

Introduced: 1/31/77
Referred: Health, Education &
Social Services

1 IN THE SENATE

BY CROFT

2 SENATE BILL NO. 106

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
7 judicial proceedings; changing the court's responsi-
8 bilities and authority under Children's Rules 11(a),
9 12(a) and (b), 14, 15, 21 and 28, and Rule of Civil
10 Procedure 17(b)."

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

12 * Section 1. AS 09.55.205 is repealed and re-enacted to read:

13 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce
14 or for legal separation the court may, during the pendency of the
15 action, or at the final hearing or at any time thereafter during the
16 minority of any child of the marriage, make an order for the custody of
17 or visitation with the minor child which may seem necessary or proper
18 and may at any time modify or vacate the order. Any appointment of a
19 guardian ad litem for a child shall be made under the terms of AS 09.-
20 65.130. The court shall determine custody in accordance with the best
21 interests of the child. Neither parent is entitled to preference as a
22 matter of right in awarding custody of the child. In determining the
23 best interests of the child the court shall consider all relevant
24 factors including:

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

1 (4) the love and affection existing between the child and
2 each parent;

3 (5) the length of time the child has lived in a stable,
4 satisfactory environment and the desirability of maintaining continuity.

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 11.15.110 is amended to read:

18 Sec. 11.15.110. EXCUSABLE HOMICIDE. The killing of a human being
19 is excusable when committed

20 (1) [BY ACCIDENT OR MISFORTUNE IN LAWFULLY CORRECTING A
21 CHILD, OR] in doing any [OTHER] lawful act, by lawful means, with usual
22 and ordinary caution and without unlawful intent; or

23 (2) by accident or misfortune in the heat of passion, upon a
24 sudden and sufficient provocation, or upon a sudden combat, without
25 premeditation or undue advantage being taken, and without a dangerous
26 weapon or thing being used, and not done in a cruel or unusual manner.

27 * Sec. 5. AS 11.40.150 is repealed and re-enacted to read:

28 Sec. 11.40.150. DELINQUENT DEFINED. For the purpose of sec. 130
29 of this chapter a child is a delinquent if he is under the age of 18

1 years and violates a law of the United States, or the state, or an
2 ordinance of a city or town.

3 * Sec. 6. AS 20.15.050(a)(1), (4) and (5) are amended to read:

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

8 (4) a parent who has voluntarily relinquished his right to
9 consent under AS 25.20.035 [SEC. 180 OF THIS CHAPTER];

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

12 * Sec. 7. AS 20.15.060 is repealed and re-enacted to read:

13 Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) A consent which
14 does not name or otherwise identify the adopting parent is valid if the
15 consent is executed at any time after the birth of the child in the
16 presence of the court or in the presence of a person authorized to take
17 acknowledgements. However, if the consenting person desires, this con-
18 sent shall specifically name the adopting person, and this consent is
19 valid only for the purpose of adoption by the named adopting parent.

20 (b) All consents to adoption shall be executed in writing and
21 shall give adequate notice that

22 (1) the person consenting to adoption has the right to con-
23 sent to a specific person adopting the child, if the consenting person
24 so desires;

25 (2) the person consenting to adoption has a right to appear
26 at the adoption hearing;

27 (3) the hearing will not take place less than 30 days after
28 the consent has been signed;

29 (4) the person consenting to adoption has the right to with-

1 draw his consent at any time before the adoption hearing or after com-
2 mencement of the adoption hearing upon a showing of good cause;

3 (5) the consent itself does not alter the consenting person's
4 existing rights and responsibilities toward the child;

5 (6) the adoption decree terminates the consenting person's
6 rights and responsibilities toward the child;

7 (7) the person consenting must give his consent voluntarily;
8 and

9 (8) relinquishment of parental rights under AS 25.20.035 is
10 available as an alternative to consent to adoption and that the person
11 obtaining the consent to adoption has the legal duty to explain the
12 difference between the alternatives.

