

Original sponsor: Rules Committee by request Offered: 4/15/76
of the Legislative Council Referred: Rules
Children's Code Revision
Task Force

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR 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;
7 changing the court's responsibilities and authority
8 under Children's Rules 11(a), 12(a) and (b), 15, 21
9 and 28, and Rule of Civil Procedure 17(b)."

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

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

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

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

26 (c) Instead of, or in addition to, appointment of an attorney
27 under (a) of this section, the court may, upon the motion of either
28 party or upon its own motion, appoint an attorney or other person to
29 serve as guardian ad litem to represent the best interests of a minor in

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

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

24 (j) Appointment of an attorney to represent the minor or an
25 attorney or other person to serve as guardian ad litem [A GUARDIAN AD
26 LITEM OR ATTORNEY] for a person to be adopted who is a minor shall be
27 made under the terms of AS 09.65.130.

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

29 (a) Proceedings relating to a minor under 18 years of age residing

1 or found in the state are governed by this chapter, except as otherwise
2 provided in this chapter, when the court finds the minor

3 (1) to be a delinquent minor as a result of violating a law
4 of the state, or an ordinance or regulation of a political subdivision
5 of the state; or

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

7 (A) having no caring parent, guardian, custodian or
8 relative available and willing to care for him;

9 (B) having suffered or being likely to suffer imminent
10 physical injury, inflicted upon him by other than accidental
11 means;

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

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

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

25 (F) having been sexually abused by his parent, guardian,
26 or custodian or having been sexually abused as a result of failure
27 on the part of his parent, guardian, or custodian to adequately and
28 reasonably supervise him;

29 (G) committing delinquent acts as a result of pressure,

1 guidance, or approval from parents, guardian or custodian;

2 (H) being habitually absent from home; or

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

5 * Sec. 5. AS 47.10.050 is amended to read:

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

7 Whenever in the course of proceedings instituted under this chapter it
8 appears to the court that the welfare of a minor will be promoted by the
9 appointment of an attorney to represent the minor or an attorney or
10 other person to serve as guardian ad litem [A GUARDIAN AD LITEM OR
11 ATTORNEY], the court may make the appointment. Appointment of a guard-
12 ian ad litem or attorney shall be made under the terms of AS 09.65.130.

13 * Sec. 6. AS 47.10.080(a) is amended to read:

14 (a) The court, at the conclusion of the hearing, or thereafter as
15 the circumstances of the case may require, shall find and enter a judg-
16 ment that the minor is or is not a delinquent [,] or a child in need of
17 aid [SUPERVISION, OR DEPENDENT MINOR]. The department shall send a
18 written treatment plan and statement of goals to the court, the child,
19 and his parents within 30 days of the adjournment of the minor's dis-
20 position hearing; if the department fails to send this plan and state-
21 ment, the court shall hold a hearing under sec. 80(f) of this chapter to
22 determine if continued supervision or commitment is in the best in-
23 terests of the minor and may take action it considers appropriate under
24 sec. 100(a) and (b) of this chapter.

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

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

1 (A) the department may apply for and the court may grant
2 two-year extensions of supervision which do not extend beyond the
3 child's 19th birthday, if the extension is in the best interests of
4 the minor and the public; or

5 (B) the department may apply for and the court may grant
6 an additional one-year period of supervision past age 19, if con-
7 tinued supervision is in the best interests of the person and the
8 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION
9 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED
10 TO TREATMENT]; the department shall place the minor in the juvenile
11 facility which the department considers appropriate and which may
12 include a juvenile correctional school, detention home, or deten-
13 tion facility; the minor may be released from placement or deten-
14 tion and placed on probation on order of the court and may also be
15 released by the department, in its discretion, under sec. 200 of
16 this chapter; or

17 * Sec. 8. AS 47.10.080(b)(2) is amended to read:

18 (2) order the minor placed on probation, to be supervised by
19 the department, and release him to his parents, guardian, or a suitable
20 person; if the court orders the minor placed on probation, it may
21 specify the terms and conditions of probation; the probation may be for
22 a [AN INDETERMINATE] period of time, not to exceed two years [EXTEND
23 PAST A SPECIFIED DATE] and in no event extend past the day the minor
24 becomes 19, except that

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

29 (B) the department may apply for and the court may grant

1 an additional one-year period of supervision past age 19, if con-
2 tinued supervision is in the best interests of the person and the
3 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION
4 FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED
5 TO TREATMENT].

