

Original sponsor: Judiciary Committee

Offered: 4/14/77
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 204 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to children's laws and related judicial
7 proceedings; changing the court's responsibilities and
8 authority under Children's Rules 11(a), 12(a) and (b),
9 14, 15, 21 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 AS 09.55.205 is repealed and re-enacted to read:

12 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce or
13 for legal separation the court may, during the pendency of the action, or
14 at the final hearing or at any time thereafter during the minority of
15 any child of the marriage, make an order for the custody of or visitation
16 with the minor child which may seem necessary or proper and may at any
17 time modify or vacate the order. Any appointment of a guardian ad litem
18 for a child shall be made under the terms of AS 09.65.130. The court
19 shall determine custody in accordance with the best interests of the
20 child. Neither parent is entitled to preference as a matter of right in
21 awarding custody of the child. In determining the best interests of the
22 child the court shall consider all relevant factors including:

- 23 (1) the physical, emotional, mental and social needs of the
24 child;
25 (2) the capability and desire of each parent to meet these
26 needs;
27 (3) the child's preference;
28 (4) the love and affection existing between the child and
29 each parent;

1 (5) the length of time the child has lived in a stable,
2 satisfactory environment and the desirability of maintaining continuity;

3 (6) the desire and ability of each parent to allow an open
4 and loving frequent relationship between the child and his other parent.

5 * Sec. 2. AS 09.65.130(a) is amended to read:

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

19 * Sec. 3. AS 09.65.130 is amended by adding a new subsection to read:

20 (c) Instead of, or in addition to, appointment of an attorney
21 under (a) of this section, the court may, upon the motion of either
22 party or upon its own motion, appoint an attorney or other person to
23 serve as guardian ad litem to represent the best interests of a minor in
24 any legal proceedings involving his welfare. The court shall appoint a
25 guardian ad litem when, in the opinion of the court, representation of
26 the child's best interests, to be distinguished from his preferences,
27 would serve the welfare of the child. The person appointed under (a) of
28 this section may also be appointed as guardian ad litem under this
29 subsection. The court in its order appointing a guardian ad litem shall

1 limit the duration of the appointment of the guardian ad litem to the
2 pendency of the legal proceedings affecting the child's interests, and
3 shall outline the guardian ad litem's responsibilities and limit his
4 authority to those matters related to his effective representation of
5 the child's best interests in the pending legal proceeding. The court
6 shall make every reasonable effort to appoint a guardian ad litem from
7 among persons in the community where the child's parents or the person
8 having legal custody or guardianship of the child's person reside. When
9 custody, support, or visitation are at issue in a divorce, it is the
10 responsibility of the parties or their counsel to notify the court that
11 these matters are at issue. Upon notification, the court shall deter-
12 mine if the child's best interests need representation or if the child
13 needs other services and shall make a finding on the record before
14 trial. The court shall enter an order for costs, fees, and disburse-
15 ments in favor of the child's guardian ad litem and may further order
16 that other services be provided for the protection of the child.

17 * Sec. 4. AS 20.15.050(a)(1) and (5) are amended to read:

18 (1) for purposes of this section, a parent who has abandoned
19 a child for not less than six months [WITHOUT AFFORDING MEANS OF IDENTI-
20 FICATION, OR WHO HAS ABANDONED A CHILD AS DETERMINED UNDER AS 47.10.080-
21 (c)(3)(B)];

22 (5) a parent whose parental rights have been terminated by
23 order of the court under AS 47.10.080(c)(3) [SEC. 180 OF THIS CHAPTER];

24 * Sec. 5. AS 25.20.010 is amended to read:

25 Sec. 25.20.010. AGE OF MAJORITY. A person is considered to have
26 arrived at majority at the age of 18 [19] years, and thereafter has
27 control of his own actions and business and has all the rights and is
28 subject to all the liabilities of citizens of full age, except as other-
29 wise provided by statute.

