

HOUSE BILL NO. 391

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLY, Dyson, Therriault

Introduced: 2/11/98

Referred: Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act defining the relationship between a minor and a person or persons
2 having the legal custody of the minor, and relating to the enforcement of that
3 relationship when a minor has run away from or is refusing care provided by
4 a person having the minor's legal custody."

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

6 * **Section 1.** AS 25.20 is amended by adding a new section to read:

7 **Sec. 25.20.005. Legal custody relationship.** The relationship of legal custody
8 between a person or persons having the legal custody of a minor and the minor
9 includes

10 (1) the following rights and responsibilities relating to the care and
11 control of the minor:

12 (A) the responsibility to provide the minor with food, clothing,
13 shelter, education, and medical care;

14 (B) the right and responsibility to protect, train, and discipline

- 1 the minor;
- 2 (C) the right to determine where and with whom the minor shall
- 3 live; and
- 4 (D) the right and responsibility to make decisions of legal or
- 5 financial significance concerning the minor; and
- 6 (2) the following residual rights:
- 7 (A) the right of reasonable visitation with the minor;
- 8 (B) the rights to consent to
- 9 (i) the minor's marriage;
- 10 (ii) the minor's military enlistment;
- 11 (iii) the minor's adoption;
- 12 (iv) medical treatment for the minor except in cases of
- 13 emergency or cases described in AS 25.20.025(a); and
- 14 (C) the right to obtain representation for the minor in legal
- 15 actions.

16 * **Sec. 2.** AS 47.10.084 is amended to read:

17 **Sec. 47.10.084. Legal custody, guardianship, and residual parental rights**

18 **and responsibilities.** (a) When a child is committed under AS 47.10.080(c)(1) to the

19 department, released under AS 47.10.080(c)(2) to the child's parents, guardian, or other

20 suitable person, or committed to the department or to a legally appointed guardian of

21 the person of the child under AS 47.10.080(c)(3), a relationship of legal custody exists.

22 This relationship imposes on the department and its authorized agents or the parents,

23 guardian, or other suitable person the **rights and responsibilities set out in**

24 **AS 25.20.005**, [RESPONSIBILITY OF PHYSICAL CARE AND CONTROL OF THE

25 CHILD, THE DETERMINATION OF WHERE AND WITH WHOM THE CHILD

26 SHALL LIVE, THE RIGHT AND DUTY TO PROTECT, TRAIN, AND DISCIPLINE

27 THE CHILD, AND THE DUTY OF PROVIDING THE CHILD WITH FOOD,

28 SHELTER, EDUCATION, AND MEDICAL CARE. THESE OBLIGATIONS ARE]

29 subject to any residual parental rights and responsibilities and **any** rights and

30 responsibilities of a guardian if one has been appointed. When a child is committed

31 to the department and the department places the child with the child's parent, the

1 parent has the responsibility to provide and pay for food, **clothing**, shelter, education,
 2 and medical care for the child. When parental rights have been terminated, or there
 3 are no living parents and **a** [NO] guardian has **not** been appointed, the responsibilities
 4 of legal custody include those in (b) and (c) of this section. The department or person
 5 having legal custody of the child may delegate any of the responsibilities under this
 6 section, except authority to consent to marriage, adoption, and military enlistment may
 7 not be delegated. For purposes of this chapter, a person in charge of a placement
 8 setting is an agent of the department.

9 (b) When a guardian is appointed for the child, the court shall specify in its
 10 order the rights and responsibilities of the guardian. The guardian may be removed
 11 only by court order. The rights and responsibilities may include, but are not limited
 12 to, having the **residual rights described in AS 25.20.005(2)** [RIGHT AND
 13 RESPONSIBILITY OF REASONABLE VISITATION, CONSENTING TO
 14 MARRIAGE, CONSENTING TO MILITARY ENLISTMENT, CONSENTING TO
 15 MAJOR MEDICAL TREATMENT, OBTAINING REPRESENTATION FOR THE
 16 CHILD IN LEGAL ACTIONS,] and making decisions of legal or financial significance
 17 concerning the child.

