

CHILDRENS

CODES

SB106

HB 204

1977-78

You should check on Chanay's  
Resolution on Mr. Ch.'s Code  
from last year - or 1977.

6-2565

Rudge Klenikoff - 272-5522 ext 345  
Betsy McGuire - hm 279-4824  
Childs Booklet

## CHILDREN'S CODE

BETSY MCQUIRE: Former Director of the Office of Child Advocacy. Ms. McGuire informed us that a task force was appointed in 1975 as a result of two conferences. Had support of the Governor's office. Task force was funded by the Legislative Council. Introduced in 1976, passed in 1977. A change was made in the language, instead of Dependent children, they are "children in need of aid."

MILES: Asked if we had a Children's Code now.

MCGUIRE: Said we have a change in the law, but the Legislative Affairs agency has not followed up. They would like to see the childrens' code under a separate chapter. One title.

CHAT: Asked if it was under the same title?

MCGUIRE: No.

ELIZABETH MUKTARIAN: Division of Social Services.

Spoke on implementing the Children's Code. Stressed the need of solid justification before removal of children from the home.

RICK ROBERTSON: Mentioned that Title 9, which deals with divorce and Title 20, which deals with adoption should be under the same title as the children's code. He stated that the change in the law was very fundamental. He went on to give us examples of how the law works:

1. Adjudicary - demonstrates court's power - to prove that the child is in need of aid.
2. Disposition - Court. Showing best interests of the child.

① Reference Library -  
Children's Codes - of Other  
States.

KF 479 A75  
K. 38

KFH 20 .H 38 1973

25

# Children's Code

## Invitation -

Betsy McGuire - Former Director office of  
Child Advocacy. Support from Gov.  
office. Task Force. Appointed 1975  
(Results) of Conferences  
1st Introduced 1976. Funded<sup>by</sup> Legis. Council.  
Passed 1977. Children's Code.  
Formerly Dependent Children. "Children in  
need of aid!"  
Sept/Oct

Mile Do we have C.C. Now

Betsy Changes in laws - Under separate  
Chapters Legis. Affairs not followed  
up. 1 title.

Chat: Same title?

Betsy No

Elizabeth Muctarian - Div S.S.  
implementing C.C.

Analysis of C.C. Solid justification  
for removal from home.

Chat: Adm. introduce proposal to accomplish  
this?

Burres:

Rick Robertson - AG's

Title 9 - Divorce

" 20 - Adoption

RS. 47.10 - modern day statutory embodiment  
Change was fundamental

1977 - parental conduct. Vague.

Prof Stanford

- ① adjudicans - demonstrate courts power - showing child is in need of aid
- ② Disposition - court. Best interest of child.

Chat: Guardianship?

Robertson: Minors? Social workers usually one of concern.

Murson: Is there a way to get a guardian ad litem

Robertson - yes. Usually lawyers. Represent best interests.

★

SB-34

Parent orientated statute.

Clear & convincing evidence.

Mike Bad environment?

Robertson - abused. physically, emotionally etc.

Arburt: True on poverty level?

Robertson if contested case, obviously parent care. To provide for certain needs.

## Jurisdictional evidence:

Thelma parents rights hard to terminate.

Robertson when parents recognize the problem, it's a lot easier.

Most cases alcohol related.

Prior to 1977 - if went into court - have to provide actual notice to parent.

Statute says let them know - often hard to find parents.

Chet Guardianship proceedings?

Robertson File Detector, Incompatibility.

→

AS. 13.26

Munson - Is it necessary for consolidation

↑  
Robertson - not very high priority. Supreme Ct hasn't had chance to interpret. Worthy of further study.

Mills Codification better for children? →

Robertson - if don't change language of statute. Easier to read. Specific change in language of statutes.

McGuire Revision in Delapton did not get out of Committee.

Chet Committee project.

Barbara McPherson - Criminal Children's Rules

## Children's Codes:

### Oklahoma Statutes

HB-1089 - Juveniles - Records destruction

SB-8 - Children - Confinement - Release

\* ALASKA LAW - AS HB-204 Judiciary Comm.  
SB-106

AS 47.10.290(17)

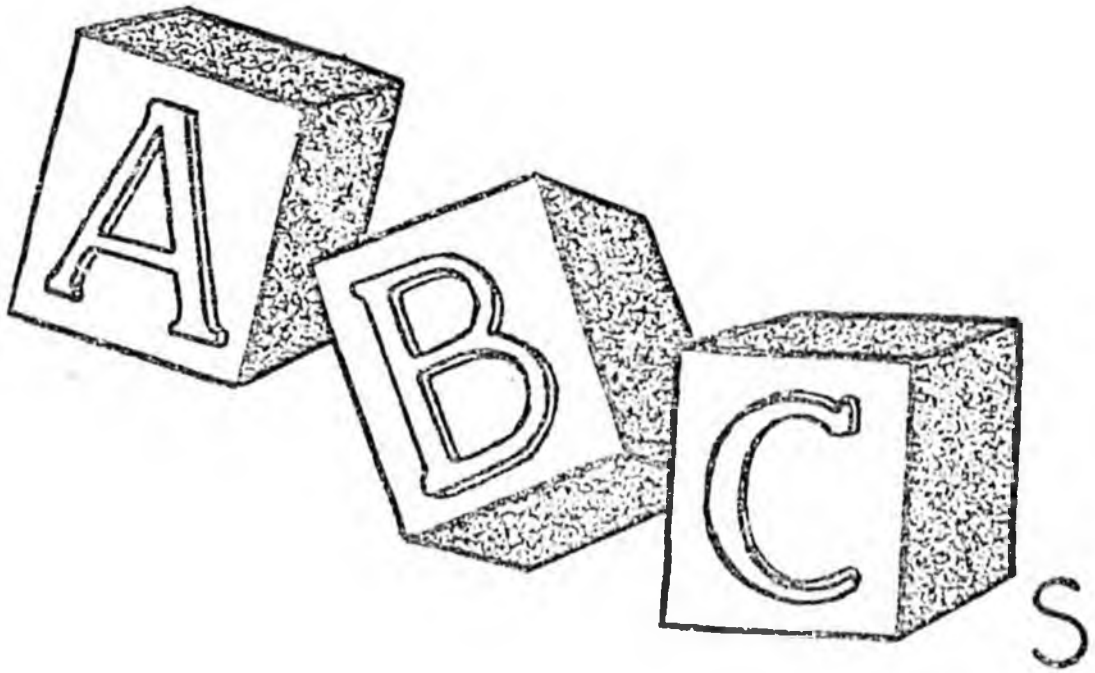
① Dependent minor ② Child in need of supervision ③ Delinquent ~~child~~ minor

## Children's Code:

- ① Handling children in need of supervision
- ② Protection of neglected & abused & battered
- ③ Delinquent children.

Name	Organization	address	Bill No.
Thomas H. Robertson	Attorney General's Office	GPHI	—
Betsey W.M. 'Guine	Former - Exec. Dir. Office of Ch. Advocacy	.	
Barbara J. McPherson	Criminal Justice Planning Agency	Pouch A1	
ELIZABETH MUKTARIAN	DIVISION OF SOCIAL SERVICES	POUCH H05	
Rosl. Soboleff	Rural Alaska Community Action Prog	c/o 165 S. Franklin St. Juneau	

THE



OF THE  
COLORADO  
CHILDRENS  
CODE

## FOREWORD

This booklet is designed to answer some of the more common questions about the Children's Code. The answers are not legal opinions and should not be relied on as such. Rather, they are the most usual interpretations given to the sections of the Code they cover. Some variation may be found in different judicial districts. Where a legal opinion is needed, an attorney should be consulted.

\* \* \* \* \*

Prepared and released as a public service by:

Colorado Juvenile Court Judges Association

With the cooperation and support of:

Colorado Parent-Teacher Association

League of Women Voters

Colorado Juvenile Council

Metropolitan Council for Community Service

Family Law Committee of the Colorado Bar Association

Illustrations:

Frank J. Jacobucci

THE A B C's OF THE  
COLORADO CHILDREN'S CODE

\* \* \* \*

Q. What is the Colorado Children's Code?

A. It is a single chapter of the Colorado Revised Statutes which includes all Colorado laws relating to children.

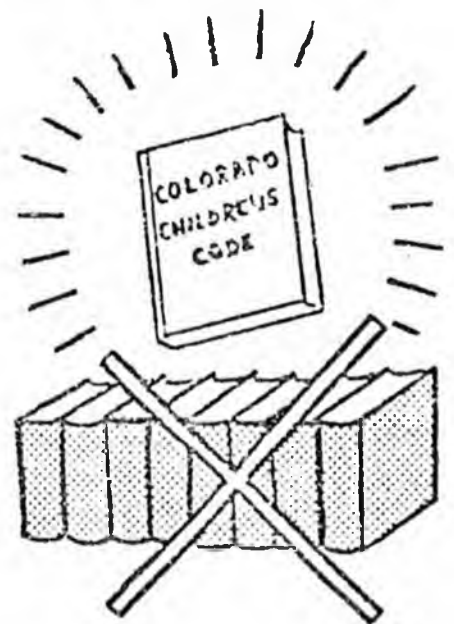
Q. Is the Children's Code a completely new law?

A. Not really. Parts of it are new but much is a regrouping in a single chapter laws formerly found in many of the 155 chapters of the Colorado Revised Statutes. For example, before the Children's Code, parts of children's laws were found in Chapter 3, Administrative Code, Chapter 4, Adoptions, Chapter 22, Children, Chapter 37, Courts, Chapter 39, Criminal Procedure,

Chapter 40, Crimes, Chapter 105, Penal and Correctional Institutions, and Chapter 119, Public Welfare. Many of these laws remain unchanged but have been brought together in one place under the title Colorado Children's Code.

Q. Why was the Children's Code adopted?

A. To up-date Colorado's juvenile laws and to set up standard court procedures, something not covered by the old law.



Q. How does the present Children's Code differ from the former laws?

A. Here are some comparisons:

<u>Definition</u>	<u>Old Law</u>	<u>New Law</u>
Delinquency:	Child 10 to 13 who has violated state or federal law or municipal ordinance, who is habitually truant from school or who is beyond control of parent. Exceptions: One over 16 charged with a capital offense shall be treated as an adult offender.	Child 10 to 18 who has violated a state or federal law, or municipal ordinance if penalty is a jail sentence. Exceptions: One over 14 charged with capital offense shall be treated as an adult offender.
Child in Need of Supervision:	No provision.	Child under 18 who indulges in anti-social although non-criminal conduct; i.e., who is truant, runaway, or beyond parental control.
Dependent or Neglected Child:	Child under 18 who is abandoned, homeless, neglected, who fails to receive proper parental care or who is dependent on charity for support.	Child under 18 whose parents abuse or neglect him. Note: New law eliminates poverty or dependence on welfare as a ground for declaring a child dependent or neglected.
<u>Procedures</u>		
Petition:	No provision as to contents.	Must state the specific offense.
Hearing:	No provision.	<u>Allegations of petition must be proved beyond reasonable doubt.</u> Child entitled to counsel and hearing must be recorded. Child has right to appeal from Court's judgment.
Disposition:	If child is found delinquent, may be left with parents under probation or may be placed in foster home, training school, or state reformatory.	Same disposition but child <u>may not be committed to state reformatory.</u>
Transfer Hearing:	No provision.	If child is over 14 and accused of serious offense (felony), court may transfer to adult criminal court.
Records:	No limitation on use.	Police must keep record of child in separate file. No release to public; may not be sent to FBI.

Q. Was a change in the law necessary?

A. Yes. Many recent U. S. Supreme Court decisions, especially those relating to the 5th and 14th Amendments, have radically changed court procedures for both adults and juveniles. Recently, the Colorado Supreme Court, in response to such changes, adopted a whole new

"Code of Criminal Procedure." The Children's Code is, in a more limited way, an up-to-date code of juvenile procedures.



Q. Is the Colorado Children's Code radically different from Children's laws in other states?

A. Colorado has always been a leader in Children's laws. Denver, with Chicago, pioneered the juvenile court movement. Hence, children's laws of many states have followed Colorado.



Where changed, the Children's Code follows closely the Standard Juvenile Court Act developed by the National Council on Crime and Delinquency, the U. S. Children's Bureau, and the National Council of Juvenile Court Judges. This model law served as a basis for new juvenile codes for such states as New York, Illinois, Maryland, Oregon, and Utah. South Dakota has since adopted a Children's Code almost identical to Colorado's. Oklahoma also updated its children's laws along the same lines.

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Records:	No limitations on use.	Police must keep record of child in separate file. No release to public; may not be sent to FBI.

Old Law

New Law

Expungement: No provision.

If adjudicated delinquent, two years after closing of case, if there has been no further misconduct, child may apply for and the court may expunge the juvenile record.

Publicity: Name and picture of youth accused of delinquency may not be published without leave of court.

Same provision.

Q. May the police arrest a child accused of a delinquent act?

A. Any form of police detention is called "custody."

A child may be taken into custody without court order:

For any violation of law committed in presence of the police, or where there is good reason to think the child committed such offense.

When he is lost, abandoned; when he is a runaway or when he is a danger to himself or others.

Q. When is a child considered to be "in custody"?

A. Only when suspicion focuses on him as an offender and he is questioned, not about an offense in general, but about his involvement and he is no longer free to leave. A runaway child or one who endangers himself or others may likewise be detained "in custody".

Q. May the police take a child into a police car or to headquarters to question him?

A. Yes. In most cases it is needlessly embarrassing to a child to be questioned in a public place. It may be necessary to consult the police files to determine whether the juvenile court has issued a "Request to take into Custody." Finally, since parents should be notified of the





police contact with their child and may be asked to take him home, the police department, a sub-station, or a juvenile detention center, if there is such, are appropriate places to hold the child until the parents arrive.

Q. May the police question a child without his parents being present?

A. Certainly. As a practical matter, if the police did not question a child thought to have committed some unlawful act, or who is on the street at late or unusual hours, or is behaving in a way which might be dangerous to himself or others, they could never learn his name, his address, or who his parents are, receive an explanation of his conduct, or otherwise determine whether there is cause to take the child into custody, make an official report, or refer the matter to a juvenile court.



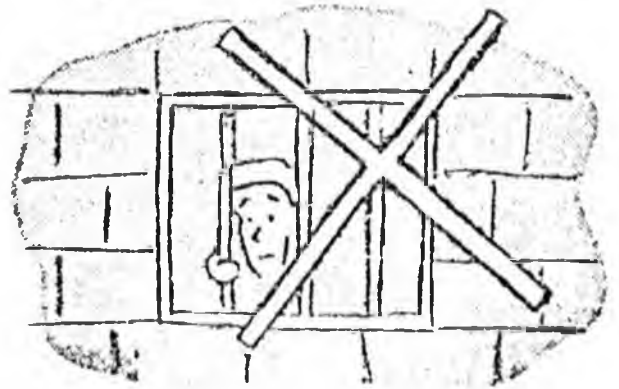
No statement of a child may be used in evidence against him unless a parent or guardian was present and the child and parent were advised of their right to remain silent, that any statement made might be used against the child, and of the right to legal counsel.

Q. What if the child refuses to give the police officer any information?

A. In most communities, ordinances require a person, including a juvenile, to give information to a police officer. Refusal to do so would be a violation of an ordinance, committed in the presence of an officer, warranting taking the child into custody. He is not obliged, however, to make self-incriminating statements.

Q. If a child is taken into custody, what happens then?

A. The Children's Code provides that the child's parents must be notified as soon as possible, and he should be released to them unless his safety, or that of others, indicates he should be detained. A child under 14 may not be placed in jail. If over 14, he may be kept in a juvenile detention center or in a jail, if separated from adult inmates.