1 * Sec. 6. AS 25.20 is amended by adding a new section to read:

2 Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over
3 child custody, either parent may petition the superior court for reso-
4 lution of the matter under this section unless an action between the
5 parents is pending under AS 09.55. The court shall award custody on the
6 basis of the best interests of the child. In determining the best
7 interests of the child, the court shall consider all relevant factors
8 including those factors enumerated in AS 09.55.205. Neither parent,
9 regardless of the question of the child's legitimacy, is entitled to
10 preference in the awarding of custody.

11 * Sec. 7. AS 47.10.010(a) is repealed and re-enacted to read:

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

15 (1) to be a delinquent minor as a result of violating a
16 criminal law of the state or of a municipality of the state; or

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

18 (A) the child being habitually absent from his home or
19 refusing to accept available care, or having no parent, guardian,
20 custodian or relative caring or willing to care for him, including
21 physical abandonment by

22 (i) both parents,

23 (ii) the surviving parent, or

24 (iii) one parent if the other parent's rights and
25 responsibilities have been terminated under sec. 80 of this
26 chapter or voluntarily relinquished;

27 (B) the child being in need of medical treatment to
28 cure, alleviate, or prevent his suffering substantial physical harm
29 or mental harm as evidenced by failure to thrive, severe anxiety,

1 depression, withdrawal, or untoward aggressive behavior or hosti-
2 lity toward others, and his parents are unwilling to provide the
3 medical treatment;

4 (C) the child having suffered substantial physical harm
5 or if there is an imminent and substantial risk that the child will
6 suffer such harm as a result of the actions done by or conditions
7 created by his parent, guardian or custodian or the failure of his
8 parent, guardian or custodian adequately to supervise him;

9 (D) the child having been sexually abused either by his
10 parent, guardian or custodian, or as a result of conditions created
11 by his parent, guardian or custodian, or by the failure of his
12 parent, guardian or custodian adequately to supervise him;

13 (E) the child committing delinquent acts as a result of
14 pressure, guidance, or approval from his parents, guardian or
15 custodian.

16 * Sec. 8. AS 47.10.010(b) is amended to read:

17 (b) When a minor is accused of violating a traffic statute or
18 regulation, [OR] a traffic ordinance or regulation of an incorporated
19 municipality, or a parks and recreational facilities statute or regula-
20 tion under AS 41.20, excepting a statute the violation of which is a
21 felony, the procedure prescribed in secs. 20 - 90 of this chapter may
22 not be followed, except that a parent, guardian or legal custodian shall
23 be present at all proceedings. The minor accused of a traffic offense,
24 or parks and recreational facilities violation under AS 41.20 shall be
25 charged, prosecuted, and sentenced in the district court in the same
26 manner as an adult.

27 * Sec. 9. AS 47.10.030(b) is repealed and re-enacted to read:

28 (b) In all cases under this chapter the minor, each parent of the
29 minor and the guardian of the minor shall be given notice adequate to

1 give actual notice of the proceedings and the possibility of termination
2 of parental rights and responsibilities, taking into account education
3 and language differences which are known or reasonably ascertainable by
4 the petitioner or the department. The notice of the hearing shall
5 contain all names by which the minor has been identified. Notice shall
6 be given in the manner appropriate under rules of civil procedure for
7 the service of process in a civil action under Alaska law or in any
8 manner the court by order directs. Proof of the giving of the notice
9 shall be filed with the court before the petition is heard. The court
10 may also subpoena the parent of the minor, or any other person whose
11 testimony may be necessary at the hearing. A subpoena or other process
12 may be served by a person authorized by law to make the service, and
13 where personal service cannot be made, the court may direct that service
14 of process be in a manner appropriate under rules of civil procedure for
15 the service of process in a civil action under Alaska law or in any
16 manner the court directs.

