

HB

16

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16 (HES)

Revision Date: _____
 Title: "An Act relating to juvenile delinquency proceedings..."
 Sponsor: Senator Kelly
 Requestor: (H) HES

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	133.4	133.4	133.4	133.4	133.4	133.4
TRAVEL	4.5	4.5	4.5	4.5	4.5	4.5
CONTRACTUAL	22.5	22.5	22.5	22.5	22.5	22.5
SUPPLIES	2.3	2.3	2.3	2.3	2.3	2.3
EQUIPMENT	7.5	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	170.2	164.2	164.2	164.2	164.2	164.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	170.2	164.2	164.2	164.2	164.2	164.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	170.2	164.2	164.2	164.2	164.2	164.2

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Frank, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/29/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16

ANALYSIS (continued)

Dual Sentencing. This bill creates a "dual sentencing" scheme that invokes the jurisdiction of both the criminal and juvenile court. In the scheme the court would impose a juvenile disposition and an adult criminal sentence simultaneously. Execution of the adult criminal sentence would be stayed during imposition of the juvenile disposition. If the conditions of the juvenile disposition were satisfied, the adult criminal sentence is never imposed. If the conditions of the juvenile disposition were violated, the adult criminal sentence would be invoked.

This dual sentencing scheme is recommended for 13 to 15 year olds who are charged with Class A and unclassified offenses for which a 16 or 17 year old would be automatically waived to adult court and sexual assault in the second degree as well as 16 to 17 year olds who are convicted of sexual abuse of a minor in the second degree or a crime against a person with a previous felony adjudication against a person. Procedurally, the district attorney must either file a petition or the minor must agree to be subject to dual sentencing. The prosecutor must present the case to the grand jury and if there is a true bill filed, petition with the court. If the district attorney exercises his discretion not to invoke dual jurisdiction or the grand jury returns a no true bill, it stays in the juvenile system. The adult sentence must include some period of imprisonment that is not suspended. A child can be revoked and the adult sentence imposed if the child: 1) commits a new felony offense; 2) commits a misdemeanor offense against a person that involves injury to another person or the use of a deadly weapon; 3) fails to comply with restitution; 4) fails in a rehabilitation program ordered by the court or required by a facility or juvenile probation officer; or 5) escapes from a juvenile facility. Such violation must be proven by a preponderance of the evidence. If the new felony is a crime against a person or arson the court must impose the adult sentence and transfer custody of the child to the Department of Corrections. For other of the circumstances the court has to impose the adult sentence unless the child proves by preponderance of the evidence that mitigating circumstances exist that justify a continued stay of the adult sentence and that the child is amenable to further treatment under this chapter. Once an adult sentence is imposed the child is transferred to an adult correctional center.

This dual sentencing provision will impact the entire criminal justice system. The categories of children are quite broad, with the expectation that over 60 children will be eligible for such a referral per year, based upon FY 96 DHSS figures. (It is understood that the Department of Law and the Court System did not include numbers for 16 and 17 year olds in their calculations.) The Alaska Public Defender Agency would continue to be appointed to the majority of these cases which will now require the same attorney labor as an adult felony case (including grand jury review, virtual certainty of trial, and felony sentencing procedures). Based upon those numbers, and the serious nature of the allegations, an additional Attorney IV will be necessary in Anchorage and a part-time Attorney IV will be necessary in Fairbanks to provide attorney services in these serious felonies. It is anticipated that most of these cases will arise in these urban locales, with the attorneys travelling to more remote sites if assistance is needed. Additionally, the conditions for which a juvenile may be revoked for being in violation of his juvenile disposition are so overbroad and vague that it is anticipated that many of them will have petitions filed against them and engage in litigation to determine if a violation occurred or they have to prove that they have mitigating circumstances that justify a continued stay in the juvenile system. It will require clearly more prosecutor resources with mandatory grand jury and adult sentencing proceedings. It will clearly require more defense resources with challenges to the grand jury and Superior Court sentencings and duplication of efforts for two jurisdictions. It will result in many more felony level trials as the focus shifts from trying to find the best treatment alternative to avoiding the serious consequence of having an adult permanent record at such a young age. It will result in longer pre-trial stays and overcrowding and programming problems as more juvenile will be detained for longer periods of time in order to deal with the increase in the number of cases contested. Jails and juvenile detention pre-trial facilities are not programmed for lengthy pre-trial stays and cannot provide educational or other treatment services needed. Some critics within the juvenile justice system claim that had they received sufficient resources to begin with, they could have done a good job in improving their system at less cost. By shifting the population to adult Corrections Department if any programming will be developed which is doubtful, it is for a population that Corrections does not want and does not have the expertise to address.

The U.S. Department of Justice study recommends that the transfer alternative to adult court should only be considered for those juveniles whose criminal history, failure to respond to treatment, or serious or violent conduct clearly demonstrates that they require criminal justice system sanctions. This bill is too broadly fashioned and includes many juveniles who are charged

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16

with offenses that would clearly indicate their amenability to treatment. In particular, sexual assault in the second degree and sexual abuse of a minor in the second degree include a broad range of conduct which are often amenable to education and treatment. While attempting to make the juvenile justice system more similar to the adult system, this portion of the bill stating the grounds for imposing the adult sentence actually makes the system more punitive than the adult system. As a basis for revocation, the failure to complete a rehabilitation program ordered by the court accurately reflects the adult system. However, including "any program required by a facility or juvenile probation officer" gives complete unsupervised discretion to a facility or individual who may or may not have the skill to determine the appropriateness of a program with no judicial oversight. To revoke for an offense "involving injury to another person" is completely overbroad in that a number of minor charges including disorderly conduct and assault in the fourth degree which may include a simple shoving match among children is enough to transfer a case to the adult system. Making transfer to the adult sentencing provisions automatic for certain crimes eliminates any individual discretion. In adult court the judge continues to have discretion to determine the disposition based upon a violation. It is even more problematic when one understands that 90% of the juvenile offenders have at one time or another a petition to revoke their probation filed. This is because it is a useful mechanism for probation and juvenile authorities to enforce compliance, to inspire good behavior, and to issue a wake up call. A broad population will have to go through the process of determining whether or not adult sentencing is appropriate. The mandatory imprisonment requirement places a child in a much worse position than an adult offender and completely disregards potential alternative community correction solutions available in adult court. The completely unbridled prosecutorial discretion is neither subject to judicial review nor based upon detailed criteria. The Utah Supreme Court in State v. Mohi, 901 P.2d 991 (Utah 1995) ruled that a similar Utah juvenile court Act giving such unbridled discretion to the prosecutor violated the state constitution.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSIB 16(HES)

Revisor Date: _____
 Title: "A. Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain."
 Sponsor: Representative Kelly
 Requestor: (H) HES

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	23.4	23.4	23.4	23.4	23.4	23.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.6					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.2	80.6	80.6	80.6	80.6	80.6

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	----------	----------	----------	----------	----------	----------

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	----------	----------	----------	----------	----------	----------

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.2	80.6	80.6	80.6	80.6	80.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	86.2	80.6	80.6	80.6	80.6	80.6

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill fundamentally alters the manner in which serious cases involving thirteen, fourteen, and fifteen year old children will be processed by the justice system. This new dual sentencing scheme will impose adult sentences that are automatically triggered by several commonly violated probation conditions. The severity of the sanctions and the complexity of the procedures will require extensive attorney and expert witness resources.

(continued)

Prepared by Brent McGee Public Advocate
 Division Office of Public Advocacy

Phone 274-1684
 Date _____

Approved by Commissioner Mark Boyer
 Agency Administration

Date 4/20/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16(HES)

ANALYSIS: (continued)

Such cases will require significantly more resources than an adult felony case since they involve not only grand jury review, pre-trial motions, trial and post conviction work, but also representation at complex probation revocation hearings. The law provides no incentive whatsoever to plead guilty as charged and many strong reasons to try such cases. In short, most cases will go to trial and, because of the high incidence of recidivism among untreated juveniles, most cases will result in probation revocation proceedings.

OPA estimates that it would receive about one third of the appointments in such cases and would therefore require the services of an experienced half-time attorney. The position would require extensive travel to other Alaska communities where such cases arise, and would need the services of expert witnesses in the revocation proceedings that trigger adult prison sentences for children.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB16(HES)

Revision Date: _____
 Title: Relating to delinquent minors: services to victims and agency records
 Sponsor: Representative Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 ERU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0


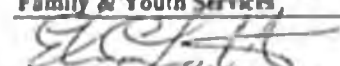
POSITIONS:

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division if this bill were to become law.

 Prepared by:	<u>L. Diane Worley, Director</u> Division: <u>Family & Youth Services</u>	Phone: <u>465-3191</u> Date: <u>04/29/97</u>
Approved by Commissioner:	 <u>Karen Perdur, Commissioner</u> Agency: <u>Department of Health & Social Services</u>	Date: <u>4/29/97</u>

PREPAPER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CS HB 16
Draft L, 4/24/97

Revision Date:
Title: Delinquent Minors - Dual Sentencing

Dept. Affected: Alaska Court System

BRU: Trial Courts

Component:

Sponsor: Rep. Kolly

Requestor: (H) HESS

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	12.8	12.8	12.8	12.8	12.8	12.8
TRAVEL						
CONTRACTUAL	7.0	7.0	7.0	7.0	7.0	7.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.8	19.8	19.8	19.8	19.8	19.8

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.8	19.8	19.8	19.8	19.8	19.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	19.8	19.8	19.8	19.8	19.8	19.8

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	2.0	2.0	2.0	2.0	2.0	2.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis

Prepared by: Doug Wooliver, Administrative Attorney

Agency: Alaska Court System

Phone: 261-8228

Date: 04/28/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 04/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSHB 16(HESS) Draft L, Dated 4/24/97

The Department of Law has estimated that it will seek dual sentencing in approximately 20 cases a year. This note is based on that estimate.

Although minors in juvenile court have the same right to a jury trial as adults, very few actually occur because the consequences of being adjudicated a delinquent are not as severe as a criminal conviction. If the Department of Law elects the dual sentencing approach, juveniles can be expected to more aggressively defend their cases and be more willing to go to trial. Because of this, this note assumes that 4 of the 20 cases will result in jury trials.

The petition to invoke the adult sentence for a juvenile who does not fulfill the terms of his or her juvenile disposition will require additional judicial time. A juvenile facing the imposition of the adult sentence can be expected to vigorously oppose the petition. However, because the number of such cases is speculative, this note does not reflect a cost. This note also does not include the costs associated with 20 additional grand jury proceedings.

Finally, this note does not estimate the additional costs that will result from allowing municipalities to bring civil actions against minors for violations of municipal ordinances. It is not known how many municipalities will choose this option or how often they will utilize it; should there be a significant impact, the court system may need to return to the legislature for funding.

Alaska Court System
Fiscal Analysis
CS HB 16
Draft L 1/24/97

Personal Services

Position

Pro Tem Superior Court Judge, statewide, permanent part-time, 1.25 months
In-Court Clerk, Anchorage, 12A, permanent part-time, 1 month

<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
\$6,094	\$3,709	\$9,803
2,375	612	2,987

Total Personal Services

12,790

Contractual

Jury fees - four 5-day trials with 14 jurors at \$25 a day each

7,000

Total Estimated Cost

\$19,790

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16 (HES)

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act relating to delinquent minors, to the takin BRU: ALL
of action based on the alleged criminal misconduct of certain minors... Component: ALL
 Sponsor: Representative Kelly
 Requester: House HESS Committee COMPONENT SERIAL NO. #0894

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS		115.3	230.6	345.9	481.2	578.5
TOTAL OPERATING	0.0	115.3	230.6	345.9	481.2	578.5

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		115.3	230.6	345.9	481.2	578.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	115.3	230.6	345.9	481.2	578.5

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The major impact of this legislation upon the Department of Corrections (DOC) is Section 12 whereas AS 47.12 is amended by adding a new section where delinquent minors age 13 to 16 could have dual juvenile and adult sentencing provisions imposed on them for certain types of criminal offenses. It has been estimated the dual sentencing provisions of this legislation would result in approximately three (3) delinquent juvenile prisoners per year being incarcerated in adult correctional facilities.

The DOC does not anticipate an impact on the agency during the year of this legislation. A juvenile would have to unsuccessfully go through juvenile proceedings and a number of other alternative diversions before the adult dual sentencing provision would be imposed. Based on the statewide average daily cost of \$105.27 per day, the first year financial impact on the DOC would be \$115,270.65 (115.3); with three new juveniles and \$115.3 added every year thereafter.

Prepared by: Bruce Richards
 Division: Commissioner's Office
 Approved by: Commissioner Margaret M. Pugh
 Agency: Department of Corrections

Phone: 485-3307
 Date: 4/28/97
 Date: 4/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: CSHB 16 (HESS)

Revision Date: 04/28/97 Dept. Affected: Public Safety
 Title: Juvenile Delinquency BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Rep. Kelly
 Requestor: H. HESS COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 04/28/97
 Approved by Commissioner: Ronald L. O'Neil Smith Date: 4/28/97
 Agency: Department of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

(Workdraft L)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSHB 16 (HES)

Revision Date: _____ Dept. Affected: Department of Law
 Title: delinquent minors, to the taking of action based BRU: Criminal Division/Civil Division
on the alleged criminal misconduct of certain minors . . . Component: Criminal Division/General Legal Services
 Sponsor: Representative Kelly
 Requester: House HESS Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill repeals and reenacts AS 47.12.010 (purposes of juvenile delinquency laws) to set out a new philosophy toward juvenile offenders, balancing the goal of reformation of a juvenile offender with protection of the public. Further, the bill authorizes local communities to handle minor juvenile offenses by allowing municipalities to assess civil penalties for juvenile offenses and by allowing the Department of Health and Social Services to delegate to community programs or review panels the authority to handle minor offenses. This bill also amends the delinquency adjudication statutes to authorize district attorneys to seek "dual sentencing" in certain serious juvenile criminal cases; i.e., the state asks the court to pronounce both a juvenile and an adult sentence for the offense, but the adult sentence would be imposed only if the minor commits a new offense or fails to abide by the ordered conditions of the juvenile sentence. Included in the bill is also a provision to enact the rendition amendment to the Interstate Compact on Juveniles that allows one state to take into custody and return to another state a juvenile who is alleged to have violated a criminal law in the second state but who has not been adjudicated a delinquent, and a provision to permit the Department of Health and Social Services to

Prepared by: Joan M. Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 4/26/97
 Date: 4/26/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

ANALYSIS CONTINUATION:

provide additional information to public officials, such as legislators, who are contacted by parents with concerns about children's proceedings. Without this amendment, the state is unable to explain to these officials why the action it has taken was necessary.

Passage of this legislation will have no fiscal impact on the Department of Law. The department estimates that approximately 20 cases per year, statewide, will require additional criminal proceedings under the proposed dual sentencing provisions. Although this represents an increase in the Criminal Division caseload, when this increase is spread between the division's several offices, fiscal note costs are not warranted.

Action by municipalities on minor juvenile offenses will also have no fiscal impact on the department, either positive or negative. The types of cases that would be handled by municipal authorities under these amendments do not require the use of Department of Law staff under current law, so no savings would be achieved in the Civil Division from a reduced caseload.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/29/97

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 16

HOUSE BILL NO. 16

JUVENILE DELINQUENCY PROCEDURES

"An Act relating to delinquent minors, to the taking of action based on the alleged criminal misconduct of certain minors, to the services to be provided to the victims of criminal misconduct of minors, and to agency records involving minors alleged to be delinquent based on their criminal misconduct; und amending Rule 19 and repealing Rules 6, 7, 11(a), 12(a), and 21(f), Alaska Delinquency Rules."

recommends it be replaced with the following committee substitute CS HB 16 (HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) ② Admin, Court, Corrections

fiscal note(s) _____

zero fiscal note(s) H+SS, Law, Public Safety

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Frank Brown</i>	✓			
<i>Joseph [unclear]</i>	✓			
<i>Con Bunker</i>	✓			
<i>Brian D. [unclear]</i>	✓			
<i>[unclear]</i>	✓			

CHAIR'S SIGNATURE

Con Bunker

NOT
OFFERED

A M E N D M E N T

OFFERED IN THE HOUSE

TO: Draft CSHB 16() ("L" Version, Dated 4/24/97)

1 Page 1, line 8, following "3,":

2 Insert "10(c),"

3 Page 15, following line 17:

4 Insert a new bill section to read:

5 **** Sec. 24.** AS 47.12.250 is amended by adding a new subsection to read:

6 (f) At a hearing held under (c) of this section, hearsay evidence of a statement
7 related to the offense, not otherwise admissible, made to a law enforcement officer
8 by a victim of the offense or a witness to the offense and testified to by the law
9 enforcement officer may be admitted into evidence if

- 10 (1) the circumstances of the statement indicate its reliability;
- 11 (2) additional evidence is introduced to corroborate the statement; and
- 12 (3) the victim or witness whose statement is offered will be available
13 to testify at trial."

14 Renumber the following bill sections accordingly.

15 Page 20, following line 2:

16 Insert a new bill section to read:

17 **** Sec. 36.** AS 47.12.250(f), added by sec. 24 of this Act, has the effect of amending
18 Rule 10(c), Alaska Delinquency Rules, by allowing admission of certain hearsay evidence
19 during a temporary detention hearing."

20 Renumber the following bill sections accordingly.

1 Page 20, line 3:

2 Delete "sec. 28"

3 Insert "sec. 29"

4 Page 20, line 8:

5 Delete "SECTIONS 1 - 32."

6 Insert "SECTIONS 1 - 33."

7 Delete "Sections 1 - 32"

8 Insert "Sections 1 - 33"

9 Page 20, line 10:

10 Delete "SECTION 33"

11 Insert "SECTION 34"

12 Page 20, line 11:

13 Delete "sec. 33"

14 Insert "sec. 34"

15 Page 20, line 13:

16 Delete "sec. 33"

17 Insert "sec. 34"

18 Delete "Section 33"

19 Insert "Section 34"

not offered

A M E N D M E N T

OFFERED IN THE HOUSE

TO: Draft CSHB 16() ("L" Version, Dated 4/24/97)

1 Page 1, line 8, following "21,"

2 Insert "23(d),"

3 Page 13, line 5:

4 Delete "least restrictive"

5 Insert "most appropriate [LEAST RESTRICTIVE]"

6 Page 13, lines 6 - 9:

7 Delete "the "least restrictive alternative disposition" means that disposition that is no
8 more restrictive than is, in the judgment of the court, most conducive to the minor's
9 rehabilitation taking into consideration the interests of the public."

10 Insert "the "most appropriate [LEAST RESTRICTIVE] alternative disposition" means
11 that disposition that [IS NO MORE RESTRICTIVE THAN] is, in the judgment of the court,
12 most conducive to the minor's rehabilitation taking into consideration the interests of the
13 public."

14 Page 19, following line 30:

15 Insert a new bill section to read:

16 * Sec. 34. Rule 23(d), Alaska Delinquency Rules, is amended to read:

17 (d) Order. The court's [IN ITS] disposition order [, THE COURT] shall
18 conform to AS 47.12.140 [ORDER THE LEAST RESTRICTIVE ALTERNATIVE
19 DISPOSITION UNDER AS 47.10.080(b) THAT ADDRESSES THE JUVENILE'S
20 TREATMENT NEEDS AND PROTECTS THE PUBLIC]."

21 Renumber the following bill sections accordingly.

0-LS0121V
Chenoweth
4/24/97

CS FOR HOUSE BILL NO. 16()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KELLY

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to delinquent minors, to the taking of action based on the
2 alleged criminal misconduct of certain minors, to the services to be provided to
3 the victims of criminal misconduct of minors, and to agency records involving
4 minors alleged to be delinquent based on their criminal misconduct; providing for
5 the dual sentencing of minors who commit certain felony offenses; relating to
6 violations of municipal ordinances by minors and to civil penalties for violation
7 of municipal ordinances by minors; amending the Interstate Compact on Juveniles
8 to which the state is a party; and amending Rules 3, 21, and 27 and repealing
9 Rules 6, 7, and 21(f), Alaska Delinquency Rules; and providing for an effective
10 date."

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

12 • Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

1 (54) AS 29.25.070(e) (notices of certain civil actions).

2 * Sec. 2. AS 29.25.070(b) is amended to read:

3 (b) The municipality or an aggrieved person may institute a civil action against
4 a person, including a minor as provided in AS 29.25.072, who violates an ordinance.
5 In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000
6 may be imposed for each violation. An action to enjoin a violation may be brought
7 notwithstanding the availability of any other remedy. On application for injunctive
8 relief and a finding of a violation or a threatened violation, the superior court shall
9 grant the injunction. Each day that a violation of an ordinance continues constitutes
10 a separate violation.