6 * Sec. 9. AS 47.10.080(c) is amended to read:

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

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

12 (A) the department may apply for and the court may grant
13 two-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 the
18 continued supervision is in the best interests of the person and
19 the person consents to it [PETITION THE COURT FOR CONTINUED SUPER-
20 VISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT
21 RESPONDED TO TREATMENT];

22 (2) order the minor released to his parents, guardian, or
23 some other suitable person, and, in appropriate cases, order the parents,
24 guardian, or other person to provide medical or other care and treat-
25 ment; if the court releases the minor, it shall direct the department to
26 supervise the care and treatment given to the minor; the department's
27 supervision may not exceed two years or in any event extend past the
28 date the minor reaches age 19 [MAJORITY], except that

29 (A) the department may apply for and the court may grant

1 two-year extensions of supervision which do not extend beyond the
2 child's 19th birthday if the extension is in the best interests of
3 the minor and the public; or

4 (B) the department may apply for and the court may grant
5 an additional one-year period of supervision past age 19, if the
6 continued supervision is in the best interests of the person and
7 the person consents to it [PETITION THE COURT FOR CONTINUED SUPER-
8 VISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT
9 RESPONDED TO TREATMENT]; or

10 * Sec. 10. AS 47.10.080(f) is amended to read:

11 (f) A minor found to be delinquent or a child in need of aid
12 [, A CHILD IN NEED OF SUPERVISION, OR DEPENDENT] is a ward of the state
13 as long as he is committed to the department or the department has the
14 power to supervise his actions. The court shall review an order made
15 under (b) or (c)(1) or (2) [OR (j)] of this section annually, and may
16 review the order more frequently to determine if continued placement,
17 probation, or supervision, as it is being provided, is in the best
18 interest of the minor and the public [, AND TO DETERMINE IF THE MINOR IS
19 BEING TREATED FAIRLY]. The department, the minor, [OR] the minor's
20 parents, [OR] guardian, or custodian are [IS] entitled, when good cause
21 is shown, to a review on application. If the application is granted,
22 the court shall afford these parties and their counsel reasonable notice
23 in advance of the review and hold a hearing where these parties and
24 their counsel shall be afforded an opportunity to be heard. The minor
25 shall be afforded the opportunity to be present at the review.

26 * Sec. 11. AS 47.10.290(2) is repealed and re-enacted to read:

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

29 * Sec. 12. AS 47.10.080(j) and 47.10.290(3) and (7) are repealed.

1 * Sec. 13. AS 47.10.290 is amended by adding a new paragraph to read:

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

4 * Sec. 14. AS 47.10.080(e) is amended to read:

5 (e) If the court finds that the minor is not delinquent or [,] a
6 child in need of aid [SUPERVISION, OR DEPENDENT], it shall immediately
7 order his release from its custody and his return to his parents,
8 guardian, or custodian, and close the case.

9 * Sec. 15. AS 47.10.085 is amended to read:

10 Sec. 47.10.085. CHILD IN NEED OF AID [DEPENDENT MINOR]; RELIGIOUS
11 TREATMENT. In a case in which the minor's status as a child in need of
12 aid [DEPENDENT MINOR] is sought to be based on his need for medical
13 care, the court may, upon consideration of the health of the minor and
14 the fact, if it is a fact, that the minor is being provided treatment by
15 spiritual means through prayer in accordance with the tenets and prac-
16 tices of a recognized church or religious denomination by an accredited
17 practitioner of the church or denomination, dismiss the proceedings and
18 thereby close the matter. This may be done, in the interests of justice
19 and religious freedom, on the court's own motion or upon the application
20 of a party to the proceedings, at any stage of the proceedings after
21 information is given to the court under sec. 20(a) of this chapter.

22 * Sec. 16. AS 47.10.090(b) is amended to read:

23 (b) The name or picture of a minor under the jurisdiction of the
24 court may not be made public in connection with the minor's status as a
25 delinquent [OR DEPENDENT] child or a child in need of aid unless autho-
26 rized by order of the court, except that the name of a minor who is
27 found for the second time to have violated a law, which if committed by
28 an adult would be a felony, shall be made public unless the court, for
29 good cause, in certain individual cases, enters an order prohibiting the

1 disclosure.

2 * Sec. 17. AS 47.10.100(a) and (c) are amended to read:

3 (a) The court retains jurisdiction over the case and may at any
4 time stay execution, modify, set aside, revoke, or enlarge a judgment or
5 order, or grant a new hearing, in the exercise of its power of pro-
6 tection over the minor and for his best interest, for a period of time
7 not to exceed two years or in any event extend past the day the minor
8 becomes 19 [UNTIL HE BECOMES 19 YEARS OF AGE], unless sooner discharged
9 by the court, except that the department may apply for and the court may
10 grant an additional one-year period of supervision past age 19 if con-
11 tinued supervision is in the best interests of the person and the
12 person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION FOR
13 AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED TO
14 TREATMENT]. An application for any of these purposes may be made by the
15 parent, guardian, or custodian acting in behalf of the minor, or the
16 court may, on its own motion, and after reasonable notice to interested
17 parties and the appropriate department, take action which it considers
18 appropriate.