17 * Sec. 10. AS 47.10.040 is amended to read:

18 Sec. 47.10.040. RELEASE OF MINOR. A minor who is taken into
19 custody may, in the discretion of the court and upon the written promise
20 of the parent, guardian or custodian to bring the minor before the court
21 at a time specified by the court, be released to the care and custody of
22 the parent, guardian or custodian. The minor, if not released, shall be
23 detained as provided by sec. 140 of this chapter. The court may deter-
24 mine whether the father or mother or another person shall have the cus-
25 tody and control of the minor for the duration of the proceedings. If
26 the minor is of sufficient age and intelligence to state his desires,
27 the court shall give consideration to his desires [OVER 14 YEARS OF AGE,
28 HIS DESIRES IN THE MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

29 * Sec. 11. AS 47.10.050 is amended to read:

1 Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY. (a)

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

8 * Sec. 12. AS 47.10.050 is amended by adding a new subsection to
9 read:

10 (b) In all proceedings initiated under a petition for delinquency,
11 a minor shall have the right to be represented by counsel and if indi-
12 gent have counsel appointed for him by the court. The court shall
13 appoint counsel in such cases unless it makes a finding on the record
14 that the minor has made a voluntary, knowing, and intelligent waiver of
15 the right to counsel and a parent or guardian with whom the child
16 resides or resided before the filing of the petition concurs with the
17 waiver. In cases where it has been alleged that the minor has committed
18 an act which would be a felony if he were an adult, waiver of counsel
19 shall not be accepted unless the court is satisfied that the minor has
20 consulted with an attorney before his waiver of counsel.

21 * Sec. 13. AS 47.10.060(d) and (e) are amended to read:

22 (d) A minor is unamenable to treatment under this chapter if he
23 probably cannot be rehabilitated by treatment under this chapter before
24 he reaches 20 [21] years of age. In determining whether a minor is
25 unamenable to treatment, the court may consider the seriousness of the
26 offense the minor is alleged to have committed, the minor's history of
27 delinquency, the probable cause of the minor's delinquent behavior, and
28 the facilities available to the division of youth and adult authority
29 for treating the minor.

1 (e) If a person who has been tried as an adult under this section
2 has completed his sentence and five years have elapsed, he may petition
3 (or the Department of Health and Social Services may petition for him)
4 the superior court to seal the records of all criminal proceedings
5 against him and all punishments assessed against him, except for traffic
6 offenses, while he was a minor. If the superior court finds that the
7 punishment assessed against the person has had its intended rehabilita-
8 tive effect, the superior court shall order the record of proceedings
9 and the record of punishments sealed. Sealing the records restores
10 civil rights removed because of a conviction. No person may [EVER] use
11 records so sealed for any purpose except that the court may order their
12 use for good cause shown or may order their use by an officer of the
13 court in making a presentencing report for the court.

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

15 (a) The court, at the conclusion of the hearing, or thereafter as
16 the circumstances of the case may require, shall find and enter a judg-
17 ment that the minor is or is not a delinquent [,] or a child in need of
18 aid [SUPERVISION, OR DEPENDENT MINOR].

19 * Sec. 15. AS 47.10.080(b) is repealed and re-enacted to read:

20 (b) If the court finds that the minor is delinquent, it shall

21 (1) order the minor committed to the Department of Health and
22 Social Services for a period of time not to exceed two years or in any
23 event extend past the day the minor becomes 19, except that the depart-
24 ment may petition for and the court may grant in a hearing (A) two-year
25 extensions of commitment which do not extend beyond the child's 19th
26 birthday if the extension is in the best interests of the minor and the
27 public; and (B) an additional one-year period of supervision past age 19
28 if continued supervision is in the best interests of the person and the
29 person consents to it; the department shall place the minor in the

1 juvenile facility which the department considers appropriate and which
2 may include a juvenile correctional school, detention home, or detention
3 facility; the minor may be released from placement or detention and
4 placed on probation on order of the court and may also be released by
5 the department, in its discretion, under sec. 200 of this chapter;

6 (2) order the minor placed on probation, to be supervised by
7 the department, and release him to his parents, guardian, or a suitable
8 person; if the court orders the minor placed on probation, it may
9 specify the terms and conditions of probation; the probation may be for
10 a period of time, not to exceed two years and in no event extend past
11 the day the minor becomes 19, except that the department may petition
12 for and the court may grant in a hearing:

13 (A) two-year extensions of supervision which do not
14 extend beyond the child's 19th birthday if the extension is in the
15 best interests of the minor and the public; and

16 (B) an additional one-year period of supervision past
17 age 19 if the continued supervision is in the best interests of the
18 person and the person consents to it;