11 * Sec. 3. AS 29.25.070 is amended by adding new subsections to read:

12 (e) The municipality shall provide written notice to the commissioner of health
13 and social services or to the commissioner's designee of the commencement of a civil
14 enforcement action for the violation of an ordinance under (b) of this section against
15 a minor. Unless the commissioner and the municipality have negotiated an agreement
16 making other arrangements for the municipality to provide the notice required by this
17 subsection, the municipality shall provide the notice by mailing a copy of the citation
18 or other document setting out the notice of the commencement of the civil enforcement
19 action. This subsection applies to home rule and general law municipalities.

20 (f) In this section, "minor" means a person under 18 years of age.

21 * Sec. 4. AS 29.25 is amended by adding a new section to read:

22 Sec. 29.25.072. Civil penalties for violation of municipal ordinances by
23 minors. (a) Except as otherwise provided in this section, the enforcement under
24 AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal
25 ordinance shall be heard in the district court in the same manner as for similar
26 allegations brought against an adult, except that the minor's parent, guardian, or legal
27 custodian shall be present at all proceedings unless the court excuses the parent,
28 guardian, or legal custodian from attendance for good cause.

29 (b) If provision is made by ordinance for use of a hearing officer to decide
30 enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for
31 a civil penalty under a municipal ordinance may be assigned to a hearing officer for

1 the municipality for decision.

2 (c) An action for a civil penalty filed against a minor under this section does
3 not give rise to the right to a trial by jury or to counsel appointed at public expense.

4 * Sec. 5. AS 33.30.901(12) is amended to read:

5 (12) "prisoner"

6 (A) means a person held under authority of state law in official
7 detention as defined in AS 11.81.900(b);

8 (B) includes a minor [JUVENILE] committed to the custody
9 of the commissioner when,

10 (i) under AS 47.12.030(a), 47.12.065, or 47.12.100, the
11 minor [JUVENILE] has been charged, prosecuted, or convicted as an
12 adult; or

13 (ii) under AS 47.12.160(e), the minor has been
14 ordered transferred to the custody of the commissioner;

15 * Sec. 6. AS 44.23 is amended by adding a new section to read:

16 Sec. 44.23.070. Victim/witness assistance program. If the Department of
17 Law maintains a victim/witness assistance program, subject to sufficient appropriations
18 for the purpose, the services of that program shall be extended to victims of criminal
19 offenses committed by persons under 18 years of age so that victims of these offenses
20 may exercise the rights provided to them by law.

21 * Sec. 7. AS 47.10.092(a) is amended to read:

22 (a) Notwithstanding AS 47.10.090 and 47.10.093,

23 (1) a parent or legal guardian of a minor subject to a proceeding under
24 AS 47.10.010 - 47.10.142 may disclose confidential or privileged information about
25 the minor, including information that has been lawfully obtained from agency or court
26 files, to the governor, the lieutenant governor, a legislator, the ombudsman appointed
27 under AS 24.55, the attorney general, and the commissioners of health and social
28 services, administration, or public safety, or an employee of these persons, for review
29 or use in their official capacities;

30 (2) the department may disclose confidential or privileged
31 information about the minor and make available for inspection documents about

1 the minor to the state officials or employees identified in (1) of this subsection for
2 review or use in their official capacities; and

3 (3) a [A] person to whom disclosure is made under (1) or (2) of this
4 subsection [SECTION] may not disclose confidential or privileged information about
5 the minor to a person not authorized to receive it.

6 • Sec. 8. AS 47.10.092(b) is amended to read:

7 (b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and
8 not in derogation of, the rights of a parent or legal guardian of a minor.

9 • Sec. 9. AS 47.12.010 is repealed and reenacted to read:

10 Sec. 47.12.010. Goal and purposes of chapter. (a) The goal of this chapter
11 is to promote a balanced juvenile justice system in the state to protect the community,
12 impose accountability for violations of law, and equip juvenile offenders with the skills
13 needed to live responsibly and productively.

14 (b) The purposes of this chapter are to

15 (1) respond to a juvenile offender's needs in a manner that is consistent
16 with

17 (A) prevention of repeated criminal behavior;

18 (B) restoration of the community and victim;

19 (C) protection of the public; and

20 (D) development of the juvenile into a productive citizen;

21 (2) protect citizens from juvenile crime;

22 (3) hold each juvenile offender directly accountable for the offender's
23 conduct;

24 (4) provide swift and consistent consequences for crimes committed by
25 juveniles;

26 (5) make the juvenile justice system more open, accessible, and
27 accountable to the public;

28 (6) require parental or guardian participation in the juvenile justice
29 process;

30 (7) create an expectation that parents will be held responsible for the
31 conduct and needs of their children;

1 (8) ensure that victims, witnesses, parents, guardians, juvenile offenders,
2 and all other interested parties are treated with dignity, respect, courtesy, and
3 sensitivity throughout all legal proceedings;

4 (9) provide due process through which juvenile offenders, victims,
5 parents, and guardians are assured fair legal proceedings during which constitutional
6 and other legal rights are recognized and enforced;

7 (10) divert juveniles from the formal juvenile justice process through
8 early intervention as warranted when consistent with the protection of the public;

9 (11) provide an early, individualized assessment and action plan for
10 each juvenile offender in order to prevent further criminal behavior through the
11 development of appropriate skills in the juvenile offender so that the juvenile is more
12 capable of living productively and responsibly in the community;

13 (12) ensure that victims and witnesses of crimes committed by juveniles
14 are afforded the same rights as victims and witnesses of crimes committed by adults;

15 (13) encourage and provide opportunities for local communities and
16 groups to play an active role in the juvenile justice process in ways that are culturally
17 relevant; and

18 (14) review and evaluate regularly and independently the effectiveness
19 of programs and services under this chapter.

20 • Sec. 10. AS 47.12.04(a) is amended to read:

21 (a) Whenever circumstances subject a minor to the jurisdiction of this chapter,
22 the court shall

23 (1) provide, under procedures adopted by court rule, that, for a minor
24 who is alleged to be a delinquent minor under AS 47.12.020, the department or an
25 entity selected by it [A STATE AGENCY] shall make a preliminary inquiry to
26 determine if any action is appropriate and may take appropriate action to adjust the
27 matter without a court hearing; if, under this paragraph,

28 (A) the department or an entity selected by it [STATE
29 AGENCY] makes a preliminary inquiry and takes appropriate action to adjust
30 the matter without a court hearing, the minor may not be detained or taken into
31 custody as a condition of the adjustment and, subject to AS 47.12.060, the

1 matter shall be closed by the department or an entity selected by it
 2 [AGENCY] if the minor successfully completes all that is required of the minor
 3 by the department or an entity selected by it [AGENCY] in the adjustment;
 4 in a municipality or municipalities in which a youth court has been established
 5 under AS 47.12.400, adjustment of the matter under this paragraph may include
 6 referral to the youth court:

7 (B) the department or an entity selected by it
 8 [AGENCY] concludes that the matter may not be adjusted without a court
 9 hearing, the department or an entity selected by it [AGENCY] may file a
 10 petition under (2) of this subsection setting out the facts; or

11 (2) appoint a competent person or agency to make a preliminary
 12 inquiry and report for the information of the court to determine whether the interests
 13 of the public or of the minor require that further action be taken; if, under this
 14 paragraph, the court appoints a person or agency to make a preliminary inquiry and
 15 to report to it, then upon the receipt of the report, the court may informally adjust the
 16 matter without a hearing, or it may authorize the person having knowledge of the facts
 17 of the case to file with the court a petition setting out the facts; if the court informally
 18 adjusts the matter, the minor may not be detained or taken into the custody of the
 19 court as a condition of the adjustment, and the matter shall be closed by the
 20 adjustment.

21 * Sec. 11. AS 47.12.060 is amended to read:

22 Sec. 47.12.060. Informal action [BY DEPARTMENT] to adjust matter.

23 (a) The provisions of this section apply to a minor who is alleged to be a delinquent
 24 minor under AS 47.12.020 and for whom the department or an entity selected by
 25 it [AN AGENCY] has, under applicable court rule, made a preliminary inquiry
 26 [BEFORE TAKING APPROPRIATE ACTION] as authorized by AS 47.12.040(a)(1)
 27 [AS 47.12.040(a)]. Following the preliminary inquiry,

28 (1) [UNLESS] the department or the entity selected by it may
 29 dismiss the matter with or without prejudice; or

30 (2) [AGENCY DETERMINES THAT THE MATTER SHOULD BE
 31 DISMISSED.] the department or the entity selected by it [AGENCY] may take

1 informal action to adjust the matter.

2 (b) When the department or the entity selected by it [AGENCY] decides to
3 make [THAT] an informal adjustment of a matter under (a)(2) of this section
4 [SHOULD BE MADE], that informal adjustment may not be made without the
5 agreement or consent of the minor and the minor's parents or guardian
6 [GUARDIANS] to the terms and conditions of the adjustment. An informal action to
7 adjust a matter is not successfully completed unless, among other factors that the
8 department or the entity selected by it [AGENCY] considers, as to the victim of the
9 act of the minor that is the basis of the delinquency allegation, the minor pays
10 restitution in the amount set by the department or the entity selected by it
11 [AGENCY] or agrees as a term or condition set by the department or the entity
12 selected by it [AGENCY] to pay the restitution.

13 • Sec. 12. AS 47.12 is amended by adding a new section to read:

14 Sec. 47.12.065. Dual sentencing provisions. (a) The department or the entity
15 selected by it shall refer to the appropriate district attorney the circumstances involving
16 a minor who is subject to the provisions of this section because the minor is alleged
17 to have violated a criminal law of the state. The department or the entity selected by
18 it shall make the referral if the minor was

19 (1) at least 13 years of age but had not reached 16 years of age at the
20 time of the offense, and the offense is

21 (A) an unclassified felony or a class A felony for which
22 AS 47.12.030(a) would have made this chapter and the Alaska Delinquency
23 Rules inapplicable if the minor had been at least 16 years of age at the time of
24 the offense; or

25 (B) sexual assault in the second degree; or

26 (2) 16 years of age or older at the time of the offense, and the offense

27 is

28 (A) a felony that is a crime against a person and the minor has
29 previously been adjudicated a delinquent under the laws of this state or
30 substantially similar laws of another jurisdiction for a felony offense that is a
31 crime against a person; or

1 (B) sexual abuse of a minor in the second degree.

2 (b) If a referral is made under (a) of this section, the district attorney may elect
3 to seek imposition of a dual sentence in the case to further the goal and purposes of
4 this chapter as set out in AS 47.12.010. If the district attorney seeks imposition of a
5 dual sentence, the district attorney shall present the case to the grand jury for
6 indictment. If the grand jury returns an indictment, the district attorney shall file with
7 the court under AS 47.12.040(a) a petition seeking the minor's adjudication as a
8 delinquent.

9 (c) If the district attorney decides not to seek imposition of a dual sentence
10 under (b) of this section or if the grand jury does not return an indictment, the case
11 shall proceed under the remaining provisions of this chapter.

12 • Sec. 13. AS 47.12.110(b) is amended to read:

13 (b) Notwithstanding (a) of this section or an order prohibiting or limiting
14 the public made under (d) of this section, the victim of an offense that a minor is
15 alleged to have committed, or the designee of the victim, has a right to be present at
16 all hearings held under this section. If the minor is found to have committed the
17 offense, the victim may at the disposition hearing give sworn testimony or make an
18 unsworn oral presentation concerning the offense and its effect on the victim. If there
19 are numerous victims of a minor's offense, the court may limit the number of victims
20 who may give sworn testimony or make an unsworn oral presentation, but the court
21 may not limit the right of a victim to attend a hearing.

22 • Sec. 14. AS 47.12.110 is amended by adding a new subsection to read:

23 (d) Notwithstanding (a) of this section, a court proceeding shall be open to the
24 public, except as prohibited or limited by order of the court.

25 (1) when the district attorney has elected to seek imposition of a dual
26 sentence, and a petition has been filed under AS 47.12.065, or when a minor agrees
27 as part of a plea agreement to be subject to dual sentencing; or

28 (2) for a minor who is 16 years of age or older at the time of the
29 commission of the offense and who is found by the court to have committed a crime
30 against a person punishable as a felony or who, after having been previously
31 adjudicated a delinquent for an offense punishable as a felony, is found by the court

1 to have committed the offense of burglary in the first degree.

2 • Sec. 15. AS 47.12.120(b) is amended to read:

3 (b) If the minor is not subject to (j) of this section and the court finds that
4 the minor is delinquent, it shall

5 (1) order the minor committed to the department for a period of time
6 not to exceed two years or in any event extend past the day the minor becomes 19
7 years of age, except that the department may petition for and the court may grant in
8 a hearing (A) two-year extensions of commitment that do not extend beyond the
9 minor's [CHILD'S] 19th birthday if the extension is in the best interests of the minor
10 and the public; and (B) an additional one-year period of supervision past age 19 if
11 continued supervision is in the best interests of the person and the person consents to
12 it; the department shall place the minor in the juvenile facility that the department
13 considers appropriate and that may include a juvenile correctional school, juvenile
14 work camp, treatment facility, detention home, or detention facility; the minor may be
15 released from placement or detention and placed on probation on order of the court
16 and may also be released by the department, in its discretion, under AS 47.12.260
17 [AS 47.10.200];

18 (2) order the minor placed on probation, to be supervised by the
19 department, and released to the minor's parents, guardian, or a suitable person, if the
20 court orders the minor placed on probation, it may specify the terms and conditions
21 of probation; the probation may be for a period of time, not to exceed two years and
22 in no event extend past the day the minor becomes 19 years of age, except that the
23 department may petition for and the court may grant in a hearing

24 (A) two-year extensions of supervision that do not extend
25 beyond the minor's [CHILD'S] 19th birthday if the extension is in the best
26 interests of the minor and the public; and

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

30 (3) order the minor committed to the department and placed on
31 probation, to be supervised by the department [,] and released to the minor's parents.

1 guardian, other suitable person, or suitable nondetention setting such as with a relative
2 or in a foster home or residential [A FAMILY HOME, GROUP CARE FACILITY,
3 OR] child care facility, whichever the department considers appropriate to implement
4 the treatment plan of the predisposition report; if the court orders the minor placed on
5 probation, it may specify the terms and conditions of probation; the department may
6 transfer the minor, in the minor's best interests, from one of the probationary
7 placement settings listed in this paragraph to another, and the minor, the minor's
8 parents or guardian, and the minor's attorney are entitled to reasonable notice of the
9 transfer; the probation may be for a period of time [,] not to exceed two years and in
10 no event extend past the day the minor becomes 19 years of age, except that the
11 department may petition for and the court may grant in a hearing

12 (A) two-year extensions of commitment that do not extend
13 beyond the minor's [CHILD'S] 19th birthday if the extension is in the best
14 interests of the minor and the public; and

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

18 (4) order the minor and the minor's parent to make suitable restitution
19 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
20 under this paragraph.

21 (A) except as provided in (B) of this paragraph, the court may
22 not refuse to make an order of restitution to benefit the victim of the act of the
23 minor that is the basis of the delinquency adjudication; and

24 (b) the court may not order payment of restitution by the parent
25 of a minor who is a runaway or missing minor for an act of the minor that was
26 committed by the minor after the parent has made a report to a law
27 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
28 away or is missing; for purposes of this subparagraph, "runaway or missing
29 minor" means a minor who a parent reasonably believes is absent from the
30 minor's residence for the purpose of evading the parent or who is otherwise
31 missing from the minor's usual place of abode without the consent of the

1 parent:

2 (5) order the minor committed to the department for placement in an
3 adventure based education program established under AS 47.21.020 with conditions
4 the court considers appropriate concerning release upon satisfactory completion of the
5 program or commitment under (1) of this subsection if the program is not satisfactorily
6 completed:

7 (6) in addition to an order under (1) - (5) of this subsection, [IF THE
8 DELINQUENCY FINDING IS BASED ON THE MINOR'S VIOLATION OF
9 AS 11.71.030(a)(3) OR 11.71.040(a)(4).] order the minor to perform [50 HOURS OF]
10 community service; for purposes of this paragraph, "community service" includes work

11 (A) defined as community service under AS 33.30.901; or

12 (B) that, on the recommendation of the city council or
13 traditional village council, would benefit persons within the city or village who
14 are elderly or disabled; or

15 (7) in addition to an order under (1) - (6) of this subsection, order the
16 minor's parent or guardian to comply with orders made under AS 47.12.155, including
17 participation in treatment under AS 47.12.155(b)(1).

18 • Sec. 16. AS 47.12.120(g) is amended to read:

19 (g) Within 18 months after the date a minor is initially taken into
20 [COMMITTED TO THE] custody by [OF] the department under (b)(3) of this section,
21 the court shall hold a hearing to review the placement and services provided and to
22 determine the future status of the minor. The court shall make appropriate written
23 findings, including findings related to the following:

24 (1) whether the minor should be returned to the parent;

25 (2) whether the minor should remain in out-of-home care for a
26 specified period;

27 (3) whether the minor should remain in out-of-home care on a
28 permanent or long-term basis because of special needs or circumstances;

29 (4) whether the minor should be placed for adoption or legal
30 guardianship.

31 • Sec. 17. AS 47.12.120 is amended by adding new subsections to read:

1 (i) When, under (a) of this section, the court enters judgment finding that a
2 minor is delinquent, the court may order the minor temporarily detained pending entry
3 of its dispositional order if the court finds that detention is necessary

4 (1) to protect the minor or the community; or

5 (2) to ensure the minor's appearance at a subsequent court hearing.

6 (j) If, in a case in which a district attorney has elected to seek imposition of
7 a dual sentence under AS 47.12.065, the court finds that the minor is delinquent for
8 committing an offense in the circumstances set out in AS 47.12.065, or if the minor
9 agrees as part of a plea agreement to be subject to dual sentencing, the court shall

10 (1) enter one or more orders under (b) of this section; and

11 (2) pronounce a sentence for the offense in accordance with the
12 provisions of AS 12.55; however, the sentence pronounced under this paragraph must
13 include some period of imprisonment that is not suspended by the court.

14 * Sec. 18. AS 47.12.140 is amended to read:

15 Sec. 47.12.140. Court dispositional order. In making its dispositional order
16 under AS 47.12.120(b)(1) - (3) and (5) and (j), the court shall

17 (1) consider both the best interests of the minor and the interests of the
18 public, and, in doing so, the court shall take into account

19 (A) the seriousness of the minor's delinquent act [,] ~~and~~ the
20 attitude of the minor and the minor's parents toward that act;

21 (B) the minor's culpability as indicated by the circumstances of
22 the particular case;

23 (C) the age of the minor;

24 (D) the minor's prior criminal or juvenile record [,] and the
25 success or failure of any previous orders, dispositions, or placements imposed
26 on the minor;

27 (E) the effect of the dispositional order to be imposed in
28 deterring the minor [CHILD] from committing other delinquent acts;

29 (F) the need to commit the minor to the department's custody
30 or to detain the minor in an institution or other suitable place in order to
31 prevent further harm to the public;

1 (G) the interest of the public in securing the minor's
2 rehabilitation; and

3 (H) the ability of the state to take custody of and to care for the
4 minor; and

5 (2) order the least restrictive alternative disposition for the minor; for
6 purposes of this paragraph, the "least restrictive alternative disposition" means that
7 disposition that is no more restrictive than is, in the judgment of the court, most
8 conducive to the minor's rehabilitation taking into consideration the interests of the
9 public.

10 • Sec. 19. AS 47.12.160 is amended by adding new subsections to read:

11 (d) The department may petition the court for imposition of sentence
12 pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction
13 of the court and if the offender, after pronouncement of sentence under
14 AS 47.12.120(j)(2),

15 (1) commits a subsequent felony offense;

16 (2) commits a subsequent offense against a person that is a
17 misdemeanor and involves injury to a person or the use of a deadly weapon;

18 (3) fails to comply with the terms of a restitution order;

19 (4) fails to engage in or satisfactorily complete a rehabilitation program
20 ordered by a court or required by a facility or juvenile probation officer; or

21 (5) escapes from a juvenile correctional facility.

22 (e) If a petition is filed under (d) of this section and if the court finds by a
23 preponderance of the evidence that the minor has committed a subsequent felony
24 offense that is a crime against a person or is the crime of arson, the court shall impose
25 the adult sentence previously pronounced under AS 47.12.120(j) and transfer custody
26 of the minor to the Department of Corrections. If the court finds by a preponderance
27 of the evidence that any of the other circumstances set out in (d)(1) - (5) of this
28 section exist, the court shall impose the adult sentence previously pronounced and
29 transfer custody of the minor to the Department of Corrections unless the minor proves
30 by preponderance of the evidence that mitigating circumstances exist that justify a
31 continuance in the stay of the adult sentence and the minor is amenable to further

1 treatment under this chapter. The court shall make written findings to support its
2 order.