13 * Sec. 8. AS 20.15.070(b) is amended to read:

14 (b) A consent to adoption may be withdrawn before the first
15 evidentiary adoption hearing [ENTRY OF A DECREE OF ADOPTION, WITHIN 10
16 DAYS,] by delivering written notice to the court. After commencement
17 of the hearing and before entry of a decree, a consenting person must
18 petition the court in order to withdraw his consent. The petition shall
19 be granted only upon a showing of good cause [PERSON OBTAINING THE
20 CONSENT, OR AFTER THE 10-DAY PERIOD, IF THE COURT FINDS, AFTER NOTICE
21 AND OPPORTUNITY TO BE HEARD IS AFFORDED TO PETITIONER, THE PERSON SEEK-
22 ING THE WITHDRAWAL, AND THE AGENCY PLACING A CHILD FOR ADOPTION, THAT
23 THE WITHDRAWAL IS IN THE BEST INTEREST OF THE PERSON TO BE ADOPTED AND
24 THE COURT ORDERS THE WITHDRAWAL].

25 * Sec. 9. AS 20.15.100(b) is amended to read:

26 (b) Notice to persons specified in sec. 50 of this chapter shall
27 include a statement of the grounds under which consent to the adoption
28 is not required. Notice given under this section shall be adequate to
29 give actual notice of the proceedings, taking into account education and

1 language differences which are known or reasonably ascertainable by the
2 petitioner or the department. The notice of hearing shall contain all
3 names by which the minor has been identified and shall state in summary
4 form the effect of a decree of adoption. Notice shall be given in the
5 manner appropriate under rules of civil procedure for the service of
6 process in a civil action under Alaska law [IN THIS STATE] or in any
7 manner the court by order directs. [NOTICE BY PUBLICATION MAY NOT BE
8 GIVEN.] Proof of the giving of the notice shall be filed with the court
9 before the petition is heard, subject to the time limitation in (e) of
10 this section.

11 * Sec. 10. AS 20.15.100(j) is amended to read:

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

16 * Sec. 11. AS 20.15.190 is amended to read:

17 Sec. 20.15.190. ADOPTION ASSISTANCE. A [HANDICAPPED] minor
18 eligible for adoption [IN THE PERMANENT CUSTODY OF THE DEPARTMENT IN A
19 FOSTER HOME FOR NOT LESS THAN ONE YEAR] may not be denied the opportunity
20 for a permanent home if an adoptive placement could be achieved through
21 financial assistance as authorized by this section. It is the purpose
22 of adoption assistance

23 (1) to encourage and promote the adoption of children who are
24 hard to place due to the fact that they have special needs by reason of
25 physical or mental condition, race, ethnic background, age, membership
26 in a sibling group, color, language, or other conditions; or

27 (2) to assist financially those persons who otherwise qualify
28 to adopt children but cannot due to a lack of financial resources [THE
29 ACHIEVEMENT OF THIS DEPENDS ON CONTINUED SUBSIDY BY THE STATE].

1 * Sec. 12. AS 20.15.200 is amended to read:

2 Sec. 20.15.200. INVESTIGATION. Persons who [ARE CARING FOR A
3 HANDICAPPED MINOR ON A FOSTER PARENT BASIS AND WHO] have applied to
4 adopt the minor and to receive payments for the care and support of the
5 [HANDICAPPED] minor shall be evaluated as to their suitability as
6 adoptive parents by means of an adoptive home study. This home study
7 shall be made by the commissioner's adoption staff or on his behalf by
8 an authorized agency which provides adoption services.

9 * Sec. 13. AS 20.15 is amended by adding a new section to read:

10 Sec. 20.15.205. INFORMATION. The department shall disseminate
11 information throughout the state with special emphasis to rural com-
12 munities regarding the availability of adoptable children and financial
13 assistance to adoptive families under this chapter.