19 (3) order the minor committed to the department and placed on
20 probation, to be supervised by the department, and release him to his
21 parents, guardian, other suitable person, or suitable nondetention
22 setting such as a family home, group care facility, or child care facil-
23 ity, whichever the department considers appropriate to implement the
24 treatment plan of the predisposition report; if the court orders the
25 minor placed on probation, it may specify the terms and conditions of
26 probation; the department may transfer the minor, in his best interests,
27 from one of the probationary placement settings listed in this paragraph
28 to another, and the minor, his parents or guardian and attorney are
29 entitled to reasonable notice of the transfer; the probation may be for

1 a period of time, not to exceed two years and in no event extend past
2 the day the minor becomes 19, except that the department may petition
3 for and the court may grant in a hearing:

4 (A) two-year extensions of commitment which do not
5 extend beyond the child's 19th birthday if the extension is in the
6 best interests of the minor and the public; and

7 (B) an additional one-year period of supervision past
8 age 19 if the continued supervision is in the best interests of the
9 person and the person consents to it; or

10 (4) order the minor to make suitable restitution in lieu of
11 or in addition to the court's order under (1), (2) or (3) of this sub-
12 section.

13 * Sec. 16. AS 47.10.080(c) is repealed and re-enacted to read:

14 (c) If the court finds that the minor is a child in need of aid,
15 it shall

16 (1) order the minor committed to the department for placement
17 in an appropriate setting for a period of time not to exceed two years
18 or in any event past the date the minor becomes 19 years of age, except
19 that the department may petition for and the court may grant in a
20 hearing (A) two-year extensions of commitment which do not extend
21 beyond the child's 19th birthday if the extension is in the best in-
22 terests of the minor and the public; and (B) an additional one-year
23 period of supervision past age 19 if the continued supervision is in the
24 best interests of the person and the person consents to it; the depart-
25 ment may transfer the minor, in his best interests, from one placement
26 setting to another, and the minor, his parents or guardian and attorney
27 are entitled to reasonable notice of the transfer;

28 (2) order the minor released to his parents, guardian, or
29 some other suitable person, and, in appropriate cases, order the parents

1 guardian, or other person to provide medical or other care and treat-
2 ment; if the court releases the minor, it shall direct the department to
3 supervise the care and treatment given to the minor, but the court may
4 dispense with the department's supervision if the court finds that the
5 adult to whom the minor is released will adequately care for the minor
6 without supervision; the department's supervision may not exceed two
7 years or in any event extend past the date the minor reaches age 19,
8 except that the department may petition for and the court may grant in a
9 hearing:

10 (A) two-year extensions of supervision which do not
11 extend beyond the child's 19th birthday if the extension is in the
12 best interests of the minor and the public; and

13 (B) an additional one-year period of supervision past
14 age 19 if the continued supervision is in the best interests of the
15 person and the person consents to it; or

16 (3) by order, upon a showing in the adjudication by clear and
17 convincing evidence that there is a child in need of aid under sec.
18 10(a)(2) of this chapter as a result of parental conduct and upon a
19 showing in the disposition by clear and convincing evidence that the
20 parental conduct is likely to continue to exist if there is no termina-
21 tion of parental rights, terminate parental rights and responsibilities
22 of one or both parents and commit the child to the department or to a
23 legally appointed guardian of the person of the child, and the depart-
24 ment or guardian shall report annually to the court on efforts being
25 made to find a permanent placement for the child.

26 * Sec. 17. AS 47.10.080(e) is amended to read:

27 (e) If the court finds that the minor is not delinquent or [,] a
28 child in need of aid [SUPERVISION, OR DEPENDENT], it shall immediately
29 order his release from the department's [ITS] custody and his return to

1 his parents, guardian, or custodian, and dismiss [CLOSE] the case.