18 (c) When there has been transfer of legal custody or appointment of a guardian
 19 and parental rights have not been terminated by court decree, the parents shall have

20 **(1) the residual rights described in AS 25.20.005(2)** [AND
 21 RESPONSIBILITIES. THESE RESIDUAL RIGHTS AND RESPONSIBILITIES OF
 22 THE PARENT INCLUDE, BUT ARE NOT LIMITED TO, THE RIGHT AND
 23 RESPONSIBILITY OF REASONABLE VISITATION, CONSENT TO ADOPTION,
 24 CONSENT TO MARRIAGE, CONSENT TO MILITARY ENLISTMENT, CONSENT
 25 TO MAJOR MEDICAL TREATMENT EXCEPT IN CASES OF EMERGENCY OR
 26 CASES FALLING UNDER AS 25.20.025, AND THE RESPONSIBILITY FOR
 27 SUPPORT], except if by court order any residual right **or** [AND] responsibility has
 28 been delegated to a guardian under (b) of this section; **and**

29 **(2) the responsibility to furnish support for the purposes described**
 30 **in AS 25.20.005(1)(A).**

31 * **Sec. 3.** AS 47.10.141(b) is amended to read:

1 (b) **If a minor described in this subsection is not otherwise subject to**
 2 **arrest or detention, a** [A] peace officer shall take into protective custody a minor
 3 described in (a) of this section **or a minor as to whom there are reasonable grounds**
 4 **to believe that the minor either has run away without the consent of the person**
 5 **having legal custody of the minor or is refusing available care from the person**
 6 **having legal custody of the minor** [IF THE MINOR IS NOT OTHERWISE
 7 SUBJECT TO ARREST OR DETENTION]. Unless (c) of this section applies, when
 8 a peace officer takes a minor into protective custody under this subsection,

9 (1) the peace officer shall

10 (A) return the minor to the minor's parent or guardian at the
 11 parent's or guardian's residence if the residence is in the same community
 12 where the minor was found and if the minor's parent or guardian consents to
 13 the return, except that the officer may not use this option if the officer has
 14 reasonable cause to believe that the minor has experienced physical or sexual
 15 abuse in the parent's or guardian's household;

16 (B) take the minor to a nearby location agreed to by the minor's
 17 parent or guardian if the parent or guardian does not consent to return of the
 18 minor under (A) of this paragraph and the officer does not have reasonable
 19 cause to believe that the minor has experienced physical or sexual abuse in the
 20 parent's or guardian's household; or

21 (C) if disposition of the minor is not made under (A) or (B) of
 22 this paragraph, take the minor to

23 (i) an office specified by the Department of Health and
 24 Social Services;

25 (ii) a program for runaway minors licensed by the
 26 department under AS 47.10.310;

27 (iii) a shelter for runaways that has a permit from the
 28 department under AS 47.35.085 that agrees to shelter the minor;

29 (iv) a facility or contract agency of the department; or

30 (v) another suitable location and promptly notify the
 31 department if an office specified by the department, a licensed program

1 for runaway minors, a shelter for runaways that will accept the minor,
2 or a facility or contract agency of the department does not exist in the
3 community;

4 (2) if the peace officer plans to take the minor to an office, program,
5 shelter, or facility under (1)(C) of this subsection, the peace officer shall give the
6 highest priority to taking the minor to an office, program, shelter, or facility that is
7 semi-secure;

8 (3) a minor under protective custody may not be housed in a jail or
9 other detention facility but may be housed in a semi-secure portion of an office,
10 program, shelter, or other facility under (1)(C) of this subsection;

11 (4) the peace officer, immediately upon taking a minor into protective
12 custody, shall

13 (A) advise the minor of available mediation services and of the
14 right to social services under AS 47.10.142(b); and

15 (B) if the identity of the minor's parent or guardian is known,
16 advise the minor's parent or guardian that the minor has been taken into
17 protective custody and that counseling services for the minor's parent or
18 guardian and the minor's household may be available under AS 47.10.142(b).