14 * Sec. 14. AS 20.15.210 is amended to read:

15 Sec. 20.15.210. AMOUNT AND DURATION OF SUBSIDY PAYMENTS. Upon
16 application by the prospective adoptive parents, the amount and duration
17 of the subsidy shall be determined by the department according to regu-
18 lations which the department shall adopt according to the Administrative
19 Procedure Act (AS 44.62) [THE MONTHLY PAYMENT AND THE LENGTH OF TIME FOR
20 WHICH A SUBSIDY FOR A HANDICAPPED CHILD IS GRANTED ARE LEFT TO THE
21 DISCRETION OF THE COMMISSIONER] and the subsidy may vary in [FROM A
22 SMALL MONTHLY SUM TO AN] amount but may not exceed [NOT EXCEEDING] the
23 existing rate and benefits for foster care until the child reaches the
24 age of majority, if the need continues to exist. Subsidies shall be
25 paid from the same public funds and in the same manner as foster care
26 payments. The grant of subsidies made under this section shall not
27 affect the eligibility of an adoptive child for aid under AS 47.25.790 -
28 47.25.970, and the amount of the subsidies made under this section shall
29 not be used in any computation of resources and needs under AS 47.25.-

1 810.

2 * Sec. 15. AS 20.15.180 and 20.15.240(7) are repealed.

3 * Sec. 16. AS 25.20.010 is amended to read:

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

9 * Sec. 17. AS 25.20 is amended by adding a new section to read:

10 Sec. 25.20.032. The parent and child relationship may be severed
11 either in an adoption proceeding under AS 20.15, in a voluntary relin-
12 quishment proceeding under sec. 35 of this chapter, or in a juvenile
13 court proceeding under AS 47.10.010(a)(2).

14 * Sec. 18. AS 25.20 is amended by adding a new section to read:

15 Sec. 25.20.035. VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND
16 RESPONSIBILITIES. (a) A parent may petition the court or its duly
17 authorized representative to voluntarily relinquish his parental rights
18 and responsibilities with reference to his child, including residual
19 rights and responsibilities.

20 (b) The petition for relinquishment shall state

21 (1) the date and place of birth, if known, of the child;

22 (2) the full name, date of birth, and place and duration of
23 residence of the petitioner; and

24 (3) the relationship of the petitioner to the child.

25 (c) The court shall conduct a hearing on the petition. The court
26 shall ascertain whether the parent relinquishing his rights and respon-
27 sibilities understands the meaning of relinquishment, and, if necessary,
28 the court shall explain to the parent the meaning and consequences of
29 relinquishment and the right to withdraw the relinquishment under (f) of

1 this section. If the court finds that the parent does not adequately
2 understand the meaning of relinquishment, then it may continue the
3 matter and order the parent to be counseled regarding the relinquish-
4 ment.

5 (d) If the court finds that voluntary relinquishment is in the
6 best interests of the petitioner and the child, it shall enter an order
7 of voluntary relinquishment terminating the parent and child relation-
8 ship, and order guardianship of the person and legal custody of the
9 child to be transferred to the Department of Health and Social Services,
10 a licensed child placement agency, or a willing and able relative of the
11 child, whichever is in the best interests of the child. A copy of the
12 court's order shall be given to the parent, and it shall also state the
13 relinquishing parent's right to withdraw his relinquishment under (f) of
14 this section.

15 (e) For the purpose of a proceeding under this section, an order
16 of relinquishment terminating all rights and responsibilities of a
17 parent with reference to his child or the relationship of parent and
18 child issued by a court of competent jurisdiction in this or any other
19 state dispenses with the consent to adoption proceedings of a parent
20 whose rights and responsibilities or parent and child relationship are
21 terminated by the relinquishment order and with any required notice of
22 an adoption proceeding.

23 (f) The relinquishing parent may petition the court for vacation
24 of the order of voluntary relinquishment within 10 days of issuance of
25 the order upon a showing of good cause.

26 * Sec. 19. AS 25.20 is amended by adding a new section to read:

27 Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over
28 child custody, either parent may petition the superior court for reso-
29 lution of the matter under this section unless an action between the

1 parents is pending under AS 09.55. The court shall award custody on the
2 basis of the best interests of the child. In determining the best
3 interests of the child, the court shall consider all relevant factors
4 including those factors enumerated in AS 09.55.205. Neither parent,
5 regardless of the question of the child's legitimacy, is entitled to
6 preference in the awarding of custody.