2 * Sec. 18. AS 47.10.080(f) is amended to read:

3 (f) A minor found to be delinquent or [,] a child in need of aid
4 [SUPERVISION, OR DEPENDENT] is a ward of the state as long as he is
5 committed to the department or the department has the power to supervise
6 his actions. The court shall review an order made under (b) or (c)(1)
7 or (2) [OR (j)] of this section annually, and may review the order more
8 frequently to determine if continued placement, probation, or super-
9 vision, as it is being provided, is in the best interest of the minor
10 and the public [, AND TO DETERMINE IF THE MINOR IS BEING TREATED FAIR-
11 LY]. The department, the minor, [OR] the minor's parents, [OR] guard-
12 ian, or custodian are [IS] entitled, when good cause is shown, to a
13 review on application. If the application is granted, the court shall
14 afford these parties and their counsel reasonable notice in advance of
15 the review and hold a hearing where these parties and their counsel
16 shall be afforded an opportunity to be heard. The minor shall be
17 afforded the opportunity to be present at the review.

18 * Sec. 19. AS 47.10.085 is amended to read:

19 Sec. 47.10.085. CHILD IN NEED OF AID [DEPENDENT MINOR]; RELIGIOUS
20 TREATMENT. In a case in which the minor's status as a child in need of
21 aid [DEPENDENT MINOR] is sought to be based on his need for medical
22 care, the court may, upon consideration of the health of the minor and
23 the fact, if it is a fact, that the minor is being provided treatment by
24 spiritual means through prayer in accordance with the tenets and prac-
25 tices of a recognized church or religious denomination by an accredited
26 practitioner of the church or denomination, dismiss the proceedings and
27 thereby close the matter. This may be done, in the interests of justice
28 and religious freedom, on the court's own motion or upon the application
29 of a party to the proceedings, at any stage of the proceedings after

1 information is given to the court under sec. 20(a) of this chapter.

2 * Sec. 20. AS 47.10.090(b) is amended to read:

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

11 * Sec. 21. AS 47.10.100(a) and (c) are amended to read:

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

28 (c) If a minor is adjudicated a delinquent or [,] a child in need
29 of aid [SUPERVISION, OR A DEPENDENT] before his 18th birthday, the court

1 may retain jurisdiction over him after his 18th birthday for the purpose
2 of supervising his rehabilitation, but the court's jurisdiction over him
3 under this chapter never extends beyond his 19th birthday, except that
4 the department may apply for and the court may grant an additional one-
5 year period of supervision past age 19 if continued supervision is in
6 the best interests of the person and the person consents to it [PETITION
7 THE COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR PERIOD
8 FOR MINORS WHO HAVE NOT RESPONDED TO TREATMENT]. The department may
9 retain jurisdiction over a child between his 18th and 19th birthdays for
10 the purpose of supervising his rehabilitation, if he has been placed
11 under the supervision [IS COMMITTED TO THE CUSTODY] of the department
12 before his 18th birthday, except that the department may apply for and
13 the court may grant an additional one-year period of supervision past
14 age 19 if continued supervision is in the best interests of the person
15 and the person consents to it [PETITION THE COURT FOR CONTINUED SUPER-
16 VISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RE-
17 SPONDED TO TREATMENT].

18 * Sec. 22. AS 47.10.110 is amended to read:

19 Sec. 47.10.110. APPOINTMENT OF GUARDIAN OR CUSTODIAN. When, in
20 the course of a proceeding under this chapter, it appears to the court
21 that the welfare of a minor will be promoted by the appointment of a
22 guardian or custodian of his person, the court may make the appointment.
23 The court shall have a summons issued and served upon the parents of the
24 minor, if they can be found, in a manner and within a time before the
25 hearing which the court considers reasonable. The court may determine
26 whether the father, mother, or the Department of Health and Social
27 Services shall have the custody and control of the minor. If the minor
28 is of sufficient age and intelligence to state his desires, the court
29 shall consider his desires [OVER 14 YEARS OF AGE, HIS DESIRES IN THE

1 MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

2 * Sec. 23. AS 47.10.120(a) is amended to read:

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

11 * Sec. 24. AS 47.10.142(c) and (d) are amended to read:

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

18 (d) The court shall immediately, and in no event more than 48
19 hours after being notified unless prevented by lack of transportation,
20 hold a hearing at which the minor, if his health permits, and his
21 parents or guardian, if they can be found, shall be permitted to be
22 present. The court shall determine whether probable cause exists for
23 believing the minor to be a child in need of aid [DEPENDENT MINOR], as
24 defined in sec. 290(8) [290(3)] of this chapter. The court shall inform
25 the minor, and his parents or guardian if they can be found, of the
26 reasons given as constituting probable cause and the reasons given as
27 authorizing his temporary placement.

