

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2 HOUSE BILL NO. 399

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to proceedings in juvenile
7 cases."

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

9 Section 1. Sec. 9, Art. I, Ch. 145, SLA 1957, is repealed
10 and re-enacted to read:

11 Sec. 9. WAIVER OF JURISDICTION. (1) If a district
12 magistrate court finds at a hearing on a petition that there
13 is probable cause for believing that a minor is delinquent
14 and finds that the minor is not amenable to treatment under
15 this Act, the court shall transfer the case and all papers
16 and records relative to it to the superior court.

17 (2) When a case is transferred to the superior
18 court under this section, the superior court shall
19 immediately order a de novo hearing to determine whether or
20 not there is probable cause and whether or not the minor is
21 amenable to treatment under this Act.

22 (3) If the superior court finds, at the hearing,
23 that there is no probable cause for believing that the minor
24 is delinquent it shall dismiss the petition. If the
25 superior court finds that there is probable cause and that
26 the minor is amenable to treatment under this Act, it
27 shall return the case to the district magistrate court. If
28 the superior court finds that there is probable cause and
29 that the minor is not amenable to treatment under this Act,

1 jurisdiction of the district magistrate court under this
2 Act is waived and the minor may be prosecuted as if he were
3 an adult.

4 (4) A minor is unamenable to treatment under this
5 Act if he probably cannot be rehabilitated by treatment
6 under this Act before he reaches 21 years of age. In
7 determining whether or not a minor is unamenable to treat-
8 ment, the court may consider the seriousness of the offense
9 the minor is alleged to have committed, the minor's history
10 of delinquency, the probable causes of the minor's
11 delinquent behavior, and the facilities available to the
12 division of youth and adult authority for treating the minor.

13 (5) When a person who has been tried as an adult
14 under this section reaches 25 years of age, he may petition
15 (or the division of youth and adult authority may petition
16 for him) the superior court to seal the records of all
17 criminal proceedings against him and all punishments
18 assessed against him, except for traffic offenses, while
19 he was a minor. If the superior court finds that the
20 punishment assessed against the person has had its intended
21 rehabilitative effect, the superior court shall order the
22 record of proceedings and the record of punishments sealed.
23 Sealing the records restores civil rights removed because
24 of a conviction. No person may ever use records so sealed
25 for any purpose. If the records are sealed, criminal
26 identification records made on a person while a minor
27 may not be used as evidence in any subsequent proceeding
28 against him.

29 Sec. 2. Sec. 10(2), Art. I, Ch. 145, SLA 1957, as amended

1 by Sec. 2, Ch. 110, SLA 1960, is repealed and re-enacted to read:

2 (2) JUDGMENTS AND ORDERS; APPEAL.

3 (a) The court, at the conclusion of the
4 hearing, shall find and enter a judgment that the minor
5 is or is not a delinquent or dependent minor.

6 (b) If the court finds that the minor is
7 delinquent it shall make one of the following orders.

8 1. The court may order the minor
9 committed to the Department of Health and Welfare
10 for an indeterminate period of time not to extend
11 past a specified date or in any event past the
12 day the minor becomes 21, and may direct the
13 minor's placement in a juvenile correctional
14 school, detention home or detention facility
15 designated by the department. The minor may be
16 released from placement and placed on probation
17 on order of the department.

18 2. The court may order the minor placed
19 on probation, to be supervised by the department,
20 and release him to his parents, guardian or a
21 suitable person. If the court orders the minor
22 placed on probation, it may specify the terms and
23 conditions of probation. The probation may be
24 for an indeterminate period of time, not to extend
25 past a specified date and in no event past the
26 day the minor becomes 21.

27 (c) If the court finds the minor is
28 dependent, it shall make one of the following orders.

29 1. The court may order the minor

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committed to the department for an indeterminate period of time not to exceed the date the minor becomes 21 years of age.

2. The court may order the minor released to his parents, guardian or some other suitable person. If the court releases the minor it shall direct the department to supervise the care and treatment given to the minor. The department's supervision may not extend past the date the minor becomes 21 years of age.