7 * Sec. 20. AS 47.10.010(a) is repealed and re-enacted to read:

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

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

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

14 (A) habitually absenting himself from his home or re-
15 fusing to accept available care, or having no parent, guardian,
16 custodian or relative caring or willing to care for him, including
17 physical abandonment, by

18 (i) both parents,

19 (ii) the surviving parent, or

20 (iii) one parent if the other parent's rights and
21 responsibilities have been terminated under sec. 80 of this
22 chapter or voluntarily relinquished under AS 25.20.035;

23 (B) being in need of medical treatment to cure, allevi-
24 ate, or prevent his suffering substantial physical or mental harm
25 and his parents are unwilling to provide the medical treatment;

26 (C) having suffered substantial physical harm or if
27 there is an imminent and substantial risk that the child will
28 suffer such harm as a result of the actions done by or conditions
29 created by his parent, guardian or custodian or the failure of his

1 parent, guardian or custodian adequately to supervise him;

2 (D) having been sexually abused by his parent, guardian
3 or custodian, or as a result of conditions created by his parent,
4 guardian or custodian, or by the failure of his parent, guardian or
5 custodian adequately to supervise him;

6 (E) committing delinquent acts as a result of pressure,
7 guidance, or approval from his parents, guardian or custodian.

8 * Sec. 21. AS 47.10.010(b) is amended to read:

9 (b) When a minor is accused of violating a traffic statute or
10 regulation, [OR] a traffic ordinance or regulation of an incorporated
11 municipality, a fish and game statute or regulation under AS 16, or a
12 parks and recreational facilities statute or regulation under AS 41.20,
13 excepting a statute the violation of which is a felony, the procedure
14 prescribed in secs. 20 - 90 of this chapter may not be followed, except
15 that a parent, guardian or legal custodian shall be present at all
16 proceedings. The minor accused of a traffic offense, fish and game
17 violation under AS 16, or parks and recreational facilities violation
18 under AS 41.20 shall be charged, prosecuted, and sentenced in the dis-
19 trict court in the same manner as an adult.

20 * Sec. 22. AS 47.10.030(b) is repealed and re-enacted to read:

21 (b) In all cases under this chapter the minor, each parent of the
22 minor and the guardian of the minor shall be given notice adequate to
23 give actual notice of the proceedings and the possibility of termination
24 of parental rights and responsibilities, taking into account education
25 and language differences which are known or reasonably ascertainable by
26 the petitioner or the department. The notice of the hearing shall
27 contain all names by which the minor has been identified. Notice shall
28 be given in the manner appropriate under rules of civil procedure for
29 the service of process in a civil action under Alaska law or in any

1 manner the court by order directs. Proof of the giving of the notice
2 shall be filed with the court before the petition is heard. The court
3 may also subpoena the parent of the minor, or any other person whose
4 testimony may be necessary at the hearing. A subpoena or other process
5 may be served by a person authorized by law to make the service, and
6 where personal service cannot be made, the court may direct that service
7 of process be in a manner appropriate under rules of civil procedure for
8 the service of process in a civil action under Alaska law or in any
9 manner the court directs.

10 * Sec. 23. AS 47.10.040 is amended to read:

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

22 * Sec. 24. AS 47.10.050 is amended to read:

23 Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY. (a)
24 Whenever in the course of proceedings instituted under this chapter it
25 appears to the court that the welfare of a minor will be promoted by the
26 appointment of an attorney to represent the minor or an attorney or
27 other person to serve as guardian ad litem [A GUARDIAN AD LITEM OR
28 ATTORNEY], the court may make the appointment. Appointment of a guard-
29 ian ad litem or attorney shall be made under the terms of AS 09.65.130.

1 * Sec. 25. AS 47.10.050 is amended by adding a new subsection to read:

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

13 * Sec. 26. AS 47.10.060(d) and (e) are amended to read:

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

22 (e) If a person who has been tried as an adult under this section
23 has completed his sentence and five years have elapsed, he may petition
24 (or the Department of Health and Social Services may petition for him)
25 the superior court to seal the records of all criminal proceedings
26 against him and all punishments assessed against him, except for traffic
27 offenses, while he was a minor. If the superior court finds that the
28 punishment assessed against the person has had its intended rehabilita-
29 tive effect, the superior court shall order the record of proceedings

1 and the record of punishments sealed. Sealing the records restores
2 civil rights removed because of a conviction. No person may [EVER] use
3 records so sealed for any purpose except that the court may order their
4 use for good cause shown or may order their use by an officer of the
5 court in making a presentencing report for the court.