19 (c) If a minor is adjudicated a delinquent or [,] a child in need
20 of aid [SUPERVISION, OR A DEPENDENT] before his 18th birthday, the court
21 may retain jurisdiction over him after his 18th birthday for the purpose
22 of supervising his rehabilitation, but the court's jurisdiction over him
23 under this chapter never extends beyond his 19th birthday, except that
24 the department may apply for and the court may grant an additional one-
25 year period of supervision past age 19, if continued supervision is in
26 the best interests of the person and the person consents to it [PETI-
27 TION THE COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR
28 PERIOD FOR MINORS WHO HAVE NOT RESPONDED TO TREATMENT]. The department
29 may retain jurisdiction over a child between his 18th and 19th birthdays

1 for the purpose of supervising his rehabilitation, if he is committed to
2 the custody of the department before his 18th birthday, except that the
3 department may apply for and the court may grant an additional one-year
4 period of supervision past age 19, if continued supervision is in the
5 best interests of the person and the person consents to it [PETITION THE
6 COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR
7 MINORS WHO HAVE NOT RESPONDED TO TREATMENT].

8 * Sec. 18. AS 47.10.120(a) is amended to read:

9 (a) When a child in need of aid [DEPENDENT MINOR] is committed
10 under this chapter the court may, after giving the parent a reasonable
11 opportunity to be heard, adjudge that the parent shall pay in a manner
12 which the court directs a sum which will cover in full or in part the
13 support of the child in need of aid [DEPENDENT MINOR]. When a delin-
14 quent minor is committed under this chapter the court shall order that
15 the parent of the minor pay in a manner which the court directs a sum
16 which will cover in full or in part the support of the delinquent minor.

17 * Sec. 19. AS 47.10.142(c) and (d) are amended to read:

18 (c) When a child is taken into custody under (a) or (b) of this
19 section, the department shall immediately, and in no event more than 12
20 hours later unless prevented by lack of communication facilities,
21 notify the parents or the person or persons having custody of the child
22 and the court of the action and file with the court a petition alleging
23 that there is a child in need of aid [DEPENDENCY].

24 (d) The court shall immediately, and in no event more than 48
25 hours after being notified unless prevented by lack of transportation,
26 hold a hearing at which the minor, if his health permits, and his
27 parents or guardian, if they can be found, shall be permitted to be
28 present. The court shall determine whether probable cause exists for
29 believing the minor to be a child in need of aid [DEPENDENT MINOR], as

1 defined in sec. 290(8) [290(3)] of this chapter. The court shall inform
2 the minor, and his parents or guardian if they can be found, of the
3 reasons given as constituting probable cause and the reasons given as
4 authorizing his temporary placement.

5 * Sec. 20. AS 47.10.150(1) is amended to read:

6 (1) purchase, lease or construct buildings or other facili-
7 ties for the care, detention, rehabilitation and education of children
8 in need of aid [DEPENDENT] or delinquent minors;

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

17 * Sec. 22. Section 10 of this Act has the effect of adding to the court's
18 responsibilities when holding a review under Rule 28, Alaska Rules of Chil-
19 dren's Procedure, by requiring the court to hold a hearing upon a showing of
20 good cause, give notice, and afford an opportunity to be heard.

21 * Sec. 23. Section 4 of the Act has the effect of changing Children's
22 Rule 12 by deleting any references to "truant from school," "endanger(ing)
23 the morals or health," "being wayward or habitually disobedient," or "un-
24 controlled," and has the effect of substituting the words "child in need of
25 aid" for the terms "child in need of supervision" and "dependent" where those
26 two terms appear in the Rules of Children's Procedure.

27 * Sec. 24. The portions of AS 47.10.080(b) and (c) in secs. 7 - 9 of this
28 Act which specify the length of commitment to the department are applicable
29 to those minors committed to the department under former AS 47.10.080(b), (c)

1 and (j) before the effective date of this Act so that the commitment of
2 minors to the department before the effective date of this Act shall continue,
3 but may not exceed two years from the effective date of this Act unless two-
4 year extensions have been granted by the court under this Act. The commit-
5 ment of minors with pending judicial actions under AS 47.10.010(a) on the
6 effective date of this Act may not exceed two years unless two-year extensions
7 have been granted by the court under this Act.

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