Q. If a child is taken into custody, must he post a bail bond for his release?

A. Usually, no. The Code provides a child should be released to his parents if they give a written promise to appear in court with the child if and when notified to do so. Such a promise subjects parents to court action if they fail to appear when requested.

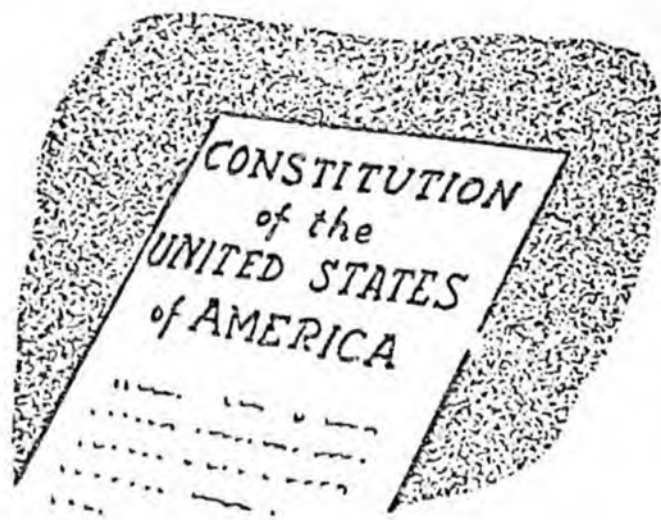


Q. Do the limits on arrest and questioning of a juvenile hamper the police in their work?

A. Yes; any restrictions of this kind probably make police work more difficult.

Q. Why should the Children's Code limit the police?

A. It is the United States and Colorado Constitutions which impose these limits, which provide for privilege against self-incrimination, right to counsel, and to release on reasonable bail, presumption of innocence, require proof beyond reasonable doubt, and similar protections guaranteed alike to adults and juveniles. The Children's Code merely sets up procedures which apply these principles and insure that these rights are protected.



Q. Why has the Children's Code been criticized by some?

A. The Children's Code, like many new laws, is not always well or fully



understood by all. Yet it imposes limits on the police, the district attorneys and the courts in the handling of juvenile cases, especially in the areas of greater personal safeguards for children. Hence, it has been subject to criticism by many who would rather not change a previously

traditional procedure. Further, such safeguards for the rights and liberties of children and their parents does make more work for the police, prosecution and court, but are essential if we are to maintain constitutional government.

Q. Is the Children's Code concerned only with delinquency?

A. By no means. In addition to delinquency, the Code provides for handling children in need of supervision, protection for those neglected and abused, and for the battered child, i.e., the infant who receives severe, non-accidental injuries not adequately accounted for by parents; for termination of parental rights where appropriate; for hospitalization and treatment of the mentally ill child; for paternity proceedings; for orders to compel payment of support; for court orders to protect a child from mistreatment or other improper conduct by others; for the relinquishment of children where the parent wishes to give up the child; for the adoptive placement of relinquished or other children available for adoption; and for the prosecution and punishment of those who abuse or mistreat children or contribute to their delinquency.

Q. Early complaints by law enforcement stated the Children's Code was not workable. Have changes been made in the law?

A. Yes. In 1968 the legislature changed from 16 to 14 the age at which a child, accused of a capital offense (murder or other offense punishable by death or life imprisonment) may be charged as an adult criminal.

Another change lowered the age at which a child, accused of a serious offense (felony) may be transferred to the adult criminal court.

Still another change now permits a police officer to take a child into custody if there is probable cause to believe he committed a delinquent act.

In 1969 the legislature made other significant changes:

Child abuse cases may be proved by a preponderance of evidence rather than beyond reasonable doubt.

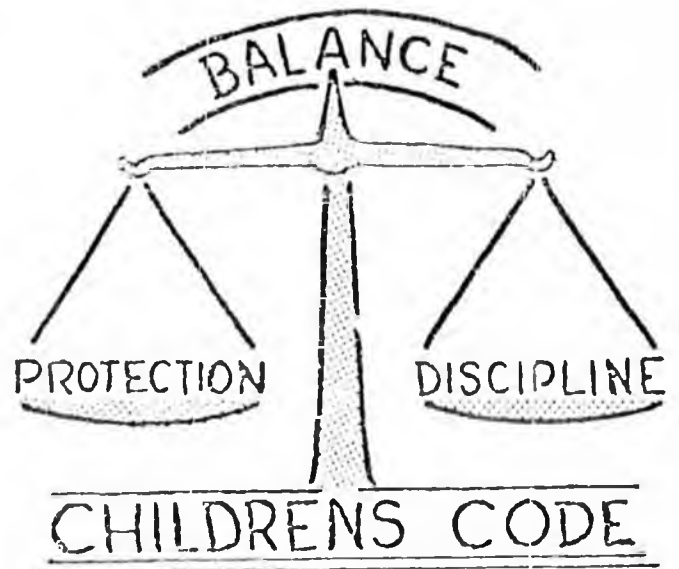
If an infant or small child receives unexplained injuries, it is not necessary to prove these were the result of abuse or neglect by the parent or guardian. Such neglect or abuse is presumed from the injury, although the parent may rebut this presumption by showing otherwise.

Adoptive procedure was simplified.

A separate juvenile section was created at Colorado State Reformatory for boys over 16 who run away from or otherwise cannot be handled adequately at Lookout Mountain School for Boys.

Q. Why a special set of laws for children?

A. Without the Children's Code children who broke a public law would be held to the same degree of responsibility as adults. It affords children protection against abuse and neglect and makes the compulsory school law enforceable. It provides adoption procedures, and empowers the court to enter protective orders for children, to determine paternity, and institute action for support of children. In short, the law recognizes that children have their own special



basic rights which the Children's Code defines and safeguards. The law also holds the child accountable for his own conduct according to his age, maturity and the kind of home in which he lives.

Q. If I know of a case of child abuse or neglect, should I report it and, if so, where?

A. Such a case should be reported immediately to the police or sheriff's office, depending upon where you live, since such conduct may be both a civil and criminal matter. You may also report the incident to your local Welfare Department or to the Juvenile Court. If you request, your name will not be used unless you should be needed as a witness.

Q. Where may one apply to adopt a child?

A. Adoptive placements are made to a licensed child placement agency. These include your local Department of Welfare and, among private agencies, Catholic Charities, Family and Children's Service, Jewish Family and Children's Service and Lutheran Service Society.

Q. May a step parent adopt his step child?

A. Yes, with consent of the spouse and the other natural parent. Such adoptive petitions are filed with the Juvenile Court.

Q. How does the Children's Code affect the Department of Welfare and private social work agencies?

A. The Code gives such agencies the responsibility for most non-institutional placements for children and casework services to families. They also establish and supervise family and group foster homes, provide protective services to children, investigate child abuse complaints, counsel with parents who wish to relinquish children, make adoptive studies and

adoptive placements and furnish the multitude of social services today's complex society demands.

Q. How can we prevent or reduce juvenile crime and child abuse?

A. By good example; by observing all laws and encouraging others to do so.

By supporting, with respect, better pay and full cooperation, your local police and law enforcement officers; when in referring to a police officer, by eliminating such names as "cop" and "fuzz".

By setting firm limits of conduct for your children; requiring regular school attendance and reasonable effort and by knowing your children's companions and whereabouts.

By insisting that schools devise courses for those students who do not fit into the regular school program and by substantial reduction in the dropout rate.

By assisting the communities in securing better treatment facilities for delinquent children.

SECOND REGULAR SESSION

SENATE BILL NO. 511

77TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHNEIDER

Pre-filed December 20, 1973, and 1,000 copies ordered printed.

VINITA E. RAMSEY, Secretary.

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**A N N O U N C E M E N T**

To provide for the State of Missouri to enter into an Interstate Compact on the Placement of Children with other states and setting forth in full the terms of such Compact.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section 1. The Interstate Compact on the Placement of

2 Children is hereby enacted into law and entered into with all  
3 other jurisdictions legally joining therein, in form substan-  
4 tially as follows:

5 ARTICLE I.

6 It is the purpose and policy of the party states to cooperate  
7 with each other in the interstate placement of children to the  
8 end that:

9 (a) Each child requiring placement shall receive the  
10 maximum opportunity to be placed in a suitable environment  
11 and with persons or institutions having appropriate qualifi-

12 cations and facilities to provide a necessary and desirable  
13 degree and type of care.

14 (b) The appropriate authorities in a state where a child  
15 is to be placed may have full opportunity to ascertain the cir-  
16 cumstances of the proposed placement, thereby promoting  
17 full compliance with applicable requirements for the pro-  
18 tection of the child.

19 (c) The proper authorities of the state from which the  
20 placement is made may obtain the most complete information  
21 on the basis of which to evaluate a projected placement be-  
22 fore it is made.

23 (d) Appropriate jurisdictional arrangements for the  
24 care of children will be promoted.

25 ARTICLE II.

26 As used in this compact:

27 (a) "Child" means a person who, by reason of minority,  
28 is legally subject to parental, guardianship or similar con-  
29 trol.

30 (b) "Sending agency" means a party state, officer or em-  
31 ployee thereof; a subdivision of a party state, or officer or  
32 employee thereof; a court of a party state; a person, cor-  
33 poration, association, charitable agency or other entity which  
34 sends, brings, or causes to be sent or brought any child to  
35 another party state.

36 (c) "Receiving state" means the state to which a child  
37 is sent, brought, or caused to be sent or brought, whether by  
38 public authorities or private persons or agencies, and whether  
39 for placement with state or local public authorities or for  
40 placement with private agencies or persons.

41 (d) "Placement" means the arrangement for the care  
42 of a child in a family free or boarding home or in a child-  
43 caring agency or institution but does not include any institu-  
44 tion caring for the mentally ill, mentally defective or epileptic

45 or any institution primarily educational in character, and any  
46 hospital or other medical facility.

47 ARTICLE III.

48 (a) No sending agency shall send, bring, or cause to be  
49 sent or brought into any other party state any child for  
50 placement in foster care or as a preliminary to a possible  
51 adoption unless the sending agency shall comply with each  
52 and every requirement set forth in this article and with the  
53 applicable laws of the receiving state governing the place-  
54 ment of children therein.

55 (b) Prior to sending, bringing or causing any child to  
56 be sent or brought into a receiving state for placement in  
57 foster care or as a preliminary to a possible adoption, the  
58 sending agency shall furnish the appropriate public authori-  
59 ties in the receiving state written notice of the intention  
60 to send, bring, or place the child in the receiving state. The  
61 notice shall contain:

- 62 1. The name, date and place of birth of the child.
- 63 2. The identity and address or addresses of the parents  
64 or legal guardian.
- 65 3. The name and address of the person, agency or in-  
66 stitution to or with which the sending agency proposes to  
67 send, bring, or place the child.
- 68 4. A full statement of the reasons for such proposed  
69 action and evidence of the authority pursuant to which the  
70 placement is proposed to be made.

71 (c) Any public officer or agency in a receiving state  
72 which is in receipt of a notice pursuant to paragraph (b) of  
73 this article may request of the sending agency, or any other  
74 appropriate officer or agency of or in the sending agency's  
75 state, and shall be entitled to receive therefrom, such sup-  
76 porting or additional information as it may deem necessary  
77 under the circumstances to carry out the purpose and policy  
78 of this compact.

79 (d) The child shall not be sent, brought, or caused to  
80 be sent or brought into the receiving state until the appro-  
81 priate public authorities in the receiving state shall notify  
82 the sending agency, in writing, to the effect that the proposed  
83 placement does not appear to be contrary to the interests of  
84 the child.

85 ARTICLE IV.

86 The sending, bringing, or causing to be sent or brought  
87 into any receiving state of a child in violation of the terms  
88 of this compact shall constitute a violation of the laws re-  
89 specting the placement of children of both the state in which  
90 the sending agency is located or from which it sends or brings  
91 the child and of the receiving state. Such violation may be  
92 punished or subjected to penalty in either jurisdiction in ac-  
93 cordance with its laws. In addition to liability for any such  
94 punishment or penalty, any such violation shall constitute  
95 full and sufficient grounds for the suspension or revocation  
96 of any license, permit, or other legal authorization held by  
97 the sending agency which empowers or allows it to place,  
98 or care for children.

99 ARTICLE V.

100 (a) The sending agency shall retain jurisdiction over  
101 the child sufficient to determine all matters in relation to the  
102 custody, supervision, care, treatment and disposition of the  
103 child which it would have had if the child had remained in  
104 the sending agency's state, until the child is adopted, reaches  
105 majority, becomes self-supporting or is discharged with the  
106 concurrence of the appropriate authority in the receiving  
107 state. Such jurisdiction shall also include the power to ef-  
108 fect or cause the return of the child or its transfer to another  
109 location and custody pursuant to law. The sending agency  
110 shall continue to have financial responsibility for support  
111 and maintenance of the child during the period of the place-

112 ment. Nothing contained herein shall defeat a claim of juris-  
113 diction by a receiving state sufficient to deal with an act of  
114 delinquency or crime committed therein.

115 (b) When the sending agency is a public agency, it may  
116 enter into an agreement with an authorized public or private  
117 agency in the receiving state providing for the performance  
118 of one or more services in respect of such case by the latter  
119 as agent for the sending agency.

120 (c) Nothing in this compact shall be construed to pre-  
121 vent a private charitable agency authorized to place children  
122 in the receiving state from performing services or acting as  
123 agent in that state for a private charitable agency of the send-  
124 ing state; nor to prevent the agency in the receiving state  
125 from discharging financial responsibility for the support and  
126 maintenance of a child who has been placed on behalf of the  
127 sending agency without relieving the responsibility set forth  
128 in paragraph (a) hereof.

129 ARTICLE VI.

130 A child adjudicated delinquent may be placed in an in-  
131 stitution in another party jurisdiction pursuant to this com-  
132 pact but no such placement shall be made unless the child is  
133 given a court hearing on notice to the parent or guardian with  
134 opportunity to be heard, prior to his being sent to such other  
135 party jurisdiction for institutional care and the court finds  
136 that:

137 1. Equivalent facilities for the child are not available  
138 in the sending agency's jurisdiction; and

139 2. Institutional care in the other jurisdiction is in the  
140 best interest of the child and will not produce undue hard-  
141 ship.

142 ARTICLE VII.

143 The executive head of each jurisdiction party to this  
144 compact shall designate an officer who shall be general co-

145 ordinator of activities under this compact in his jurisdiction  
146 and who, acting jointly with like officers of other party  
147 jurisdictions, shall have powers to promulgate rules and regu-  
148 lations to carry out more effectively the terms and provisions  
149 of this compact.

150 ARTICLE VIII.

151 This compact shall not apply to:

152 (a) The sending or bringing of a child into a receiving  
153 state by his parent, step-parent, grandparent, adult brother  
154 or sister, adult uncle or aunt, or his guardian and leaving the  
155 child with any such relative or non-agency guardian in the  
156 receiving state.

157 (b) Any placement, sending or bringing of a child into  
158 a receiving state pursuant to any other interstate compact to  
159 which both the state from which the child is sent or brought  
160 and the receiving state are party, or to any other agreement  
161 between said states which has the force of law.

162 ARTICLE IX.

163 This compact shall be open to joinder by any state, ter-  
164 ritory or possession of the United States, the District of  
165 Columbia, the Commonwealth of Puerto Rico, and with the  
166 consent of Congress, the Government of Canada or any prov-  
167 ince thereof. It shall become effective with respect to any  
168 such jurisdiction when such jurisdiction has enacted the  
169 same into law. Withdrawal from this compact shall be by the  
170 enactment of a statute repealing the same, but shall not take  
171 effect until two years after the effective date of such statute  
172 and until written notice of the withdrawal has been given  
173 by the withdrawing state to the Governor of each other party  
174 jurisdiction. Withdrawal of a party state shall not affect the  
175 rights, duties and obligations under this compact of any send-  
176 ing agency therein with respect to a placement made prior to  
177 the effective date of withdrawal.