3 • Sec. 20. AS 47.12.180(a) is amended to read:

4 (a) Except as provided by AS 47.12.160(d) and (e) and AS 47.12.170, an
5 adjudication under this chapter upon the status of a minor

6 (1) may not operate to impose any of the civil disabilities ordinarily
7 imposed by conviction upon a criminal charge;

8 (2) does not operate to permit a minor afterward to be considered a
9 criminal by the adjudication; and

10 (3) does not operate to permit the adjudication to be afterward
11 considered [DEEMED] a conviction, nor may a minor be charged with or convicted
12 of a crime in a court [,] except as provided in this chapter.

13 • Sec. 21. AS 47.12.210(b) is amended to read:

14 (b) Except as provided by AS 47.12.310(h)(1), fingerprint [FINGERPRINT]
15 records taken under this section are not subject to AS 47.12.310.

16 • Sec. 22. AS 47.12.240(c) is amended to read:

17 (c) Notwithstanding (a) of this section, a minor may be incarcerated in a
18 correctional facility

19 (1) if the minor is the subject of a petition filed with the court under
20 this chapter seeking adjudication of the minor as a delinquent minor or if the minor
21 is in official detention pending the filing of that petition; however, detention in a
22 correctional facility under this paragraph may not exceed the lesser of

23 (A) six hours; or

24 (B) the time necessary to arrange the minor's transportation to
25 a juvenile detention home or comparable facility for the detention of minors;

26 (2) if, in response to a petition of delinquency filed under this chapter,
27 the court has entered an order closing the case under AS 47.12.100(a), allowing the
28 minor to be prosecuted as an adult; [OR]

29 (3) if the incarceration constitutes a protective custody detention of the
30 minor that is authorized by AS 47.37.170(b); or

31 (4) if, under AS 47.12.160(e), the court has entered an order

1 imposing an adult sentence and transferring custody of the minor to the
2 Department of Corrections.

- 3 • Sec. 23. AS 47.12 is amended by adding a new section to read:

4 Sec. 47.12.245. Arrest. A peace officer

5 (1) may arrest a minor

6 (A) for the commission of an act that subjects the minor to the
7 provisions of this chapter under the same circumstances and in the same
8 manner as would apply to the arrest of an adult for violation of a criminal law
9 of the state or a municipality of the state;

10 (B) if the peace officer reasonably believes the minor is a
11 fugitive from justice;

12 (C) if the peace officer has probable cause to believe that the
13 minor has violated a condition of the minor's release or probation; or

14 (D) if the peace officer reasonably believes that the minor has
15 been adjudicated a delinquent and has escaped from an institution or absconded
16 from probation, parole, or the jurisdiction of a court;

17 (2) may continue the lawful arrest of a minor that is made by a citizen.

- 18 • Sec. 24. AS 47.12.300(c) is amended to read:

19 (c) Except as provided in (g) of this section, the [THE] name or picture of
20 a minor under the jurisdiction of the court may not be made public in connection with
21 the minor's status as a delinquent unless authorized by order of the court.

- 22 • Sec. 25. AS 47.12.300(d) is amended to read:

23 (d) Except as provided in (f) of this section, within [WITHIN] 30 days of
24 the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past
25 the minor's 18th birthday, within 30 days of the date on which the court releases
26 jurisdiction over the minor, the court shall order all the court's official records
27 pertaining to that minor in a proceeding under this chapter sealed, as well as records
28 of all driver's license proceedings under AS 28.15.185, criminal proceedings against
29 the minor, and punishments assessed against the minor. A person may not use these
30 sealed records for any purpose except that the court may order their use for good cause
31 shown or may order their use by an officer of the court in making a presentencing

1 report for the court. The provisions of this subsection relating to the sealing of records
2 do not apply to records of traffic offenses.

3 * Sec. 26. AS 47.12.300(e) is amended to read:

4 (e) The court's official records prepared under this chapter and not made
5 public under this section are confidential and may be inspected only with the
6 court's permission and only by persons having a legitimate interest in them. A person
7 with a legitimate interest in the inspection of a confidential [AN OFFICIAL] record
8 maintained by the court includes a victim who suffered physical injury or whose real
9 or personal property was damaged as a result of an offense that was the basis of an
10 adjudication or modification of disposition. If the victim knows the identity of the
11 minor, identifies the minor or the offense to the court, and certifies that the
12 information is being sought to consider or support a civil action against the minor or
13 against the minor's parents or guardian [GUARDIANS] under AS 34.50.020, the court
14 shall, subject to AS 12.61.110 and 12.61.140, allow the victim to inspect and use the
15 following records and information in connection with the civil action:

16 (1) a petition filed under AS 47.12.040(a) seeking to have the court
17 declare the minor a delinquent;

18 (2) a petition filed under AS 47.12.120 seeking to have the court
19 modify or revoke the minor's probation;

20 (3) a petition filed under AS 47.12.100 requesting the court to find that
21 a minor is not amenable to treatment under this chapter and that results in closure of
22 a case under AS 47.12.100(a); and

23 (4) a court judgment or order entered under this chapter that disposes
24 of a petition identified in (1) - (3) of this subsection.

25 * Sec. 27. AS 47.12.300(f) is amended to read:

26 (f) A person who has been tried as an adult under AS 47.12.100(a) or a
27 person whose records have been made public under (g) of this section, or the
28 department on the person's behalf, may petition the superior court to seal the records
29 of all criminal proceedings, except traffic offenses, initiated against the person, and all
30 punishments assessed against the person, while the person was a minor. A petition
31 under this subsection may not be filed until five years after the completion of the

1 sentence imposed for the offense for which the person was tried as an adult or five
2 years after a disposition was entered for an offense for which the records were
3 made public under (g) of this section. If the superior court finds that its order has
4 had its intended rehabilitative effect and further finds that the person has fulfilled all
5 orders of the court entered under AS 47.12.120, the superior court shall order the
6 record of proceedings and the record of punishments sealed. Sealing the records
7 restores civil rights removed because of a conviction. A person may not use these
8 sealed records for any purpose except that the court may order their use for good cause
9 shown or may order their use by an officer of the court in making a presentencing
10 report for the court. The court may not, under this subsection, seal records of a
11 criminal proceeding

12 (1) initiated against a person if the court finds that the person has not
13 complied with a court order made under AS 47.12.120; or

14 (2) commenced under AS 47.12.030(a) unless the minor has been
15 acquitted of all offenses with which the minor was charged or unless the most serious
16 offense of which the minor was convicted was not an offense specified in
17 AS 47.12.030(a).

18 * Sec. 28. AS 47.12.300 is amended by adding new subsections to read:

19 (g) When a district attorney has elected to seek imposition of a dual sentence
20 and a petition has been filed under AS 47.12.065, or when a minor agrees as part of
21 a plea agreement to be subject to dual sentencing, all court records shall be open to
22 the public except for predisposition reports, psychiatric and psychological reports, and
23 other documents that the court orders to be kept confidential because the release of the
24 documents could be harmful to the minor or could violate the constitutional rights of
25 the victim or other persons.

26 (h) A person who discloses confidential information in violation of this section
27 is guilty of a class B misdemeanor.

28 * Sec. 29. AS 47.12.310(b) is amended to read:

29 (b) A state or municipal agency or employee

30 (1) shall disclose information regarding a case to a state or
31 municipal law enforcement agency for a specific investigation being conducted by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

that agency; and

(2) may disclose information regarding a case to

(A) [(1)] a guardian ad litem appointed by the court or to a citizen review panel for permanency planning authorized by AS 47.14.200 - 47.14.220;

(B) [(2)] a person or an agency requested to provide consultation or services for a minor who is subject to the jurisdiction of the court under this chapter;

(C) [(3)] school officials as may be necessary to protect the safety of school students and staff;

(D) [(4)] a governmental agency as may be necessary to obtain that agency's assistance for the department in its investigation or to obtain physical custody of a minor;

(E) [(5)] a state or municipal law enforcement agency as may be necessary [FOR A SPECIFIC INVESTIGATION BEING CONDUCTED BY THAT AGENCY OR] for disclosures by that agency to protect the public safety; and

(F) [(6)] a victim or to the victim's insurance company as may be necessary to inform the victim or the insurance company about the arrest of the minor, an investigation regarding a case involving the minor, or the disposition or resolution of a case involving a minor.

• Sec. 30. AS 47.12.310(g) is amended to read:

(g) The department and affected law enforcement agencies shall work with school districts and private schools to develop procedures for the disclosure of information to school officials under (b)(2)(C) [(b)(3)] and (c)(3) of this section. The procedures must provide a method for informing the principal or the principal's designee of the school the student attends as soon as it is reasonably practicable.

• Sec. 31. AS 47.12.320(a) is amended to read:

(a) Notwithstanding AS 47.12.300 and 47.12.310,

(1) a parent or legal guardian of a minor subject to a proceeding under this chapter may disclose confidential or privileged information about the minor,

1 including information that has been lawfully obtained from agency or court files, to
2 the governor, the lieutenant governor, a legislator, the ombudsman appointed under
3 AS 24.55, the attorney general, and the commissioners of health and social services,
4 administration, or public safety, or an employee of these persons, for review or use in
5 their official capacities;

6 (2) the department may disclose confidential or privileged
7 information about the minor and make available for inspection documents about
8 the minor to the state officials or employees identified in (1) of this subsection for
9 review or use in their official capacities; and

10 (3) a [. A] person to whom disclosure is made under (1) or (2) of this
11 subsection [SECTION] may not disclose confidential or privileged information about
12 the minor to a person not authorized to receive it.

13 * Sec. 32. AS 47.12.320(b) is amended to read:

14 (b) The disclosure right under (a)(1) [(a)] of this section is in addition to, and
15 not in derogation of, the rights of a parent or legal guardian of a minor.

16 * Sec. 33. AS 47.15.010 is amended by adding a new article to read:

17 ARTICLE XVII

18 RENDITION

19 (a) This article shall provide additional remedies and shall be binding only
20 between those party states which specifically execute it.

21 (b) All provisions and procedures of articles V and VI of the Interstate
22 Compact on Juveniles shall be construed to apply to any juvenile charged with being
23 a delinquent by reason of a violation of any criminal law. Any juvenile charged with
24 being a delinquent by reason of violating any criminal law shall be returned to the
25 requesting state upon a requisition to the state where the juvenile may be found. A
26 petition in such a case shall be filed in a court of competent jurisdiction in the
27 requesting state where the violation of criminal law is alleged to have been committed.
28 The petition may be filed regardless of whether the juvenile has left the state before
29 or after filing of the petition. The requisition described in article V of the compact
30 shall be forwarded by the judge of the court in which the petition has been filed.

31 * Sec. 34. AS 47.12.110(d), added by sec. 14 of this Act, has the effect of changing

1 Rules 3 and 21, Alaska Delinquency Rules, by reversing the presumption that the public shall
2 be excluded from hearings involving minors.

3 * Sec. 35. The provisions of AS 47.12.300(g), added by sec. 28 of this Act, have the effect
4 of changing Rule 27, Alaska Delinquency Rules, by making court records for certain juvenile
5 proceedings public documents in specified circumstances.

6 * Sec. 36. Rules 6, 7, and 21(f), Alaska Delinquency Rules, are repealed.

7 * Sec. 37. AS 47.12.110(c) is repealed.

8 * Sec. 38. APPLICABILITY OF SECTIONS 1 - 32. Sections 1 - 32 of this Act apply to
9 all offenses committed on or after the effective date of this Act.

10 * Sec. 39. SCOPE AND APPLICABILITY OF SECTION 33. The juvenile rendition
11 amendment to the Interstate Compact on Juveniles is hereby enacted into law by sec. 33 of
12 this Act and entered into by this state with all other states legally joining therein in the form
13 substantially as set out in sec. 33 of this Act. Section 33 of this Act applies to offenses
14 committed before, on, or after the effective date of this Act.

15 * Sec. 40. This Act takes effect July 1, 1997.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 450-8161

Write in Ink
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

Sectional

C.S House Bill 16

Section 1 & 2. Technical reference.

Section 3. Requires a municipality to provide notification to the Department of Health and Social Services when the Municipality commences a civil action against a minor. This keeps the records of HSS intact.

Section 4. Authorizes Municipalities to take a minor to civil court for violations of municipal ordinances.

Section 5. Collateral references relating to the dual sentencing provision in section 12 .

Section 6. Encourages the department of Law to extend its victim witness assistance program to the juvenile justice system. This is in response to Fairbanks constituents who discovered that, although their homes had been broken into, they were faced great difficulty gaining access to police reports and the court process.

Section 7. Allows the Department of Health and Social Services to discuss otherwise confidential cases with legislators. This will allow the department to respond factually to legislators, but it does not allow legislators to communicate confidential information to anyone else.

Section 8. Technical renumbering.

Section 9. An expansion of the goals and purposes of the delinquency chapter. Incorporates elements of the "restorative justice model" into Alaska's goals for juveniles.

Section 10 & 11. Allow the department to bring communities into the juvenile justice system. The "entity" included in this sections may include municipalities, non-profits, organized citizen groups, etc.

Section 12. Dual sentencing.

(a) The department shall refer a case to the District attorney if the minor was:

- (1) at least 13, but not yet 16, and the offense is
 - (A) an unclassified or class A felony, and the minor would have been waived into adult court if 16 years of age; or
 - (B) sexual assault in the second degree; or
- (2) 16 years of age or older, and the offense was
 - (A) a felony crime against a person and the minor has been previously adjudicated a delinquent for a felony offense.
 - (B) sexual abuse of a minor in the second degree.

(b) The District Attorney is authorized to take a case before a grand jury for indictment, and then may proceed to seek imposition of a dual sentence.

Section 13. Technical reference.

Section 14. Opens the court proceedings to the public, when the District Attorney seeks the imposition of a dual sentence.

Section 15. Adds placement options for the court, including placement of a minor with a relative, foster care home or a residential child care facility.

Expands the courts ability to assign community service.

Section 16. Technical references.

Section 17.

New part (i) from delinquency court rule 11(a).

New part (J), dual sentencing. If the district attorney seeks imposition of a dual sentence, and the court finds the minor to be delinquent, then the court shall (1) enter a juvenile sentence under AS 47.12.120(b); and (2) pronounce an adult sentence that must include some period of imprisonment that is not suspended by the court.

Section 18. Technical reference.

Section 19. The department may petition for imposition of the adult portion of the dual sentence if:

- (1) the minor commits a subsequent felony offense;
 - (2) commits a subsequent offense against a person that is a misdemeanor and involves injury to a person or the use of a deadly weapon;
 - (3) fails to comply with the terms of a restitution order;
 - (4) fails to engage in or satisfactorily complete a rehabilitation program ordered by a court or required by a facility or juvenile probation officer; or
 - (5) escapes from a juvenile correction facility.
- (e) if the court finds, by the preponderance of the evidence that the minor has failed as listed above, then the minor is transferred to adult corrections.

Sectional HB 16\L
Page 3.

Section 20, 21, 22. Technical reference

Section 23. Arrest, from delinquency court rule 7(a) combined with existing code AS 47.12.250(a).

Section 24, 25, 26, & 27. Technical references & edits.

Section 28. New part (g). Dual sentencing court proceedings open to the public.

Section 29. (b)(1) Provides for communication between law enforcement agencies and the department of Health and Social Services.

Section 30. Technical reference.

Section 31. Allows the Department of Health and Social Services to discuss otherwise confidential cases with legislators. This will allow the department to respond factually to constituent concerns made by legislators, but it does not allow legislators to communicate confidential information to anyone else.

Section 32. Technical reference.

Section 33. Rendition. Alaska is a signatory to the Interstate Compact on Juveniles, providing for extradition or juvenile offenders, this just codifies these provisions.

Section 34, 35, & 36. Delinquency rule changes and repealers.

Section 37. Repeal of AS 47.12.110(c), This is an old, unused portion of code. It requires school principals to give judges lists of students for selection for "young adult advisory panels." This concept has been supplanted with the youth court. Its repeal in no way impairs the youth court, which is entirely different.

Section 38 & 39. Applicability section.

Section 40. Effective date.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



White in Fairbanks
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

Sponsor Statement

House Bill 16

House Bill 16 is a product of the Governor's Conference on Juvenile Justice, offering several solutions to the problems facing Alaska's juvenile justice system.

The bill: 1) allows municipalities to seek civil court remedy for juveniles who violate municipal ordinances; 2) provides for dual sentencing of serious juvenile offenders; 3) allows the department of Health and Social Services to draw upon the available resources of local communities or other entities who desire to get involved in juvenile crime issues; and 4) provides for the extradition of minors between states.

HB 16 also provides additional insight into the workings of our juvenile justice system. I have added portions of the existing Alaska Court Delinquency Rules to the statutes in an effort to give police, DFYS and the Courts a single set of instructions to follow when dealing with juveniles.

Chapter 8.05

CRIMES AGAINST PERSONS AND PROPERTIES*

8.05.010	Sale or furnishing of alcoholic liquor to certain persons prohibited.
8.05.030	Assault.
8.05.040	Stalking.
- 8.05.060	Child abuse.
8.05.070	Concealed weapons.
- 8.05.080	Consuming alcoholic beverage in public place.
8.05.100	Defrauding innkeeper.
- 8.05.120	Disorderly conduct.
- 8.05.150	Intoxicated persons on roadway.
8.05.160	Enticement.
8.05.170	Escape and attempt to escape.
8.05.175	Report of failure to return to detention.
8.05.180	Tampering with or withholding evidence.
8.05.185	Failure to appear.
8.05.186	Violation of conditions of release.
8.05.190	False reports generally.
8.05.200	False information.
8.05.210	False bomb report.
8.05.220	Obtaining money or property by false pretenses.
8.05.240	Discharging firearms.
8.05.250	Firearms on premises licensed for sale of alcoholic beverages.
- 8.05.255	Firearms on school grounds.
- 8.05.260	Possession of weapons by minors.
- 8.05.270	Fireworks.
8.05.290	Impersonation of public officer.
8.05.300	Indecent exposure or exhibition.
8.05.360	Larceny.
- 8.05.370	Littering; defacing building or other structure.
- 8.05.375	Graffiti and related vandalism.
8.05.390	Theft of lost property.
8.05.390	Magazine subscription sales. (Repealed)
- 8.05.400	Malicious destruction of property.
- 8.05.410	Performances and exhibitions harmful to minors.
- 8.05.420	Disseminating indecent material to minors.
- 8.05.425	Sexual exploitation of minors.
- 8.05.430	Sale or furnishing of firearms to minors.
- 8.05.440	Minors—Curfew.
- 8.05.450	Minors—Sale of tobacco products.
- 8.05.451	Minors—Possession of tobacco products.
- 8.05.453	Sale of single cigarettes and other unpackaged or unlabeled tobacco products.
- 8.05.455	Minors prohibited on premises of dating and escorting services.
8.05.480	Destruction of official notices. (Repealed)
8.05.490	Public excretion.
8.05.530	Resisting or interfering with officer.
- 8.05.550	Shoplifting.
8.05.560	Solicitation to illegal act.
- 8.05.580	Switchblade and gravity knives.
8.05.590	Illegal use of telephones.
8.05.600	Theft of vehicle.

*Cross reference—Emergency proclamation, restricting certain activity, § 3.50.070.
State law reference—Offenses against the person, AS 11.41.100 et seq.

ANCHORAGE MUNICIPAL CODE

- 8.05.610 Unauthorized duplication of keys.
- 8.05.620 Unauthorized entry.
- 8.05.660 Tampering with vehicle.
- 8.05.670 Possession of weapon with intent to assault.
- 8.05.680 Parent or guardian providing firearm to violent minor.
- \ 8.05.690 Duty of parent or guardian knowing of minor's possession of dangerous weapon.
- 8.05.700 Drive-by shootings.

8.05.010 Sale or furnishing of alcoholic liquor to certain persons prohibited.

A. It is unlawful for any person to sell, furnish, give or deliver any alcoholic liquor to anyone who is visibly intoxicated or who is under the age of 21 years.

B. The term "person" as used in this section does not include a parent as to his own child, a guardian as to his ward, or a licensed physician or nurse in giving medical treatment.

C. The burden shall at all times be upon the licensee and his employees to determine the age and sobriety of any patron. For the purposes of this section, the term "licensee" means any person licensed under the law of the state to dispense or sell alcoholic beverages.

(GAAB 19.05.110; AO No. 86-110)

State law references—Authority to regulate, AS 4.21.010; furnishing alcoholic beverage to underage or intoxicated persons, AS 4.16.030, 4.16.051.

8.05.030 Assault.

A. It is unlawful for any person to commit an assault.

B. An assault is:

1. An intentional or reckless use of force or violence upon the person of another; or
2. An intentional or reckless use of force, which creates a reasonable apprehension of immediate physical injury to the person of another.

C. A peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has committed a crime under subsection A of this section when the victim is a spouse or former spouse of the person who committed the crime; a parent, grandparent, child or grandchild of the person who committed the crime; a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime; or another person who is not a spouse or former spouse of the person who committed the crime but who previously lived in a spousal relationship with the person who committed the crime

or is in or has been in a dating, courtship or engagement relationship with the person who committed the crime.

