

Introduced: 1/23/76  
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST OF  
THE LEGISLATIVE COUNCIL'S CHILDREN'S  
CODE REVISION TASK FORCE

1 IN THE SENATE

2 SENATE BILL NO. 572

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to children's court proceeding; adding  
7 to the court's responsibilities and delineating its  
8 authority under Rule 12(a), Rules of Children's Proce-  
9 dure and Rule 17(b) Rules of Civil Procedure; restrict-  
10 ing the court's authority to hold hearings under Rule  
11 21, Alaska Children's Rules; and requiring the court to  
12 review judgment at the application of an interested  
13 party and to afford notice and an opportunity to be  
14 heard at a review held under Rule 23, Alaska Children's  
15 Rules."

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

17 \* Section 1. AS 09. 65.130(a) is amended to read:

18 (a) The court may, upon the motion of either party or upon its own  
19 motion, appoint an attorney [OR GUARDIAN AD LITEM] to represent the  
20 [INTERESTS OF A] minor [OR DEPENDENT CHILD] with respect to his custody,  
21 support, and visitation or in any other legal proceeding involving his  
22 welfare. When custody, support, or visitation are at issue in a divorce  
23 it is the responsibility of the parties or their counsel to notify the  
24 court that those matters are at issue. Upon notification, the court  
25 shall determine whether the child should have legal representation  
26 [ASSISTANCE] or other services and shall make a finding on the record  
27 before trial. The court shall enter an order for costs, fees, and dis-  
28 bursements in favor of the child's attorney [OR GUARDIAN AD LITEM] and  
29 may further order that other services be provided for the protection of

1 the child.

2 \* Sec. 2. AS 09.65.130 is amended by adding a new subsection to read:

3 (c) The court may, upon the motion of either party or upon its  
4 own motion, appoint an attorney or other person to serve as guardian  
5 ad litem to represent the best interests of a minor in any legal pro-  
6 ceeding involving his welfare. The court shall appoint a guardian ad  
7 litem where, in the opinion of the court, representation of the child's  
8 best interests, to be distinguished from his preferences, would serve  
9 the welfare of the child. The court in its order appointing a guardian  
10 ad litem shall limit the duration of the appointment of the guardian ad  
11 litem to the pendency of the legal proceeding affecting his interests,  
12 and shall outline the guardian ad litem's responsibilities and limit his  
13 authority to those matters related to his effective representation of  
14 the child's best interests in the pending legal proceeding. The court  
15 shall appoint a guardian ad litem from among persons in the community  
16 where the child's parents or the person having legal custody or guardian-  
17 ship of the child's person resides. When custody, support, or visita-  
18 tion are at issue in a divorce, it is the responsibility of the parties  
19 or their counsel to notify the court that these matters are at issue.  
20 Upon notification, the court shall determine if the child's best inter-  
21 ests need representation or if the child needs other services and shall  
22 make a finding on the record before trial. The court shall enter an  
23 order for costs, fees, and disbursements in favor of the child's guardian  
24 ad litem and may further order that other services be provided for the  
25 protection of the child.

26 \* Sec. 3. AS 20.15.100(j) is amended to read:

27 (j) Appointment of an attorney to represent the minor or an  
28 attorney or other person to serve as guardian ad litem [A GUARDIAN AD  
29 LITEM OR ATTORNEY] for a person to be adopted who is a minor shall be

1 made under the terms of AS 09.65.130.

2 \* Sec. 4. AS 47.10.010(a) is repealed and re-enacted to read:

3 (a) Proceedings relating to a minor under 18 years of age residing  
4 or found in the state are governed by this chapter, except as otherwise  
5 provided in this chapter, when the court finds the minor

6 (1) to be a delinquent minor as a result of violating a law  
7 of the state, or an ordinance or regulation of a political subdivision  
8 of the state; or

9 (2) to be a child in need of aid as a result of the child

10 (A) having no caring adult available and willing to care  
11 for him;

12 (B) having suffered or being likely to imminently suffer  
13 a physical injury, inflicted upon him by other than accidental means;

14 (C) being in need of medical treatment to cure, allevi-  
15 ate, or prevent his suffering a serious physical injury and his  
16 parents are unwilling to provide the medical treatment;

17 (D) having suffered physical injury or if there is a  
18 substantial risk that the child imminently will suffer physical  
19 injury as a result of conditions created by his parent, guardian  
20 or custodian or the failure of his parent, guardian or custodian  
21 adequately to supervise him;

22 (E) suffering serious emotional damage, evidenced by  
23 failure to thrive, severe anxiety, depression, or withdrawal or  
24 untoward aggressive behavior or hostility toward others, or is in  
25 need of medical treatment to cure, alleviate, or prevent his suffer-  
26 ing that serious emotional damage;

27 (F) having been sexually abused by his parent, guardian,  
28 or custodian or as a result of conditions created by his parent,  
29 guardian, or custodian or by the failure of his parent, guardian or

1           custodian to adequately supervise him;

2                   (G) committing delinquent acts as a result of pressure,  
3 guidance, or approval from parents, guardian or custodian;

4                   (H) being habitually truant from school or home; or

5                   (I) having been released by his parent or parents, or  
6 guardian, to the department for adoptive purposes.