28 * Sec. 25. AS 47.10.150(1) is amended to read:

29 (1) purchase, lease or construct buildings or other facili-

1 ties for the care, detention, rehabilitation and education of children
2 in need of aid [DEPENDENT] or delinquent minors;

3 * Sec. 26. AS 47.10 is amended by adding new sections to read:

4 Sec. 47.10.081. PREDISPOSITION HEARING REPORTS. (a) Before the
5 disposition hearing of a delinquent minor the department shall submit a
6 predisposition report with a recommended plan of treatment to aid the
7 court in its selection of a disposition, and any further information
8 which the court may request.

9 (b) Before the disposition hearing of a child in need of aid the
10 department shall submit a predisposition report to aid the court in its
11 selection of a disposition. This report shall include, but is not
12 limited to, the following:

13 (1) a statement of changes in the child's or parent's be-
14 havior, which will aid the court in determining that supervision of the
15 family or placement is no longer necessary;

16 (2) if removal from the home is recommended, a description of
17 the reasons the child cannot be protected or rehabilitated adequately in
18 the home, including a description of any previous efforts to work with
19 the parents and the child in the home and the parents' attitude toward
20 placement of the child;

21 (3) a description of the potential harm to the child which
22 may result from removal from the home and any efforts which can be made
23 to minimize such harm; and

24 (4) any further information which the court may request.

25 (c) The court shall inform the child, his parents and the attor-
26 neys representing the parties and the guardian ad litem that the pre-
27 disposition report will be available to them not less than 10 days
28 before the disposition hearing.

29 (d) For purposes of this section "parents" means the natural or

1 adoptive parents, and any legal guardian, relative, or other adult
2 person with whom the minor has resided and who has acted as a parent in
3 providing for the minor for a continuous period of time before this
4 action.

5 Sec. 47.10.082. BEST INTERESTS OF THE CHILD. In making its dis-
6 positional order under sec. 80(b) of this chapter the court shall
7 consider the best interests of the child and the public, and in making
8 its dispositional order under sec. 80(c) of this chapter the court shall
9 consider the best interests of the child; in either case the court shall
10 consider also the ability of the state to take custody and to care for
11 the child to protect his best interests under secs. 10 - 142 of this
12 chapter.

13 Sec. 47.10.083. REVIEW HEARING INFORMATION. In the case of a
14 child in need of aid, the child shall be returned home at the review
15 hearing under sec. 80(f) of this chapter unless the court finds by a
16 preponderance of the evidence that the basis upon which the child was
17 adjudicated under sec. 10(a)(2) of this chapter continues to exist. If
18 the child is not returned home, the court shall establish on the record:

- 19 (1) why the child was removed from the home;
20 (2) what services have been provided to or offered to the
21 parents to facilitate reunion;
22 (3) what services were utilized by the parents to facilitate
23 reunion;
24 (4) the visitation history between the parents and the child;
25 (5) whether additional services are needed to facilitate the
26 return of the child to his parents;
27 (6) when return of the child can be expected.

28 Sec. 47.10.084. LEGAL CUSTODY, GUARDIANSHIP, AND RESIDUAL PARENTAL
29 RIGHTS AND RESPONSIBILITIES. (a) When a child is committed under sec.

1 80(b)(1) or (c)(1) of this chapter to the department or released under
2 sec. 80(b)(2) or (3) or (c)(2) of this chapter to his parents, guardian,
3 or other suitable person, a relationship of legal custody exists. This
4 relationship imposes on the department and its authorized agents or the
5 parents, guardian, or other suitable person the responsibility of physi-
6 cal care and control of the child, the determination of where and with
7 whom the child shall live, the right and duty to protect, train and
8 discipline the child, and the duty of providing the child with food,
9 shelter, education, and medical care. These obligations are subject to
10 any residual parental rights and responsibilities and rights and respon-
11 sibilities of a guardian if one has been appointed. When parental
12 rights have been terminated, or there are no living parents and no
13 guardian has been appointed, the responsibilities of legal custody
14 include those in (b) and (c) of this section. The department or person
15 having legal custody of the child may delegate any of the responsibili-
16 ties under this section, except authority to consent to marriage, adop-
17 tion, and military enlistment may not be delegated. For purposes of
18 this chapter a person in charge of a placement setting is an agent of
19 the department.