D. It is unlawful when an assault is committed against the person of a police officer, firefighter, paramedic or animal control officer and the person committing the offense knows or reasonably should know that such victim is a police officer, firefighter, paramedic or animal control officer engaged in the performance of official duties.

(AO No. 79-24; AO No. 85-209; AO No. 93-41)

State law references—Reckless endangerment, AS 11.41.250; arrest without warrant, AS 12.25.030.

8.05.040 Stalking.

A. It is unlawful for any person to commit the offense of stalking.

B. A person commits the crime of stalking if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

C. In this section, the following terms shall have the meaning given in this subsection:

1. *Course of conduct* means repeated acts of nonconsensual contact involving the victim or a family member.
2. *Family member* means a:
 - a. Spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew or niece of the victim, whether related by blood, marriage or adoption;
 - b. Person who lives, or has previously lived, in a spousal relationship with the victim;
 - c. Person who lives in the same household as the victim; or
 - d. Person who is a former spouse of the victim or is or has been in a dating, courtship or engagement relationship with the victim.
3. *Nonconsensual contact* means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in dis-

regard of that person's expressed desire that the contact be avoided or discontinued. The term "nonconsensual contact" includes:

- a. Following or appearing within the sight of that person.
- b. Approaching or confronting that person in a public place or on private property.
- c. Appearing at the workplace or residence of that person.
- d. Entering onto or remaining on property owned, leased or occupied by that person.
- e. Contacting that person by telephone.
- f. Sending mail or electronic communications to that person.
- g. Placing an object on, or delivering an object to, property owned, leased or occupied by that person.

4. *Victim* means a person who is the target of a course of conduct.

(AO No. 93-200, § 1, 2-3-94)

State law references—Stalking in the second degree, AS 11.41.270; arrest without warrant, AS 12.25.030(b)(1).

8.05.060 Child abuse.

A. It is unlawful for any person to commit child abuse.

B. A person commits child abuse if he knowingly, intentionally or negligently and without justifiable excuse causes or permits a child to be:

1. In any place under circumstances creating a substantial risk of injury to the child;
2. Abandoned, tortured, cruelly confined or cruelly punished; or
3. Deprived of necessary food, clothing or shelter.

C. In this section, the word "child" means a person under the age of 16 years.

(CAC 8.47.010)

State law references—Endangering the welfare of a child, AS 11.51.120; child protection, AS 47.17.010.

8.05.070 Concealed weapons.

It is unlawful for any person other than a peace officer to carry concealed about his person in any manner:

- A. A revolver, pistol or other firearm;
- B. A switchblade knife, gravity knife or any knife other than an ordinary folded pocket knife (one which has the blade stored in the handle and requires the bearer to physically pull the blade from the handle before it can be used), or a dirk or dagger;
- C. A slingshot, metal knuckles, club, billy, blackjack or any other instrument or thing the principal purpose or use of which is as a weapon;
- D. Any other instrument or thing which, because of the manner in which it is concealed and the accompanying circumstances, could reasonably be construed as being kept as a weapon or in order to achieve some violent purpose, and by which injury could be inflicted upon the person of another; or
- E. Nothing in this section shall be construed to prohibit the following:
 1. Carrying a weapon concealed in a vehicle so long as the weapon is not also concealed on the person of an occupant of the vehicle; or
 2. Carrying a concealed handgun in accordance with AS 18.65.700 through 18.65.790 by a person issued and carrying a valid permit under such state statutes.

(AO No. 89-52; AO No. 94-72(S-1), § 1, 4-26-94; AO No. 94-171, § 1, 10-1-94)

State law reference—Misconduct involving weapons in the third degree, AS 11.61.220.

8.05.080 Consuming alcoholic beverage in public place.

A. It is unlawful for any person to consume any alcoholic beverage on the traveled portion of any public street, sidewalk or alley upon the grounds of any municipal building, except as permitted by ordinance or regulation, or in any store or establishment doing business with the public and not

authorized to sell alcoholic beverages for consumption on the premises, nor shall any person who owns, operates or controls any such unauthorized store or establishment permit the consumption of alcoholic beverages therein.

B. The mayor is authorized to designate public areas and places, in addition to those specified in subsection A of this section, in which the consumption of alcoholic beverages is prohibited, and to cause signs to be posted in such areas or places advising members of the public of the prohibition. (GAAB 18.05.010.GG)

8.05.100 Defrauding innkeeper.

A. It is unlawful for any person to obtain lodging at a hotel, inn, boardinghouse or lodginghouse and procure board or lodging from the owner or operator by means of a trick, deception or false representation, or a false show of baggage or effects, or procure food, drink or other merchandise from any restaurant, dining room, cocktail lounge, bar or other premises where food or drink is offered to the public for sale, with the intent to cheat or defraud the owner or operator out of the pay for the board, lodging or accommodation, or food, drink or merchandise. It is also unlawful, with such intent, to abscond from the premises, or surreptitiously remove, or cause to be removed, baggage or effects from a hotel, inn, boardinghouse or lodginghouse without first paying the proper charges due. As used in this section, the term "board or lodging" includes all charges incurred except for cash payouts to a guest.

B. Proof that board, lodging, food, drink or merchandise were obtained by false pretenses, or that the person refused or neglected to pay for the board, lodging, food, drink or merchandise on demand, is prima facie evidence of the fraudulent intent required in subsection A of this section. (GAAB 18.05.160)

State law reference—Theft of services, AS 11.46.200(2)(b).

8.05.120 Disorderly conduct.

It is unlawful for any person to commit any of the following acts, which shall constitute disorderly conduct:

A. Solicitation of any person to engage in, or engaging in, lewd conduct in any public place or in any place open to the public or exposed to public view.

- B. Accosting another in any public place or in any place open to the public for the purposes of begging or soliciting alms.
- C. Engaging in or soliciting any lewd or lascivious or unlawful act in or about any toilet open to the public.
- D. In a public place, repeatedly or continuously shouting, blowing a horn, playing a musical or recording or amplifying instrument, or otherwise generating loud noises intended to disturb or acting with reckless disregard for the peace and privacy of others, or, in a private place, engaging in the same conduct with the same intent or reckless disregard, having been informed by another that the conduct is disturbing the peace and privacy of others not in the same place.
- E. In a public or private place, looking or peeping into an enclosed area for the purpose of observing another person who has a reasonable expectation of privacy therein. As used in this subsection, the term "enclosed area" includes but is not limited to tanning booths, dressing rooms, toilets and washrooms.
- F. Lodging in any building, structure or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof.
- G. In a public place, when a criminal offense has occurred, refusing to comply with a lawful order of the police to disperse, or, in a private place, refusing to comply with an order of the police to leave premises in which the person so refusing has neither a right of occupancy nor the express invitation to remain of the person having the right of possession.
- H. In a public or private place, challenging another to fight, or engaging in fighting other than in self-defense.
- I. In a public or private place, knowingly or recklessly creating a hazardous condition for others by an act which has no legal justification or excuse.
- J. Sleeping in a public place, except where camping is permitted, while intoxicated.

K. For purposes of this section, the term:

1. *Loud noise*, in a private place, means noise which is loud enough to awaken the average person sleeping in a place other than the private place. If the loud noise constitutes speech, the content of speech or evidence of specific words used by the defendant is admissible in evidence against him only as permitted by court rule.
2. *Loud noise*, in a public place, means noise which is loud enough to inhibit the ability of the average person in the same place to converse freely without leaving the public place.
3. *Public place* means a place where the public is permitted to assemble, enter or pass through, whether publicly or privately maintained, including but not limited to places of accommodation, transportation, business and entertainment, or any other place which is not a private place.

L. For a second or subsequent conviction of an offense under subsection J of this section within two years the municipality may place the individual's name and other identifying information in a data base, and may make such data base available to the public. Any persons listed on such a data base shall be deleted from the data base if two years elapse without another conviction for the same offense.

(GAAB 18.05.010; AO No. 89-52; AO No. 95-149(S), § 1, 11-2-95)

State law reference—Disorderly conduct, AS 11.61.110.

8.05.150 Intoxicated persons on roadway.

It is unlawful for any person to be upon any public street, road or highway while intoxicated in such a manner as to be hazardous to motor vehicle traffic.

(GAAB 18.05.010.B)

State law reference—Similar provisions, AS 47.37.250(3).

8.05.160 Enticement.

It is unlawful for any person to accost another person and entice or attempt to entice such other

person into any automobile, building, bushes, or wooded or secluded area, or any remote public or private place, for any unlawful purpose.
(GAAB 18.05.010.M)

8.05.170 Escape and attempt to escape.

A. It is unlawful for any person to escape or attempt to escape from the custody of a peace officer under arrest or from a jail or institution in which he is detained by a peace officer or confined by direction of a court, or from custody under process issued by a court.

B. It is unlawful for any person to in any way aid or assist a person in an escape or attempted escape as defined in this section.

(AO No. 94-130, § 1, 9-20-94)

State law reference—Escape in the fourth degree, AS 11.56.230.

8.05.175 Report of failure to return to detention.

A person who commits the crime of escape or attempt to escape if, while charged with or convicted of a misdemeanor under this Code, and who is assigned to jail or an institution within the municipality by corrections authorities, knowingly fails to return to official detention within the time authorized following temporary leave granted for a specified purpose or a limited period including leave granted under AS 33.30.091—33.30.181 shall be reported by the jail or institution to the police department and the municipality department of law, prosecution division within 24 hours.

(AO No. 94-130, § 2, 9-20-94)

8.05.180 Tampering with or withholding evidence.

It is unlawful for any person, knowing that any book, paper, record, instrument in writing, or other matter or thing is about to be produced in evidence upon any trial, inquiry or criminal investigation authorized by law, to willfully destroy, alter, conceal or withhold such evidence.

State law reference—Tampering with physical evidence, AS 11.56.610.

8.05.185 Failure to appear.

It is unlawful for any person charged with violating any provision of this Code, which violation is punishable as a crime, to fail to appear for any arraignment, hearing, trial or other court appearance which pertains to such charge after having been given proper notice in person or through authorized counsel.

(AO No. 80-92)

State law reference—Failure to obey citation, AS 12.25.230.

8.05.186 Violation of conditions of release.

It is unlawful for any person charged with any criminal offense under this Code to violate or fail to adhere to any restrictions on travel, association, place of abode or any other restriction or condition of release, with or without bail, imposed by any court in connection with such charge.

(AO No. 94-203, § 1, 12-13-94)

8.05.190 False reports generally.

A. It is unlawful for any person to report to any police officer, district attorney, prosecutor, assistant district attorney or other official of any public law enforcement or prosecution agency that a felony or misdemeanor has been committed, knowing such report to be false.

B. It is unlawful for any person to register, make, render or report any false alarm, report or complaint to either the fire department or the police department.

State law reference—Making a false report, AS 11.56.800.

8.05.200 False information.

A. It is unlawful for any person who is under arrest or detention by a peace officer for the purpose of issuance of a complaint or citation for violation of any state law or municipal ordinance to provide such officer with false information concerning the person's name, address, driver's license or date of birth, or any other matter necessary to proper issuance of the citation or complaint.

B. It is unlawful for a person who has an arrest warrant outstanding to provide a peace officer with false information concerning the person's

name, address, driver's license or date of birth, or any other matter necessary to proper service of the warrant.

(GAAB 18.05.030; AO No. 82-134; AO No. 89-124)

State law reference—Making a false report, AS 11.56.800(a)(2).

8.05.210 False bomb report.

It is unlawful for any person to:

A. Report to any police officer, prosecutor, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, assistant district attorney, employee of an airline, airport, railroad or bus line, employee of a telephone company, occupants of a building, or a news reporter in the employ of a newspaper or radio or television station that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such report is false.

B. Maliciously inform any other person that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such information is false.

State law reference—Terroristic threatening, AS 11.56.510.

8.05.220 Obtaining money or property by false pretenses.

It is unlawful for any person to obtain money, property or other things of value, including but not limited to the use of coin vending devices, or the use of any public utility service:

A. By false pretenses or representations, whether oral, written or otherwise;

B. By use of any device or means by which the use of any such machine or service is secured without paying or contracting to pay the established consideration therefor; or

C. When the consideration is charged to another person without the authorization or subsequent consent of the person.

(GAAB 18.05.010.KK)

8.05.240 Discharging firearms.

A. It is unlawful for any person to:

1. Shoot, discharge or flourish any firearm, air rifle or air pistol from or upon a public road or highway.

2. Flourish, point or discharge a firearm, air rifle or air pistol in any urban area or in or on any means of public transportation, or in or near a park or public grounds, or at a public place, whether public in itself or made public at the time by an assemblage of people, except in those areas open to the public for lawful hunting or upon established shooting ranges.
3. Discharge or shoot a pistol or other firearm, air rifle or air pistol into, in, through or against a dwelling, house, schoolhouse, church building, factory, storehouse, courthouse or a house or building used for manufacturing purposes, or any house or building used for the assembling of people for business or pleasure.
4. Have in his possession or under his control, or use or discharge, a firearm while such person is under the influence of intoxicating liquor or a narcotic, stimulant, hallucinogenic or depressant drug.

B. This section shall not apply to any officer of the United States, the state or the municipality who is authorized to use firearms in the enforcement of any law or ordinance and who is actually engaged in such enforcement.

(GAAB 18.05.010.D)

State law reference—Misconduct involving weapons in the second degree, AS 11.61.210.

8.05.250 Firearms on premises licensed for sale of alcoholic beverages.

A. It is unlawful for any person to have in his possession or control any firearm on premises licensed for the sale of alcoholic beverages for consumption, or for any person to conceal a firearm on licensed premises.

B. Subsection A of this section shall not apply to the owner of the premises, or to an employee of the premises while performing his duties, or to a peace officer.

(AO No. 79-24)

State law reference—Misconduct involving weapons in the third degree, AS 11.61.220.

8.05.255 Firearms on school grounds.

A. It is unlawful for any person to have in his possession or control within the grounds of or on

a parking lot immediately adjacent to a public or private preschool, elementary, junior high or secondary school:

1. A revolver, pistol or other firearm;
2. A switchblade knife, gravity knife or any knife other than a folded pocket knife (one which requires the bearer to physically pull the blade from the handle before it can be used), or a dirk or dagger; or
3. A slingshot, metal knuckles, club, billy, blackjack or other instrument or thing the principal purpose or use of which is as a weapon.

B. Subsection A of this section shall not apply to peace officers or persons who have express authorization of the school district superintendent or his designee or, in the case of a private or religious school, express authorization of the chief administrative officer of that school.

C. In the case of a conviction under subsection A of this section the weapon shall be disposed of as provided in section 8.50.020.F.

D. Weapons possessed by persons under 18 years of age (minors) in violation of subsection A of this section shall be seized and may be forfeited to the municipality in accordance with this section.

1. The legal owner of a weapon seized from a minor, if known, shall be notified by first class mail within 30 days of the seizure.
2. The legal owner may redeem the weapon upon providing the chief of police or designee with the following information:
 - a. Proof of ownership.
 - b. A description of precautions taken to prevent unauthorized access to the weapon.
 - c. A statement that the juvenile in possession of the weapon did not have permission to have access to the weapon.
 - d. A description of the steps the owner intends to take to prevent future incidents of unauthorized access.
3. The chief of police or designee may deny return of the weapon and order it forfeited

if the chief, after considering information provided by the purported owner, police reports regarding the incident, information regarding prior incidents involving the weapon or the individuals, and such other relevant information as is presented, determines based upon a preponderance of the evidence that either:

- a. The person claiming the weapon is not the rightful owner;
 - b. The owner failed to store the weapon in a manner which would reasonably be expected to prevent unauthorized access to the weapon; or
 - c. The owner authorized the minor to access the weapon during school hours.
4. If the legal owner is unknown, or fails to request return of the weapon under subsection D.2 of this section within 30 days of mailing of the notice under subsection D.1 of this section, the weapon may be disposed of pursuant to chapter 7.25, pertaining to abandoned property.

(AO No. 90-122; AO No. 93-56(S))

State law reference—Misconduct involving weapons in the third degree, AS 11.61.220.

8.05.260 Possession of weapons by minors.

A. A minor under 18 years of age may not possess a dangerous weapon unless he:

1. Is at his residence or on privately owned real property with the permission of the owner, licensee or lessee of the property;
2. Is accompanied by a parent or guardian while he has the weapon in his possession;
3. Has completed a firearms safety course or hunting safety course and has proof of successful course completion in his possession; or
4. Has in his possession the written permission of his parent or legal guardian to have the weapon in his possession, and at the time of possession he:
 - a. Holds a valid hunting license issued pursuant to AS 16.05.330—16.05.430

and was actively engaged in traveling to or returning from a lawful activity relating to hunting; or

- b. Is traveling to or from or engaging in:
 - (1) A hunter's safety course;
 - (2) A firearm safety course;
 - (3) Practicing the use of firearms at a shooting range or any place where discharge is not prohibited; or
 - (4) An organized competition involving the use of firearms at an authorized shooting range; and
- c. While traveling in possession of a firearm under subsection A.4.a or b of this section, such firearm is not loaded.

B. Any minor under 12 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult unless at his residence or on privately owned real property with the permission of the owner, licensee or lessee of the property.

C. Except as provided by federal or state law, a minor under 18 years of age may not possess the following:

1. A sawed-off rifle or sawed-off shotgun; or
2. A fully automatic weapon.

D. For the purposes of this section, the following terms shall have the meaning given in this subsection:

1. *Shooting range* includes shooting galleries licensed pursuant to section 10.45.035 or publicly owned shooting ranges.
2. *Dangerous weapon* means any weapon, the concealment of which is prohibited by section 8.05.070.
3. *Fully automatic weapon* means any firearm which is designed to fire, or can be readily restored to fire, automatically more than one shot, without manual reloading, by a single function of the trigger.
4. *Parental permission* means written approval or permission to possess a firearm which is on a form prescribed by the chief of

police, signed by the minor's parent or legal guardian, which specifically describes the firearm as follows:

- a. Type;
- b. Manufacturer;
- c. Caliber; and
- d. Serial number.

E. For the purposes of this section a firearm shall be considered loaded if:

1. There is a cartridge in the chamber of the firearm;
2. There is a cartridge in the cylinder, if the firearm is a revolver;
3. There is a cartridge in the magazine which is attached to the firearm, if the firearm utilizes a magazine, whether such magazine is detachable or fixed; or
4. The firearm, and the ammunition therefor, are carried on the person of the juvenile or are within such close proximity that the juvenile could readily gain access to the firearm and the ammunition and load the firearm.

F. If a minor is convicted of a violation of this section, the court shall order the forfeiture of the firearm which the minor possessed in violation of this section. The court shall order the return of the firearm to its lawful owner only if the owner shows to the court, by a preponderance of the evidence, that such firearm was obtained by the minor without permission of the owner.

(AO No. 94-30, § 3, 4-19-94)

Editor's note—The referendum required by AS 11.61.220 was held on April 19, 1994.

Cross reference—Sale or furnishing firearms to minors. § 8.05.430.

8.05.270 Fireworks.

It is unlawful for any person to sell, possess or use any explosive fireworks or stench bomb to which fuses are attached or which are capable of ignition by matches or percussion, without permission of that municipal official charged with issuing permits for such activities. This section does not apply to sale, possession or use of high-

way or other warning flares, or of ammunition for firearms, unless used for other than their intended purposes.

(GAAB 18.05.010.Y)

State law reference—Similar provisions, AS 18.72.060.

8.05.290 Impersonation of public officer.

A. It is unlawful for any person to falsely represent himself to be a public officer, including but not limited to an investigator, inspector or deputy clerk in any municipal department, or in such assumed character to arrest or detain, threaten to arrest or detain, or otherwise intimidate any person or search the person, building or other property of any person, or obtain money, property or other thing of value.

B. It is unlawful for any person to falsely assume to be a magistrate or peace officer, or to act as such, and require any other person to in any way aid or assist in any matter pertaining to the duty of a magistrate or peace officer.

State law reference—Impersonating a public servant, AS 11.56.830.

8.05.300 Indecent exposure or exhibition.

It is unlawful for any person to intentionally expose his or her genitals in a public place, except as part of public entertainment or dramatic presentation, or to the view of other persons, which exposure is offensive to those persons or which is likely to cause affront or alarm.

State law reference—Indecent exposure, AS 11.41.460.

8.05.360 Larceny.

It is unlawful for any person to steal money, goods or chattels, or a government note, a bank note, a promissory note, bill of exchange, bond or other thing in action, or a book of accounts, order or certificate concerning money or goods due or to become due or to be delivered, or a deed or writing containing a conveyance of land or interest in land, or a bill of sale, or writing containing a conveyance of goods or chattels or interest in them, or any other valuable contract in force, or a receipt, release or defeasance, or a writ, process or public record which is the property of another.