3. The court may, by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child; provided that one of the following conditions exists:

(i) each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights, wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court; or

(ii) the child has been abandoned by both parents, or the surviving parent, or one parent if the other has been deprived of

1 custody and visitation rights, for a period
2 of not less than six months; or

3 (iii) each parent, or the surviving
4 parent, or one parent if the other has been
5 deprived of custody and visitation rights,
6 has been judicially determined to be of
7 unsound mind and the disability has not been
8 removed or the parents, or said parent, have
9 been hospitalized for reasons of mental ill-
10 ness diagnosed as permanent or of long duration;
11 or

12 (iv) each parent, or the surviving parent,
13 or one parent if the other has been deprived
14 of custody and visitation rights, has
15 demonstrated by his conduct, proven by clear
16 and convincing proof amounting to more than a
17 preponderance of the evidence, that he is
18 unfit to continue to exercise his parental
19 rights and responsibilities.

20 Such order shall authorize the commissioner of
21 health and welfare or his designee, or the guardian
22 of the person of the child to consent to the
23 adoption of the child.

24 (d) If the court finds that the minor is not
25 delinquent or dependent, it shall immediately order his
26 release from its custody and his return to his parents,
27 guardian or custodian, and close the case.

28 (e) A minor found to be delinquent or
29 dependent is a ward of the court so long as he is com-

1 mitted to the department or the department has the power
2 to supervise his actions. The court shall review an
3 order made under (b) or (c)(1) or (2) of this subsection
4 annually and may review the order more frequently to
5 determine if continued placement, probation or super-
6 vision is in the best interest of the minor and the
7 public, and to determine if the minor is being treated
8 fairly. The department or the minor's parents or
9 guardian are entitled to a review on application. If
10 the minor is out of the state, he need not be present
11 at the review.

12 (f) No adjudication under this Act upon the
13 status of any child shall operate to impose any of the
14 civil disabilities ordinarily imposed by conviction
15 upon a criminal charge, nor shall any minor be there-
16 after deemed a criminal by such adjudication, nor shall
17 such adjudication be thereafter deemed a conviction,
18 nor shall any minor be charged with or convicted of a
19 crime in any court, except as provided in this Act.
20 The commitment and placement of a child or any evidence
21 given in the court shall not be admissible as evidence
22 against the minor in any subsequent case or proceedings
23 in any other court, nor shall such commitment and
24 placement or evidence operate to disqualify a minor in
25 any future civil service examination or appointment in
26 the state.

27 (g) The department shall pay all court costs
28 incurred in all proceedings in connection with the
29 adjudication of delinquency under this Act, including

1 hearings which result in the release of the minor.

2 (h) A minor, his parents or guardian acting
3 on his behalf, or the department may appeal a judgment
4 or order, or the stay, modification, setting aside,
5 revocation or enlargement of a judgment or order
6 issued by the court under this Act.

7 Sec. 3. Sec. 15, Art. I, Ch. 145, SLA 1957 is repealed and
8 re-enacted to read:

9 Sec. 15. TEMPORARY DETENTION; DETENTION HEARING. (1)

10 A peace officer may arrest a minor who violates a law or
11 ordinance in his presence, or whom he reasonably believes to
12 be a fugitive from justice or to be evading the person
13 having legal custody of him. A peace officer may continue
14 a lawful arrest made by a citizen. He may have the minor
15 detained in a juvenile detention facility if in his opinion
16 it is necessary to do so to protect the minor or the com-
17 munity.

18 (2) A peace officer who has a minor detained under
19 (1) of this section shall forthwith, and in no event more
20 than 12 hours later, notify the court, the minor's parents
21 or guardian, and the division of youth and adult authority
22 of his action. The division may file with the court a
23 petition alleging delinquency before the detention hearing.

24 (3) The court shall forthwith, and in no event
25 more than 48 hours later, hold a hearing at which the minor
26 and his parents or guardian if they can be found shall be
27 present. The court shall determine whether probable cause
28 exists for believing the minor to be delinquent. The court
29 shall inform the minor of the reasons alleged to constitute

1 probable cause and the reasons alleged to authorize his
2 detention. The minor is entitled to counsel and to con-
3 frontation of the witnesses against him.

4 (4) If the court finds that probable cause exists
5 it shall determine whether the minor should be detained
6 pending the hearing on the petition or released. It may
7 either order the minor held in detention, or order him to
8 be released to the custody of a suitable person, pending the
9 hearing on the petition. If the court finds no probable
10 cause it shall order the minor released, and close the case.

11 (5) Except for temporary detention pending a
12 detention hearing, no minor may be detained except by court
13 order.
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