new arrangement;

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

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

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

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

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

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

30 (5) the court shall hold a hearing to review the permanent plan at least
31 annually until successful implementation of the plan; if the plan approved by the court

1 changes after the hearing, the department shall promptly apply to the court for another
 2 permanency hearing, and the court shall conduct the hearing within 30 days after
 3 application by the department.

4 * **Sec. 3.** AS 47.10.080 is amended by adding a new subsection to read:

5 (w) The court shall recognize a presumption that maintenance of a sibling
 6 relationship, including with a sibling who is related by blood through one parent, is in
 7 a child's best interest.

8 * **Sec. 4.** AS 47.10.100 is amended to read:

9 **Sec. 47.10.100. Retention of jurisdiction over child [MINOR].** (a) The court
 10 retains jurisdiction over the case and may at any time stay execution, modify, set
 11 aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise
 12 of its power of protection over the child [MINOR] and for the child's [MINOR'S] best
 13 interest, for a period of time not to exceed two years or in any event extend past the
 14 day the child reaches [MINOR BECOMES] 19 years of age, unless sooner
 15 discharged by the court, except that the department may apply for and the court may
 16 grant [AN] additional one-year periods [PERIOD] of supervision past [AGE] 19
 17 years of age that do not extend beyond the person's 21st birthday if continued
 18 supervision is in the best interests of the person and the person consents to it. An
 19 application for any of these purposes may be made by the parent, guardian, or
 20 custodian acting in behalf of the minor, or the court may, on its own motion, and after
 21 reasonable notice to interested parties and the appropriate department, take action that
 22 it considers appropriate.

23 (b) If the court determines at a hearing authorized by (a) of this section that
 24 the department has complied with the requirements for release of a child under
 25 AS 47.14.100(q) and that it is in [FOR] the best interests of the child [MINOR] to be
 26 released to the child's own custody, or to the care or custody of the child's
 27 [MINOR'S] parent, guardian, or custodian, it shall [MAY] enter an order to that effect
 28 and the child [MINOR] is discharged from the control of the department.

29 (c) If a child [MINOR] is adjudicated a child in need of aid before the child's
 30 [MINOR'S] 18th birthday, the court may retain jurisdiction over the child [MINOR]
 31 after the child's [MINOR'S] 18th birthday for the purpose of supervising the child

1 [MINOR], but the court's jurisdiction over the minor under this chapter never extends
 2 beyond the **child's** [MINOR'S] 19th birthday, except that the department may apply
 3 for and the court may grant [AN] additional one-year **periods** [PERIOD] of
 4 supervision past [AGE] 19 **years of age that do not extend beyond the person's 21st**
 5 **birthday** if continued supervision is in the best interests of the person and the person
 6 consents to it. The department may retain jurisdiction over a child [BETWEEN THE
 7 CHILD'S 18TH AND 19TH BIRTHDAYS FOR THE PURPOSE OF SUPERVISING
 8 THE CHILD,] if the child has been placed under the supervision of the department
 9 before the child's 18th birthday, except that the department may apply for and the
 10 court may grant [AN] additional one-year **periods** [PERIOD] of supervision past
 11 [AGE] 19 **years of age that do not extend beyond the person's 21st birthday** if
 12 continued supervision is in the best interests of the person and the person consents to
 13 it.

14 * **Sec. 5.** AS 47.14.100(m) is amended to read:

15 (m) Prima facie evidence of good cause not to place a child with an adult
 16 family member or family friend under AS 47.10.088(i) or under (e) of this section
 17 includes the failure to meet the requirements for a foster care license under AS 47.32
 18 and regulations adopted under AS 47.32, **taking into account a waiver, variance, or**
 19 **exemption allowed under AS 47.32.030(a)(3) and 47.32.032.** Prima facie evidence
 20 of good cause not to place a child with an adult family member or adult family friend
 21 does not include poverty or inadequate or crowded housing. If the department denies a
 22 request for placement with an adult family member or a family friend, the department
 23 shall inform the adult family member or family friend of the basis for the denial and
 24 the right to request a hearing to review the decision. A non-party adult family member
 25 or family friend requesting a review hearing under AS 47.10.088(i) or under (e) of this
 26 section is not eligible for publicly appointed legal counsel.

27 * **Sec. 6.** AS 47.14.100 is amended by adding new subsections to read:

28 (o) Except as provided in (p) and (q) of this section, the department shall
 29 continue to search for a suitable adoptive or permanent legal guardianship for a child
 30 who is in the custody of the state and who is under 18 years of age.

31 (p) The department may recommend another planned permanent living

1 arrangement for a child who is in state custody only if

2 (1) the department has unsuccessfully made intensive efforts to find a
3 permanent placement for the child;

4 (2) the department, after considering reunification, adoption, legal
5 guardianship, or permanent placement with a fit and willing relative, determines that
6 there is a compelling reason that the most appropriate permanency plan for the child is
7 placement in another planned permanent living arrangement, and the department
8 documents for the court the compelling reason for the alternate plan; and

9 (3) the court, at a permanency hearing under AS 47.10.080(I), has
10 approved the placement of the child to another permanent planned living arrangement.

11 (q) The department may release from state custody a child who is under 19
12 years of age who has been committed to the custody of the department only if

13 (1) the child and the guardian ad litem are notified not less than 30
14 days before a petition for release is filed;

15 (2) the department files a petition with the court for termination of
16 state custody and release that describes the reasons the release is in the best interest of
17 the child; and

18 (3) a court makes a written finding that release from state custody is in
19 the best interest of the child.

20 (r) The department shall make all reasonable efforts to place siblings who are
21 in the custody of the department in the same placement. If siblings are not placed
22 together after reasonable efforts have been made, the state or regional director of the
23 division with responsibility over the custody of children shall provide a written
24 explanation in the file of the efforts that were made and the reason separating the
25 siblings for placement purposes is in the best interest of the children. In this
26 subsection, "sibling" means two or more persons who are related by blood or marriage
27 as a child of one or both parents.

28 (s) As used in (p) of this section, "compelling reason" may include
29 circumstances in which

30 (1) the child is more than 15 years of age and has specifically
31 requested that emancipation be established;

1 (2) a parent and child have a significant bond, but the parent is unable
 2 to care for the child because of an emotional or physical disability, and the child's
 3 foster parents have committed to raising the child to the age of majority and to
 4 facilitating visitation with the disabled parent;

5 (3) a tribe has identified another planned permanent living
 6 arrangement for the child.

7 * **Sec. 7.** AS 47.32 is amended by adding a new section to read:

8 **Sec. 47.32.032. Foster care license; variance.** (a) The department shall ensure
 9 that the application and licensing paperwork necessary for a person to be approved as
 10 a foster parent or relative placement is not unduly complex and is as short and
 11 straightforward as necessary to protect a child's best interests.

12 (b) The department shall approve a variance of the applicable building code
 13 requirements for licensure of a foster care home to the extent permitted by federal law
 14 if an applicant does not meet the requirements at the time of inspection and

15 (1) the variance serves the best interest of a child intended to be placed
 16 in that home;

17 (2) the placement is preferable to other placement options;

18 (3) the home design and construction is consistent with homes located
 19 in the community; and

20 (4) the home is otherwise a safe environment for a child.