

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

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CS FOR HOUSE BILL NO. 399

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SECOND LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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 I, Ch. 145, SLA 1957, is repealed and re-enacted to read:

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

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

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(3) If the superior court finds, at the hearing, that there is no probable cause for believing that the minor is delinquent it shall dismiss the petition. If the superior court finds that there is probable cause and that the minor is amenable to treatment under this Act, it shall return the case to the district magistrate court. If the superior court finds that there is probable cause and that the minor is not amenable to treatment under this Act, jurisdiction of the district

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

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

12 (5) When a person who has been tried as an adult
13 under this section has completed his sentence and after five
14 M years has elapsed, he may petition (or the Department of Health
15 and Welfare may petition for him) the superior court to seal
16 A the records of all criminal proceedings against him and all
17 punishments assessed against him, except for traffic offenses,
18 T while he was a minor. If the superior court finds that the
19 punishment assessed against the person has had its intended
20 T rehabilitative effect, the superior court shall order the
21 record of proceedings and the record of punishments sealed.
22 E Sealing the records restores civil rights removed because of a
23 conviction. No person may ever use records so sealed for any
24 R purpose.

25 Sec. 2. Sec. 10(2), Art. I, Ch. 145, SLA 1957, as amended by
26 Sec. 2, Ch. 110, SLA 1960, is repealed and re-enacted to read:

27 (2) JUDGMENTS AND ORDERS; APPEAL

28 (a) The court, at the conclusion of the
29 hearing, shall find and enter a judgment that the minor

1 N is or is not a delinquent or dependent minor.

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

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

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

23 T (c) If the court finds the minor is dependent,
24 it shall make one of the following orders.

25 1. The court may order the minor
26 E committed to the department for an indeterminate
27 period of time not to exceed the date the minor
28 becomes 21 years of age.

29 R 2. The court may order the minor released

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

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

13 (i) each parent, or the surviving
14 M parent, or one parent if the other has been
15 deprived of custody and visitation rights,
16 wishes to relinquish the child to the depart-
17 A ment or to a legally appointed guardian of the
18 person of the child for adoptive purposes, and
19 the relinquishment is in writing, signed and
20 T acknowledged before the court or duly author-
21 ized representative of the department and
22 filed with the court; or

23 T (ii) the child has been abandoned
24 by both parents, or the surviving parent, or
25 one parent if the other has been deprived of
26 E custody and visitation rights, for a period
27 of not less than six months; or

28 (iii) each parent, or the surviving
29 parent, or one parent if the other has been

1 N deprived of custody and visitation rights,
2 has been judicially determined to be of
3 unsound mind and the disability has not been
4 E removed and the parents, or said parent, have
5 been hospitalized for reasons of mental illness
6 diagnosed as permanent or of long duration; or
7 W (iv) each parent, or the surviving
8 parent, or one parent if the other has been
9 judicially deprived of custody and visitation
10 rights, has demonstrated by his conduct, proven
11 by clear and convincing proof amounting to more
12 than a preponderance of the evidence, that he
13 is unfit to continue to exercise his parental
14 M rights and responsibilities.

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

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

23 T (e) A minor found to be delinquent or
24 dependent is a ward of the court so long as he is com-
25 mitted to the department or the department has the power
26 E to supervise his actions. The court shall review an
27 order made under (b) or (c)(1) or (2) of this subsec-
28 tion annually and may review the order more frequently
29 R to determine if continued placement, probation or

1 N supervision is in the best interest of the minor and the
2 public, and to determine if the minor is being treated
3 fairly. The department or the minor's parents or
4 E guardian are entitled to a review on application. The
5 minor need not be present at the review.

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

20 T (g) The department shall pay all court costs
21 incurred in all proceedings in connection with the
22 adjudication of delinquency under this Act, including
23 T hearings which result in the release of the minor.

24 (h) A minor, his parents or guardian acting
25 on his behalf, or the department may appeal a judgment
26 E or order, or the stay, modification, setting aside,
27 revocation or enlargement of a judgment or order
28 R issued by the court under this Act.

29 Sec. 3. Sec. 15, Art. I, Ch. 145, SLA 1957, is repealed and

1 re-enacted to read:

2 N Sec. 15. TEMPORARY DETENTION; DETENTION HEARING. (1)

3 A peace officer may arrest a minor who violates a law or
4 E ordinance in his presence, or whom he reasonably believes to
5 W be a fugitive from justice or to be evading the person
6 having legal custody of him. A peace officer may continue
7 a lawful arrest made by a citizen. He may have the minor
8 detained in a juvenile detention facility if in his opinion
9 it is necessary to do so to protect the minor or the community.

10 (2) A peace officer who has a minor detained under
11 (1) of this section shall forthwith, and in no event more
12 than 12 hours later, notify the court, the minor's parents
13 or guardian, and the Department of Health and Welfare of his
14 M action. The department may file with the court a petition
15 alleging delinquency before the detention hearing.

16 (3) The court shall forthwith, and in no event
17 A more than 48 hours later, hold a hearing at which the minor
18 and his parents or guardian if they can be found shall be
19 present. The court shall determine whether probable cause
20 T exists for believing the minor to be delinquent. The court
21 shall inform the minor of the reasons alleged to constitute
22 probable cause and the reasons alleged to authorize his
23 T detention. The minor is entitled to counsel and to con-
24 frontation of the witnesses against him.

25 (4) If the court finds that probable cause exists
26 E it shall determine whether the minor should be detained
27 pending the hearing on the petition or released. It may
28 either order the minor held in detention, or order him to
29 R be released to the custody of a suitable person, pending the

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hearing on the petition. If the court finds no probable cause
it shall order the minor released, and close the case.

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

Passed by the House March 30, 1962

Speaker of the House

ATTEST:

Chief Clerk of the House

Passed by the Senate _____, 1962

President of the Senate

ATTEST:

Secretary of the Senate