178

## ARTICLE X.

179 The provisions of this compact shall be liberally con-  
180 strued to effectuate the purposes thereof. The provisions of  
181 this compact shall be severable and if any phrase, clause,  
182 sentence or provision of this compact is declared to be con-  
183 trary to the constitution of any party state or of the United  
184 States or the applicability thereof to any government, agency,  
185 person or circumstance is held invalid, the validity of the  
186 remainder of this compact and the applicability thereof to  
187 any government, agency, person or circumstance shall not be  
188 affected thereby. If this compact shall be held contrary to the  
189 constitution of any state party thereto, the compact shall  
190 remain in full force and effect as to the remaining states  
191 and in full force and effect as to the state affected as to all  
192 severable matters.

Section 2. The financial responsibility for any child  
2 placed pursuant to the Provisions of the Interstate Compact  
3 on the Placement of Children shall be determined in ac-  
4 cordance with the provisions of Article V thereof, in the  
5 first instance. However, in the event of partial or complete  
6 default of performance thereunder, the provisions of state  
7 laws fixing responsibility for the support of children also  
8 may be invoked.

Section 3. The "appropriate public authorities" as used  
2 in Article III of the Interstate Compact on the Placement of  
3 Children shall, with reference to this state, mean Division of  
4 Welfare, and said Division of Welfare shall receive and act  
5 with reference to notices required by said Article III.

Section 4. As used in paragraph (a) of Article V "ap-  
2 propriate authority in the receiving state" shall mean th'  
3 Division of Welfare.

Section 5. Any court having jurisdiction to place de-  
2 linquent children may place such a child in an institution of

3 or in another state pursuant to Article VI of the Interstate  
4 Compact on the Placement of Children and shall retain  
5 jurisdiction as provided in Article V thereof.

Section 6. As used in Article VII of the Interstate Com-  
2 pact on the Placement of Children the term "executive head"  
3 means the Governor. The Governor is hereby authorized to  
4 appoint a compact administrator in accordance with the terms  
5 of said Article VII.

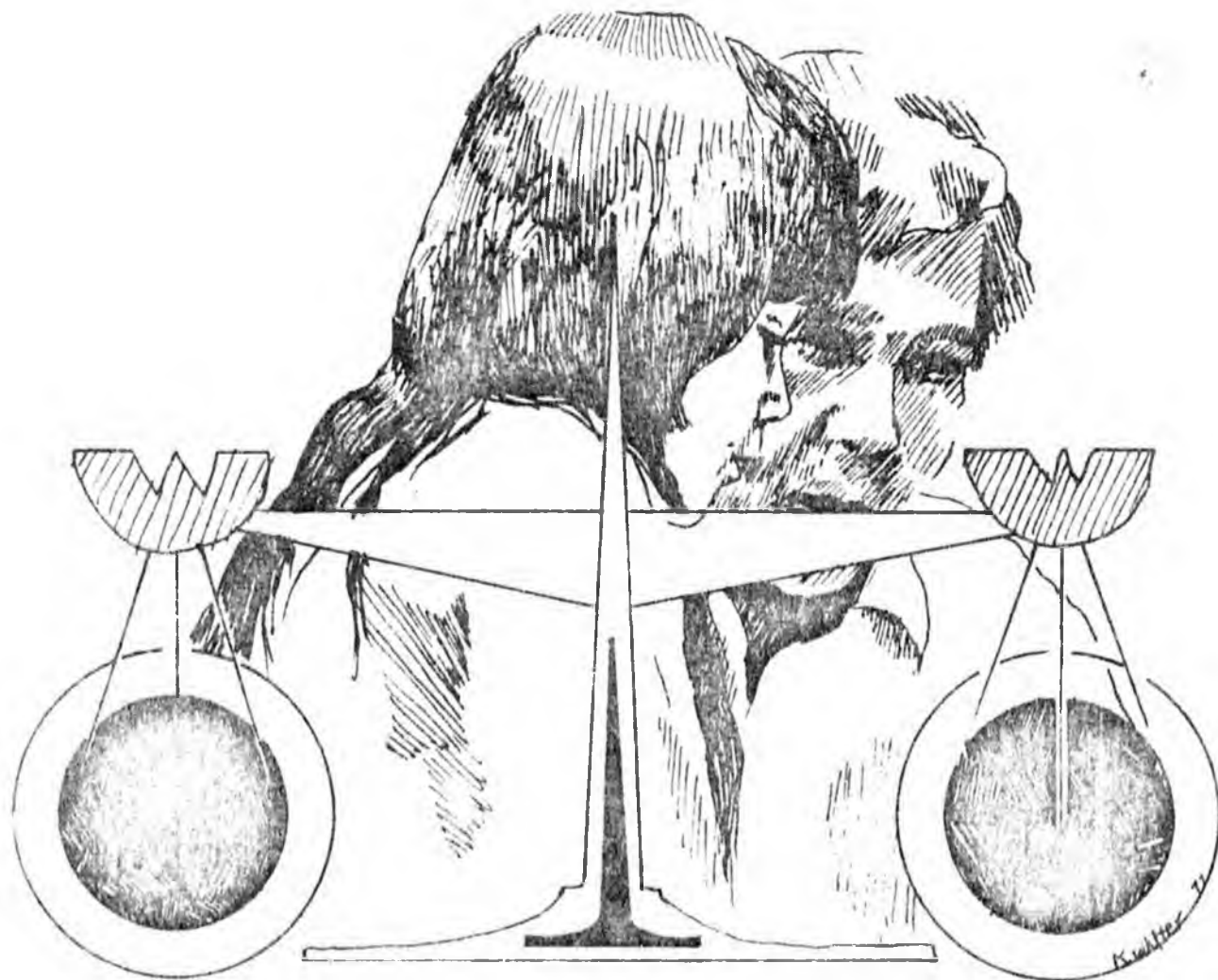
Section 7. No placement made into this state from a  
2 jurisdiction not party to the Interstate Compact on the Place-  
3 ment of Children shall be lawful unless the person or agency  
4 making the placement complies with and follows the pro-  
5 cedures and requirements of Article III of that compact as  
6 though the state or jurisdiction from which the child is sent  
7 or brought were party thereto. This section shall not apply  
8 to any placement which would not be subject to the terms of  
9 the Interstate Compact on the Placement of Children if both  
10 this state and the other state or jurisdiction from which the  
11 child is sent or brought were parties thereto.

✓

BEIRNE

STATE OF ALASKA <sup>2/1/79</sup>

 Department of Health and Social Services



ANALYSIS <sup>W. K. Robertson AG</sup>

of

1977 CHILDRENS CODE

DIVISION OF SOCIAL SERVICES

CHILDREN'S CODE ANALYSIS

AUGUST, 1977

THIS REPORT WAS PREPARED BY  
NINA KINNEY AND ELIZABETH MUKTARIAN ✓

## INTRODUCTION

This report has been prepared by the Division of Social Services to assist you in understanding the changes in Alaskan statutes relating to children which are effective on August 26, 1977.

This report has been organized in the following manner. On the right hand pages are the new statutes. Deletions in the previous statutes are included in parentheses in the appropriate sections on the right hand side. Likewise, additions to the statutes are underlined in the new statutes.

On the left hand page, you will find two types of notations. First, whenever a section of the old statute has been repealed and re-enacted, opposite that new section you will find the section which has been repealed.

The significant changes in the new statute are outlined in black boxes on the left hand page.

It must be recognized that the Children's Code, as any set of statutes, will require a period of adjustment after implementation. However, after you have worked under these new statutes you may find areas you consider to be problematic. We suggest that Division of Social Services staff communicate such areas to their Regional Manager who will forward their concerns to the Director's Office. Some areas may require policy decisions within the Division. For other areas it may be necessary to consult the Attorney General's Office for further interpretation.

We hope that this report, by contrasting old and new sections, will help to clarify the significant areas of change in Alaska's Children's Code. We wish to thank Elizabeth Arnold, Assistant Attorney General for her assistance in reviewing the draft of this report, and to acknowledge the Legislative Affairs Agency for their preparation of the type-script of the statute.

Sec. 1. AS 09.55.205 Enumerates criteria to be utilized by a court in determining the "best interests of the child" in awarding custody of children; in addition it specifies what is in the best interests of the child.

**Sec. 09.55.205. Judgments for custody.** In an action for divorce or for legal separation the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 09.65.130. In awarding custody the court is to be guided by the following considerations:

(1) by what appears to be for the best interests of the child and if the child is of a sufficient age and intelligence to form a preference, the court may consider that preference in determining the question;

(2) as between parents adversely claiming the custody neither parent is entitled to it as of right. (§ 1 ch 160 SLA 1968; am § 1 ch 167 SLA 1975)

1  
2  
3  
4  
5  
6 "An Act relating to children's laws and related judi-  
7 cial proceedings; changing the court's responsibilities  
8 and authority under Children's Rules 11(a), 12(a) and  
9 (b), 14, 15, 21 and 28, and Rule of Civil Procedure  
10 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, if it has jurisdiction under AS  
15 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060,  
16 during the pendency of the action, or at the final hearing or at any  
17 time thereafter during the minority of any child of the marriage, make  
18 an order for the custody of or visitation with the minor child which may  
19 seem necessary or proper and may at any time modify or vacate the order.  
20 Any appointment of a guardian ad litem for a child shall be made under  
21 the terms of AS 09.65.130. The court shall determine custody in accor-  
22 dance with the best interests of the child. Neither parent is entitled  
23 to preference as a matter of right in awarding custody of the child. In  
24 determining the best interests of the child the court shall consider all  
25 relevant factors including:

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

Sec. 2. AS 09.65.130 deals with representation of a child. The changes clarify the responsibilities of a guardian ad litem and attorney for a child, and provides for the appointment of both and procedures for both.

The new subsection (c) clarifies that the guardian ad litem is to represent the best interests of the child, not his preferences. It also delineates the limits of the guardian ad litem's authority.

(3) the child's preference;

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

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

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

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

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

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

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon its own motion, appoint an attorney or other person to serve as guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare. The court shall appoint a guardian ad litem when, in the opinion of the court, representation of the child's best interests, to be distinguished from his preferences,

The guardian ad litem should, when reasonable, be appointed from among persons in the community where the child's parents or the person having legal custody or guardianship of the child's person reside.

Sec 4. AS 30.15.050 deals with consent to adoption. This does not change the requirement; it was added for clarification.

Sec. 5. AS 25.20.010 changes the age of majority from 19 to 18 years. Those statutes which specifically provide an age requirement of 19, such as drinking, jury duty, and selling/serving liquor remain unchanged.

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

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

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

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

27 \* Sec. 5. AS 25.20.010 is amended to read:

28 Sec. 25.20.010. AGE OF MAJORITY. A person is considered to have  
29 arrived at majority at the age of 18 [19] years, and thereafter has

Sec. 6. AS 25.20.060 provides for resolution of a child custody controversy between claimants not parties to an action for divorce or legal separation. The significance of this amendment is that it clarifies that it applies to persons who are not married or to custodians who are not related.

**Sec. 47.10.010. Jurisdiction.** (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor

- (1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state;
- (2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian;
- (3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;
- (4) is abandoned by his parent, guardian or custodian;
- (5) lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian;
- (6) associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others;
- (7) is an orphan who has no relatives willing and able to assume custody and care;
- (8) has been released by his parent or parents, or guardian, to the department for adoptive purposes; or
- (9) is in need of special care or training not otherwise provided.

Sec. 7. AS 47.10.010(a) is a crucial section for Division of Social Services' staff. It includes major statutory changes. The whole concept of status offenders is removed except for runaway children. In addition, it eliminates the categories "child in need of supervision" (CHINS) and "dependent child" and in substitution grants the court jurisdiction over a child to be a "child in need of aid" (CINA), and significantly changes the types of situations which could result in such a finding. The criteria is much more specific and focuses on actual or imminent harm to the child rather than on conduct of the parent or guardian unless it endangers the child. Note that "caring" (Sec. 7., (2), (A)), means more than physical care. See Sec. 28, (9).

1 control of his own actions and business and has all the rights and is  
2 subject to all the liabilities of citizens of full age, except as other-  
3 wise provided by statute.

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

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

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

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

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

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

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

25 (i) both parents,

26 (ii) the surviving parent, or

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

Sec. 8. AS 47.10.010(b) deals with jurisdiction. This amendment provides that a child shall be prosecuted as an adult for misdemeanor fish and game and parks and recreational facilities violations.

1 (B) the child being in need of medical treatment to  
2 cure, alleviate, or prevent his suffering substantial physical  
3 harm, or mental harm as evidenced by failure to thrive, severe  
4 anxiety, depression, withdrawal, or untoward aggressive behavior or  
5 hostility toward others, and his parents are unwilling to provide  
6 the medical treatment;

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

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

16 (E) the child committing delinquent acts as a result of  
17 pressure, guidance, or approval from his parents, guardian or  
18 custodian.

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

20 (b) When a minor is accused of violating a traffic statute or  
21 regulation, [OR] a traffic ordinance or regulation of an incorporated  
22 municipality, a fish and game statute or regulation under AS 16 or a  
23 park and recreational facilities statute or regulation under AS 41.20,  
24 excepting a statute the violation of which is a felony, the procedure  
25 prescribed in secs. 20 - 90 of this chapter may not be followed, except  
26 that a parent, guardian or legal custodian shall be present at all  
27 proceedings. The minor accused of a traffic offense, a fish and game  
28 statute or regulation under AS 16 or parks and recreational facilities  
29 violation under AS 41.20 shall be charged, prosecuted, and sentenced in

Sec. 9. AS 47.01.030(b) requires notice to be given to each parent in any children's proceeding. It requires efforts to notify absent parents regardless of the length of absence. Proof of notice must be filed before the petition is heard. If proof of notice cannot be given, you must give proof that you tried to give notice.

Sec. 9. AS 47.10.030(b) If the person summoned is not the parent or guardian of the minor, the court shall also give the parent or guardian notice of the place and time of the hearing. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A summons, subpoena or other process may be served by a person authorized by law to make the service. Where personal service cannot be made, the court may direct that service of process be made by registered mail.

Sec. 10. AS 47.10.040 The significant change is that the arbitrary 14 year age requirement is removed.

1 the district court in the same manner as an adult.

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

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

21 \* Sec. 10. AS 47.10.040 is amended to read:

22 Sec. 47.10.040. RELEASE OF MINOR. A minor who is taken into  
23 custody may, in the discretion of the court and upon the written promise  
24 of the parent, guardian or custodian to bring the minor before the court  
25 at a time specified by the court, be released to the care and custody of  
26 the parent, guardian or custodian. The minor, if not released, shall be  
27 detained as provided by sec. 140 of this chapter. The court may deter-  
28 mine whether the father or mother or another person shall have the cus-  
29 tody and control of the minor for the duration of the proceedings. If

Sec. 11 & 12. AS 47.10.050 This section asserts very positively a minor's right to counsel. While a minor can waive counsel voluntarily and knowingly, he/she must consult an attorney prior to the waiver of counsel in all cases which would be felonies if committed by an adult. The intention of this section is to assure that juveniles are not intimidated by the legal proceedings and to ensure their rights are not violated.

Sec. 13. AS 47.10.060(d) The only change is in age from 21 to 20.