19 * **Sec. 4.** AS 47.12.150 is amended to read:

20 **Sec. 47.12.150. Legal custody, guardianship, and residual parental rights**
21 **and responsibilities.** (a) When a minor is committed under AS 47.12.120(b)(1) or
22 (3) to the department or released under AS 47.12.120(b)(2) to the minor's parents,
23 guardian, or other suitable person, a relationship of legal custody exists. This
24 relationship imposes on the department and its authorized agents or the parents,
25 guardian, or other suitable person the **rights and responsibilities set out in**
26 **AS 25.20.005**, [RESPONSIBILITY OF PHYSICAL CARE AND CONTROL OF THE
27 MINOR, THE DETERMINATION OF WHERE AND WITH WHOM THE MINOR
28 SHALL LIVE, THE RIGHT AND DUTY TO PROTECT, TRAIN, AND DISCIPLINE
29 THE MINOR, AND THE DUTY OF PROVIDING THE MINOR WITH FOOD,
30 SHELTER, EDUCATION, AND MEDICAL CARE. THESE OBLIGATIONS ARE]
31 subject to any residual parental rights and responsibilities and **any** rights and

1 responsibilities of a guardian if one has been appointed. When a minor is committed
 2 to the department and the department places the minor with the minor's parent, the
 3 parent has the responsibility to provide and pay for food, **clothing**, shelter, education,
 4 and medical care for the minor. When parental rights have been terminated, or there
 5 are no living parents and a guardian has not been appointed, the responsibilities of
 6 legal custody include those in (b) and (c) of this section. The department or person
 7 having legal custody of the minor may delegate any of the responsibilities under this
 8 section, except authority to consent to marriage, adoption, and military enlistment may
 9 not be delegated. For purposes of this chapter, a person in charge of a placement
 10 setting is an agent of the department.

11 (b) When a guardian is appointed for the minor, the court shall specify in its
 12 order the rights and responsibilities of the guardian. The guardian may be removed
 13 only by court order. The rights and responsibilities may include, but are not limited
 14 to, having the **residual rights described in AS 25.20.005(2)** [RIGHT AND
 15 RESPONSIBILITY OF REASONABLE VISITATION, CONSENTING TO
 16 MARRIAGE, CONSENTING TO MILITARY ENLISTMENT, CONSENTING TO
 17 MAJOR MEDICAL TREATMENT, OBTAINING REPRESENTATION FOR THE
 18 MINOR IN LEGAL ACTIONS,] and making decisions of legal or financial
 19 significance concerning the minor.

20 (c) When there has been transfer of legal custody or appointment of a guardian
 21 and parental rights have not been terminated by court decree, the parents shall have

22 **(1) the residual rights described in AS 25.20.005(2)** [AND
 23 RESPONSIBILITIES. THESE RESIDUAL RIGHTS AND RESPONSIBILITIES OF
 24 THE PARENT INCLUDE THE RIGHT AND RESPONSIBILITY OF REASONABLE
 25 VISITATION, CONSENT TO ADOPTION, CONSENT TO MARRIAGE, CONSENT
 26 TO MILITARY ENLISTMENT, CONSENT TO MAJOR MEDICAL TREATMENT
 27 EXCEPT IN CASES OF EMERGENCY OR CASES FALLING UNDER
 28 AS 25.20.025, AND THE RESPONSIBILITY FOR SUPPORT], except if by court
 29 order any residual right **or** [AND] responsibility has been delegated to a guardian
 30 under (b) of this section; **and**

31 **(2) the responsibility to furnish support for the purposes described**

1 **in AS 25.20.005(1)(A).**