7 \* Sec. 5. AS 47.10.010 is amended by adding a new subsection to read:

8           (d) If the minor exhibits behavior which indicates that he may be  
9 suffering from mental illness and is otherwise within the jurisdiction  
10 of this chapter under (a) of this section, the court shall appoint a  
11 licensed medical, psychiatric, or psychological practitioner to examine  
12 the minor to determine whether, in the practitioner's opinion, the minor  
13 is mentally ill, or has symptoms of mental illness, and because of his  
14 illness is (1) likely to injure himself or others if allowed to remain  
15 at liberty, or (2) is in need of care or treatment in a hospital. For  
16 the purpose of this examination the court may order the minor to be  
17 committed to a hospital or other suitable facility for not more than 30  
18 days, subject to AS 47.30.040(b). If the appointed practitioner certi-  
19 fies in writing that the minor is mentally ill or has symptoms of mental  
20 illness and because of his illness is likely to injure himself or others  
21 if allowed to remain at liberty or is in need of care or treatment in a  
22 hospital, the procedure prescribed in secs. 20 - 90 of this chapter may  
23 not be followed and appropriate proceedings may be instituted under  
24 AS 47.30.026, 47.30.030 and 47.30.070.

25 \* Sec. 6. AS 47.10.050 is amended to read:

26           Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY.

27 Whenever in the course of proceedings instituted under this chapter it  
28 appears to the court that the welfare of a minor will be promoted by the  
29 appointment of an attorney to represent the minor or an attorney or other

1 person to serve as guardian ad litem [A GUARDIAN AD LITEM OR ATTORNEY],  
2 the court may make the appointment. Appointment of a guardian ad litem  
3 or attorney shall be made under the terms of AS 09.65.130.

4 \* Sec. 7. AS 47.30.040(b) is amended to read:

5 (b) At the end of the 48 hours, a patient admitted under sec. 20  
6 or 30 of this chapter, or AS 47.10.010(d), shall be discharged without  
7 application if a preliminary examination has not been held or if, upon  
8 examination, the designated examiner refuses or fails to certify to the  
9 head of the designated hospital that in his opinion the patient is  
10 mentally ill and is either likely to injure himself or others if allowed  
11 at liberty, or in need of care or treatment in a hospital and because  
12 of his illness lacks sufficient insight or capacity to make responsible  
13 decisions concerning it. All other patients shall be discharged when,  
14 in the opinion of the head of the designated hospital, there is no  
15 further need for their hospitalization. Notice of discharge shall be  
16 given to the department and the court or person responsible for the order  
17 of hospitalization, who shall have an additional 48 hours within which  
18 to make other arrangements under sec. 70 of this chapter or otherwise.

19 \* Sec. 8. AS 47.10.080(a) is amended to read:

20 (a) The court, at the conclusion of the hearing, or thereafter as  
21 the circumstances of the case may require, shall find and enter a judg-  
22 ment that the minor is or is not a delinquent [,] or a child in need of  
23 aid [SUPERVISION, OR DEPENDENT MINOR]. After that judgment is entered,  
24 the department shall present its recommendations concerning dispositions  
25 available to the court under this section relative to placement in a  
26 juvenile detention home, juvenile detention facility, or other placement,  
27 probation, or supervision; and the court shall consider these recommenda-  
28 tions in selecting dispositions under this section. The department shall  
29 send a written treatment plan and statement of goals to the court,

1 the child, and his parents within 30 days of the adjournment of the  
2 minor's disposition hearing; if the department fails to send this plan  
3 and statement, the court shall hold a hearing under sec. 80(f) of this  
4 chapter to determine if continued supervision or commitment is in the  
5 best interests of the minor and may take action it considers appropriate  
6 under sec. 100(a) and (b) of this chapter.

7 \* Sec. 9. AS 47.10.080(b)(1) is amended to read:

8 (1) order the minor committed to the Department of Health  
9 and Social Services for a [AN INDETERMINATE] period of time not to  
10 exceed two years [EXTEND PAST A SPECIFIED DATE] or in any event extend  
11 past the day the minor becomes 19, except that

12 (A) the department may apply for and the court may grant  
13 one-year extensions of supervision which do not extend beyond the  
14 child's 19th birthday, if the extension is in the best interests of  
15 the minor and the public; or

16 (B) the department may apply for and the court may grant  
17 an additional one-year period of supervision past age 19, if con-  
18 tinued supervision is in the best interests of the person and the  
19 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION  
20 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED  
21 TO TREATMENT]; the department shall place the minor in the juvenile  
22 facility which the department considers appropriate and which may  
23 include a juvenile correctional school, detention home, or detention  
24 facility; the minor may be released from placement or detention and  
25 placed on probation on order of the court and may also be released  
26 by the department, in its discretion, under sec. 200 of this chapter;  
27 or

28 \* Sec. 10. AS 47.10.080(b)(2) is amended to read:

29 (2) order the minor placed on probation, to be supervised by

1 the department, and release him to his parents, guardian, or a suitable  
2 person; if the court orders the minor placed on probation, it may specify  
3 the terms and conditions of probation; the probation may be for a [AN  
4 INDETERMINATE] period of time, not to exceed two years [EXTEND PAST A  
5 SPECIFIED DATE] and in no event extend past the day the minor becomes  
6 19, except that

7 (A) the department may apply for and the court may grant  
8 one-year extensions of supervision which do not extend beyond the  
9 child's 19th birthday if the extension is in the best interests of  
10 the minor and the public; or

11 (B) the department may apply for and the court may grant  
12 an additional one-year period of supervision past age 19, if  
13 continued supervision is in the best interests of the person and the  
14 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION  
15 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED  
16 TO TREATMENT].