6 * Sec. 27. AS 47.10.080(a) is amended to read:

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

11 * Sec. 28. AS 47.10.080(b) is repealed and re-enacted to read:

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

13 (1) order the minor committed to the Department of Health and
14 Social Services for a period of time not to exceed two years or in any
15 event extend past the day the minor becomes 19, except that the depart-
16 ment may petition for and the court may grant in a hearing (A) two-year
17 extensions of commitment which do not extend beyond the child's 19th
18 birthday if the extension is in the best interests of the minor and the
19 public; and (B) an additional one-year period of supervision past age 19
20 if continued supervision is in the best interests of the person and the
21 person consents to it; the department shall place the minor in the
22 juvenile facility which the department considers appropriate and which
23 may 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 by
26 the department, in its discretion, under sec. 200 of this chapter;

27 (2) order the minor placed on probation, to be supervised by
28 the department, and release him to his parents, guardian, or a suitable
29 person; if the court orders the minor placed on probation, it may

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

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

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

11 (3) order the minor committed to the department and placed on
12 probation, to be supervised by the department, and release him to his
13 parents, guardian, other suitable person, or suitable nondetention
14 setting such as a family home, group care facility, or child care facili-
15 ty, whichever the department considers appropriate to implement the
16 treatment plan of the predisposition report; if the court orders the
17 minor placed on probation, it may specify the terms and conditions of
18 probation; the department may transfer the minor, in his best interests,
19 from one of the probationary placement settings listed in this paragraph
20 to another, and the minor, his parents or guardian and attorney are
21 entitled to reasonable notice of the transfer; the probation may be for
22 a period of time, not to exceed two years and in no event extend past
23 the day the minor becomes 19, except that the department may petition
24 for and the court may grant in a hearing:

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

28 (B) an additional one-year period of supervision past
29 age 19 if the continued supervision is in the best interests of the

1 person and the person consents to it; or

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

5 * Sec. 29. AS 47.10.080(c) is repealed and re-enacted to read:

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

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

20 (2) order the minor released to his parents, guardian, or
21 some other suitable person, and, in appropriate cases, order the parents,
22 guardian, or other person to provide medical or other care and treat-
23 ment; if the court releases the minor, it shall direct the department to
24 supervise the care and treatment given to the minor, but the court may
25 dispense with the department's supervision if the court finds that the
26 adult to whom the minor is released will adequately care for the minor
27 without supervision; the department's supervision may not exceed two
28 years or in any event extend past the date the minor reaches age 19,
29 except that the department may petition for and the court may grant in a

1 hearing:

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

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

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

18 * Sec. 30. AS 47.10.080(e) is amended to read:

19 (e) If the court finds that the minor is not delinquent or [,] a
20 child in need of aid [SUPERVISION, OR DEPENDENT], it shall immediately
21 order his release from the department's [ITS] custody and his return to
22 his parents, guardian, or custodian, and dismiss [CLOSE] the case.

23 * Sec. 31. AS 47.10.080(f) is amended to read:

24 (f) A minor found to be delinquent or [,] a child in need of aid
25 [SUPERVISION, OR DEPENDENT] is a ward of the state as long as he is
26 committed to the department or the department has the power to supervise
27 his actions. The court shall review an order made under (b) or (c)(1)
28 or (2) [OR (j)] of this section annually, and may review the order more
29 frequently to determine if continued placement, probation, or super-

1 vision, as it is being provided, is in the best interest of the minor
2 and the public [, AND TO DETERMINE IF THE MINOR IS BEING TREATED FAIR-
3 LY]. The department, the minor, [OR] the minor's parents, [OR] guard-
4 ian, or custodian are [IS] entitled, when good cause is shown, to a
5 review on application. If the application is granted, the court shall
6 afford these parties and their counsel reasonable notice in advance of
7 the review and hold a hearing where these parties and their counsel
8 shall be afforded an opportunity to be heard. The minor shall be
9 afforded the opportunity to be present at the review.

10 * Sec. 32. AS 47.10.085 is amended to read:

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

23 * Sec. 33. AS 47.10.090(b) is amended to read:

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

1 good cause, in certain individual cases, enters an order prohibiting the
2 disclosure.