1 the minor is of sufficient age and intelligence to state his desires,  
2 the court shall give consideration to his desires [OVER 14 YEARS OF AGE,  
3 HIS DESIRES IN THE MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

4 \* Sec. 11. AS 47.10.050 is amended to read:

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

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

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

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

26 (d) A minor is unamenable to treatment under this chapter if he  
27 probably cannot be rehabilitated by treatment under this chapter before  
28 he reaches 20 [21] years of age. In determining whether a minor is  
29 unamenable to treatment, the court may consider the seriousness of the

Sec. 13 AS 47.10.060(e) The change was to make this section consistent with another section.

Sec. 14. AS 47.10.080(b) deals with limits of custody for delinquents. It eliminates indeterminate custody; custody is limited to two years. The provisions are similar to those for CINA which are explained opposite Sec. 47.10.060(c).

Sec. 14.

Sec. 47.10.080

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

(1) order the minor committed to the Department of Health and Social Services for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under § 200 of this chapter; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

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

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

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

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

(b) If the court finds that the minor is delinquent, it shall  
(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th

1 birthday if the extension is in the best interests of the minor and the  
2 public; and (B) an additional one-year period of supervision past age 19  
3 if continued supervision is in the best interests of the person and the  
4 person consents to it; the department shall place the minor in the  
5 juvenile facility which the department considers appropriate and which  
6 may include a juvenile correctional school, detention home, or detention  
7 facility; the minor may be released from placement or detention and  
8 placed on probation on order of the court and may also be released by  
9 the department, in its discretion, under sec. 200 of this chapter;

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

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

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

23 (3) order the minor committed to the department and placed on  
24 probation, to be supervised by the department, and release him to his  
25 parents, guardian, other suitable person, or suitable nondetention  
26 setting such as a family home, group care facility, or child care facil-  
27 ity, whichever the department considers appropriate to implement the  
28 treatment plan of the predisposition report; if the court orders the  
29 minor placed on probation, it may specify the terms and conditions of

Sec. 16. AS 47.10.080(c) eliminates indeterminate custody and limits an order of custody to two years. Provisions are made for two year extensions of custody to be decided by the court in a hearing if the extension is in the best interests of the minor and the public up to the child's 19th birthday. It also makes provisions for one year supervision past age 19 with the consent of the child. The Department must give the child, parents, or guardian and attorneys reasonable notice of transfer of placement.

Sec. 16

AS 47.10.080

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor reaches majority, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

1 probation; the department may transfer the minor, in his best interests,  
2 from one of the probationary placement settings listed in this paragraph  
3 to another, and the minor, his parents or guardian and attorney are  
4 entitled to reasonable notice of the transfer; the probation may be for  
5 a period of time, not to exceed two years and in no event extend past  
6 the day the minor becomes 19, except that the department may petition  
7 for and the court may grant in a hearing:

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

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

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

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

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

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

A fourth option is added. The court may dispense with the Department's supervision and return the child to his/her family.

(3) In cases where parental rights have been terminated, the Department or guardian must report annually to the court on efforts being made to find a permanent placement for the child. In addition, for parental rights to be terminated a child has to have been adjudicated CINA and parental fault must be clear and convincing that the child is a CINA. It must be shown that the parental conduct is going to continue. This is directly tied to 10 (a) (2).

1 setting to another, and the minor, his parents or guardian and attorney  
2 are entitled to reasonable notice of the transfer;

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

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

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

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

Sec. 18. AS 47.10.080(f) adds the provision that the minor and the custodian are entitled to request a review and that reasonable notice in advance of the review will be granted to all parties.

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

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

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

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

22 \* Sec 19. AS 47.10.085 is amended to read:

23 Sec. 47.10.085. CHILD IN NEED OF AID [DEPENDENT MINOR]; RELIGIOUS  
24 TREATMENT. In a case in which the minor's status as a child in need of  
25 aid [DEPENDENT MINOR] is sought to be based on his need for medical  
26 care, the court may, upon consideration of the health of the minor and  
27 the fact, if it is a fact, that the minor is being provided treatment by  
28 spiritual means through prayer in accordance with the tenets and prac-  
29 tices of a recognized church or religious denomination by an accredited

See explanation of Sec. 14. AS 47.10.080 on limits of custody.

1 practitioner of the church or denomination, dismiss the proceedings and  
2 thereby close the matter. This may be done, in the interests of justice  
3 and religious freedom, on the court's own motion or upon the application  
4 of a party to the proceedings, at any stage of the proceedings after  
5 information is given to the court under sec. 20(a) of this chapter.

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

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

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

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

Refer to Sec. 10. AS 47.1C.040.

1 parties and the appropriate department, take action which it considers  
2 appropriate.

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

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

23 Sec. 47.10.110. APPOINTMENT OF GUARDIAN OR CUSTODIAN. When, in  
24 the course of a proceeding under this chapter, it appears to the court  
25 that the welfare of a minor will be promoted by the appointment of a  
26 guardian or custodian of his person, the court may make the appointment.  
27 The court shall have a summons issued and served upon the parents of the  
28 minor, if they can be found, in a manner and within a time before the  
29 hearing which the court considers reasonable. The court may determine



1 whether the father, mother, or the Department of Health and Social  
2 Services shall have the custody and control of the minor. If the minor  
3 is of sufficient age and intelligence to state his desires, the court  
4 shall consider his desires [OVER 14 YEARS OF AGE, HIS DESIRES IN THE  
5 MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

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

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

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

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

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

Sec. 26. AS 47.10.081(b) requires the department to submit a predisposition report to the court prior to the disposition hearing and specifies what shall be included in the report.

Sec. 26. AS 47.10.081(c) The predisposition report will be made available by the court to the child, his parents, the attorneys representing the parties and the guardian ad litem not less than 10 days before the disposition hearing. Because of this 10 day requirement the adjudication and disposition hearings will always be separate proceedings.

1 reasons given as constituting probable cause and the reasons given as  
2 authorizing his temporary placement.

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

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

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

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

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

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

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

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

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

29 (c) The court shall inform the child, his parents and the attor-

Sec. 26. AS 47.10.082 requires that dispositions be made in the best interests of the child and the public. The court also must consider the state's ability to take custody. The state must show that it has the ability to do more than warehouse the child.

Sec. 26. AS 47.10.083 This is a significant change. It requires the court at the annual review hearing to order return of the child to the home unless the court finds by a preponderance of the evidence that the reason for original removal from the home continues to exist; specifies the information to be provided in the review hearing. The burden is on the state to show why it should retain custody.

Sec. 26. AS 47.10.084 attempts to define the responsibilities of legal custodians and parents. (a) and (c) need to be read together, and (b) if a guardian is ever involved. These are terms which have been used and never clearly defined.

1 neys representing the parties and the guardian ad litem that the pre-  
2 disposition report will be available to them not less than 10 days  
3 before the disposition hearing.

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

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

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

- 23 (1) why the child was removed from the home;  
24 (2) what services have been provided to or offered to the  
25 parents to facilitate reunion;  
26 (3) what services were utilized by the parents to facilitate  
27 reunion;  
28 (4) the visitation history between the parents and the child;  
29 (5) whether additional services are needed to facilitate the



1 return of the child to his parents;

2 (6) when return of the child can be expected.

3 Sec. 47.10.084. LEGAL CUSTODY, GUARDIANSHIP, AND RESIDUAL PARENTAL  
4 RIGHTS AND RESPONSIBILITIES. (a) When a child is committed under sec.  
5 80(b)(1) or (c)(1) of this chapter to the department or released under  
6 sec. 80(b)(2) or (3) or (c)(2) of this chapter to his parents, guardian,  
7 or other suitable person, a relationship of legal custody exists. This  
8 relationship imposes on the department and its authorized agents or the  
9 parents, guardian, or other suitable person the responsibility of physi-  
10 cal care and control of the child, the determination of where and with  
11 whom the child shall live, the right and duty to protect, train and  
12 discipline the child, and the duty of providing the child with food,  
13 shelter, education, and medical care. These obligations are subject to  
14 any residual parental rights and responsibilities and rights and respon-  
15 sibilities of a guardian if one has been appointed. When parental  
16 rights have been terminated, or there are no living parents and no  
17 guardian has been appointed, the responsibilities of legal custody  
18 include those in (b) and (c) of this section. The department or person  
19 having legal custody of the child may delegate any of the responsibili-  
20 ties under this section, except authority to consent to marriage, adop-  
21 tion, and military enlistment may not be delegated. For purposes of  
22 this chapter a person in charge of a placement setting is an agent of  
23 the department.

24 (b) When a guardian is appointed for the child, the court shall  
25 specify in its order the rights and responsibilities of the guardian.  
26 The guardian shall be removed only by court order. The rights and  
27 responsibilities may include, but are not limited to, having the right  
28 and responsibility of reasonable visitation, consenting to marriage,  
29 consenting to military enlistment, consenting to major medical treat-

Sec. 27

AS 47.10.290 (2)

(2) "delinquent minor" is a minor whom the court determines is within the provisions of § 10 (a) (1) of this chapter;

This makes caring a broader more significant term than just meeting physical needs.

Sec. 28

AS 47.10.290.

(3) "dependent minor" is a minor whom the court determines is within the provisions of § 10 (a) (4), (5), (6), (7), (8), or (9) of this chapter;

(7) "child in need of supervision" is a minor whom the court determines is within the provisions of § 10 (a) (2), (3) or (6). (5 1 art 1 ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970)

Sec. 29

AS 47.10.080.

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:

(1) any order which is authorized under (c) of this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

1 ment, obtaining representation for the child in legal actions, and  
2 making decisions of legal or financial significance concerning the  
3 child.

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

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

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

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

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

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

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

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

Sec. 34 explains how to deal with custody and the effective date of this act.

1 area from which the guardian ad litem may be selected.

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

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

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

19 \* Sec. 34. The portions of AS 47.10.080(b) and (c) in secs. 15 and 16 of  
20 this Act which specify the length of commitment to the department or pro-  
21 bation or supervision by the department are applicable to those minors  
22 affected under former AS 47.10.080(b), (c) and (j) before the effective date  
23 of this Act so that the commitment, probation or supervision of minors by the  
24 department before the effective date of this Act shall continue, but may not  
25 exceed two years from the effective date of this Act unless two-year exten-  
26 sions have been granted by the court under this Act. The commitment, pro-  
27 bation or supervision of minors with pending judicial actions under AS 47.-  
28 10.010(a) on the effective date of this Act may not exceed two years unless  
29 two-year extensions have been granted by the court under this Act.

SIGNIFICANT ADDITIONAL  
STATUTORY AMENDMENTS AFFECTING CHILDREN

It is the intent of these amendments to provide for placement of children in surroundings which are socially and culturally desirable and with persons who are able to meet their special needs. Placement of children with blood relatives will work to prevent loss of identity and self-esteem, and provide for increased family and cultural stability, security and solidarity.

17 (a) Subject to (e) and (f) of this section, the [THE] Department  
18 of Health and Social Services shall arrange for the care of every child  
19 committed to its custody by placing him in a foster home or in the care  
20 of an agency or institution providing care for children inside or out-  
21 side the state. The department may place a child in a suitable family  
22 home, with or without compensation, and may place a child released to  
23 it, in writing verified by the parent, or guardian or other person  
24 having legal custody, for adoptive purposes, in a home for adoption in  
25 accordance with existing law.

26 AS 47.10.230 is amended by adding new subsections to read:

27 (e) A child may not be placed in a foster home or in the care of  
28 an agency or institution providing care for children if a blood relative  
29 exists who requests custody of the child. However, the department may  
30 retain custody of the child and provide for its placement in the same  
31 manner as for other children if it makes a determination, supported by  
32 clear and convincing evidence, that the custody of the child by the  
33 blood relative will result in physical or emotional damage. In making  
34 that determination, poverty, including inadequate or crowded housing,  
35 on the part of the blood relative is not considered prima facie evidence  
36 that physical or emotional damage to the child will occur. This deter-  
37 mination may be appealed to the superior court to hear the matter de  
38 novo.

39 (f) If a blood relative of the child specified under (e) of this  
40 section exists and agrees that the child should be placed elsewhere,  
41 before placement elsewhere the department shall fully communicate the  
42 nature of the placement proceedings to the relative. Communication  
43 under this section shall be made in the relative's native language, if  
44 necessary. Nothing in this section or in (e) of this section applies to  
45 child placement for adoptive purposes.  
46

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THIS PUBLICATION IS  
ONE IN A SERIES  
PREPARED BY THE  
DIVISION OF SOCIAL SERVICES  
ALASKA DEPARTMENT OF HEALTH & SOCIAL SERVICES

77-DSS-04

JAY S. HAMMOND

FRANCIS S. L. WILLIAMSON, COMMISSIONER

SAM J. GRANATO, DIRECTOR

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 12, 1977

SUBJECT: Committee Substitute for HB 204 - Changes in Original Bill  
TO: Representative Terry Gardiner, Chairman House Judiciary Committee  
FROM: Andrew Brown

1. Sections 4 & 5 of HB 204 were deleted pursuant to Committee direction, because they relate to criminal laws on excusable homicide and delinquency which will be dealt with in the criminal law revision.
2. Subsection (4) in Section 6 of the bill and sections 7 - 15 have been deleted from HB 204 and introduced in a new separate bill HB 419. These sections deal with adoption, adoption assistance and voluntary relinquishment of parental rights. There is now a sponsor substitute for HB 419 which allows for voluntary termination of parental rights either through the court or a representative of the Department of Health and Social Services or a licensed placement agency. This is the only change in HB 419.
3. The placement of the words "the child" in Section 20 of the original bill in line 13 pg 10 has been moved over to the beginning of each phrase in paragraphs (A) - (E). This should make reading of AS 47.10.010(a)(2) easier.
4. Section 20 of the original HB 204 is further changed by defining "mental harm" in line 24 pg 10. The new language reads in (a)(2)(B) "... prevent his suffering substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and his parents are unwilling to provide the medical treatment." This new language should remove any vagueness problems with the use of the term "mental harm".
5. Another change in Section 20 of the original bill is the addition of the word "either" in line 2 pg 11 after the word "abused". This is to make clear that the sexual abuse covered in (D) can be the result of three different situations.
6. In line 19 pg 22 of the original bill the three days has been changed to 10 days.

These were the only changes requested by the Judiciary Committee in its March 26th hearing at which I testified on HB 204.

Dev  
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G Laws -  
Other  
States

CHILDREN IN MASSACHUSETTS --- AT THE TOP OF THE LIST

THE GOVERNOR'S RECOMMENDATIONS FOR THE  
1974 - 75 CHILDREN'S BUDGET

FACT SHEET

A Major Commitment to Children

The 1974-75 Children's Budget will be submitted by Governor Sargent on January 23rd. The budget includes:

1. a recommendation that 20.4 million new dollars be committed to programs and services to children;
2. the funding of thirty-nine area citizen Councils for Children in the amount of \$150,000 for each Council to develop or continue new community-based services for special needs children and to provide each Council with some staff support.

These funding recommendations place children as the single highest priority for service expansion in the 1974-75 budget. It also represents the highest single increase in the appropriation for new programs in human services in recent years.

A Major Accomplishment for Children's Advocacy Groups

The funds and programs recommended in this budget stem from documented reports and studies from a number of citizen commissions and task forces including the Governor's Advisory Committee on Child Development, the Governor's Commission on Child Abuse, and the Governor's Commission on Adoption and Foster Care. It also represents the culmination of untiring efforts of literally dozens of child advocacy groups over the past years. Finally, the budget reflects the effectiveness of the Office for Children as a coordinating agency and as a voice for children within the governmental process.