8.05.370 Littering; defacing building or other structure.**A. It is unlawful for any person to:**

1. Litter in or on any property not his own on which he is not an invitee or licensee, or on any public building, park, recreation area, parking lot, street or highway; or
2. Deface without permission of the owner any building or structure not his own, or any public building, park, recreation area, parking lot, street or highway, or any other publicly owned edifice or structure, whether manmade or naturally occurring.

B. In addition to all other fines and penalties provided for in section 8.50.010 and this section, persons violating this section shall:

1. Perform community service of not less than 20 nor more than 100 hours; and
2. Remove or cause the removal of the litter and restore the property defaced at their sole expense and at the direction and under the supervision of the property owner.

C. If the person violating this section fails to remove the litter or restore the property as the case may be, the owner thereof may cause the same to be accomplished and charge the person responsible for doing so for the reasonable expense incurred and recover such expenses by civil action.

D. Any act in violation of this section committed by a minor under the age of 18 years who is not a runaway, as that term is defined by AS 47.10.390, when the violation occurred, shall be imputed to that minor's parent or legal guardian who shall be liable for payment of the fine and expense of restoration.

E. Subject to AS 47.10, persons under the age of 18 years, shall be subject to the provisions of this section, provided however, that in the event any such provision conflicts with or cannot be effected under the provisions of AS 47.10, the latter shall prevail and the person, court or agency having jurisdiction over such minor shall, whenever consistent with AS 47.10, apply the penalties, fines, repair and restoration provisions hereof as a part of its final disposition or as a condition of

pre-trial/hearing diversion. Subject to the discretion of the court, agency or official having jurisdiction, the parent or legal guardian of a person under the age of 18 years violating this section shall accompany the minor to some or all of the minor's community service and repair, removal or restoration work.

1. Nothing contained in this section shall in any way limit, abridge or deny the authority or discretion of any court under AS title 12 or any agency or official under AS title 47 and such court, agency or official may vary the sentence or other disposition imposed pursuant to such authority or jurisdiction for a violation of this section.

(GAAB 18.05.010.Z; CAC 8.30.030; AO No. 94-221(S), § 1, 3-23-95)

State law reference—Litter, AS 11.46.466, 46.06.080.

8.05.375 Graffiti and related vandalism.

A. Purpose and intent. It is the purpose and intent of this section to prevent graffiti and to promote its eradication, and to prevent related vandalism, as graffiti and related vandalism adversely affects property, both public and private. It is the further intent of this section to fight against blight, to preserve the value of property, both public and private, and to promote the security of the community, all of which are threatened by graffiti and graffiti-related vandalism.

B. Definitions. For the purpose of this section, the following definitions shall apply:

1. **Aerosol paint container** means any canister, can, bottle, container or other receptacle which contains any substance commonly known as paint, stain, dye or other pigmented substance which is or can be modified to contain pressure, or be pressurized, in order to impel or propel any such substance.
2. **Graffiti** means any inscription, symbol, design or configuration of letters or numbers written, drawn, etched, marked, painted, stained, stuck on or adhered to any surface on public or private property without the express permission of the owner of such property, including but not limited to trees, signs, poles, fixtures, utility boxes, walls,

paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings or any other structures or surfaces.

3. *Graffiti implement* means any implement capable of marking a surface to create graffiti, including but not limited to aerosol paint containers, markers and gum labels.
4. *Gum label* means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal efforts.
5. *Marker* means any indelible or permanent marker, or similar implement containing an ink that is not water soluble.

C. Prohibition of graffiti. It shall be unlawful for any person to commit any overt act resulting in or attempting to result in application of graffiti on any surface on public or private property without the express permission of the owner of such property, including but not limited to trees, signs, poles, fixtures, utility boxes, walls, paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings or any other structures or surfaces.

D. Possession of graffiti implements. It shall be unlawful for any person to possess any graffiti implement while on public or private property without the express consent of the owner of such property, in a manner that warrants a justifiable and reasonable alarm or immediate concern for the safety of property in the vicinity. Among the circumstances which may be considered by the enforcement officer in determining whether such alarm or immediate concern is warranted, is the fact that the person takes flight upon appearance of an enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or the graffiti implement. Prior to any citation being issued to a person for a violation of this subsection, such person shall be afforded an opportunity by the enforcement officer to dispel any alarm or immediate concern which could otherwise be warranted by requesting such person to identify himself and explain his presence and conduct.

E. Parental civil liability. Any act in violation of subsection C or D of this section committed by a minor under the age of 18 years shall be imputed to that minor's parent or legal guardian. A parent or legal guardian of a minor who violates subsection C or D of this section shall be liable for the payment of any civil fine and the expense of restoration as set forth in subsection F of this section.

F. Penalty. Any person who commits a violation of subsection C of this section, or, in the case of a violator under 18 years of age, the parent or legal guardian, shall be punished by a fine of not more than \$500.00 for a first offense, and of not more than \$1,000.00 for a second or subsequent offense. In addition to such punishment, the violator, or the minor's parent or legal guardian, shall also be responsible for repaying the cost of restoration to the property owner, pursuant to subsection G of this section, for such completed restoration. Any person who commits a violation of subsection D of this section, or, in the case of a violator under 18 years of age, the parent or legal guardian, shall be punished by a fine of not more than \$100.00 for each offense.

G. Civil remedies. As an alternative to other penalty provisions of this section, any person who violates any provision of this section shall be subject to and shall pay to the municipality civil penalties equivalent to and on the same basis as the monetary penalties provided for in subsection F of this section. Any person, including the municipality, may seek appropriate injunctive relief for the enforcement of this section, its penalties and remedial provisions, including but not limited to actions for abatement, prevention of violations, and enforcement of all remedial and preventive provisions of this section as may be appropriate. The monetary civil penalties provided for in this subsection may also be enforced as civil fines by the administrative hearings officer under title 14.

H. Graffiti removal. A person, and, in the case of a minor, the parent or legal guardian, violating this section shall, in addition to all other penalties provided for in this section, remove or cause removal of the graffiti at their sole expense and at the direction and under the supervision of the

property owner. If the person, including a minor and the minor's parent or legal guardian, fails to remove the graffiti, the property owner may cause the graffiti to be removed and charge the person responsible for doing so for the removal expenses incurred, to include suing in a court of competent jurisdiction to recover such expenses. Graffiti on any public or private property visible from any public right-of-way, including but not limited to any street, highway, road, alley or walkway, is declared a public nuisance. The municipality shall give notice to the property owner requesting the owner to remove or cause to be removed such graffiti.

I. Anti-graffiti trust fund. There is hereby created the municipal anti-graffiti trust fund. All civil fines paid by violators of this section and ultimately received by the municipality shall be placed in the fund. The fund may also receive monetary donations from citizens, businesses and other organizations. The mayor, or his designee, shall direct the expenditure of monies in the fund. Such expenditures shall be limited to the payment of rewards under subsection J of this section and restoration costs.

J. Reward for providing information. Any person who shall provide information which leads to the actual payment of a fine by a violator of subsection C of this section, is entitled to receive from the municipality a monetary reward of up to \$500.00. The mayor, or his designee, shall determine the actual amount of reward and whether a particular reward shall be divided among persons based on the information provided and the number of persons providing the information. In no event shall the total reward relating to a particular violation exceed \$500.00.

K. Mandatory juvenile community service. Any minor (under the age of 18) violating this section shall perform community service, including graffiti removal service, of not less than 20 hours and not more than 100 hours, in addition to all other fines, penalties and restoration work. At least one parent or legal guardian shall be present at the community service site for at least one-half of the community service hours required of the minor. (AO No. 94-134(S), § 1, 9-8-94)

8.05.380 Theft of lost property.

Any person who comes into control of property of another that he knows, or reasonably should know, to have been lost, mislaid, stolen or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of larceny if, with the intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

(AO No. 91-140)

State law references—Theft by receiving, AS 11.46.190; theft of lost or mislaid property, AS 16.46.160.

8.05.390 Magazine subscription sales. (Repealed)

(GAAB 18.05.010.JJ; AO No. 93-169, 4-13-94)

8.05.400 Malicious destruction of property.

A. It is unlawful for any person to recklessly or intentionally injure or destroy any real or personal property not his own.

B. In addition to all other fines and penalties provided for in section 8.50.010 and this section, persons violating this section shall:

1. Perform community service of not less than 20 nor more than 100 hours; and
2. Remove or cause the removal of the litter and restore the property defaced at their sole expense and at the direction and under the supervision of the property owner.

C. If the person violating this section fails to remove the litter or restore the property as the case may be, the owner thereof may cause the same to be accomplished and charge the person responsible for doing so for the reasonable expense incurred and recover such expenses by civil action.

D. Any act in violation of this section committed by a minor under the age of 18 years who is not a runaway, as that term is defined by AS 47.10.390, when the violation occurred, shall be imputed to that minor's parent or legal guardian who shall be liable for payment of the fine and expense of restoration.

E. Subject to AS 47.10, persons under the age of 18 years, shall be subject to the provisions of this section, provided however, that in the event any such provision conflicts with or cannot be effected under the provisions of AS 47.10, the latter shall prevail and the person, court or agency having jurisdiction over the minor shall, whenever consistent with AS 47.10, apply the penalties, fines, repair and restoration provisions hereof as a part of its final disposition or as a condition of pre-trial/hearing diversion. Subject to the discretion of the court, agency or official having jurisdiction, the parent or legal guardian of a person under the age of 18 years violating this section shall accompany the minor to some or all of the minor's community service and repair, removal or restoration work.

F. Nothing contained in this section shall in any way limit, abridge or deny the authority or discretion of any court under AS title 12 or any agency or official under AS title 47 and such court, agency or official may vary the sentence or other disposition imposed pursuant to such authority or jurisdiction for a violation of this section.

(GAAB 18.05.010.L; AO No. 94-221(S), § 2, 3-23-95)

State law reference—Criminal mischief, AS 11.46.466.

8.05.410 Performances and exhibitions harmful to minors.

A. It is unlawful for any person or organization, as that term is defined in AS 11.81.900(37), to knowingly exhibit, perform or present to a minor in a commercial setting a performance, exhibition or other presentation which, in whole or in part, depicts nudity, sexual conduct or sexual excitement and which is harmful to minors.

B. It is unlawful for a minor to knowingly exhibit, perform or present in a commercial setting a performance, exhibition or other presentation which, in whole or in part, depicts nudity, sexual conduct or sexual excitement and which is harmful to minors.

C. It is unlawful for any person or organization, as that term is defined in AS 11.81.900 (37), to knowingly admit or sell to a minor an admis-

sion ticket or pass to a performance, exhibition or other presentation prohibited in subsection A of this section.

D. The provisions of this section shall not apply to a performance or exhibition harmful to minors where such performances or exhibitions are exhibited or performed under circumstances where minors are not present, are not allowed to be present, or are not able to view such performances or exhibitions. A person may comply with the requirements of this clause by physically segregating such performances and exhibitions in a manner so as to physically prohibit the access to and view of the performances and exhibitions by minors, by prominently posting at the entrances to such restricted area the words "Adults Only—You must be 18 to enter," and by enforcing such restrictions.

E. As used in this section, the following terms shall have the meaning given in this subsection:

1. *Minor* means any person under the age of 18 years, regardless of parental permission or emancipated status.
2. *Nudity* means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.
3. *Sexual conduct* includes any of the following depicted sexual conduct:
 - a. Any act of sexual intercourse, actual or simulated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal.
 - b. Sadoomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound or otherwise physically restricted on the part of one so clothed.

- c. Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of human genital organ.
 - d. Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
 - e. An act of sexual assault where physical violence or drugs are employed to overcome the will of or achieve the consent of a person to an act of sexual conduct and the effects or results of the violence or drugs are shown.
4. *Sexual excitement* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
 5. *Harmful to minors* means that quality of any description, representation, performance or exhibition, in whatever form, of nudity, sexual conduct or sexual excitement, when it:
 - a. Predominantly appeals to the prurient, shameful or morbid interest of minors in sex;
 - b. Is patently offensive to contemporary standards in the adult community as a whole with respect to what is suitable sexual material for minors; and
 - c. Taken as a whole, lacks serious literary, artistic, political or scientific value.
 6. *Knowingly* means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both regarding:
 - a. The character and content of any material which is reasonably susceptible of examination by the defendant; and
 - b. The age of a minor; provided, however, that an honest mistake shall constitute an excuse from liability under this

subsection if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(AO No. 91-53; AO No. 93-133(S), § 1, 11-4-93)

8.05.420 Disseminating indecent material to minors.

A. *Definitions.* In construing and applying this section, the following definitions shall apply:

1. *Minor* means a person less than 18 years old, regardless of parental permission or emancipated status.
2. *Sexual conduct* means any sexual act, normal or perverted, or any act of masturbation, excretory functions or lewd exhibition of the genitals.
3. *Sexual excitement* means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
4. *Sado-masochistic abuse* means flagellation or torture by or upon a person, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
5. *Harmful to minors* means that quality of any description or representation, in whatever form, of sexual conduct, sexual excitement or sado-masochistic abuse if, when taken as a whole, it:
 - a. According to contemporary community standards appeals to the prurient interest in sex;
 - b. Portrays sexual conduct, sexual excitement or sado-masochistic abuse; and
 - c. Does not have serious literary, artistic, political or scientific value.
6. *Indecent material* means a picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexual excitement, sexual conduct or sado-masochistic abuse which is harmful to minors; a book, pamphlet, magazine, printed matter, however produced, or sound recording which contains any matter enumerated in this definition

or explicit and detailed verbal description or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which is harmful to minors; or an enactment of sexual conduct or sado-masochistic abuse, or exhibition of sexual excitement, by one or more persons.

B. *Prohibited acts.* It is unlawful for any person to knowingly:

1. Disseminate, distribute, offer to distribute or exhibit indecent material to a minor;
2. Sell or give to a minor an admission ticket or pass to premises whereon indecent material is exhibited or to be exhibited; or
3. Admit a minor to premises whereon indecent material is exhibited or to be exhibited.

C. *Affirmative defenses.* In a prosecution for disseminating indecent material to minors, it is an affirmative defense that:

1. The defendant had reasonable cause to believe that the person involved was 18 years old or more, and such person exhibited to the defendant a driver's license, birth certificate or other official or apparently official document purporting to establish that such person was 18 years old or more; or
2. The defendant is the parent or legal guardian of the minor.

(CAC 8.48.010—8.48.030; AO No. 93-133(S), § 2, 11-4-93)

8.05.425 Sexual exploitation of minors.

A. It shall be unlawful for any person to knowingly employ, use, persuade, induce, entice or coerce any minor to engage in, or to have a minor assist any other person to engage in, any sexual excitement or sexual conduct for the purpose of producing any film, photograph, negative, slide, book, magazine, audiotape or live performance that depicts that conduct.

B. It shall be unlawful for any person to photograph, film, tape or televise a minor engaged in nudity, sexual excitement or sexual conduct, for the purpose of producing a film, photograph,

negative, slide, book, audiotape or magazine depicting that conduct for sale or distribution to other persons.

C. It shall be unlawful for any person to engage in nudity, sexual excitement or sexual conduct with a minor for the purpose of producing any film, photograph, negative, slide, book, magazine, audiotape or live performance that depicts that conduct.

D. It shall be unlawful for any person to knowingly produce, publish, distribute, sell or disseminate any film, photograph, negative, slide, book, audiotape or magazine or other printed, visual or audio medium if such person knows or has reason to know that such works are or contain graphic representations, films, photographs, negatives or slides that depict a minor engaged in nudity, sexual excitement or sexual conduct in a patently offensive way and if:

1. The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; and
2. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

E. For the purpose of this section, the following terms shall have the meaning given in this subsection:

1. *Minor* means any person under the age of 18 years, regardless of parental permission or emancipated status.
2. *Sexual conduct* means actual or simulated:
 - a. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
 - b. Bestiality;
 - c. Masturbation;
 - d. Sado-masochistic abuse (for the purpose of sexual stimulation); and
 - e. Lewd exhibition of the genitals or pubic area of any person.
3. *Sexual excitement* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

4. *Nudity* means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.

(AO No. 77-332A; AO No. 89-52; AO No. 90-5; AO No. 91-53, AO No. 93-133(S), § 3, 11-4-93)

State law reference—Unlawful exploitation of minors, AS 11.41.455.

8.05.430 Sale or furnishing of firearms to minors.

A. A person may not give, barter, sell, lease or otherwise make available any firearm to a minor under 18 years of age unless the minor is accompanied by a parent or guardian.

B. A person, including a parent or guardian, may not provide a handgun to a minor when the minor is prohibited from possessing a handgun. (GAAB 18.05.060; AO No. 94-22, § 1, 2-15-94)

Cross reference—Possession of weapons by minors, 8.05.260.

State law reference—Misconduct involving weapons in the third degree, AS 11.61.220.

8.05.440 Minors—Curfew.

A. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Curfew hours means:

- a. September through May:
 - (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
 - (2) 1:00 a.m. on any Saturday and Sunday until 5:00 a.m. of the same day.
- b. June through August: 1:00 a.m. on any day until 5:00 a.m. of the same day.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile

accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian means:

- a. A person who, under court order, is the guardian of the minor; or
- b. A public or private agency with whom a minor has been placed by a court.

Knowingly means, with respect to conduct or to a circumstance described by a provision of law defining an offense, that a person is aware that his or her conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist.

Minor means any person under the age of 18 years.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is:

- a. A natural parent, adoptive parent, or step-parent of another person; or
- b. At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place means any place to which the public or a substantial group of the public has access, and includes but is not limited to streets, highways, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain means to:

- a. Linger or stay; or
- b. Fail to leave the premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

B. Offenses.

1. A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the municipality during curfew hours.
2. A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the municipality during curfew hours in violation of this section.
 - a. Indifference as to the activities or whereabouts of the minor shall be prima facie evidence of insufficient control.
3. The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

C. Exceptions.

1. It is an exception to prosecution under subsections B.1. and B.2. of this section if the minor was:
 - a. Accompanied by his or her parent or guardian;
 - b. On an errand at the written direction of his or her parent or guardian, without any detour or stop (written direction must be signed, timed, and dated by the parent or guardian and must indicate the specific errand);
 - c. Involved in an emergency;

- d. Engaged in an employment activity, or going to or returning from an employment activity, without detour or stop;
- e. On the public right-of-way immediately abutting the minor's residence or immediately abutting the residence of a next-door neighbor, if the neighbor did not complain to the police department about the minor's presence;
- f. Attending, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the municipality, Anchorage school district, a civic organization, or another similar entity that takes responsibility for the minor;
- g. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- h. Married or had disabilities of minority removed in accordance with AS 9.55.540.

2. It is an exception to prosecution under subsection B.3 of this section that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(GAAB 18.05.070; AO No. 89-52; AO No. 95-195(S-1), § 1, 1-1-96)

8.05.450 Minors—Sale of tobacco products.

It is unlawful for any person 19 years of age or older to negligently sell, exchange or give cigarettes, cigars or tobacco in any form to any person under 19 years of age.

(GAAB 18.05.010.X; AO No. 95-178, § 1, 9-26-95)

State law reference—Similar provisions, AS 11.76.100

8.05.451 Minors—Possession of tobacco products.

A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or any product containing tobacco.

(AO No. 95-178, § 2, 9-26-95)

8.05.453 Sale of single cigarettes and other unpackaged or unlabeled tobacco products.

It is unlawful for any person doing business within the municipality to sell, offer to sell or distribute any cigarette or tobacco product except in a sealed package properly labeled with the health warning label and other labels or stamps required by federal law (15 USC 1331 et seq., 26 USC 5751(a)(3)) and regulations.

(AO No. 95-181, § 1, 9-26-95)

8.05.455 Minors prohibited on premises of dating and escorting services.

In a business establishment that arranges dates or escorts for clients it is unlawful for minors to be on the premises. Legible signs shall be posted on the premises stating that no minors are allowed. (AO No. 87-119)

8.05.480 Destruction of official notices. (Repealed)

(GAAB 18.05.010.V; AO No. 93-169, § 2, 4-13-94)

8.05.490 Public excretion.

It is unlawful for any person to urinate or defecate in or on any public street, road, highway, alley, sidewalk, park or other public place open to public view which is not a lavatory facility.

8.05.530 Resisting or interfering with officer.

A. It is unlawful for any person to willfully resist, delay or obstruct any public officer in the discharge or attempt to discharge any duty of his office.

B. It is unlawful for any person to willfully commit any of the following acts at the burning of a building or other emergency or at any other time and place where any firefighter or paramedic is discharging or attempting to discharge an official duty:

1. Resist, obstruct or interfere with the lawful efforts of any firefighter or paramedic in the discharge or attempted discharge of an official duty.

2. Disobey the lawful orders of any public officer.

3. Willfully engage in any conduct which delays or prevents a fire from being timely extinguished.

4. Forbid or prevent others from assisting in extinguishing a fire, or exhort another person whom the actor has no legal right or obligation to protect or control from assisting in extinguishing a fire.