17 \* Sec. 11. AS 47.10.080(c) is amended to read:

18 (c) If the court finds that the minor is a child in need of aid  
19 [DEPENDENT], it shall

20 (1) order the minor committed to the department for a [AN  
21 INDETERMINATE] period of time not to exceed two years or in any event  
22 past the date the minor becomes 19 years of age, except that

23 (A) the department may apply for and the court may grant  
24 one-year extensions of supervision which do not extend beyond the  
25 child's 19th birthday if the extension is in the best interests of  
26 the minor and the public; or

27 (B) the department may apply for and the court may grant  
28 an additional one-year period of supervision past age 19, if the  
29 continued supervision is in the best interests of the person and the

1 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION  
2 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED  
3 TO TREATMENT];

4 (2) order the minor released to his parents, guardian, or  
5 some other suitable person, and, in appropriate cases, order the parents,  
6 guardian, or other person to provide medical or other care and treatment  
7 if the court releases the minor, it shall direct the department to super-  
8 vise the care and treatment given to the minor; the department's super-  
9 vision may not exceed two years or in any event extend past the date the  
10 minor reaches age 19 [MAJORITY], except that

11 (A) the department may apply for and the court may grant  
12 one-year extensions of supervision which do not extend beyond the  
13 child's 19th birthday if the extension is in the best interests of  
14 the minor and the public; or

15 (B) the department may apply for and the court may grant  
16 an additional one-year period of supervision past age 19, if the  
17 continued supervision is in the best interests of the person and the  
18 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION  
19 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED  
20 TO TREATMENT]; or

21 \* Sec. 12. AS 47.10.080(f) is amended to read:

22 (f) A minor found to be delinquent or a child in need of aid  
23 [, A CHILD IN NEED OF SUPERVISION, OR DEPENDENT] is a ward of the state  
24 as long as he is committed to the department or the department has the  
25 power to supervise his actions. The court shall review an order made  
26 under (b) or (c)(1) or (2) [OR (j)] of this section annually, and may  
27 review the order more frequently to determine if continued placement,  
28 probation, or supervision, as it is being provided, is in the best  
29 interest of the minor and the public [, AND TO DETERMINE IF THE MINOR IS

1 BEING TREATED FAIRLY]. The department, the minor, [OR] the minor's  
2 parents, [OR] guardian, or custodian are [IS] entitled to a review on  
3 application. The court shall afford these parties and their counsel  
4 reasonable notice in advance of the review and hold a hearing where  
5 these parties and their counsel shall be afforded an opportunity to be  
6 heard. The minor shall be afforded the opportunity to be present at the  
7 review.

8 \* Sec. 13. AS 47.10.290(2) is repealed and re-enacted to read:

9 (2) "delinquent minor" means a minor found to be within the  
10 jurisdiction of the court under sec. 10(a)(1) of this chapter.

11 \* Sec. 14. AS 47.10.080(j) and 47.10.290(3) and (7) are repealed.

12 \* Sec. 15. AS 47.10.290 is amended by adding a new paragraph to read:

13 (8) "child in need of aid" means a minor found to be within  
14 the jurisdiction of the court under sec. 10(a)(2) of this chapter.

15 \* Sec. 16. Section 2 of this Act has the effect of limiting the discretion-  
16 ary authority of the court to appoint a guardian ad litem under Rule 17(b),  
17 Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules of  
18 Children's Procedure, by requiring as a condition of appointment that the  
19 court find that the best interests of the child need articulation. Further,  
20 this Act requires limitation of the duration of the appointment, limits the  
21 scope of the guardian ad litem's authority, and establishes the geographical  
22 area from which the guardian ad litem may be selected.

23 \* Sec. 17. Section 5 of this Act has the effect of restricting the dis-  
24 positive phase of children's hearings held under Rule 12, Alaska Children's  
25 Rules to instances where the court does not find the minor's behavior to be  
26 indicative of mental illness or where a practitioner does not certify that the  
27 minor is mentally ill.

28 \* Sec. 18. Section 12 of this Act has the effect of adding to the court's  
29 responsibilities when holding a review under Rule 28, Alaska Rules of

1 Children's Procedure, by requiring the court to give notice, hold a hearing,  
2 and afford an opportunity to be heard. Also, sec. 5 of this Act has the  
3 effect of eliminating the requirement that good cause be shown before a child,  
4 his parents, guardian, or custodian is entitled to a review.

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