A Major Commitment to Local Decision-Making --- The Children's Councils

The Office for Children's most important legislative mandate is to assure parents a decisive role in the planning, operation, and evaluation of programs which aid families in the care of children. In its first year, the Office has helped organize the thirty-nine area Councils for Children to enable the Office to develop and coordinate children's services according to priorities set at the local level. Council for Children members -- parent-consumers and providers representing every children's age group and service need -- have played a significant role in:

1. determining how interdepartmental Project for Children monies are spent in their area;
2. developing, with the Office, area information, referral and advocacy programs for individual children in need of services;
3. setting priorities for the 1975-76 Children's Budget by systematically feeding their local priorities into central Office for Children.

## BUDGET DETAILS

The 1974-75 Children's Budget is a \$20.4 million package of items representing new and improved services for children. These items are part of the state budget which the Governor is submitting to the Legislature for the upcoming fiscal year. They represent services provided by the Office for Children and the Departments of Mental Health, Public Health, Public Welfare and Youth Services.

### New Area Programs -- \$4,231,750 increase over 74

Office for Children - \$3,131,750

The Office for Children budget includes thirty-nine area allocations which total \$5.85 million and will allow the Office for Children, upon the recommendation of Councils for Children, to continue programs begun this year and to develop new community based programs for special needs children. The new monies requested will also provide staff support for these volunteer citizen's Councils.

Department of Mental Health - \$1,100,000

For the first time, the Department of Mental Health budget commits \$1.1 million for developing local services for children recommended by Mental Health and Retardation Area Boards.

### New and Expanded Day Care Services -- \$5,334,540 increase over 74

Department of Public Welfare - \$1,750,000

New funds have been earmarked to increase by about 600 across the state the number of children served in day care programs funded through the Department of Public Welfare. Since this money would be matched by federal funds under Title IV-A of the Social Security Act, children eligible for these services would be those of families on public assistance.

Department of Public Welfare - \$1,984,790

Expansion in state funds available for day care under the donated funds program would provide day care for an additional 600 children.

Department of Public Welfare - \$1,000,000

A new pilot program, funded through the Welfare Department, would for the first time provide day care to children of working families on a sliding fee scale basis.

Office for Children - \$100,000

A small number of staff would be added to the Office for Children licensing unit in order to license and provide technical assistance to the growing number of day care centers and family day care programs.

2.

Department of Public Health - \$371,000

Three new day care centers for physically handicapped children would be created in parts of the state like Western Massachusetts and the Fall River/New Bedford area, where such programs presently do not exist. With the creation of these programs, a total of 200 physically handicapped pre-schoolers would be served in six centers across the state.

Department of Public Health - \$74,960

The Baylies Nursery Program in Canton, one of the three existing centers for physically handicapped pre-school children, is unique in that it also includes non-handicapped children. Begun as a pilot program, this nursery would gain permanent status in the new budget as part of the Massachusetts Hospital School.

Department of Mental Health - \$53,790

By upgrading the salary status of aides in clinical nurseries for retarded children, the budget would guarantee each of the 112 programs across the state two trained staff persons for every twelve children, many of whom are multiply-handicapped.

Community-Based Care - \$8,367,965 increase over 74

Department of Public Welfare - \$2,200,000

Proposed new rates for foster care are significantly higher than the current rate of \$22 - \$25 per week, or \$35 - \$50 for the care of children with special needs.

New Proposed Rates

For children age 0 - 5	\$22 per week
For children age 6 - 10	\$32 per week
For children age 11+	\$42 per week
With special needs	\$60 per week

Department of Public Welfare - \$452,000

Increased funds would cover a number of new foster care services, including liability insurance for foster families. The funds would also create a pilot specialized foster care program, providing foster homes for the first time for 56 children across the state.

Department of Public Welfare - \$18,825

The Massachusetts Adoption Resource Exchange, which has had considerable success in finding homes for "hard-to-place" children, would gain staff who would publicize the need for adoptive homes.

## Office for Children - \$58,159

A new Family Resource Exchange, modeled after the Massachusetts Adoption Resource Exchange and administered by the Office for Children, would pool state and private agency publicity and recruitment efforts, and would increase the number of available foster homes.

## Department of Public Welfare - \$100,000

A new specialized foster home coordination unit would be created to train foster parents in caring for children with special needs, including retarded, physically handicapped, and emotionally disturbed children.

## Department of Mental Health - \$243,316

A 1973 agreement between the Departments of Mental Health and Public Welfare and the Office for Children paved the way for providing community care for 125 mentally retarded children now in state institutions. Funds in the new budget would provide these children with developmental day services in the community, where they will live in foster homes or small group residences.

## Department of Public Welfare - \$500,000

The Division of Family and Children's Services would for the first time provide families above IV-A income limits with counseling and homemaker services to help prevent the need for placing children in foster care. The Governor's Commission on Adoption and Foster Care strongly recommended the increased availability of these supportive services as a means of preventing the breakup of families.

## Department of Public Welfare - \$1,115,505

Protective services for abused and neglected children would be expanded by an increase in the donated funds program.

## Department of Public Welfare - \$84,601

Funds in the new budget would provide additional child welfare workers needed to cover anticipated new foster care cases.

## Department of Public Welfare - \$660,000

Increases in the donated funds program would allow additional children to benefit from community-based drug rehabilitation services and developmental services for the retarded.

## Department of Mental Health - \$245,559

A new program aimed at providing early screening and supportive services for retarded infants up to age 3 would be created in the Department of Mental Health. Teams consisting of a variety of specialists headed by a social worker would provide services and training to children and parents in their homes.

4.

Department of Youth Services - \$1,920,000

Increase in purchase of service account will cover cost increases and provide selective expansion of programs in the Department of Youth Services.

Department of Youth Services - \$125,000

Funds to staff a new fiscal control system planned by the Department of Youth Services are aimed at putting the agency on a firm financial footing.

Department of Mental Health - \$500,000

The 20-acre campus of the former Northampton School for Girls is the site of a planned interdepartmental children's center serving Western Massachusetts. This new center would provide a wide variety of day and short-term residential services for children with special needs. The Office for Children and the Department of Mental Health would jointly coordinate the development of these privately-run programs according to recommendations made by a broadly-based task force made up of both parents and professionals in the area.

Department of Public Health - \$15,000

Recent legislation authorized the creation of a state-wide screening program to detect deafness in children thought to be at risk. The fiscal year 1975 budget would allocate additional funds to carry out this program in the Department of Public Health, beginning in 1974.

Office for Children - \$130,000

The Office for Children would purchase inter-regional programs of state-wide significance for children with special needs not being served by state agency programs.

Residential Programs -- \$2,468,000 increase over 74

Department of Public Welfare - \$500,000

Funds in the new budget would cover rate increases in group homes and institutional programs for children separated from their families.

Department of Public Welfare - \$288,000

Additional money is earmarked in the budget to provide foster parents with an increased allowance for clothing and hospital care to keep up with today's costs.

5.

Department of Public Health - \$265,000

The new Canton Nursery Program for multiply-handicapped children up to age 5 would become a permanent Public Health Department program in the upcoming fiscal year. Begun this spring with funding from the Office for Children, the program includes a month's stay for child and parent at the Massachusetts Hospital School, an evaluation of the child's immediate and long-term rehabilitative needs, training of parents to fulfill these needs at home, and follow-up services after the child leaves. The goal of the Canton program, which serves up to 100 children per year from all over the state, is to enable multiply-handicapped children to avoid institutionalization.

Department of Public Health - \$395,000

Increases in the Massachusetts Hospital School budget would increase from 175 to 200 the number of children served at any one time, would supply new equipment for the brace shop, and expand other services. The School provides an extensive variety of medical, therapeutic, and educational services for physically handicapped Massachusetts children of all ages.

Department of Mental Health - \$1, 020,000

Funds totalling \$3 million are being requested by the Governor for needed improvements in the state's schools. Slightly over \$1 million of this amount will go toward additional direct services and improved living conditions for children in the state schools.

TOTAL CHILDREN'S BUDGET - \$20,402,255\*

\*The total of \$20,402,255 requested is exclusive of additional funds provided to implement Chapter 766, the Special Education Act, which takes effect on September 1, 1974.

CRITERIA FOR EVALUATING NATIONAL  
CHILD DEVELOPMENT LEGISLATION

prepared by the

National Association of State Directors  
of Child Development

- I. Type of Service. We believe that national child development legislation, if it is to be most effective, should provide for the following direct and support services for children. In some instances, services for the child are delivered to the parent or parents.
- A. Direct services
1. Child care
  2. Health care
  3. Nutrition
  4. Education
  5. Legal services and child advocacy
  6. Social services
  7. Mental Health services
- B. Support services
1. Transportation
  2. Training
  3. Facilities
  4. Research and Development
  5. Planning, Coordination and Technical Assistance
  6. Monitoring and Evaluation
- II. Eligibility. We believe that eligibility guidelines written into child development legislation should:
- A. focus primarily on the prenatal through five year old period
- B. provide programs for children above five years of age with special need; not now being met
- C. provide for the unmet needs of all children regardless of economic level, race or creed

III. Administration and Funding. The following conditions should, in our opinion, be written into national child development legislation.

- A. Funds should flow to the States
- B. States should provide a comprehensive state plan for child development which would:
  - 1. contain an assessment of needs and resources
  - 2. address federal priorities if state assessment indicates that federal priorities are not being met
  - 3. address the question of interagency coordination
  - 4. include a process for the involvement of local private and public agencies and parents.
- C. In the absence of state action, local governmental units may submit plans
- D. All state agency plans for receipt of funds for child development services must tie into the state comprehensive plan for child development.

JBHsr/de  
12-12-73

# COUNCILS FOR CHILDREN

State Government and Community Decision-Making

OFFICE FOR CHILDREN  
120 Boylston Street  
Boston, Mass. 02116

January, 1974

Of all the components that make up the Office for Children, the key ingredient to its uniqueness, and ultimately its effectiveness, is its community base. The formation of 39 Councils for Children, each representing a cross-section of children's interests in every area in the state, has been the Office's first priority. With roughly two dozen community organizers, drawn from the various "children's constituencies" the Office hopes to attract, the effort to bring together coalitions of parents, teenagers, and children's service professionals began in early 1973. These staff community representatives began by contacting every identifiable group related to children and drawing them together as an organizing committee. A publicity campaign, complete with leaflets, mailings, newspaper and radio announcements, and posters, summoned to a public organizing meeting a diverse range of people whose common denominator is their active concern for children and their determination to have a say in the state's policies affecting kids.

The general recruitment meeting, at which Office for Children director David Liederman explained the goals of the Office for Children and the possibilities open to a vocal Council for Children, is followed in each area by an election of the Council's first executive board. Aside from the Office's stipulation that at least half of the board be consumers (persons with no financial interest in providing children's services) and that the board be a representative group elected in an open process, Council members are free to design a board structure in whatever way they believe is most representative of children's interests --- geographically and in terms of children's ages, special needs, types of services required, and sometimes ethnic background. The elections themselves are frequently colorful events. Parents, teachers, social workers, welfare mothers, day care advocates, nurses, foster parents, teenagers, local government officials, and other people representing children's concerns converge to mark their ballots for candidates for their Council's decision-making board.

The Councils for Children are now in various stages of formation. Some held board elections as early as last spring. In other parts of the state, community representatives have just begun the process of informing their cities and towns and neighborhoods about the Office for Children and the prospects of forming a Council. The Councils already organized vary widely: some are already sophisticated, vocal and energetic, others are feeling their way along. Some have experienced the growing pains that come when factions that have traditionally competed for limited social service resources fall into competing for control of an organization; others have felt the excitement of building a unique coalition of diverse members feeling their own strength and working for a common goal.

There is such a thing as the politics of children's services; this has existed since the first orphanages and child welfare organizations. The creation of an Office for Children was really an acknowledgement of the political realities involved in making children's services high among the state's priorities. Together, the Office for Children and the Councils are working as children's advocates both within and outside government. How successfully they will each function still remains to be seen.

For the Office for Children, the development of the Councils is both exciting and bewildering. Thousands of parents and professionals mobilized around children's issues could form an army -- or a monster (depending on where you are coming from!). And existing state government institutions -- the large service-providing agencies with whom the Office for Children works regularly on a whole array of issues -- have never felt comfortable with either an army or a monster. Whatever from the Councils finally take, however, there are already some early signs that they are putting behind children's issues some new weight that an Office for Children, operating within the constraints of the bureaucracy, could never muster on its own.

### THE MAKING OF A TYPICAL COUNCIL FOR CHILDREN -- HIGHLIGHTS

#### The Organizing Process

The Greater Springfield Council for Children, serving Springfield and the outlying communities of Agawam, Hampden, East Longmeadow, Longmeadow, West Springfield and Wilbraham, formed during the spring of 1973. The recruitment process was led by an Office for Children community representative, a young black woman who had been the former assistant director of the community Headstart program. The area's Community Coordinated Child Care (4-C) Committee, advocates of early childhood education, served as the nucleus of an organizing committee that began to reach out and include parents and professionals concerned with physically handicapped, emotionally disturbed, mentally retarded, learning disabled, and perceptually handicapped children of all ages, needs, and abilities. The group grew to include a total of almost 300 men, women, and young people interested in developing the delivery of social, medical, educational, developmental, health, and mental health services benefiting children and teenagers in the Springfield area.

The election of the board, in which 96 candidates competed for 35 seats, was held on June 27. No sooner had the winners been announced in the next morning's newspaper, than the Council experienced its first controversy -- a losing candidate challenged the election, claiming that the rules had not been adequately explained. The challenger failed to convince either the Council's organizing committee or the Office for Children that the election had proceeded improperly, however, and the elections results stood.

Since the summer, the Council has taken up several specific projects, some required by the legislation that created the Office for Children, others stemming from issues of concern to Springfield area residents.

#### Proposal Review

Every Council for Children is responsible for designing its own procedures for reviewing and approving the program proposals for funding through the Office for Children. The proposal review committee of the Greater Springfield Council carefully reviews the written proposals submitted to the Council by area agencies applying for Office for Children funding. If the proposed program is consistent with the Council's priorities for expanded services for children with special

needs, the program is then submitted to the Council board for approval.

The Springfield proposal review committee has already established a reputation for its tough review procedures and for examining potential programs with a fine toothed comb. The committee has upheld the Council's belief that its purpose is not to simply fund every good program that comes along, but to stretch the Council's slim resources -- \$85,000 this fiscal year -- by coordinating as much as possible existing funding in the community. For example, the YWCA submitted to the Council a request for funds to buy equipment for the youth program. The Council arranged between the agency and a nearby community center talks which led to the sharing not only of equipment but also program personnel, and thus serving more children. Thus the Council for Children was able to satisfy the agency's need for supplies not through the expenditure of funds but by helping groups talk to one another -- and the Council views this role as coordinator as important as any other.

The Council has reserved for funding only those programs which provide unique services which could not be funded by any other agency and which are community priorities. One such program deals with infant care, and is operated by an agency already experienced in providing day care for preschoolers. Such a service was determined to be a priority because of an almost total lack of facilities for caring for infants, and because of the relatively high cost of providing such care with a high child/staff ratio. Funds to begin the project had already been committed by the state Department of Public Welfare, by the Junior League, and by a private agency that provides services for pregnant teenagers. The Council saw an opportunity for the Office to participate in a joint community effort to provide a badly needed service, and agreed to become a sponsor of the program. The center now provides care for up to 16 infants, children of low-income parents who would not otherwise be able to properly care for them while working during the day.