C. It is unlawful for any person to willfully injure or destroy or take or attempt to take, or assist any person in taking or attempting to take from the custody of any public officer or person, any personal property which such officer or person has in charge under any process of law.

D. For the purposes of this section, the term "public officer" means any police officer, firefighter or fire department official or animal control officer, or any public official engaged at the time of the offense in law enforcement duties.

(AO No. 82-126; AO No. 89-52)

8.05.550 Shoplifting.

A. *Removal of merchandise.* It is unlawful for any person to take or remove any merchandise or thing of value from the premises where such merchandise or thing of value is kept for purposes of sale, barter or storage without the consent of the owner or person lawfully entitled to its possession.

B. *Concealment of merchandise.* It is unlawful for any person, without authority, willfully to conceal upon or about his person any merchandise or thing of value upon the premises where such merchandise or thing of value is kept for the purposes of sale, barter or storage. Any merchandise or thing of value found concealed upon or about the person and which has not theretofore been purchased by the person is prima facie evidence of willful concealment.

C. *"Consent" defined.* As used in this section, the term "consent" shall mean express consent, or consent implied by possession of a sales ticket, slip or receipt issued for and accompanied by the article of merchandise or thing of value.

D. *Penalties.* The penalties for violation of this section shall be:

1. No more than \$300.00 if the retail value of the merchandise concealed or removed is less than \$5.00.
2. No more than \$1,000.00 or 90 days in jail or both if such value is \$5.00 or more but less than \$50.00.
3. No more than \$5,000.00 or one year in jail or both if such value is \$50.00 or more.

(GAAB 18.05.040; AO No. 89-52)

State law references—Civil liability for shoplifting, AS 9.68.110; concealment of merchandise, AS 11.46.220.

8.05.560 Solicitation to illegal act.

It is unlawful to solicit a person for the purpose of committing any illegal act.

(GAAB 18.05.010.R)

State law reference—Solicitation, AS 11.31.110.

8.05.580 Switchblade and gravity knives.

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, by exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the state or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties.

(CAC 8.50.010)

State law reference—Switchblade or gravity knives, AS 11.61.200(A&J).

8.05.590 Illegal use of telephones.

It is unlawful for any person to anonymously or repeatedly telephone another person for the purpose of annoying, molesting or abusing through patently offensive and profane language or harassing that person or his family, or threatening physical injury.

(AO No. 82-134; AO No. 89-52)

8.05.600 Theft of vehicle.

Any person who drives or takes a motor vehicle not his own without the consent of the owner thereof, and with intent to either permanently or temporarily deprive the owner thereof of his pos-

session of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

8.05.610 Unauthorized duplication of keys.

It is unlawful for any person to make a duplicate of a key bearing the inscription "do not duplicate" or "it is unlawful to duplicate this key," unless authorized to do so by the owner of the lock which the key fits.

(CAC 8.32.010)

8.05.620 Unauthorized entry.

A. It is unlawful for any person to enter, use or occupy any occupied or unoccupied dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, railroad car or structure, or apartment, cottage, clubhouse, bathhouse, hunting or fishing lodge, garage or any other structure or use any personal property therein, except with the consent of the owner of the facility or his agent. However, a person may enter, use or occupy an unoccupied structure specified in this section without the consent of the owner if:

1. The entry, use or occupancy of the facility is for an emergency in the case of immediate and dire need; and
2. The person contacts the owner or agent within 15 days after using the facility or, if the owner is unknown, the municipal police department, and makes a report of the time of entry, use or occupancy of the facility and any damage to the facility or personal property, unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

B. In this section, the term "occupied" means that the premises is being used by one or more

persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy.

8.05.660 Tampering with vehicle.

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to:

- A. Injure or tamper with any motor vehicle or the contents thereof, or to break or remove any part of a vehicle, without the consent of the owner;
- B. With the intent to commit malicious destruction or injury, or any other crime, climb into or upon a motor vehicle;
- C. With the intent to commit malicious destruction or injury, or any other crime, attempt to manipulate or actually manipulate any mechanism or device which is part of a motor vehicle which is at rest and unattended; or
- D. With the intent to commit malicious destruction or injury, or any other crime, set in motion any vehicle while the vehicle is at rest and unattended.

8.05.670 Possession of weapon with intent to assault.

It is unlawful for any person to have upon or about him any dangerous weapon with intent to assault another.

8.05.680 Parent or guardian providing firearm to violent minor.

A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a crime of violence in this or any other jurisdiction or any minor who has been adjudicated in a children's proceeding for an offense which would constitute a crime of violence if the minor were an adult. The term "minor" as used in this section means a person under the age of 18.

(AO No. 94-22, § 2, 2-15-94)

8.05.690 Duty of parent or guardian knowing of minor's possession of dangerous weapon.

It is unlawful for any parent or guardian of a minor who knows that the minor is in possession of a dangerous weapon or a firearm in violation of this Code to fail to make reasonable efforts to remove the weapon or firearm from the minor's possession.

(AO No. 94-22, § 3, 2-15-94)

8.05.700. Drive-by shootings.

A. A person commits the offense of a drive-by shooting if the person:

1. Intentionally, knowingly, or recklessly discharges a firearm into or at an occupiable dwelling from a motor vehicle;
2. Intentionally, knowingly, or recklessly discharges a firearm into an occupied or unoccupied motor vehicle from another motor vehicle; or
3. Drives or operates a motor vehicle from which a firearm is discharged into an occupiable dwelling or an occupied or unoccupied motor vehicle with the intent to aid the discharge, or with knowledge or reckless disregard that such action will occur.

B. It is prima facie evidence that a person drove or operated a motor vehicle with the intent to aid the discharge or with knowledge or reckless disregard if after the firearm is discharged the person does not immediately stop the person's motor vehicle and:

1. Immediately by the quickest means of communication, give notice of such discharge to the police department along with the person's name and address;
2. Ascertain whether any person has been injured as a result of the discharge; and
3. Render reasonable assistance to any person injured due to the discharge, including carrying or making arrangements for the carrying of any injured person for medical treatment if it is apparent medical treatment is necessary; or

4. In the case where only property damage has occurred the driver shall locate the property owner or attach securely in a prominent place in or on the damaged property a legible written notice which includes the person's name and address.

C. It is a defense to the charge under subsection A.3. of this section and any charge of aiding and abetting subsection A.1 or A.2 of this section that the driver or operator complied with the requirements of subsection B of this section.

D. Drive-by shooting is a misdemeanor punishable by a maximum fine of \$5,000.00 and a maximum term of imprisonment of one year.
(AO No. 95-187(S), § 1, 10-26-95)

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 10-10-95

Submitted by: Assemblymembers MURDY and BEGICH
Prepared by: Assembly Policy & Budget
For reading: October 10, 1995

ANCHORAGE, ALASKA
AO NO. 95-195(S-1) (as amended)

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REPEALING
AND RE-ENACTING ANCHORAGE MUNICIPAL CODE SECTION 8.05.440 AND
AMENDING SECTION 14.60.030 REGARDING CURFEW FOR MINORS

WHEREAS, the Municipality of Anchorage highly values the safety and welfare of our minors and has a vested interest in preserving and nurturing this valuable investment; and

WHEREAS, the physical, psychological, and moral well-being of our minors is threatened by the increasing presence of street crime and juvenile gang activity; and

WHEREAS, from 1990 to 1994, the Anchorage Police Department recorded the following total number of juvenile arrests:

<u>Year</u>	<u>Number of Juvenile Arrests</u>
1990	1,766
1991	1,826
1992	2,007
1993	2,416
1994	2,866

This represents a 62% increase in juvenile arrests between 1990 and 1994; and

WHEREAS, from 1990 to 1994, the Anchorage Police Department recorded the following juvenile arrests for violent crimes:

<u>Year</u>	<u>Murder/ Manslaughter</u>	<u>Sex Offense</u>	<u>Robbery</u>	<u>Assault</u>	
TOTAL					
1990	1	7	16	101	125
1991	1	2	13	105	121
1992	0	3	17	174	194
1993	3	7	30	249	289
1994	9	10	28	339	386

This represents a 200% increase in total juvenile arrests for these violent crimes between 1990 and 1994; and

2
3
4 WHEREAS, from 1990 to 1994, the Anchorage Police Department recorded the
5 following juvenile arrests for property crimes:

6
7

8	<u>Year</u>	<u>Theft/ Burglary</u>	<u>Arson</u>	<u>Forgery</u>	<u>Fraud</u>	<u>Vandalism</u>	<u>TOTAL</u>
9	1990	1,202	3	1	4	73	1,283
10	1991	1,237	5	8	6	72	1,328
11	1992	1,284	3	8	6	117	1,418
12	1993	1,576	13	6	4	97	1,696
13	1994	1,639	8	11	6	143	1,807

14

15 This represents a 40% increase in total juvenile arrests for these property crimes
16 between 1990 and 1994; and

17
18 WHEREAS, these violent crimes and property crimes are most likely to occur
19 during late night and early morning hours on our streets and highways; and

20
21 WHEREAS, during these hours, minors in public places are particularly
22 susceptible to participate in unlawful activities and are particularly vulnerable to
23 become victims of older perpetrators of crime; and

24
25 WHEREAS, the Municipality of Anchorage has an obligation to provide for the
26 protection of minors from each other and from other persons, for the enforcement of
27 parental control over and responsibility for children, for the protection of the general
28 public, and for the reduction of the incidence of juvenile crime; and

29
30 WHEREAS, to fulfill this obligation, the police need a variety of effective tools;
31 and

32
33 WHEREAS, a juvenile curfew ordinance is one tool to help preserve the public
34 safety and reduce acts of violence by and against juveniles that are occurring at rates
35 beyond the capacity of the police to assure public safety; and

36
37 WHEREAS, the Mayor and Assembly believe that a curfew for those under the
38 age of 18 will be in the best interest of the public health, safety, and general welfare
39 and will help attain the foregoing objectives.

40
41 NOW, THEREFORE, the Anchorage Municipal Assembly ordains:
42
43
44
45

2
3
4 Section 1: That Anchorage Municipal Code Section 8.05.440 is hereby
5 repealed and re-enacted as follows:

6
7 8.05.440 Minors - Curfew

8 A. Definitions.

9
10 In this section:

11
12 1. "curfew hours" means:

13
14 a. September through May:

15
16 (1). 11:00 p.m. on any Sunday, Monday, Tuesday,
17 Wednesday, or Thursday until 5:00 a.m. of the
18 following day; and

19
20 (2). 1:00 a.m. on any Saturday and Sunday until 5:00
21 a.m. of the same day.

22
23 b. June through August: 1:00 a.m. on any day until 5:00
24 a.m. of the same day.

25
26 2. "emergency" means an unforeseen combination of circumstances
27 or the resulting state that calls for immediate action. The term
28 includes, but is not limited to, a fire, natural disaster, automobile
29 accident, or any situation requiring immediate action to prevent
30 serious bodily injury or loss of life.

31
32 3. "establishment" means any privately-owned place of business
33 operated for a profit to which the public is invited, including but not
34 limited to any place of amusement or entertainment.

35
36 4. "guardian" means:

37
38 a. a person who, under court order, is the guardian of the
39 minor; or

40
41 b. a public or private agency with whom a minor has been
42 placed by a court.
43
44
45

2
3
4 5. "knowingly" means, with respect to conduct or to a circumstance
5 described by a provision of law defining an offense, that a person
6 is aware that his or her conduct is of that nature or that the
7 circumstance exists; when knowledge of the existence of a
8 particular fact is an element of an offense, that knowledge is
9 established if a person is aware of a substantial probability of its
10 existence, unless the person actually believes it does not exist.

11
12 6. "minor" means any person under the age of 18 years.

13
14 7. "operator" means any individual, firm, association, partnership, or
15 corporation operating, managing, or conducting any establishment.
16 The term includes the members or partners of an association or
17 partnership and the officers of a corporation.

18
19 8. "parent" means a person who is:

20
21 a. a natural parent, adoptive parent, or step-parent of another
22 person; or

23
24 b. at least eighteen (18) years of age and authorized by a
25 parent or guardian to have the care and custody of a minor.

26
27 9. "public place" means any place to which the public or a
28 substantial group of the public has access, and includes but is not
29 limited to streets, highways, sidewalks, bridges, alleys, plazas,
30 parks, driveways, parking lots, and the common areas of schools,
31 hospitals, apartment houses, office buildings, transport facilities,
32 and shops.

33
34 10. "remain" means to:

35
36 a. linger or stay; or

37
38 b. fail to leave the premises when requested to do so by a
39 police officer or the owner, operator, or other person in
40 control of the premises.

- 2
3
4 11. "serious bodily injury" means bodily injury that creates a substantial
5 risk of death or that causes death, serious permanent
6 disfigurement, or protracted loss or impairment of the function of
7 any bodily member or organ.
8

9
10 B. Offenses.

- 11
12 1. A minor commits an offense if he or she remains in any public
13 place or on the premises of any establishment within the
14 Municipality of Anchorage during curfew hours.
15
16 2. A parent or guardian of a minor commits an offense if he or she
17 knowingly permits, or by insufficient control allows, the minor to
18 remain in any public place or on the premises of any establishment
19 within the Municipality of Anchorage during curfew hours in
20 violation of this Ordinance.

21
22 Indifference as to the activities or whereabouts of the minor shall
23 be prima facie evidence of insufficient control.
24

- 25 3. The owner, operator, or any employee of an establishment
26 commits an offense if he or she knowingly allows a minor to remain
27 upon the premises of the establishment during curfew hours.
28

29
30 C. Exceptions.

- 31
32 1. It is an exception to prosecution under subsections B.1. and B.2. if
33 the minor was:
34
35 a. accompanied by his or her parent or guardian;
36
37 b. on an errand at the written direction of his or her parent or
38 guardian, without any detour or stop (written direction must
39 be signed, timed, and dated by the parent or guardian and
40 must indicate the specific errand);
41
42 c. involved in an emergency;
43
44 d. engaged in an employment activity, or going to or returning
45 from an employment activity, without detour or stop;

- 2
- 3
- 4 e. on the public right-of-way immediately abutting the minor's
- 5 residence or immediately abutting the residence of a next-
- 6 door neighbor, if the neighbor did not complain to the police
- 7 department about the minor's presence;
- 8
- 9 f. attending, or going to or returning home from, without any
- 10 detour or stop, an official school, religious, or other
- 11 recreational activity supervised by adults and sponsored by
- 12 the Municipality of Anchorage, Anchorage School District, a
- 13 civic organization, or another similar entity that takes
- 14 responsibility for the minor;
- 15
- 16 g. exercising First Amendment rights protected by the United
- 17 States Constitution, such as the free exercise of religion,
- 18 freedom of speech, and the right of assembly; or
- 19
- 20 h. married or had disabilities of minority removed in
- 21 accordance with AS 9.55.540.
- 22

23 2. It is an exception to prosecution under subsection B.3. that the

24 owner, operator, or employee of an establishment promptly notified

25 the police department that a minor was present on the premises of

26 the establishment during curfew hours and refused to leave.

27

28

29 Section 2: That Anchorage Municipal Code Section 14.60.030 is hereby

30 amended to read as follows:

31

32 14.60.030 Fine Schedule.

33

34 CODE SECTION	35 OFFENSE	36 PENALTY/FINE
37 8.05.440	38 Curfew	39 75.00 - <u>300.00</u>

40 Section 3: Third Party Liability.

41

42 1. It is expressly the purpose of this Ordinance to provide for and

43 promote the health, safety, and welfare of the general public and

44 not to create or otherwise establish or designate any particular

45 class or group of persons who will or should be especially

protected by the provisions of this Ordinance.

2
3
4 2. It is the specific intent of this Ordinance that no provision nor any
5 term used in this Ordinance is intended to impose any duty
6 whatsoever upon the Municipality of Anchorage or any of its
7 officers, employees or agents, for whom the implementation and
8 enforcement of this Ordinance shall be discretionary and not
9 mandatory.

10
11 3. Nothing contained in this Ordinance is intended nor shall be
12 construed to create or form the basis of any liability on the part of
13 the Municipality of Anchorage, or its officers, employees or agents,
14 for any injury or damage resulting from any action or inaction on
15 the part of the Municipality of Anchorage, related in any manner to
16 the enforcement of this Ordinance by its officers, employees or
17 agents.
18

19
20 Section 4: Severability.

21
22 If any provision of this Ordinance is deemed invalid or unconstitutional by
23 a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect
24 the other provisions of the same.
25

26
27 Section 5: Ordinance Review.
28

29 Within one year after the initial enforcement of this ordinance, the Mayor
30 shall review the ordinance and report and make recommendations to the Municipal
31 Assembly and make a report to the Anchorage Youth Commission concerning the
32 effectiveness of and the continuing need for the ordinance. The report shall specifically
33 include the following information:
34

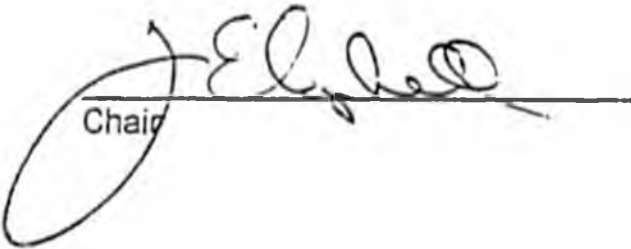
- 35 1. The practicality of enforcing the ordinance and any problems with
36 enforcement as identified by the police department;
37
38 2. The impact of the ordinance on crime statistics;
39
40 3. The number of persons cited for a violation of the ordinance; and
41
42 4. The Municipality's net cost of enforcing the ordinance.
43

44
45 Section 6: This ordinance shall become effective on January 1, 1996

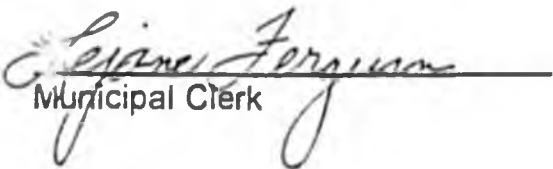
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Page 8- AO 95-195(S-1)

PASSED AND APPROVED by the Anchorage Assembly this 10th day of October, 1995.


Chair

ATTEST:


Municipal Clerk

Melanie Bolton-School Board Member
Annette Island School District
P.O. Box 661
Metlakatla, AK 99926
(907) 886-3158, work
(907) 886-6169, home

April 25, 1997

Alaska State Legislature
House-HESS Committee

Dear House HESS Committee Members,

I am a board member with the Annette Island School District-Board of Education.

I understand HB 190 (Rep. Joule) will be heard in House HESS Committee at 3:30 PM this afternoon.

I am writing in support of HB 190. Annette Island School District (AISD) meet's all three (3) criterias specified in AS 14.11.008(d). The AISD currently has \$3.5 million CIP needs and has no means of ever meeting our district's participating share required for school construction grants.

Our Community has seen the unemployment rate rise to 80% since March of this year. The population is estimated at 1,800. Like many of the communities in Southeast Alaska, Metlakatla has seen the decline in local salmon prices. Also the federal government control over our Tongass National Forest, has reduced the availability of timber. Two of the major industries that our community has centered itself around.

Please, I urge your support in favor of HB 190. Thank you.

Melanie Bolton



**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

DELINQUENCY RULES

Effective August 15, 1987

Including Amendments Received Through
May 15, 1996

Research Note

Use WESTLAW[®] to find cases citing a rule. In addition, use WESTLAW to search for specific terms or to update a rule. See the AK-RULES and AK-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Pacific Reporter 2d advance sheets.