3 * Sec. 34. AS 47.10.100(a) and (c) are amended to read:

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

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

1 retain jurisdiction over a child between his 18th and 19th birthdays for
2 the purpose of supervising his rehabilitation, if he has been placed
3 under the supervision [IS COMMITTED TO THE CUSTODY] of the department
4 before his 18th birthday, except that the department may apply for and
5 the court may grant an additional one-year period of supervision past
6 age 19 if continued supervision is in the best interests of the person
7 and the person consents to it [PETITION THE COURT FOR CONTINUED SUPER-
8 VISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RE-
9 SPONDED TO TREATMENT].

10 * Sec. 35. AS 47.10.110 is amended to read:

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

23 * Sec. 36. AS 47.10.120(a) is amended to read:

24 (a) When a child in need of aid [DEPENDENT MINOR] is committed
25 under this chapter the court may, after giving the parent a reasonable
26 opportunity to be heard, adjudge that the parent shall pay in a manner
27 which the court directs a sum which will cover in full or in part the
28 support of the child in need of aid [DEPENDENT MINOR]. When a delin-
29 quent minor is committed under this chapter the court shall order that

1 the parent of the minor pay in a manner which the court directs a sum
2 which will cover in full or in part the support of the delinquent minor.

3 * Sec. 37. AS 47.10.142(c) and (d) are amended to read:

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

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

20 * Sec. 38. AS 47.10.150(1) is amended to read:

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

24 * Sec. 39. AS 47.10 is amended by adding new sections to read:

25 Sec. 47.10.081. PREDISPOSITION HEARING REPORTS. (a) Before the
26 disposition hearing of a delinquent minor the department shall submit a
27 predisposition report with a recommended plan of treatment to aid the
28 court in its selection of a disposition, and any further information
29 which the court may request.

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

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

8 (2) if removal from the home is recommended, a description of
9 the reasons the child cannot be protected or rehabilitated adequately in
10 the home, including a description of any previous efforts to work with
11 the parents and the child in the home and the parents' attitude toward
12 placement of the child;

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

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

17 (c) The court shall inform the child, his parents and the attorneys
18 representing the parties and the guardian ad litem that the predisposi-
19 tion report will be available to them not less than three days before
20 the disposition hearing.

21 (d) For purposes of this section "parents" means the natural or
22 adoptive parents, and any legal guardian, relative, or other adult
23 person with whom the minor has resided and who has acted as a parent in
24 providing for the minor for a continuous period of time before this
25 action.

26 Sec. 47.10.082. BEST INTERESTS OF THE CHILD. In making its dis-
27 positional order under sec. 80(b) of this chapter the court shall
28 consider the best interests of the child and the public, and in making
29 its dispositional order under sec. 80(c) of this chapter the court shall

1 consider the best interests of the child; in either case the court shall
2 consider also the ability of the state to take custody and to care for
3 the child to protect his best interests under secs. 10 - 142 of this
4 chapter.

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

- 11 (1) why the child was removed from the home;
- 12 (2) what services have been provided to or offered to the
13 parents to facilitate reunion;
- 14 (3) what services were utilized by the parents to facilitate
15 reunion;
- 16 (4) the visitation history between the parents and the child;
- 17 (5) whether additional services are needed to facilitate the
18 return of the child to his parents;
- 19 (6) when return of the child can be expected.

20 Sec. 47.10.084. LEGAL CUSTODY, GUARDIANSHIP, AND RESIDUAL PARENTAL
21 RIGHTS AND RESPONSIBILITIES. (a) When a child is committed under sec.
22 80(b)(1) or (c)(1) of this chapter to the department or released under
23 sec. 80(b)(2) or (3) or (c)(2) of this chapter to his parents, guardian,
24 or other suitable person, a relationship of legal custody exists. This
25 relationship imposes on the department and its authorized agents or the
26 parents, guardian, or other suitable person the responsibility of physi-
27 cal care and control of the child, the determination of where and with
28 whom the child shall live, the right and duty to protect, train and
29 discipline the child, and the duty of providing the child with food,

1 shelter, education, and medical care. These obligations are subject to
2 any residual parental rights and responsibilities and rights and respon-
3 sibilities of a guardian if one has been appointed. When parental
4 rights have been terminated, or there are no living parents and no
5 guardian has been appointed, the responsibilities of legal custody
6 include those in (b) and (c) of this section. The department or person
7 having legal custody of the child may delegate any of the responsibili-
8 ties under this section, except authority to consent to marriage, adop-
9 tion, and military enlistment may not be delegated. For purposes of
10 this chapter a person in charge of a placement setting is an agent of
11 the department.