A second program which the Council approved for funding through the Office for Children is a community center whose existence had been threatened by cutbacks in the Model Cities program. The center, located in the city's Hill Area which is a priority in terms of service needs for children, has been offering a variety of day and after-school programs for children from pre-school age all the way through their teens. The Model Cities cutbacks had particularly affected those children who are bussed to schools in distant neighborhoods. The center had been providing these children with transportation from school to the center, but the cutbacks discontinued this service along with some other programs the center offered. Council for Children approval of only \$1600, supplementing funds from other sources, insures the survival of the community center.

#### Monitoring and Evaluation

This Council committee, although its task seems perfunctory, has already been responsible for upgrading the quality of service delivery to children in the Springfield area. The committee works closely with the proposal review committee and examines programs approved for funding by the Council. In a couple of cases the committee had found weaknesses which made the program inconsistent with the Office for Children or Council requirements, and its evaluation brought about constructive changes -- such as increased involvement of parents, for instance -- in the program. The committee has now set up a liaison person in contact with each program funded by the Council, and is establishing a system for monitoring all day care programs funded by the Department of Public Welfare.

### Child Abuse

The Council established a committee to tackle the very difficult problem of child abuse and neglect in the Springfield area. Composed of both parents and protective service agency representatives, the committee has had an active role finding speedy placement of children at risk in services suited to their special needs and those of their families. A program for abused and neglected children is funded by the Council and serves up to 12 infants with the most urgent service needs. Because the demand for services surpassed the capacity of this program, the committee worked to establish a day program to serve additional children. The committee's most challenging but potentially most far-reaching project is a joint effort with the Office for Children aimed at pooling the efforts, resources, and information of agencies capable of responding to child abuse. These agencies, the Council for Children, and the Office for Children's information and referral staff have made initial plans for a system in which doctors, hospitals, agencies, and others who know of abused or neglected children would report cases to a single telephone number where trained personnel would quickly and reliably assign responsibility to the appropriate agency for efficient response. A cross-reference system would immediately identify children who have been served previously by different medical or social service agencies, and would alert a responding agency to any history of child abuse in the family.

### Lead Paint Poisoning

A Council for Children committee, headed by a concerned parent, has been formed to try to break the "vicious bureaucratic circle" the Council feels has stifled the action needed to prevent lead paint poisoning in Springfield, particularly in public housing. Armed with statistics collected by a pediatrician who sits on the Council, the committee is working with representatives of state and city agencies to collectively establish roles and responsibilities with regard to public information and preventive testing.

### Chapter 766

A new state Special Education Law requiring local school systems to provide special education for all children who need it will be implemented next September. This controversial but progressive and potentially far-reaching legislation poses many challenges for schools, service providers, and children's advocates. A Council for Children committee, including a number of parents of children with learning disabilities, has formed to work out the role the Council will play in the next year with regard to Chapter 766. Chaired by a parent of a child in a residential school, the committee is studying the regulations for the law's implementation in an effort to plan Council strategy for insuring that adequate programs are developed and that all Springfield special needs children will benefit from the services to which they are entitled.

Other Council Committees:

A legislation committee is concerned with bills pending state legislation related to children.

A publicity and public relations committee is responsible for informing members about Council activities and children's issues through a newsletter, and informing the Springfield community through the media.

A foster care and adoption committee is concerned with recruitment of parents and reforming the foster care and adoption system.

A standards and regulations committee plan to act as a liaison between the Office for Children licensing staff and the community, and will work to interpret new regulations to service providers and parents.

In the Matter of E. M. D., a Minor Child.  
No. 1524.

Supreme Court of Alaska.  
Nov. 15, 1971.

The Superior Court, Third Judicial District, Harold J. Butcher, J., found minor to be a child in need of supervision and ordered institutionalization of minor, and appeal was taken. The Supreme Court, Rabinowitz, J., held that Superior Court exceeded its authority in ordering the institutionalization of minor who was found to be a child in need of supervision and since child was not found to be a delinquent minor no legal basis existed for her incarceration.

Dispositive provisions of Superior Court's judgment set aside and matter remanded.

1. Infants  $\Rightarrow$  16.2, 16.3

A child can be declared a dependent minor, a child in need of supervision, or a delinquent minor. AS 47.10.080(b) (1), 47.10.290(2, 7).

2. Infants  $\Rightarrow$  16.12

Superior Court exceeded its authority in ordering the institutionalization of minor who was found to be a child in need of supervision and since child was not found to be a delinquent minor no legal basis existed for her incarceration. AS 47.10.080(b) (1), 47.10.290(2, 7).

3. Infants  $\Rightarrow$  16.12

Only instance authorizing institutionalization or incarceration of minor is when child has violated laws of state or any of its political subdivisions and in turn has been adjudged a delinquent minor. AS 47.10.080(b) (1).

4. Infants  $\Rightarrow$  16.4

Notions of benevolent protective policies for children cannot be used to validate departures from positive law relating to adjudicative and dispositive phases of children's proceedings. AS 47.10.010(a) (2, 3,

6), 47.10.080(b) (1), (c) (1), (j), 47.10.290(2, 7); Rules of Children's Procedure, rule 12(b).

5. Infants  $\Rightarrow$  16.12

Department of Health and Welfare does not possess authority to institutionalize any minor, including one who has been declared in need of supervision and who has been committed to its custody, and statute prescribes conditions of confinement after a court has lawfully determined that a child should be confined in an institution. AS 22.20.022, 47.10.080(c) (1), (j), 47.10.190.

6. Infants  $\Rightarrow$  16.14

Right of appeal existed from dispositive order that minor, who had been adjudged a child in need of supervision, should be institutionalized. AS 22.05.010, 47.10.080(i), 47.10.290(7); Supreme Court Rules, rules 6, 23.

Herbert D. Soll, Public Defender, Bruce A. Bookman, Asst. Public Defender, Anchorage, for the minor child.

John E. Havelock, Atty. Gen., Juneau, Seaborn J. Buckalew, Jr., Dist. Atty., Robert L. Eastaugh, Asst. Dist. Atty., Anchorage, for State of Alaska.

Before BONEY, C. J., and DIMOND, RABINOWITZ, CONNOR, and ERWIN, JJ.

OPINION

RABINOWITZ, Justice.

In this appeal we are called upon to decide whether a minor who has been adjudged a child in need of supervision can be institutionalized under our children's code.

[1] Both Alaska's statutes relating to children's proceedings and the rules of procedure governing such proceedings establish three distinct categories of children. Thus, a child can be declared a dependent minor, a child in need of supervision, or a delinquent minor. AS 47.10.290(7) defines a "child in need of supervision" as a minor whom the court determines is within the provisions of AS 47.10.010(a) (2), (3),

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Those provisions include a minor  
 by reason of being wayward or  
 usually disobedient is uncontrolled by  
 parent, guardian, or custodian;  
 is habitually truant from school or  
 home, or habitually so conducts himself  
 to injure or endanger the morals or  
 health of himself or others;  
 . . . .  
 associates with vagrant, vicious or  
 immoral people, or engages in an occupa-  
 tion or is in a situation dangerous to life  
 or limb or injurious to the health, morals,  
 or welfare of himself or others.<sup>1</sup>

Regarding the dispositive phase of chil-  
 dren's proceedings, Alaska's children's code  
 provides that if the court determines the  
 minor is a child in need of supervision, it  
 shall make any of the following orders of  
 disposition regarding the minor's super-  
 vision, care, and rehabilitation:

- (1) any order which is authorized un-  
 der (c) of this section; or
- (2) order the minor placed on proba-  
 tion under those conditions and limita-  
 tions that the court may prescribe.<sup>2</sup>

Under section (c) of AS 47.10.080, the  
 court is empowered to order the minor com-  
 mitted to the Department of Health and  
 Welfare or order the minor released to his  
 parents, guardian, or some other suitable  
 person.<sup>3</sup>

In the case at bar, the superior court  
 found that E. M. D., a 14-year-old runaway  
 girl, was a child in need of supervision.  
 The court's findings were made after sev-  
 eral hearings before a master and the su-

perior court, and were based largely upon  
 the master's findings of fact and recom-  
 mendations. In the dispositive portion of  
 the trial court's judgment, it was ordered  
 that E. M. D. be

committed to the custody of the Depart-  
 ment of Health and Welfare for an in-  
 determinate period \* \* \*.

The court further ordered that E. M. D.  
 be placed by the Department in a cor-  
 rectional or detention facility as defined  
 in AS 47.10.080(b) (1), to be held in that  
 facility until released therefrom upon a  
 showing by an officer of the Division of  
 Corrections that the minor has completed  
 a program of rehabilitation and has been  
 amenable thereto, and that the Court has  
 been advised in writing that such release  
 is contemplated.

[2] In this appeal it is argued that the  
 superior court exceeded its authority in  
 ordering the institutionalization of E. M. D.  
 who was found to be a child in need of su-  
 pervision. We are in agreement with the  
 minor's contentions. As mentioned at the  
 outset, Alaska's pertinent statutory provi-  
 sions and procedural rules distinguish be-  
 tween categories of children for purposes  
 of administering our children's laws. Of  
 controlling significance here is that each  
 class or category man distinct dif-  
 ferences regarding the possible content  
 of any dispositional or trial court  
 can enter.

[3] Study of our children's laws leads to  
 the conclusion that the legislature has au-  
 thorized institutionalization only where the  
 child is found to be a delinquent minor.  
 The term "delinquent minor" is defined as a

- (2) order the minor released to his par-  
 ents, guardian, or some other suitable  
 person; if the court releases the minor,  
 it shall direct the department to supervise  
 the care and treatment given to the minor;  
 the department's supervision may not ex-  
 tend past the date the minor becomes 19  
 years of age, except that the department  
 may petition the court for continued super-  
 vision for an additional one-year period  
 for minors who have not responded to  
 treatment. \* \* \*

<sup>1</sup> Compare R. 12(b), Rules of Children's  
 Procedure.  
<sup>2</sup> AS 47.10.080(j).  
<sup>3</sup> AS 47.10.080(e) reads in part as follow...  
 (1) order the minor committed to the  
 department for an indeterminate period  
 of time not to exceed the date the minor  
 becomes 19 years of age, except that the  
 department may petition the court for  
 continued supervision for an additional  
 one-year period for minors who have not  
 responded to treatment;

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child who has violated a law of the state, or an ordinance or regulation of a political subdivision of the state.<sup>4</sup> As to the appropriate disposition once the child has been determined to be a delinquent minor, the legislature has in part provided that the court shall order the minor committed to the Department of Health and Welfare for an indeterminate period and

may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department. \* \* \*

Thus the only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.<sup>6</sup>

[4] In reaching this conclusion, we have rejected the state's contention that the trial court's order of incarceration is sustainable in light of the legislature's broad policy declaration to the effect that protection of children is the paramount purpose govern-

4. AS 47.10.280(2).

5. AS 47.10.080(b) (1).

6. *Cf. Fish v. Horn*, 14 N.Y.2d 905, 252 N.Y.S.2d 313, 200 N.E.2d 857 (1964).

7. AS 47.10.280 provides:

The purpose of this chapter is to secure for each minor the care and guidance which is as nearly as possible equivalent to that which should be given him by his parents. The principle is recognized that minors under the jurisdiction of the court are wards of the state, subject to its discipline and entitled to its protection, and that the state may act to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.

8. *R.R. v. State*, 487 P.2d 27, 30-31 (Alaska 1971).

9. The state argues that even if the trial court lacks power to institutionalize a child in need of supervision, it can order the child committed to the Department of Health and Welfare which in turn can

ing its enactment of laws pertaining to children's courts and institutions.<sup>7</sup> In another context we recently held that the benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards.<sup>8</sup> As to the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

[5] We also reject the suggestion that the Department of Health and Welfare possesses the authority to institutionalize any minor, including one who has been declared a child in need of supervision, who has been committed to its custody. We find it unreasonable to construe our children's statutes in a manner which would result in the grant to the Department of Health and Welfare of broader powers of commitment than possessed by the trial court.<sup>9</sup> In our view the statute relied upon by the state for this construction prescribes conditions of confinement after the court has lawfully determined that a child should be confined in an institution.<sup>10</sup>

place the child in a detention facility. The argument is that under AS 47.10.080(c) (1) a minor can be committed to the Department of Health and Welfare. The state argues that AS 47.10.100 permits the department to institutionalize any minor committed to them. AS 47.10.100 reads as follows:

When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults.

10. We note with approval the state's candor in briefing the issues in this case. The state, in its brief, initially conceded that if this court looks only to the express language of AS 47.10.080(j) and 47.10.080(c), a strong argument can be made that the judgment entered below exceeded the

[6] should private why the penal review. invoke tion in able fo White, (Rabin court lows p prior tion. said:

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[6] One additional aspect of this appeal should be discussed for we think it appropriate that an explanation be given as to why this matter has been treated as an appeal rather than coming before us for review. Counsel for the minor sought to invoke our discretionary review jurisdiction in the belief that appeal was unavailable for two reasons. First, he cites *In re White*, 445 P.2d 813, 815 (Alaska 1968) (Rabinowitz, J., concurring). There this court interpreted AS 22.20.022, which allows peremptory disqualification of a superior court judge in a civil or criminal action. A majority of the court in *White* said:

While juvenile proceedings have some of the characteristics of both civil and criminal actions, we hold that they are basically different from both, and that the words 'civil or criminal' as used in AS 22.20.022 must be strictly construed. The trial judge was correct in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings.

Counsel for the minor reads *White* as requiring the filing of a petition for review because the final judgment rule embodied in Supreme Court Rule 5 applies only to civil or criminal actions.<sup>11</sup> Such an expansive reading of *White*, assuming without deciding its continued validity in light of several of our recent decisions

which vindicated certain constitutional and procedural rights of children in children's proceedings,<sup>12</sup> would result in precluding any review of children's decisions. For the rules which delineate this court's review jurisdiction limit such jurisdiction to "any order or decision of the superior court, not otherwise appealable under Rule 6, in any action or proceeding, civil or criminal. \* \* \*"<sup>13</sup> Adoption of counsel's interpretation of *White* would also conflict with AS 22.05.010 which places final appellate jurisdiction in all cases in the supreme court.<sup>14</sup> We think *White* should be limited to its interpretation of the peremptory disqualification statute. On the other hand, we hold that the right to appeal from the type of disposition order which was entered in this children's proceeding has been clearly established by the legislature. In this regard, AS 47.10.080(i) provides:

A minor, his parents or guardian acting on his behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

The dispositive provisions of the superior court's judgment are set aside and the matter is remanded for such further disposition proceedings as are necessary and the entry of an appropriate disposition order.

court's disposition jurisdiction. The final portion of the state's brief concludes on the following note:

Nevertheless, it is the belief of the Department of Law that the judgment ordering petitioner detained exceeded the authority of the court below. This belief is founded on the State's concern that courts should comply with their granted powers even where, as here, the factual circumstances cry out for a disposition beyond the fingertips of the lower court.

11. In regard to what may be appealed, Supreme Ct.R. 6 states:

An appeal may be taken to this court from a final judgment entered by the

superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or information.

12. *Doe v. State*, 487 P.2d 47 (Alaska 1971); *R.I.R v. State*, 487 P.2d 27 (Alaska 1971).

13. Supreme Ct.R. 23.

14. For a discussion of another facet of this court's final appellate jurisdiction see *State v. Browder*, 486 P.2d 925, 929-933 (Alaska 1971).

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1971

Position Paper

on

Senate Bill No. 106

"An Act relating to children's laws and related judicial proceedings; changing the court's responsibilities and authority under Children's Rules 11(a), 12(a) and (b), 14, 15, 21, and 28, and Rule of Civil Procedure 17(b)."

This Bill constitutes recommendations of the Children's Code Revision Task Force made as the result of meetings held between August 1975 and December 1976. A section by section analysis prepared by the Attorney for the Task Force, is attached.