Table of Rules

Cross Reference Table

PART I. GENERAL PROVISIONS

Rule

1. Title—Scope—Construction—Situations Not Covered by the Rules.
 - (a) Title
 - (b) Scope
 - (c) Construction
 - (d) Legal Effect of Rules
 - (e) Criminal Rules Applicable
 - (f) Situations Not Covered by These Rules
2. Definitions.
 - (a) "Adjudication Hearing"
 - (b) "Admit Plea"
 - (c) "Arraignment or Petition"
 - (d) "The Department"
 - (e) "Deny Plea"
 - (f) "Detention"
 - (g) "Disposition Hearing"
 - (h) "Guardian"
 - (i) "Guardian Ad Litem"
 - (j) "Intake Officer"
 - (k) "Juvenile"
 - (l) "Minor"
 - (m) "Parent"
 - (n) "Party"
 - (o) "Petition for Adjudication"
 - (p) "Probation"
 - (q) "Temporary Detention Hearing"
3. Hearings.
 - (a) Notice
 - (b) Presence of Juvenile and Other Parties
 - (c) General Public Excluded
 - (d) Exclusion of Witnesses
 - (e) Telephonic and Televised Participation

Rule

- (f) Testimony Under Oath
- (g) Representation by Non-attorney

PART II. MASTERS, MAGISTRATES, DISTRICT COURT JUDGES

4. Appointment and Authority of Masters.
 - (a) Appointment
 - (b) Authority, Order of Reference
 - (c) Objection to Reference to a Master
 - (d) Standing Master's Authority to Enter Orders
 - (e) Master's Report, Recommendations
 - (f) Objections to Master's Report, Recommendations
5. Authority of District Court Judges and Magistrates.
 - (a) Emergency Situations
 - (b) Review

PART III. COMMENCEMENT OF PROCEEDINGS

6. Intake.
 - (a) Responsibility for Investigation
 - (b) Intake Interviews
 - (c) Parties Advised of Rights
 - (d) Informal Supervision
 - (e) Formal Procedure
 - (f) Authority of Court
7. Emergency Detention or Placement.
 - (a) Arrest
 - (b) Detention, Placement, Notification
 - (c) Release
8. Petition for Adjudication, Summons.
 - (a) Petition
 - (b) Summons
 - (c) Service
 - (d) Dismissal
 - (e) Amendment

DELINQUENCY RULES

Rule

PART IV. DISCOVERY, EVIDENCE, PROOF

- 9. Depositions and Discovery
- 10. Evidence
 - (a) Applicability of Evidence Rules
 - (b) Disposition and Review of Disposition Order
 - (c) Temporary Detention Hearing
- 11. Burden and Standards of Proof
 - (a) Detention
 - (b) Adjudication
 - (c) Waiver
 - (d) Other Motions
 - (e) Disposition
 - (f) Release, Modification, Extension
 - (g) Annual Review

PART V. PRELIMINARY PROCEEDINGS

- 12. Temporary Detention Hearing
 - (a) Hearing Required
 - (b) Detention or Placement After Hearing
 - (c) Release From Detention or Placement
 - (d) Termination of Detention or Placement
- 13. Judge's Responsibility Concerning Conditions of Detention
- 14. Arraignment—In Petition
 - (a) Time
 - (b) Order of Proceedings
 - (c) Temporary Detention, Placement
- 15. Guardian Ad Litem
 - (a) When Appointed
 - (b) Appointment
 - (c) Service
- 16. Right to Counsel
 - (a) Notice of Right to Counsel
 - (b) Appointed Counsel
 - (c) Waiver of Right to Counsel
- 17. Pleadings and Motions Before Trial—Defenses and Objections
 - (a) Pleadings and Motions
 - (b) Motions Prior to Adjudication
 - (c) Notice of Mental Disease or Defect
 - (d) Ruling on Motion
 - (e) Effect of Failure to Raise Defenses or Objections
 - (f) Effect of Dismissal
- 18. Joinder and Severance
 - (a) Joinder
 - (b) Severance
- 19. Pretrial Conference
 - (a) Time and Purpose
 - (b) Order

Rule

PART VI. WAIVER OF JUVENILE JURISDICTION

- 20. Waiver of Juvenile Jurisdiction
 - (a) Persons Subject to Trial as Adults
 - (b) Waiver Petition
 - (c) Waiver Hearing
 - (d) Waiver Order
 - (e) Custody Pending Criminal Proceedings

PART VII. ADJUDICATION

- 21. Adjudication Hearing
 - (a) Nature of Proceedings
 - (b) Juries
 - (c) Venue
 - (d) Judgment
 - (e) Failure of Proof
 - (f) Order Pending Disposition

PART VIII. DISPOSITION

- 22. Reports in Aid of Disposition
 - (a) Pre-disposition Report
 - (b) Supplementary Material
 - (c) Disclosure of Reports
- 23. Disposition
 - (a) Nature and Timing of the Hearing
 - (b) Statements
 - (c) Findings
 - (d) Order
 - (e) Release by Department
- 24. Probation Revocation
 - (a) Revocation Petition
 - (b) Detention Pending Hearing
 - (c) Hearing
 - (d) Disposition
- 25. Review and Extension of Disposition Orders
 - (a) Annual Review
 - (b) Review Upon Application
 - (c) Extension of Custody or Supervision

PART IX. APPEAL AND PETITION FOR REVIEW

- 26. Appeal and Petition for Review in Appellate Courts
 - (a) Grounds, Procedure
 - (b) Stay

PART X. COURT ADMINISTRATION OF JUVENILE RECORDS

- 27. Court Records—Confidentiality

CROSS REFERENCE TABLE

Cross References From Delinquency Rules to Prior Children's Rules

Delinquency Rules
1
2

Children's Rules
1, 32

Delinquency Rules
3
4
5
6
7

Children's Rules
12, 13
2
2
4
6, 7

Delinquency Rules	Children's Rules	Delinquency Rules	Children's Rules
8	8, 10	17	—
9	20	18	—
10	17	19	—
11	21	20	3
12	7	21	12
13	27	22	—
14	12	23	11
15	11	24	—
16	11, 14, 15	25	28
		26	12
		27	—

PART I. GENERAL PROVISIONS

RULE 1. TITLE—SCOPE—CONSTRUCTION—SITUATIONS NOT COVERED BY THE RULES

(a) **Title.** These rules will be known and cited as the Delinquency Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of delinquency proceedings brought under AS 47.10.010(a)(1).

(c) **Construction.** These rules will be construed and applied to promote fairness; accurate fact-finding; expeditious determination of juvenile matters; the best interests of the juvenile, including individualized care and treatment in the least restrictive placement; and the preservation of the juvenile's family life; and protection of the public.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska supreme court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not enacted for the specific purpose of changing a rule, these rules supersede the statute to the extent of the inconsistency.

(e) **Criminal Rules Applicable.** Criminal Rules 17, 18-20, 24, 25, 27-31, 36, 40, 42, 43(a), 44, 46, 47, 50 and 53 apply to delinquency proceedings except to the extent that any provisions of these criminal rules conflict with the Delinquency Rules.

(f) **Situations Not Covered by These Rules.** If these rules do not prescribe a specific procedure, the court may proceed in any lawful manner, including application of the Civil or Criminal Rules, applicable statutes, the Alaska and United States Constitutions or the common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of delinquency proceedings.

[Amended effective July 9, 1992]

Cross References: AS 22.10.020; AS 22.15.100(a); AS 47.05.060; AS 47.10.082; Alaska Constitution, Art. IV, § 15

RULE 2. DEFINITIONS

(a) **"Adjudication Hearing"** is the proceeding, analogous to the trial in a criminal case, in which the court or a jury determines whether the juvenile is a delinquent minor as a result of the minor's violation of a criminal law of the state or a municipality.

(b) **"Admit Plea"** is a plea, analogous to a guilty plea in a criminal case, by which the juvenile admits committing acts constituting delinquent conduct under AS 47.10.010(a)(1).

(c) **"Arraignment on Petition"** is a proceeding, analogous to an arraignment in a criminal case, in which the court advises the juvenile and other parties of their rights and asks the juvenile to enter a plea.

(d) **"The Department"** means the Department of Health and Social Services of the State of Alaska.

(e) **"Deny Plea"** is a plea, analogous to a not guilty plea in a criminal case, by which the juvenile requires the state to prove the allegations of the petition for adjudication in the adjudication hearing.

(f) **"Detention"** means holding in a locked or secure facility.

(g) **"Disposition Hearing"** is a proceeding, analogous to a sentencing hearing in a criminal case, in which the court determines the appropriate disposition of a juvenile who has been adjudicated a delinquent.

(h) **"Guardian"** means a legally appointed guardian of the person of the minor.

(i) **"Guardian Ad Litem"** means a person appointed by the court to represent the best interests of the juvenile in the delinquency proceeding as distinguished from a guardian of the person as defined in paragraph (h).

(j) "Intake Officer" means a person assigned by the Department to perform intake functions as defined by these rules.

(k) "Juvenile" means a person under eighteen years of age at the time of the alleged delinquent conduct who remains subject to the jurisdiction of the court.

(l) "Minor" means a person under eighteen years of age, as defined by AS 25.20.010.

(m) "Parent" means a natural or adoptive parent.

(n) "Party" means the juvenile, the guardian ad litem, the juvenile's parents or guardian, and the Department.

(o) "Petition for Adjudication" is a document which formally begins a delinquency proceeding and which brings the juvenile under the jurisdiction of the court.

(p) "Probation" means releasing the juvenile into the community subject to conditions set by the court and under the supervision of a probation officer.

(q) "Temporary Detention Hearing" is a proceeding in which the court determines the conditions concerning placement of the juvenile pending the adjudication and disposition hearings.

Cross References: AS 47.10.080(b), AS 47.10.084, AS 47.10.110, AS 47.10.280, AS 25.20.010

RULE 3. HEARINGS

(a) Notice. Notice of each hearing must be given to all parties within a reasonable time before the hearing.

(b) Presence of Juvenile and Other Parties. The presence of the juvenile is required unless the juvenile:

(1) waives the right to be present and the juvenile's presence is excused by the court; or

(2) engages in conduct which justifies exclusion from the courtroom.

The presence of the parent or guardian is preferred, but not required unless the court so orders.

(c) General Public Excluded. Hearings are not open to the public unless requested by the juvenile. However, the court may, after due consideration for the welfare of the juvenile and the interests of the public, admit specific individuals to a hearing, and shall admit victims of the juvenile's offense to hearings as required by AS 47.10.070(b).

(d) Exclusion of Witnesses. Witnesses may be excluded from a hearing pursuant to Evidence Rule 615.

(e) Telephonic and Televised Participation.

(1) The juvenile has the right to be physically present in court. However, the court has discretion to allow telephonic participation by other parties. The juvenile's waiver of the right to be physically present may be obtained orally on the record or in writing.

(2) The court may allow telephonic participation of witnesses only upon stipulation of the juvenile and the Department, except that the court may allow telephonic participation of witnesses without the consent of the parties at disposition, disposition review or temporary detention hearings.

(3) In those court locations in which a television system has been approved by the supreme court and has been installed, juveniles in custody may appear by way of television with the consent of the juvenile and with the approval of the court. Appearance by television shall not be allowed at adjudication trials or at any hearings in which sworn testimony is to be presented.

(f) Testimony Under Oath. All testimony must be given under oath or affirmation as required by Evidence Rule 603.

(g) Representation by Non-attorney. A guardian ad litem need not be represented by an attorney unless the court, for good cause, requires representation by an attorney.

[Amended effective January 15, 1990, September 15, 1991, by Laws 1991, c. 57, § 21; July 15, 1992; July 15, 1994.]

Cross Reference: AS 47.10.070

Note

Paragraph (c) was amended by ch. 57, § 21, SLA 1991.

PART II. MASTERS, MAGISTRATES, DISTRICT COURT JUDGES

RULE 4. APPOINTMENT AND AUTHORITY OF MASTERS

(a) Appointment. The presiding judge may appoint a standing master to conduct any or all of the delinquency proceedings listed in subparagraph (b)(2). Appointments of standing masters must be reviewed annually. The presiding judge may appoint a special

master to conduct a proceeding which is specified in the order of reference and is listed in subparagraph (b)(2).

(b) Authority, Order of Reference.

(1) An order of reference specifying the extent of the master's authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

(2) The following proceedings may be referred to a master:

(A) temporary detention and arraignment proceedings;

(B) interim hearings, including detention review, change of plea and pre-trial conferences;

(C) non-jury adjudication hearings and disposition hearings resulting from a non-jury adjudication, provided all parties stipulate to both hearings before the master;

(D) disposition following an admit plea, post-disposition review, probation revocation and extension of custody hearings.

(3) A master's report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except:

(A) a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and by paragraph (d) of this rule; and

(B) a master's order of detention or placement outside the home is effective pending superior court review.

(c) **Objection to Reference to a Master.** The prosecution and the defense are entitled as a matter of right to a change of one judge and one master pursuant to the procedures stated in Criminal Rule 25(d). In addition, a party may file an objection to a case or proceeding being referred to a master in the following manner:

(1) *Timeliness.* A party may file an objection no later than five days after receiving notice of the order of reference.

(2) *Grounds for Objection.* An objection to the assignment of a master to hear a probation revocation hearing or an extension of custody hearing under Delinquency Rules 24 and 25(e) will be granted as a matter of right. Any other objection must set forth sufficient grounds from which the court may determine whether good cause exists to remove the matter from the master's jurisdiction. Good cause may include involvement of (i) complex questions of law which require a decision by a superior court judge or (ii) questions requiring prompt resolution which would be seriously impaired by a reference to a master.

(d) **Standing Master's Authority to Enter Orders.** A standing master is authorized to take the following actions without further approval by a superior court judge:

(1) issue an arrest warrant;

(2) appoint counsel or a guardian ad litem for the juvenile;

(3) order home studies, pre-disposition reports, and psychological or psychiatric evaluations;

(4) set hearings and order continuances of hearings held before the master;

(5) decide motions requesting expedited review pursuant to Civil Rule 77(f);

(6) accept and approve stipulations, except that stipulated adjudications or dispositions must be reviewed by a superior court judge;

(7) review and approve uncontested orders on annual review under Delinquency Rule 25(a);

(8) order release from detention and set conditions of release pursuant to Delinquency Rule 12(c); and

(9) order conditions of probation for minors placed on probation or released from institutionalization.

(e) **Master's Report, Recommendations.** A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge. The master shall advise the parties on the record of their right to file objections to any such report or recommendation pursuant to paragraph (f) of this rule.

(f) **Objections to Master's Report, Recommendations.**

(1) *Objections, Reply, Oral Argument.* Objections to a master's report or recommendation must be filed within 10 days of entry of the findings or service of the report unless the court requires objection to be filed earlier. In the case of a recommendation rendered orally on record where a party requests a cassette tape of the recommendation, the time period for objection runs from receipt of the tape. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order the taking of further evidence, or grant a hearing de novo.

(2) *Request for Stay, Immediate Review.* A party may request that a superior court judge stay a master's order issued under paragraph (d) pending review of the order.

(3) *Review of Detention or Placement Outside the Home Order.* A master's order for detention or placement outside the home which is not stayed must be reviewed by the superior court by the end of the next working day if a party so requests.

[Amended effective January 15, 1989.]

RULE 5. AUTHORITY OF DISTRICT COURT JUDGES AND MAGISTRATES

(a) **Emergency Situations.** When a minor is in a condition or surrounding dangerous to the welfare of the minor or others which requires immediate action, and no superior court judge or authorized master is available, a district court judge or magistrate may order temporary detention of the minor or take other

action which a superior court judge is authorized by law to take. The district court judge or magistrate must immediately notify the superior court of the facts concerning the child and expeditiously transfer the case file to the superior court.

(b) **Review.** A party may request a hearing before the superior court or authorized master to review any action taken by a district court judge or magistrate under this rule.

(Cross Reference: AS 22.15.100.)

PART III. COMMENCEMENT OF PROCEEDINGS

RULE 6. INTAKE

(a) **Responsibility for Investigation.** If a law enforcement agency or the court is informed of facts which would bring a juvenile within the court's jurisdiction under AS 47.10.010(a)(1) the agency or court shall refer the matter to the Department for preliminary investigation to determine if any action, formal or informal, is appropriate.

(b) **Intake Interview.** The intake officer may arrange to interview the juvenile, the juvenile's parents and guardian, and any other person having relevant information. The intake officer must inform the juvenile, parents and guardian of any interview and that their attendance is voluntary.

(c) **Parties Advised of Rights.** At or prior to the interview, the juvenile, parents and guardian, if present, must be advised that any statements may be used against the juvenile and of the following rights of the juvenile: to have a parent or guardian present at the interview; to remain silent; to have retained or appointed counsel at all stages of the proceedings including the intake interview; if a petition is filed, to have an adjudication hearing before a judge or jury with compulsory process to compel the attendance of witnesses; and the opportunity to confront and cross-examine witnesses.

(d) **Informal Supervision.** If, after investigation, the intake officer determines that an informal disposition would best serve the interests of the juvenile and the public, the officer may refrain from filing a petition, and may either counsel the juvenile, parents and guardian, or may establish a program of informal supervision, for a duration not in excess of six months. The juvenile and the juvenile's parents or guardian must consent to any informal disposition. An informal supervision agreement may not be enforced by detention or removal from the home by the Department. Upon successful completion of informal supervision, the Department may not file a petition based on the actions which led to informal supervision.

(e) **Formal Procedure.** If the intake officer determines that informal supervision is not in the best interests of the juvenile or the public, the officer may file a petition for adjudication.

(f) **Authority of Court.** Nothing in this rule precludes the court from appointing persons other than the intake officer to make investigations, file reports

or make recommendations with respect to the formal or informal handling of a delinquency matter.

(Cross Reference: AS 47.10.020(a).)

RULE 7. EMERGENCY DETENTION OR PLACEMENT

(a) Arrest.

(1) A juvenile may be arrested for the commission of a delinquent act under the same circumstances and in the same manner as would apply to the arrest of an adult for violation of a criminal law of the state or a municipality of the state.

(2) A peace officer or probation officer may, without a warrant, arrest a juvenile if probable cause exists to believe that the juvenile has violated conditions of release or probation.

(3) In conformity with the Interstate Compact on Juveniles, a peace officer may, without a requisition, arrest a juvenile based upon reasonable information that the juvenile is a delinquent and has escaped from an institution or absconded from probation, parole or the jurisdiction of a court.

(b) **Detention, Placement, Notification.** If a juvenile is arrested, the juvenile must be taken immediately to a detention facility or placement facility designated by the Department or released pursuant to paragraph (c) of this rule. The arresting officer shall immediately notify the parents or guardian of the arrest and detention or placement and shall notify the court and Department immediately, if possible, and in no event more than 12 hours later. The arresting officer shall make and retain a written record of the notification. If the juvenile is arrested under subparagraph (a)(3) of this rule, prompt notification must also be given to the Department of Law.

(c) **Release.** A peace officer or probation officer may, before taking the juvenile arrested under subparagraphs (a)(1) or (2) of this rule to a detention or other placement facility, release the juvenile to the juvenile's parents or guardian if detention or placement is not necessary to protect the juvenile or others, and the juvenile will be available for court hearings. The Department may direct that a juvenile arrested under paragraph (a) of this rule be released from detention before the temporary detention hearing.

[Amended effective January 15, 1993.]

Cross References: AS 47.10.020, AS 47.10.010(a)(1), AS 12.25, AS 47.10.140(a), AS 47.10.070(a), AS 47.15, AS 47.10.030, AS 47.10.140, AS 47.10.290(a) and (7).

RULE 8. PETITION FOR ADJUDICATION, SUMMONS

(a) **Petition.** Formal proceedings are commenced by the Department filing a verified petition for adjudication which contains a statement of facts which brings the juvenile within the jurisdiction of the court under AS 47.10.010(a)(1). The petition may be verified on information and belief, and must establish probable cause to believe that an offense has been committed and that the minor has committed it.

(b) **Summons.** Upon the filing of a petition for adjudication, the court shall set a time for the arraignment on petition and shall, if the juvenile is not in custody, issue a summons to be served with the petition compelling the attendance of the juvenile. The court may issue a summons compelling the attendance of the juvenile's parents or guardian at the hearing. If the summons and petition are not contained in one document, the petition must be attached to and incorporated by reference into the summons.

The summons must contain a statement advising the parties of their right to counsel.

(c) **Service.** The petition must be served on the juvenile and the juvenile's parents or guardian. The petition and the summons, if issued, must be served pursuant to Criminal Rule 1(c), except that the court may appoint a probation officer or other competent person to serve the summons and petition. Inability to obtain service on a parent or guardian does not deprive the court of jurisdiction.

(d) **Dismissal.** The court may dismiss a petition at any time based on a finding of good cause consistent with the welfare of the juvenile and the protection of the public.

(e) **Amendment.** A petition may be amended with leave of the court at any time before adjudication. Amendment will be freely permitted to promote the interests of justice, the welfare of the juvenile and the protection of the public.

[Amended effective January 15, 1991]

Cross References: AS 47.10.020, AS 47.10.030, AS 47.10.140(b).

PART IV. DISCOVERY, EVIDENCE, PROOF

RULE 9. DEPOSITIONS AND DISCOVERY

Criminal Rules 15 and 16 govern depositions and discovery in delinquency proceedings with the following exceptions:

(a) the court may shorten the time periods for discovery;

(b) a juvenile under 16 years of age may not be deposed except upon court order; and

(c) the presence of parties and others at depositions is governed by Delinquency Rule 3.

RULE 10. EVIDENCE

(a) **Applicability of Evidence Rules.** The Alaska Rules of Evidence apply to delinquency proceedings to the same extent that they apply to criminal proceedings, except as otherwise provided by these rules.

(b) **Disposition and Review of Disposition Orders.** The parties may submit information through reports, statements, affidavits and testimony at the disposition hearing and in review of a disposition order. Hearsay which is not otherwise admissible under a recognized exception to the hearsay rule may be admissible at disposition and in review of a disposition order if the hearsay is probative of a material fact, has circumstantial guarantees of trustworthiness, and the appearing parties are given a fair opportunity to meet it.

(c) **Temporary Detention Hearing.** Hearsay which is not otherwise admissible under the Evidence Rules is not admissible to prove probable cause at a temporary detention hearing. However, otherwise inadmissible hearsay may be admitted under the standard stated in paragraph (b) of this rule on the issue of whether the minor should be removed from the home or detained.