20 (b) When a guardian is appointed for the child, the court shall
21 specify in its order the rights and responsibilities of the guardian.
22 The guardian shall be removed only by court order. The rights and
23 responsibilities may include, but are not limited to, having the right
24 and responsibility of reasonable visitation, consenting to marriage,
25 consenting to military enlistment, consenting to major medical treat-
26 ment, obtaining representation for the child in legal actions, and
27 making decisions of legal or financial significance concerning the
28 child.

29 (c) When there has been transfer of legal custody or appointment

1 of a guardian and parental rights have not been terminated by court
2 decree, the parents shall have residual rights and responsibilities.
3 These residual rights and responsibilities of the parent include, but
4 are not limited to, the right and responsibility of reasonable visita-
5 tion, consent to adoption, consent to marriage, consent to military
6 enlistment, consent to major medical treatment except in cases of emer-
7 gency or cases falling under AS 09.65.100, and the responsibility for
8 support, except if by court order any residual right and responsibility
9 has been delegated to a guardian under (b) of this section.

10 * Sec. 27. AS 47.10.290(2) is repealed and re-enacted to read:

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

13 * Sec. 28. AS 47.10.290 is amended by adding new paragraphs to read:

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

16 (9) "caring" under sec. 10(a)(2)(A) means to provide for the
17 physical, emotional, mental, and social needs of the child.

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

19 * Sec. 30. Section 3 of this Act has the effect of limiting the discre-
20 tionary authority of the court to appoint a guardian ad litem under Rule
21 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules
22 of Children's Procedure, by requiring as a condition of appointment that the
23 court find that the best interests of the child need articulation. Further,
24 this Act requires limitation of the duration of the appointment, limits the
25 scope of the guardian ad litem's authority, and establishes the geographical
26 area from which the guardian ad litem may be selected.

27 * Sec. 31. Section 18 of this Act has the effect of adding to the court's
28 responsibilities when holding a review under Rule 28, Alaska Rules of Child-
29 ren's Procedure, by requiring the court to hold a hearing upon a showing of

1 good cause, give notice, and afford an opportunity to be heard.

2 * Sec. 32. Section 7 of this Act has the effect of changing Children's
3 Rule 12 by deleting any references to "truant from school", "endanger(ing)
4 the morals or health", "being wayward or habitually disobedient", or "uncon-
5 trolled", and has the effect of substituting the words "child in need of aid"
6 for the terms "child in need of supervision" and "dependent" where those two
7 terms appear in the Rules of Children's Procedure.

8 * Sec. 33. Section 12 of this Act has the effect of adding to the court's
9 responsibilities under Rules 14 and 15, Alaska Rules of Children's Procedure,
10 by requiring the court to appoint counsel for an indigent minor unless the
11 minor has made a voluntary, knowing and intelligent waiver, and in certain
12 cases of delinquency where there has been waiver of counsel to appoint coun-
13 sel for the minor unless the court is satisfied that the minor consulted with
14 an attorney before his waiver of counsel.

15 * Sec. 34. The portions of AS 47.10.080(b) and (c) in secs. 15 and 16
16 of this Act which specify the length of commitment to the department or pro-
17 bation or supervision by the department are applicable to those minors
18 affected under former AS 47.10.080(b), (c) and (j) before the effective date
19 of this Act so that the commitment, probation or supervision of minors by
20 the department before the effective date of this Act shall continue, but may
21 not exceed two years from the effective date of this Act unless two-year
22 extensions have been granted by the court under this Act. The commitment,
23 probation or supervision of minors with pending judicial actions under
24 AS 47.10.010(a) on the effective date of this Act may not exceed two years
25 unless two-year extensions have been granted by the court under this Act.