The changes proposed in the Bill are, in our judgement, appropriate both in the interest of children and their families and in the interest of clarifying intent, roles and responsibilities.

The Department supports the Bill.

Recommended by: [Signature] Date: 2/9/77  
Director of Social Services

[Signature] Date: 3/1/77  
Director of Corrections

Approved by: [Signature] Date: 2/15/76  
for Commissioner  
Department of Health & Social Services

Comments by Governor's Office:

By: \_\_\_\_\_ Date: \_\_\_\_\_

I. REQUEST

Bill/Resolution No. Senate Bill No. 106

Title An Act relating to children's laws and related judicial proceedings

Requested by \_\_\_\_\_ Date 2/8/77

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services

Program Category Affected Division of Social Services

Budget Request Unit(s) Affected Program Services

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	1.2	1.2	1.3	1.4	1.5	1.6
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	1.2	1.2	1.3	1.4	1.5	1.6

FUNDING (Thousands of Dollars)

	1.2	1.2	1.3	1.4	1.5	1.6
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Section 13 of the Bill, requiring the Department to disseminate information throughout the State about the availability of adoptable children and financial assistance to eligible adopting families, constitutes the most significant new cost item in the Bill. Funds will be required for printed material, radio and TV announcements and newspaper ads.

IV. DATE 2/8/77

PREPARED BY Sam J. Granato, Director

AGENCY Division of Social Services

PHONE 465-3170

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

*Sam J. Granato*

But such provision involves only persons whose presence is not desired by child.—The area of discretion in the rule, where the court may refuse to open the hearing, involves persons whose presence is not desired by the child. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

It is an abuse of discretion for the court to refuse admittance to individuals whose presence is favored by the child, except in special circumstances such as the unavailability of a courtroom sufficiently large to hold all the individuals whose presence is sought. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child or his guardian ad litem wants the press, friends, or others to be free to attend, then the hearing must be open to them. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

As children are guaranteed the right to a public trial by the Alaska Constitution. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceedings, in spite of the possible interference with the benevolent motives of the children's court system which have, in the past, justified denial of those rights. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The reasons for the constitutional guarantees of public trial apply as much to juvenile delinquency proceedings as to adult criminal proceedings. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Sec. 47.10.080. Judgments and orders.

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

(1) order the minor committed to the Department of Health and Social Services for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under § 200 of this chapter; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor reaches majority, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

(f) A minor found to be delinquent, a child in need of super-

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vision, or dependent is a ward of the state as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c) (1) or (2) or (j) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision is in the best interest of the minor and the public, and to determine if the minor is being treated fairly. The department or the minor's parents or guardian is entitled to a review on application. The minor shall be afforded the opportunity to be present at the review.

(k) In making its order under (c) of this section, the court shall consider the fact, if it is a fact, that the minor was being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination. (am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974)

**Effect of amendments.**

The 1972 amendment, in subsection (c)(2), inserted "and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment," and substituted "reaches majority" for "becomes 19 years of age." The amendment also added subsection (k).

The 1974 amendment, in paragraph (1) of subsection (b), substituted "the department shall place the minor in the juvenile facility which the department considers appropriate and which may include" for "and may direct the minor's placement in," deleted "designated by the department" following "detention facility," and added "and may also be released by the department, in its discretion, pursuant to § 200 of this chapter." The amendment also, in subsection (f), substituted "state" for "court" in the first sentence and rewrote the fourth sentence.

As the rest of the section was not affected by the amendments, it is not set out.

Notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Nor to justify dispensing with constitutional safeguards.—The benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing

with constitutional safeguards. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The right of confrontation is paramount to the state's policy of protecting a juvenile offender. Davis v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

But state's interest in secrecy of juvenile adjudications need not always fall before confrontation right. —See Gonzalez v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Prosecution witness impeachable by cross-examination for bias from probationary status as juvenile delinquent.—The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness' probationary status as juvenile delinquent although such an impeachment would conflict with a state's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency. Davis v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Whatever temporary embarrassment might result to a prosecution witness or his family by disclosure of his juvenile record—if the prosecution insisted on using him to make its case—is outweighed by petitioner's right to probe into the influence of possible bias on the testimony of a crucial identification witness. Davis

v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The state cannot, consistent with right of confrontation, require the defendant to bear the full burden of vindicating the state's interest in the secrecy of juvenile criminal records. Davis v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The United States supreme court has held that the constitutional right of confrontation required that defense counsel be allowed to investigate the potential bias of a crucial prosecution witness, even where that potential bias arose out of a juvenile adjudication and its resultant probationary status. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Conflict between section and decision in Davis v. State is superficial. — The conflict between this section and the supreme court's decision in Davis v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is only superficial. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Since disclosure required because of probationary status, not juvenile adjudication.—The constitutional requirement of disclosure in the facts in Davis v. State, U.S. , 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is created not by the juvenile adjudication itself but by the probationary status of the juvenile at the time of Davis' trial, with its potential for motivating false testimony. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Where the witness was not on juvenile probation, it cannot be seriously argued that the fact of previous juvenile convictions, standing alone, provided any inference of potential bias. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

State adjudications directed solely

at credibility do not conflict with confrontation right.—Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently probative to create a genuine conflict with the defendant's right of confrontation. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Where the attempted impeachment was of general credibility by proof of prior "convictions," the probative value of this type of evidence is considerably less than that which suggests false or distorted testimony because of bias, and the need to confront a witness with such evidence is correspondingly less. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

As a general rule, the trial courts could properly refuse evidence of stale convictions or juvenile adjudications where these were offered for the purpose of discrediting the witness generally rather than to show some specific potential for bias or prejudice toward the defendant. Thomas v. State, Sup. Ct. Op. No. 1040 (File Nos. 1888, 1854), 522 P.2d 528 (1974).

Subsection (g) provides in part that a juvenile offender may not be considered a criminal by reason of the adjudication, nor may the adjudication be afterward deemed a conviction. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512 (1974).

Three distinct categories of children established.—Alaska's statutes relating to children's proceedings and the rules of procedure governing such proceedings establish three distinct categories of children. Thus, a child can be declared a dependent minor, a child in need of supervision, or a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

And each category mandates differences regarding content of dispositional orders.—Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court

can enter. In re Ct. Op. No. 737 P.2d 658 (1971)

The age limit subsection (b)(1) time the juvenile commitment to Health and Social Services 1970 legislative reduce the age number of months and is considered 47.10.060(d) was changed appropriate. In re 1857 (File No. 1972).

Section is statute.—Statute upon a specific fact, maximum Davenport v. No. 1049 (File No. 1140 (1974).

Sentence retroactive in the amendment section that the sentence retroactive McGinnis, Sup. Ct. Op. No. 1942, 521 P.2d 512 (1974).

The word "child" (b)(1) and court must determine intent to plan and Social Services. The analysis, especially provision in subsequent following pl legislature intent to plan of the court Op. No. 706 27 (1971).

Abandonment consists of the paragon's disapproval by a child relative Ct. Op. No. 1234 (1971). Abandonment has been an meaning o

can enter. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The age limitation of 19 years in subsection (b)(1) as to the length of time the juvenile court can order commitment to the Department of Health and Social Services reflects a 1970 legislative decision intended to reduce the age of majority in a great number of matters concerning minors and is considered controlling over AS 47.10.060(d) which was not similarly changed apparently through oversight. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Section is maximum sentencing statute.—Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Sentence reduction to 19 years of age not retroactive.—There is nothing in the amendatory legislation to this section that indicates an intention that the sentence reduction should operate retrospectively. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

The word "or" between subsections (b)(1) and (b)(2) implies that the court must choose between commitment to the Department of Health and Social Services and probation, and may not delegate the choice to the Department of Health and Social Services. This is a correct textual analysis, especially in light of the provision in subsection (b)(1) for subsequent court order for probation following placement or detention. The legislature has clearly indicated its intent to place this choice in the hands of the court. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Abandonment defined.—Abandonment consists of conduct on the part of the parent which implies a conscious disregard of the obligations owed by a parent to the child, leading to the destruction of the parent-child relationship. D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973).

Abandonment to be determined objectively.—Whether or not there has been an abandonment within the meaning of this section is to be deter-

mined objectively, taking into account not only the verbal expressions of the natural parents, but their conduct as parents as well. D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973).

The subjective intent standard often focuses too much attention on the parent's wishful thoughts and hopes for the child and too little on the more important element of how well the parents have discharged their parental responsibility. D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973).

The child's best interests are properly a consideration in determining whether a parent has abandoned the child. D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973).

A minor who has been adjudged a child in need of supervision cannot be institutionalized under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a runaway child found to be a child in need of supervision, not a delinquent minor, no legal basis exists for his incarceration. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The only instance under Alaska children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Power of court under subsection (c).—Under subsection (c) of this section, the court is empowered to order the minor committed to the Department of Health and Social Services or order the minor released to his parents, guardian, or some other suitable person. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been de-

clared a child in need of supervision, who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. *In re A Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**Peremptory challenge procedure inapplicable to juvenile proceedings.**— While juvenile proceedings have some of the characteristics of both civil and criminal actions, they are basically different from both, and the words "civil or criminal" as used in AS 22.20.022 must be strictly construed. The trial judge was correct in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings. *In Re A Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

A child adjudicated delinquent for selling LSD may be incarcerated, possibly even in a city jail, until age 19,

**Sec. 47.10.085. Dependent minor; religious treatment.** In a case in which the minor's status as a dependent minor is sought to be based on his need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under § 20(a) of this chapter. (§ 8 ch 1 SLA 1972)

**Sec. 47.10.090. Records.** (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared in the discharge of his official duty by an employee of the court or by a federal, state or city agency are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with

which may be many years. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

When sentence determined. — The sentence which may be imposed upon a convicted adult is determined as of the time of the final judgment of conviction, or as of the time of commission of the offense. These rules have been applied to juvenile sentencing. *Davenport v. McGinnis*, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

**Appellate jurisdiction.**—AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. *In re A Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Quoted in *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972).

Stated in *In re G.K.*, Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972).

Cited in *Elliason v. State*, Sup. Ct. Op. No. 898 (File No. 1750), 511 P.2d 1066 (1973).

making a preliminary court. Within 30 days of birthday or, if the defendant's 18th birthday, who relinquishes jurisdiction, all the court's efforts pertaining to that minor against him and traffic offenses. Nonetheless except that shown or may occur a presentencing report.

(b) The name of the court may not be stated in connection with a dependent child, except

(c) A person convicted of a misdemeanor may not receive more than \$500 or by both. (§ 10 SLA 1972)

Effect of amendment substituted for "shall" in the third sentence substituted "a case" the fourth sentence, added the fifth sentences therein, and deleted sentence of subsection (c). In subsection (c) substituted "a section" for "this provision".

Waiver of provisions. In the case of use of

**Sec. 47.10.095.** than for a traffic offense except for that arising out of that area

**Sec. 47.10.100.**

(c) If a minor is under supervision, or a retained jurisdiction, the purpose of supervision over him under that day, except that continued supervision have not responded

§ 47.10.095 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.10.100

making a preliminary investigation for the information of the court. Within 30 days of the date on which a minor reaches his 18th birthday or, if the court retains jurisdiction of a minor past his 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against him and punishments assessed against him, except for traffic offenses. No person may use records so sealed for any purpose except that the court may order their use for good cause shown or may order their use by an officer of court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public by a newspaper, radio, or television station in connection with the minor's status as a delinquent or dependent child, except as authorized by order of the court.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972)

**Effect of amendment.**— The 1972 amendment substituted "may not be disclosed" for "shall not be disclosed" in the third sentence of subsection (a), substituted "a case" for "the case" in the fourth sentence of that subdivision, added the fifth and sixth sentences therein, and designated the last sentence of subsection (b) as subsection (c). In subsection (c), the amendment substituted "a provision of this section" for "this provision."

**Waiver of provisions of section.** — In the case of use of restraints more

severe than placement in adjustment rooms (solitary confinement), the approval of the director of McLaughlin Youth Center must be obtained and a report made to the child's attorney and the family court. The provisions of this section are waived for this purpose. *T.M. v. Director of McLaughlin Youth Center*, Superior Court, No. 72-449 (1973).

Stated in *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**Sec. 47.10.095. Arrest of a minor.** The arrest of a minor other than for a traffic offense is not considered an arrest for any purpose except for the purpose of the disposition of a proceeding arising out of that arrest. (§ 2 ch 124 SLA 1972)

**Sec. 47.10.100. Retention of jurisdiction over minor.**

(c) If a minor is adjudicated a delinquent, a child in need of supervision, or a dependent before his 18th birthday, the court may retain jurisdiction over him after his 18th birthday for the purpose of supervising his rehabilitation, but the court's jurisdiction over him under this chapter never extends beyond his 19th birthday, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment. The department may retain ju-

August 28, 1975

M E M O R A N D U M

TO : Legislative Council  
FROM : Children's Code Revision Task Force  
BY : Anne D. Carpeneti, Legislative Counsel  
SUBJECT: Monthly Report

Please see attached report.



# Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3800

August 28, 1975

## WORK PLAN

### Legislative Council Task Force

#### Children's Law Revision

#### I. PURPOSE

The purpose of the Task Force is to study the Alaska Statutes dealing with children and to propose revision of the statutes which the Task Force finds in need of change. This study and revision is viewed by the Task Force as the first step in developing a children's code for Alaska.

#### II. GOALS AND OBJECTIVES

During the period before the legislature reconvenes, the Task Force plans to determine the areas of Alaska law dealing with children which are most in need of review, look critically at Alaska's approach to the treatment of children in these areas, comparing Alaska's approach to that of other states, and to submit legislation to the Council revising the statutes which the Task Force determines to be in need of revision.

#### III. ASSUMPTIONS

A. Responsibilities. The Legislative Council will provide an attorney who will spend approximately one-third of his/her time on the work of the Task Force, travel expenses and per diem for the attorney, office space for the attorney and researcher, and clerical support for the project. The Office of Child Advocacy is funding a full time research person for the interim period, and travel expenses and per diem for the researcher. The Office of the Governor is providing funds for travel expenses and per diem for the members of the Task Force.

B. Task Force Structure. The Task Force will meet five times during the interim period. The meetings are scheduled for August 14, September 17, October 15, November 19 and December 17. At the September meeting the Task Force will break

down into smaller groups. Each group will deal with one of the priority areas which the Task Force has decided to address. The small groups will study the problem areas in depth and report their findings to the Task Force. The Task Force will then decide whether to adopt the reports of the small groups and to recommend legislation to the Legislative Council.

#### IV. TASKS

At the August 14, 1975 meeting the Task Force decided to look into the following areas during the interim period:

- (1) update the draft of the Child Law Compilation prepared by the Legislative Affairs Agency in October 1974;
- (2) role of the guardian ad litem in the Alaska Court System;
- (3) the treatment of children classified as dependent, neglected, delinquent and in need of supervision in the Alaska Statutes;
- (4) the treatment of emotionally disturbed children;
- (5) the protection of the property rights of orphaned children in the state, particularly the rights of children under the Alaska Native Claims Settlement Act;
- (6) the scope of the term "care of the child" under AS 47.10.230;
- (7) the adequacy of the statutes dealing with child abuse in the state;
- (8) the treatment of status offenders.

Staff research for the first three areas is scheduled for completion by the September meeting of the Task Force. The remaining research is scheduled for completion by the October meeting. After each meeting a report on the work progress will be prepared for submission to the Legislative Council.