Cross References: AS 47.17.060, AS 47.10.130(c)

RULE 11. BURDEN AND STANDARDS OF PROOF

(a) **Detention.** In order to support a temporary detention order, the Department must prove that probable cause exists that the minor committed the delinquent act charged and must prove, by a preponderance of the evidence, that detention or placement is necessary either:

- (1) to protect the juvenile or others; or
- (2) to ensure the juvenile's appearance at subsequent court hearings.

(b) **Adjudication.** In order to support an adjudication of delinquency, the Department must prove the essential elements of the alleged crime beyond a reasonable doubt.

(c) **Waiver.** In order to support an order waiving juvenile court jurisdiction, the Department must prove unamenability to treatment by a preponderance of the evidence, and must prove that probable cause exists

that the juvenile committed the act charged in the petition.

(d) **Other Motions.** On other motions that relate to the criminal nature of proceedings such as the suppression of evidence, the burdens and standard of proof are the same as in a criminal proceeding.

(e) **Disposition.** In order to support a particular disposition, the Department must prove by a preponderance of the evidence that the disposition is the least restrictive alternative appropriate to the needs of the juvenile and the protection of the community.

(f) **Release, Modification, Extension.** The following petitions require the moving party to present proof by a preponderance of the evidence:

- (1) a petition for release from commitment or supervision;
- (2) a petition for extension of commitment or supervision;
- (3) a petition for modification of probation; and
- (4) a petition for revocation of probation.

(g) **Annual Review.** No party has the burden of proof at an annual review.

PART V. PRELIMINARY PROCEEDINGS

RULE 12. TEMPORARY DETENTION HEARING

(a) **Hearing Required.** A juvenile detained under AS 47.10.140 must be taken before the court for a temporary detention hearing. The hearing must be held as soon as is practicable, but in no event later than 48 hours after notification to the court, including weekends and holidays.

(b) **Detention or Placement After Hearing.** A juvenile may not be detained or placed outside the home of a parent or guardian unless the court makes the following findings:

(1) that probable cause exists to believe that either (a) the juvenile has committed a delinquent act as alleged in a petition, or (b) after such a probable cause finding has been made at a prior hearing, the juvenile has violated a release condition or probation condition imposed by the court; and

(2) that detention or placement outside the home of a parent or guardian is necessary either (a) to protect the juvenile or others, or (b) to ensure the juvenile's appearance at subsequent court hearings. The court may not order detention unless there is no less restrictive alternative which would protect the juvenile and the public or ensure the juvenile's appearance at subsequent hearings.

(c) **Release From Detention or Placement.** The juvenile must be released to a parent, guardian, relative or some other responsible person upon such reasonable conditions as the court may set if insufficient reason exists to warrant detention or placement outside the home under paragraph (b) of this rule.

(d) **Termination of Detention or Placement.** A juvenile who has been detained for a period of 30 days, but who has not been adjudicated a delinquent, will be released unless, at or prior to the expiration of the 30 days, either:

(1) the court, after a hearing, orders continued detention and makes findings stating the reasons supporting the order; or

(2) the minor and the minor's attorney stipulate with the Department to continued detention.

If the juvenile is not in the same community as the court, the juvenile's participation at the hearing to determine continued detention may be by telephone. An order for placement outside the home pending adjudication or disposition must specify its duration.

Cross References: AS 47.10.030(c); AS 47.10.040; AS 47.10.050(b); AS 47.10.130; AS 47.10.140(c), (d).

RULE 13. JUDGE'S RESPONSIBILITY CONCERNING CONDITIONS OF DETENTION

A court exercising jurisdiction under these rules has a continuing duty to ascertain that appropriate conditions of detention of juveniles are observed concerning visitation, clothing, exercise, private visitation of counsel and confinement. A juvenile may not be confined in solitary confinement for punitive reasons.

RULE 14. ARRAIGNMENT ON PETITION

(a) **Time.** The arraignment on petition may be held at the same time as the temporary detention hearing or, with notice to the parties, within a reasonable time after the filing of the petition.

(b) **Order of Proceedings.**

(1) **Opening Address.** The court shall ensure that all parties have received copies of the petition and understand its contents. The court shall advise the parties of the nature of the proceedings and the possible disposition that may occur. In addition, the court shall advise the parties of the possibility of temporary detention or placement outside the home pending final disposition, and that the parents may be liable for child support payments if the child is placed outside the home at any time during the proceeding.

(2) **Advice of Rights.** The court shall advise the parties of their right to counsel and their privilege against self-incrimination. The court shall advise the juvenile of the right to an adjudication hearing before

a judge or jury, the right to a public hearing, the right to call witnesses and to issue compulsory process to compel their attendance, the right to confront and cross-examine witnesses called by other parties, and the right to challenge the judge or master assigned to the case pursuant to Delinquency Rule 40e). If the minor is represented by counsel, the opening address and advice of rights may be waived.

(3) *Motions, Discovery, Hearing Date.* The court may set a time certain for the adjudication hearing and the date by which discovery and motion matters will close, or may refer the case to calendaring or court administration for trial setting. Priority on the trial calendar will be given to adjudication hearings.

(4) *Request for Admissions or Denial.* If it appears to the court that the juvenile adequately understands the juvenile's rights and that the requirements of AS 47.10.050(b) have been met, the court may inquire whether the juvenile admits or denies all or part of the allegations of the petition and, if so, accept the plea. Otherwise, the court shall set a date for entry of a plea. Except as stated in this paragraph, the entry of pleas is governed by Criminal Rule 11.

(c) *Temporary Detention, Placement.* The court may order the juvenile committed to the Department for detention or placement as provided by Delinquency Rule 12(b) at the arraignment on petition.

[Amended effective January 15, 1983.]

RULE 15. GUARDIANS AD LITEM

(a) *When Appointed.* The court may appoint a guardian ad litem to represent the best interests of the juvenile in a delinquency proceeding.

(b) *Appointment.* Guardians ad litem will be appointed in accord with the provisions of AS 44.21.410 and Administrative Rule 12. The court shall specify the duties of the guardian ad litem and the duration of the appointment in its order of appointment.

(c) *Service.* A guardian ad litem is a party and must be served with pleadings and notices according to the Civil Rules. Service on the guardian ad litem does not constitute service on the juvenile.

Cross References: AS 25.24.310; AS 47.10.050.

RULE 16. RIGHT TO COUNSEL

(a) *Notice of Right to Counsel.* The court shall inform the child, parent or guardian at the first hearing at which they are present of their respective rights to be represented by counsel at all subsequent stages of the proceedings.

(b) *Appointed Counsel.* The court shall appoint counsel pursuant to Criminal Rule 39 and Administrative Rule 12 for a juvenile not represented by counsel of choice. The court may order a parent to deposit an appropriate sum consistent with the parent's financial ability in the registry of the court to pay for the

appointment. At the disposition phase of a delinquency case, the court shall, if requested, appoint counsel pursuant to Administrative Rule 12 and AS 44.21.410(a)(4) for a parent or guardian who is financially unable to employ counsel if the court concludes that custody is at issue, the interests of the parent or guardian and the child are in conflict, and the interests of the parent or guardian are not adequately protected.

(c) *Waiver of Right to Counsel.* The court shall accept a valid waiver of the right to counsel by a juvenile if the requirements of AS 47.10.050(b) are met.

[Amended effective July 15, 1983.]

Cross References: AS 25.24.310; AS 47.10.050; AS 47.10.140(c).

RULE 17. PLEADINGS AND MOTIONS BEFORE TRIAL—DEFENSES AND OBJECTIONS

(a) *Pleadings and Motions.* Pleadings in delinquency proceedings are the petition for adjudication and the pleas of admit or deny. Motions in delinquency proceedings are governed by the Criminal Rules.

(b) *Motions Prior to Adjudication.* Any defense, objection or request which is capable of determination before adjudication of the general issue may be raised prior to the adjudication hearing by motion. The following matters must be raised prior to the adjudication hearing:

(1) defenses and objections based on defects in the petition (other than a failure to show jurisdiction in the court or to charge an offense, which objections may be raised at any time during the pendency of the proceeding);

(2) motions to suppress evidence on the ground that it was illegally obtained; and

(3) requests for severance or joinder under Delinquency Rule 18.

(c) *Notice of Mental Disease or Defect.* Notice of an intention to offer evidence of mental disease or defect is governed by AS 12.47.010 and AS 12.47.020.

(d) *Ruling on Motion.* The court shall decide a motion made prior to adjudication before the adjudication hearing unless the court orders that the motion be deferred until the hearing.

(e) *Effect of Failure to Raise Defenses or Objections.* Failure by the juvenile to raise defenses or objections or to make requests which must be made prior to the adjudication hearing, or by the time set by the court pursuant to Delinquency Rule 14(b)(3), constitutes waiver thereof. However, the court may grant relief from the waiver for good cause.

(f) *Effect of Dismissal.* If the court grants dismissal based on a defect in the institution of the

proceedings or in the petition, it also may order that placement or detention of the juvenile be continued for a specified time pending the filing of a new petition.

RULE 18. JOINDER AND SEVERANCE

(a) **Joinder.** The court may order two or more petitions for adjudication to be tried together if the offenses and the juveniles could have been joined in a single petition. The procedure will be the same as if the proceedings were under a single petition.

(b) **Severance.** If it appears that the juvenile or the state is prejudiced by a consolidation of offenses or of juveniles in a petition for adjudication, the court may order an election or separate adjudication of counts, grant a severance of cases against juveniles, or provide whatever other relief justice requires. In ruling on a motion by a juvenile for severance, the court may order the Department to deliver to the court for inspection in camera any statements or confessions made by the juveniles which the Department intends to introduce at the adjudication hearing.

PART VI. WAIVER OF JUVENILE JURISDICTION

RULE 20. WAIVER OF JUVENILE JURISDICTION

(a) **Persons Subject to Trial as Adults.** A person may not be tried as an adult for a delinquent act committed while the person was under the age of 18 unless the court has waived juvenile jurisdiction.

(b) **Waiver Petition.** The Department or the juvenile may file a petition requesting the court to waive juvenile jurisdiction of a person alleged to have committed a delinquent act. Waiver may not be requested for delinquent conduct which has been the basis of an adjudication of delinquency.

(c) **Waiver Hearing.** A waiver hearing will be given priority on the court calendar. The petitioner shall serve notice of the waiver hearing upon the parties. The notice, unless the hearing is requested by the juvenile, must specify the possible consequences of a waiver hearing. The conduct of a waiver hearing is governed by Criminal Rule 5.1(a)-(e).

RULE 19. PRETRIAL CONFERENCE

(a) **Time and Purpose.** At any time after the arraignment on petition or entry of a deny plea, the court may schedule a pretrial conference on the record to consider:

(1) simplification of the issues;

(2) the possibility of obtaining admissions of fact and documents which will avoid the introduction of unnecessary evidence;

(3) the number of witnesses who will give testimony of a cumulative nature; and

(4) such other matters as may aid in the adjudication of the petition.

(b) **Order.** The court shall enter an order reciting the agreement made at the conference. This order controls the subsequent course of the proceedings unless modified at the adjudication hearing in order to prevent manifest injustice.

(d) **Waiver Order.**

(1) **Requirements.** An order waiving juvenile jurisdiction must be accompanied by written findings of fact stating that:

(A) there is probable cause to believe the juvenile committed the act for which waiver is sought; and

(B) the juvenile is not amenable to treatment based on the factors stated in AS 47.10.060(d).

(2) **Effect.** Upon issuance of an order waiving juvenile jurisdiction, the juvenile proceeding will be closed and the waived juvenile may be prosecuted as an adult for the delinquent conduct for which waiver was sought.

(e) **Custody Pending Criminal Proceedings.** The court may order that a juvenile who has been waived for trial as an adult be held in custody pending arraignment on criminal proceedings.

Cross Reference: AS 47.10.060.

PART VII. ADJUDICATION

RULE 21. ADJUDICATION HEARING

(a) **Nature of Proceeding.** The adjudication hearing is a trial on the merits of the petition for adjudication. The court will decide the merits of the case unless the juvenile requests a trial by jury. The juvenile must request a jury trial within 10 days of the arraignment on petition or when entering a deny plea, whichever is later. The adjudication hearing is not

open to the public unless requested by the juvenile. The Department may not request an adjudication by jury or an adjudication hearing open to the public.

(b) **Juries.** The jury will consist of twelve persons unless at any time prior to the verdict the parties stipulate in writing, with the approval of the court, to any number of jurors less than twelve. The verdict of the jury must be unanimous.

(c) **Venue.** Venue for an adjudication by jury is determined by the law of venue applicable to trial by jury in criminal proceedings.

(d) **Judgment.**

(1) At the conclusion of the adjudication hearing, the court shall enter a judgment that the juvenile is not delinquent or, if the court or the jury finds that the juvenile committed one or more delinquent acts alleged in the petition, either:

(A) enter a judgment that the minor is delinquent; or

(B) issue an order that the matter be held in abeyance for a stated period of time not to exceed one year. The court may dismiss the case at the expiration of this period of time if dismissal will promote the interests of the public and the welfare of the child.

(2) In a case tried without a jury, the court shall make a general finding, but on request shall find fact specially. If an opinion or memorandum of decision is filed, the findings of fact may appear therein.

(c) **Failure of Proof.** A juvenile who is found not to be delinquent must be released from custody.

(f) **Order Pending Disposition.** If the court finds a juvenile to be delinquent, the court may order the juvenile placed or detained pending disposition if the court finds that:

(1) detention or placement is necessary to protect the juvenile or others; or

(2) detention or placement is necessary to ensure the juvenile's appearance at subsequent court hearings.

Cross References: AS 47.10.080(a), AS 47.10.081

PART VIII. DISPOSITION

RULE 22. REPORTS IN AID OF DISPOSITION

(a) **Predisposition Report.**

(1) The predisposition report filed by the Department may include information concerning the following: the juvenile's family background, educational history, past adjudications, verified past incidents of delinquent behavior, the juvenile's medical, psychological and psychiatric history; and a description of the delinquent act and the juvenile's attitude about the act. The report must contain a recommendation regarding the recommended form of treatment that would be in the best interests of the juvenile and the public, and the victim impact statement required by AS 47.10.081(a).

(2) The predisposition report must be made available to the persons entitled to it at least ten days before the disposition hearing unless the parties agree to a different period and this agreement is approved by the court. A predisposition report which is submitted to the court prior to the adjudication hearing must be kept sealed until the adjudication hearing is completed.

(b) **Supplementary Material.** The court may order mental and physical examinations of the juvenile, studies of the home of any person with whom the juvenile might be placed by the court, and may provide for any other reports to aid in disposition. Parties may prepare and submit their own reports in aid of disposition. All such materials must be made available to the persons entitled to receive them at a reasonable time prior to disposition.

(c) **Disclosure of Reports.** Unless otherwise ordered, copies of predisposition reports and supplementary materials must be given to all parties. Any party

may move to withhold all or part of a report from the juvenile or the juvenile's parents or guardian if disclosure would be likely to cause serious psychological harm to the juvenile or the family relationship. The court shall inspect the reports in camera prior to entering such a limitation on disclosure and a limitation does not bar an attorney's access to the material withheld. The court may enter orders prohibiting release of the material by the attorney to his or her client.

[Amended effective September 15, 1991, by Laws 1991, c. 57, § 22, July 15, 1992]

Note

Paragraph (a) was amended by ch. 57, § 22, SLA 1991

RULE 23. DISPOSITION

(a) **Nature and Timing of the Hearing.** The purpose of a disposition hearing is to determine the appropriate disposition of a juvenile who has been adjudicated a delinquent. The disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the disposition is not held immediately following the adjudication, the court shall set a time for the disposition hearing, which will be held without unreasonable delay, and shall order a predisposition report and other studies, examinations or reports under Delinquency Rule 22 which are necessary for an informed disposition. The juvenile, with approval of the court, may waive the preparation and submission of a predisposition report.

(b) **Statements.** The court shall allow the parties an opportunity to make a statement and to offer evidence in aid of disposition before entering a disposition order.

(c) **Findings.** A disposition order must be accompanied by findings of fact supporting the disposition ordered.

(d) **Order.** In its disposition order, the court shall order the least restrictive alternative disposition under AS 47.10.080(b) that addresses the juvenile's treatment needs and protects the public.

(e) **Release by Department.** The Department shall notify the court in writing when the Department releases a juvenile from institutionalization without court order.

RULE 24. PROBATION REVOCATION

(a) **Revocation Petition.** The Department may petition the court to revoke the probation of a juvenile. The petition must be supported by an affidavit stating the particulars of the alleged violations.

(b) **Detention Pending Hearing.** If the juvenile has been arrested, the provisions of Delinquency Rule 12 apply to continued detention or placement pending a hearing on the petition.

(c) **Hearing.** The Department has the burden of proving by a preponderance of the evidence that the juvenile violated the conditions of probation. At the hearing, the juvenile has the right to appointed counsel, the right against self-incrimination, the right to a public hearing, the right to call witnesses and to issue compulsory process to compel their attendance, the right to confront and examine witnesses called by other parties, and the right to challenge the judge or master assigned to the case pursuant to Delinquency Rule 4(c). However, the juvenile does not have a right to a jury trial.

(d) **Disposition.** If the juvenile is found to have violated the conditions of probation, the court may extend, enlarge or modify its disposition order, taking into account the best interests of the juvenile and the public, and the ability of the Department to care for and protect the juvenile's best interests. The provisions of Delinquency Rule 23 apply to this disposition hearing.

Cross Reference: AS 47.10.080(b)(1)-(3).

RULE 25. REVIEW AND EXTENSION OF DISPOSITION ORDERS

(a) **Annual Review.** The court shall review its disposition order annually. The review will take place without a hearing on the basis of written reports and any statements or affidavits which accompany the reports unless a hearing is requested by a party or ordered by the court on its own motion. The Department shall serve the parties with copies of reports, statements and affidavits submitted to the court for annual review together with a notice of the parties' right to submit statements, affidavits or other evidence to the court and a notice of their right to request a hearing within 20 days of service.

(b) **Review Upon Application.** A party may apply for review of a disposition order. The court shall order a hearing to review the disposition order upon a showing of good cause or on its own motion.

(c) **Extension of Custody or Supervision.**

(1) **Petition.** The Department may file a petition for an extension of custody or supervision no later than thirty days before the expiration of the existing disposition order. The Department shall notice a hearing on the petition. The juvenile must be advised of his or her right to an attorney at the extension hearing.

(2) **Report.** The Department shall submit a written report stating the basis for the requested extension and make it available to all persons entitled to receive it ten days prior to the extension hearing, unless a different time period is ordered. The report must address the juvenile's progress in treatment and the need for further treatment or services.

(3) **Status Pending Decision.** If the court cannot reach a decision on the extension petition before expiration of the existing disposition order, the court may extend custody or supervision of the juvenile for a reasonable time pending a decision on the extension petition.

(4) **Extension Past Age 19.** The court may not extend custody or supervision of the juvenile past age 19 unless the juvenile consents to the extension in writing or orally on the record.

[Amended effective January 15, 1990.]

Cross References: AS 47.10.080(b), (f), AS 47.10.082; AS 47.10.100.

PART IX. APPEAL AND PETITION FOR REVIEW

RULE 26. APPEAL AND PETITION FOR REVIEW IN APPELLATE COURTS

(a) **Grounds, Procedure.** An appeal of a final judgment or order, or a petition for review of an interlocutory order or decision, may be taken in accord with the provisions of the Appellate Rules pertaining to criminal proceedings.

(b) **Stay.** An order, judgment or decision of the superior court remains in effect pending appeal or review unless stayed by order of the superior court or the appellate courts. Neither bail nor an appellate bond is required in appellate proceedings concerning delinquency cases.

Cross References: AS 22.07.020 and (3); AS 47.10.080(d).

**PART X. COURT ADMINISTRATION
OF JUVENILE RECORDS**

**RULE 27. COURT RECORDS—
CONFIDENTIALITY**

The records of a juvenile proceeding are confidential. Information may not be released and access to the records may not be permitted except as authorized by statute or upon court order for good cause shown under such conditions as the court may set, except that:

(a) the name of a juvenile and the juvenile's parents may be released to victims by the Department for the purpose of civil restitution proceedings; and

(b) a probation officer employed by the Alaska Department of Corrections may review delinquency proceedings records for the sole purpose of preparing

a presentence report on the individual whose juvenile record is reviewed. The records may be used in the sentencing proceeding and attached to the probation officer's report.

(c) a prosecuting attorney may obtain a certified copy of an adjudication or disposition order entered in a juvenile proceeding based on a written request certifying that the prosecutor needs the order to establish the elements of a felony offense. The prosecutor may not use or disclose the order except for this purpose.

[Amended effective January 15, 1989; July 15, 1995.]

Cross Reference: AS 47.10.090.