

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR 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 I, Ch. 145, SLA 1957, is repealed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 N Sec. 9. WAIVER OF JURISDICTION. (1) If a district
12 magistrate court finds at a hearing on a petition that there
13 E is probable cause for believing that a minor is delinquent
14 and finds that the minor is not amenable to treatment under
15 W 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 M immediately order a de novo hearing to determine whether or
20 not there is probable cause and whether or not the minor is
21 A amenable to treatment under this Act.

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

1 N 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 E (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 W 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 M under this section has completed his sentence and after five
15 years has elapsed, he may petition (or the Department of
16 Health and Welfare may petition for him) the superior court
17 A to seal the records of all criminal proceedings against him
18 and all punishments assessed against him, except for traffic
19 offenses, while he was a minor. If the superior court finds
20 T that the punishment assessed against the person has had its
21 intended rehabilitative effect, the superior court shall
22 order the record of proceedings and the record of punish-
23 T ments sealed. Sealing the records restores civil rights
24 removed because of a conviction. No person may ever use
25 records so sealed for any purpose. If the records are sealed,
26 E criminal identification records made on a person while a
27 minor may not be used as evidence in any subsequent proceed-
28 ing against him.

29 R 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 N (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 E 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 W 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 M school, detention home or detention facility
15 designated by the department. The minor may be
16 released from placement and placed on probation
17 A on order of the department.

18 2. The court may order the minor placed
19 on probation, to be supervised by the department,
20 T 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 T 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 E day the minor becomes 21.

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

29 R 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.

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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.

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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:

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(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

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

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

(iii) each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights, has been judicially determined to be of unsound mind and the disability has not been removed or the parents, or said parent, have been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

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

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

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

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

1 N 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 subsec-
4 E tion annually and may review the order more frequently
5 to determine if continued placement, probation or
6 supervision is in the best interest of the minor and the
7 W 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. The
10 minor need not be present at the review.

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

26 E (g) The department shall pay all court costs
27 incurred in all proceedings in connection with the
28 adjudication of delinquency under this Act, including
29 R hearings which result in the release of the minor.

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

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

8 Sec. 15. TEMPORARY DETENTION; DETENTION HEARING. (1)
9 A peace officer may arrest a minor who violates a law or
10 ordinance in his presence, or whom he reasonably believes to
11 be a fugitive from justice or to be evading the person
12 having legal custody of him. A peace officer may continue
13 M a lawful arrest made by a citizen. He may have the minor
14 detained in a juvenile detention facility if in his opinion
15 it is necessary to do so to protect the minor or the com-
16 A munity.

17 (2) A peace officer who has a minor detained under
18 (1) of this section shall forthwith, and in no event more
19 T than 12 hours later, notify the court, the minor's parents
20 or guardian, and the Department of Health and Welfare of his
21 action. The department may file with the court a petition
22 T alleging delinquency before the detention hearing.

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

1 N detention. The minor is entitled to counsel and to con-
2 E frontation of the witnesses against him.

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

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

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