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Betsey McGuire, Chairperson  
Task Force on the Children's  
Law Revision

ADC:hg

# STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

(907) 465-3800

September 30, 1975

## CHILDREN'S CODE REVISION TASK FORCE SUMMARY OF MEETING SEPTEMBER 17, 1975

Andy Brown, research staff for the task force, reviewed his progress in researching issues dealing with the guardian ad litem in Alaska. The task force then discussed various problems with the present system of providing guardians ad litem for children. The problems discussed included:

- 1/ attorneys appointed are often not interested or knowledgeable in issues involving children;
- 2/ the length of time a guardian ad litem is responsible for the child after disposition of the case;
- 3/ the availability of persons in the bush areas to act as guardians ad litem; and
- 4/ the duties and powers of guardians ad litem are vague.

Later a working group of the task force formulated the following proposals regarding the guardian ad litem for consideration by the whole task force:

- 1/ that the present discretionary appointment by the court of guardians ad litem continue to remain in effect;
- 2/ that the scope of the guardian ad litem's duties be clearly delineated and include
  - a/ investigation of the legal and factual issues of a particular child's case and report these to the court;
  - b/ the power as guardian ad litem exist no longer than the particular matter is before the court, in other words from the time of the filing of a petition, which will involve a child's present or future care, custody or control, until the court's disposition of that matter; and

c/ the power of a guardian ad litem is to be distinguished from a guardian of a person in that the former involves only the representation of a child's best interests before a court, while the latter involves the right and power to make decisions concerning a child's physical and emotional welfare, such as food, clothing, housing, schooling, recreation, health, and finances;

3/ AS 09.65.130, AS 20.15.100(j), and AS 47.10.05 be amended to read "guardian ad litem who may also be an attorney" rather than "guardian ad litem or attorney"; and

4/ the term "law guardian" be used instead of the Latin terminology "guardian ad litem".

The staff then reviewed its research into the matters of dependent children, delinquent children and children in need of supervision. The following issues were discussed by the task force:

1/ the mandatory termination at certain intervals of state intervention unless the state can make a positive showing that state involvement is still necessary;

2/ mandatory annual review of a child's disposition;

3/ long range foster care so that foster families can get medical care and state aid;

4/ removing status offenders from the court system entirely;

5/ the problem of getting psychiatric care for children without institutionalizing them; and

6/ the lack of diagnostic services for children and their families.

A working group of the task force met in the afternoon and agreed that the following be researched and submitted to the whole task force:

- 1/ eliminate the category of children in need of supervision;
- 2/ remove the "fault" approach from consideration of dependent children;
- 3/ devising a way that children and their parents may be ordered by the court to receive diagnostic treatment and services;
- 4/ define "intake services" with greater specificity; and
- 5/ define "juvenile detention home," "institution," and "juvenile correctional school" with more specificity.

AC:cb

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 24, 1977

SUBJECT: Response to Issues Brought Up at Joint Senate HESS  
and House Judiciary Committee Meeting on SB 106 -  
HB 204

TO: Members of Senate HESS and House Judiciary Committees

FROM: Andrew M. Brown  
Attorney for Children's Code Revision  
Task Force

Following are comments touching upon the various issues raised by witnesses testifying on SB 106 - HB 204. I hope these comments clarify any uncertainties concerning this legislation.

1. Issue - Statement by Sam Granato, Director of Social Services, concerning the little possibility of state intervention into home life based upon only unsanitary home environment.

Response - Section 20 of the bill redrafts AS 47.10.010(a) because the present law does allow the very distinct possibility of unwarranted intervention in family affairs. Precisely because of the present .010(a)(1) - (9)'s vague standards, the task force has tightened and clarified the scope of the children's court jurisdiction. Under the present "lacks proper parental care by reason of the faults, habit, or neglect of his parent, guardian, or custodian" in .010(a)(5) the Department of Health and Social Services could interfere in family affairs without any showing of actual or imminent harm to the child.

2. Issue - Comments by Rudy Johnson on amending Section 1.

Response - His first amendment concerns deleting "as a matter of right" in lines 21 - 22, page 1. This phrase insures that neither parent has greater rights over the other at the outset of a custody hearing, and the phrase should be kept. Mr. Johnson's second suggestion concerned a sixth standard for the court's consideration of child custody. He desires that the court look at the attitudes of the parents toward each other and how that might affect the relationship between the child and the parent who does not

have custody. Since divorce concerns parental separation based usually on incompatibility, there will often be rancor between the parents and it is inevitable that this rancor may affect the child/non-custodial parent relationship. Whether this added factor will help the court in deciding the child's best interests, I cannot say.

3. Issue - Comment by Sister Mary Clare on her not liking the necessity of the mother relinquishing her parental rights before a judge under Section 18 of this bill.

Response - Under present law in AS 20.15.180 a parent can relinquish his or her rights to a child either in the presence of an agency representative or in court. However, the present law does not set out any standard to insure that the relinquishing parent will be told the full consequences of his or her act. While Sister Mary Clare's agency may do an adequate job explaining the meaning of relinquishment, there is no guarantee that other private or governmental agency personnel will sufficiently explain relinquishment. Since relinquishment is a major irreversible step (excepting the 10 day period after the court's order under 25.20.035(f) in Section 18 of the bill) the task force feels it is imperative that a neutral judge explain the meaning and be sure it is understood. This protects both the relinquishing parent and the child. It should also be noted that the present relinquishment law has a loophole which Section 18 of the bill closes. Under present law, no provision is made as to who is to have custody of the child upon relinquishment; however, Section 18 clearly states the three alternatives the court has in placing the child.

3. Issue - Sister Mary Clare's comment on the court should not interfere with private placements.

Response - There is confusion between the issues of placement of the child and relinquishment. Since relinquishment is a major decision, it is necessary that a disinterested forum insure that the proper decision is made. Once that is done and relinquishment takes place, a placement of the child can be done. If the court gives custody of the child to a licensed private placement agency, then it can place the child. The privacy of the placement will be maintained, but with insurance through court oversight, if necessary, that there will not be placement based on financial reward.

4. Issue - Comment by Sister Mary Clare opposing notice by publication of adoptions.

Response - Again, there is confusion over this issue. Notice by publication would not be mandatory in any case.

It would be discretionary upon the court to decide if it is warranted. Section 9 of the bill retains the present law on notice being given under the rules of civil procedure. Under Rule of Civil Procedure 4(e), the court can direct the manner of notice if personal service is not effective. In most instances publication is a last resort only after personal service and certified mail to the last known address do not work. The present Children's Rule 10(g) mandates notice by publication only after it is shown by an "affidavit of due and diligent inquiry that personal service ... cannot be effected." Since the present law in AS 20.15.100(b) on no notice by publication is ineffective due to the 1974 adoption bill, under which .100(b) was enacted, did not state its effect on court rules as required by Legislative Rule 40(e), and since recent federal and state court decisions uphold the rights of one being adequately notified of court hearings concerning his interests, the discretionary power by the court to order publication when it believes it necessary is a reasonable last resort alternative. The cases which point out the importance of notice are: Stanley v. Illinois, 405 U.S.645 (1972), a child custody case; Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306 (1950), a case clearly enunciating the importance of notice in any court case; and Aguchak v. Montgomery Ward, 520 P.2d. 1352 (1974), an Alaskan case spelling out the importance of notice.

5. Issue - Comment by Ms. Susan Burke of the Court System on the possible costs of appointment of guardian ad litem under Sections 3, 10, and 24 of this bill.

Response - It is extremely difficult to gauge the fiscal impact of the court's appointment of guardian ad litem, because it is a discretionary power of the court and it is hard to predict when either party may request such an appointment or when a particular judge will on his own make such an appointment. Also, the amount of work the guardian ad litem does and his or her status as an attorney, child specialist, or layperson will affect the bill he or she submits to the court.

6. Issue - Query by Senator Hackney on the effect the jurisdictional statute in Section 20 will have on a child treated pursuant to a parent's religious convictions.

Response - Present law in AS 47.10.085 adequately provides for cases wherein the child may need medical care and he is being treated by spiritual means. This law is not being changed, except the reference to "dependent minor" is changed to "child in need of aid."

7. Issue - Comment by Assistant Attorney General Arnold that Section 22 of the bill on notice of the hearing will require notice to absent parents where no termination of parental rights is contemplated and that this will unduly delay the proceeding.

Response - Children's Court Rule 10 requires notice to the child, parents or guardian, custodian, and guardian ad litem, if one is appointed, upon filing of a petition for adjudication. Section 22 only brings the present law in AS 47.10.030(b) into conformity with this rule, and clarifies that each parent is to receive the notice of the proceeding. When the results of attempting either personal service or service by certified mail are not known within a couple days, a formal children's proceeding can be delayed without harmful results, because under AS 47.10.142 on emergency custody the court must hold an emergency custody hearing within 48 hours to determine if probable cause exists for believing the child is a child in need of aid. This probable cause hearing would allow temporary placement of the child until a full hearing on the allegations is held. In the meantime there can be reasonable attempts to deliver notice to each parent and still allow the Department of Health and Social Services to have temporary protective custody of the child.

8. Issue - Comment by Assistant Attorney General Arnold on having the section on involuntary termination of parental rights under AS 25.20, rather than in AS 47.10.080(c)(3).

Response - Since involuntary termination of parental rights is tied to the jurisdictional basis of the Children's Court in AS 47.10.010(a)(2), (Section 20 of this bill), it would be confusing to take what is now in Section 29 of the bill under .080(c)(3), and move it to another area. The Children's Court can terminate the parent-child relationship in a child in need of aid case only upon grounds proven under the jurisdictional section. All the procedural and substantive protections for both the child and parents come under AS 47.10, and moving the most drastic type of sanction to an unrelated chapter does not make sense.

AMB:hjd



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 22, 1977

The Honorable Glenn Hackney  
Senator  
Pouch V  
Juneau, Alaska 99811

Dear Senator Hackney:

My staff and representatives of various state agencies have reviewed the final draft of the legislation developed by the Children's Code Revision Task Force, jointly supported by the Legislative Council and the Office of the Governor. This product is now before the Legislature as SB 106 and HB 204. Although I had hoped that a joint review and submission between the Governor's Office and Legislative Council would occur, I am pleased to see the product before the Legislature and the Administration for consideration at this time.

The bills address the long recognized need for a codification of child-related law. Clarification of existing laws, emphasis on the child's welfare and needs and correction of some inconsistencies in statutes are just a few of the positive aspects of the legislation. In general, the purpose and direction of the bills are sound and I support them.

In reviewing the comments from state agencies, constituents interested in the bill, and others directly involved in the procedures related to the functions covered by this legislation, the Governor's Office has received very few negative comments. However, I feel that some concerns which have been articulated need to be brought to your attention as they may require amending the bills. I would like to address those concerns briefly.

1. Adoption procedures: Some parents experienced in the adoptive process and some individuals with court responsibilities related to the adoptive process object to section 7, page 4 of the bill (reference to AS 20.15.060) and question the necessity for or wisdom of the appearance of a consenting parent in court. This particular section addresses the procedures involved when a parent knows the persons adopting the child, has arrived at the

decision to consent to that adoption and has, in fact, consented. The situation of relinquishing a child for adoption is, to say the least, an emotional experience. Court formalities and surroundings may have subtle and inhibiting effects on persons involved in the proceedings. The surroundings may induce sorrow, regret and guilt regarding the adoption decision, however rational that decision might have been. The court appearance seems unnecessary for the consenting parent and may cause tension and anxiety on the part of the adoptive parents. Apparently most hearings now occur after the child has already become used to and familiar with the adoptive parents. The aura of uncertainty connected with parental presence at the hearings seems inconsistent with the need to proceed with as little trauma and as much consideration for the child, as well as the adults.

Additionally, many of the proceedings in rural Alaska now typically involve written interrogatories and informal, less threatening procedures to allow consenting and adoptive parents to execute the arrangements for the permanent adoption of the child. If the intent is to give opportunity for the consenting parent to be sure that he or she is considering all alternatives and has had time to deliberate on the decision, perhaps a stipulation for a "cooling off period" or deliberation time could be instituted with a copy of necessary information provided to the parent with the consent papers. At any rate, the vexing situation of court appearance and the necessitated travel perhaps should be avoided. Additionally, the cost of travel expenses would often not be affordable by the consenting parent or the adoptive parent and the implication is that the State might be responsible for these costs.

The section on relinquishment of parental rights and adoption raises another question. Interpretation of the proceedings under this bill indicates that a parent wishing to give up a child for adoption must file a petition and appear in court in every case, a costly and cumbersome proceeding that does not fulfill the need for privacy and consideration to the parent and the child. In rural Alaska particularly, this means the mother might not be able to return to her home village from the hospital following the birth of a child that has been voluntarily relinquished for adoption.

2. Publication of Notice: Some feel that publication of notice brings few or no results, and that this requirement can serve little purpose for the child's benefit. It fosters undue public awareness of what should essentially be as private and personal an action as possible. The ideal step

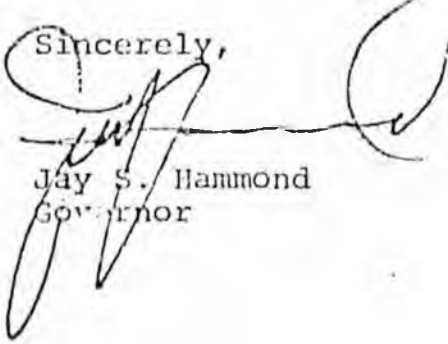
would be to eliminate the procedure and rely on the other means of notice. According to some, the notice requirement guarantees fullest possible protection of the rights of the missing or unknown parent prior to adoption of the child. However, if the records indicate not one instance of the procedure resulting in the finding of such a parent and the reunion of a child with a natural parent, it seems both unnecessary and undesirable to require this procedure.

According to AS 20.15.080 (a), the titles of cases are designated only by the proposed name of the child after adoption approval and the birth date. Therefore, publication of notice to missing or unknown parents seems perfunctory, for in most cases it is quite obvious that the recognition of a possible offspring would occur only if the natural mother's name were attached to the notice for identification. Such publications would do little to promote positive concern for the child or the mother, and probably would have little effect on any potential for a reunion of a missing or unknown parent with the child.

3. Extension of Supervision: The questions regarding the extension of supervision beyond age 18 have been for the most part centered around the curiosity of recommending extension of supervision while at the same time adopting age 18 as the age of majority. Selecting age 18 as the age of majority seems to make good sense and develops a greater consistency with other age provisions in statutes, but the extension beyond the age of majority for juvenile supervision does not seem reasonable in that light. Additionally, provisions which would allow for extension with the consent of the person involved seem not only unrealistic but would be unlikely to produce any positive benefits on behalf of either the individual or the society.

Aside from these suggestions and any recommendations for minor drafting changes, I urge your support of SB 106 and HB 204.

Sincerely,



Jay S. Hammond  
Governor

MEMORANDUM

April 7, 1977

SUBJECT: SB 54 and SSHB 419

TO: Representative Terry Gardiner, Chairman House Judiciary Committee

FROM: Andrew Brown

SB 54 is on adoption assistance and Sections 6 - 10 of SSHB 419 are also on adoption assistance. The Senate bill is an administration one, while the House bill is based on the Children's Code Revision Task Force's proposals. While both bills would result in expanded coverage of adoption assistance, the House bill would allow broader applicability, and also mandate that information about adoption assistance would be disseminated in rural areas.

While the Task Force would prefer to see its version enacted, if it appears that SSHB 419 is not going to pass the House soon, then I think it would be best to either amend SB 54 so that it reflects some of the aspects in SSHB 419 or just pass out SB 54 as is. Therefore, an expansion of the adoption assistance program which is desired by the administration, the Task Force and others would become a reality.

You might want to take this up at the Judiciary Committee meeting on April 11, 1977 when you will be discussing HB 204 on Children's Laws.

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