12 (b) When a guardian is appointed for the child, the court shall
13 specify in its order the rights and responsibilities of the guardian.
14 The guardian shall be removed only by court order. The rights and
15 responsibilities may include, but are not limited to, having the right
16 and responsibility of reasonable visitation, consenting to marriage,
17 consenting to military enlistment, consenting to major medical treatment,
18 obtaining representation for the child in legal actions, and making
19 decisions of legal or financial significance concerning the child.

20 (c) When there has been transfer of legal custody or appointment
21 of a guardian and parental rights have not been terminated by court
22 decree, the parents shall have residual rights and responsibilities.
23 These residual rights and responsibilities of the parent include, but
24 are not limited to, the right and responsibility of reasonable visita-
25 tion, consent to adoption, consent to marriage, consent to military
26 enlistment, consent to major medical treatment except in cases of emer-
27 gency or cases falling under AS 09.65.100, and the responsibility for
28 support, except if by court order any residual right and responsibility
29 has been delegated to a guardian under (b) of this section.

1 * Sec. 40. AS 47.10.290(2) is repealed and re-enacted to read:

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

4 * Sec. 41. AS 47.10.290 is amended by adding new paragraphs to read:

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

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

9 * Sec. 42. AS 47.10.080(j) and 47.10.290(3) and (7) are repealed.

10 * Sec. 43. Section 3 of this Act has the effect of limiting the discre-
11 tionary authority of the court to appoint a guardian ad litem under Rule
12 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules
13 of Children's Procedure, by requiring as a condition of appointment that the
14 court find that the best interests of the child need articulation. Further,
15 this Act requires limitation of the duration of the appointment, limits the
16 scope of the guardian ad litem's authority, and establishes the geographical
17 area from which the guardian ad litem may be selected.

18 * Sec. 44. Section 31 of this Act has the effect of adding to the court's
19 responsibilities when holding a review under Rule 28, Alaska Rules of Child-
20 ren's Procedure, by requiring the court to hold a hearing upon a showing of
21 good cause, give notice, and afford an opportunity to be heard.

22 * Sec. 45. Section 20 of this Act has the effect of changing Children's
23 Rule 12 by deleting any references to "truant from school", "endanger(ing)
24 the morals or health", "being wayward or habitually disobedient", or "uncon-
25 trolled", and has the effect of substituting the words "child in need of aid"
26 for the terms "child in need of supervision" and "dependent" where those two
27 terms appear in the Rules of Children's Procedure.

28 * Sec. 46. Section 25 of this Act has the effect of adding to the court's
29 responsibilities under Rules 14 and 15, Alaska Rules of Children's Procedure,

1 by requiring the court to appoint counsel for an indigent minor unless the
2 minor has made a voluntary, knowing and intelligent waiver, and in certain
3 cases of delinquency where there has been waiver of counsel to appoint coun-
4 sel for the minor unless the court is satisfied that the minor consulted with
5 an attorney before his waiver of counsel.

6 * Sec. 47. The portions of AS 47.10.080(b) and (c) in secs. 28 and 29 of
7 this Act which specify the length of commitment to the department are appli-
8 cable to those minors committed to the department under former AS 47.10.-
9 080(b), (c) and (j) before the effective date of this Act so that the com-
10 mitment of minors to the department before the effective date of this Act
11 shall continue, but may not exceed two years from the effective date of this
12 Act unless two-year extensions have been granted by the court under this Act.
13 The commitment of minors with pending judicial actions under AS 47.10.010(a)
14 on the effective date of this Act may not exceed two years unless two-year
15 extensions have been granted by the court under this Act.

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