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while her mother worked. Thereafter, L.M. was permitted to be on her own. Mrs. M married Mr. C. in 1971 (over L.M.'s objection) and retired from work intending to spend more time with L.M. Difficulties arose almost immediately with L.M. neglecting to return home after staying with friends. L.M. began a consistent pattern of running away in the spring and summer of 1972. The first time the minor ran, she was located by her parents without police intervention and returned home. This was in May of 1972. She ran away again on June 19, 1972, at which time her parents again found her, this time with court and police assistance, and took her to the mental health clinic for counseling. L.M. rejected counseling and ran away again on July 3, 1972, at which time her parents sought the assistance of the Langdon Psychiatric Clinic. L.M. rejected any assistance from Langdon's Clinic, missing a number of appointments. Petitions were filed seeking to have L.M. declared a child in need of supervision on June 22, 1972, and July 3, 1972; but in each case, the petitions were dismissed on stipulation and the matter handled informally. ^{5/}

Informal adjustment having been found unsuccessful, a further petition was filed on October 31, 1972, and amended on November 2, 1972. A hearing was held on November 2, 1972, at which time L.M. admitted the allegations of the petition and, upon the master's recommendation, was declared a child in need of supervision. She was ordered detained at the McLaughlin Youth Center pending adjudication. A

4. (Cont'd)

Sec. 10(a)(3) provides:

"is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; . . ."

Sec. 10(a)(6) provides:

"associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others; . . ."

background survey and analysis was prepared by probation officer Karl Ellis

which, after setting out the minor's history, culminated in the following evaluation:

The impression given by this minor is that she is not going to listen to any adult and is going to have her own way regardless. If she does not like what is being said, she tends to ignore the person saying it. It is likely that she has had her own way until her mother remarried and now does not want to be told what she has to do. No doubt, L.M. is well aware of the difficulty anyone will encounter in trying to do anything about her running away. The first time she encounters opposition to her wishes she will no doubt run again. It is not known whether she has used drugs but with her group of friends it may just be a matter of time. Continued resistance to counseling or seeing a psychiatrist can be expected. The mother's way of handling the problem has been ineffective. To tell this girl that she cannot run around with certain people will produce more rebellion and running away. It would be advisable for L.M. and her mother to attend counseling or to understand how to relate to one another. However, L.M. will not willingly attend any counseling session. Having this minor on probation may not produce any appreciable results. It is not likely that anything can be done about L.M.'s running away until she has violated a law and is declared delinquent.

On December 12, 1972, the disposition hearing was continued to obtain psychiatric and psychological evaluations that had been made of L.M. but not filed with the court. L.M. was released from detention to her parents pending the disposition. One week later, on November 19, 1972, the court was informed by Mr. Ellis that L.M. had the preceding Saturday ran away, then been picked up, and ran away again on Monday and was still missing. A pick-up order was issued. ^{6/}

Dr. Wreggitt filed his report on December 18, 1972, in which he stated in part:

5. Children's Rule 4 provides in relevant part:

(d) Informal disposition. If the intake officer, after investigation, believes that in the best interest of the child the matter should be handled on an informal basis, he may thereafter refrain from filing a petition and shall thereafter on behalf of the court, counsel with the child and parents, guardian or custodian, and with their consent and cooperation establish such informal supervision or disposition of the child matter as the circumstances may require.

L.M. was seen in psychiatric evaluation on July 17, 1972, at which time a diagnosis of depression reaction characterized negativism, apathy, hostility and runaways. Also of note, was a serious internal stress within the family in the form of severe impasse between L.M. and her mother.

Dr. Wreggitt went on to point out that family counseling had been suggested but rejected.

The minor was brought back to court on December 27, 1972, at which time she was detained pending disposition. She had been picked up on December 26, 1972, by the police. A further report was filed by Dr. Wreggitt on January 10, 1973, at which time he repeated the material from his prior report, and added the following:

In my repeat examination of L.M., she appeared equally as depressed as she had in July except that her hopelessness is markedly increased. In the period I spoke with her, I found no way to break through her hopelessness and no way to enlist her cooperation in a treatment effort. She stated that she wished to return home, although, she was still ambivalent about the problem's extent, and that she would run away from a foster or group home placement. She felt that she might consider the possibility of medication for her depression should this be offered, but felt rather hopeless about this. She denied suicidal ideation.

There have been numerous contacts with both L.M. and her parents since the inception of our contact with them in July. . . . On the basis of those ongoing interviews and on the basis of the present examination, it would not appear that psychotherapy with the intact family at this time would be very productive.

Although I have no direction from the court in this matter, whatsoever, it would appear that there are three alternatives possible for this child. The first of these is to continue with the home. Should she return to the home, the runaways are likely to continue to occur as there have been no significant structural change that I have been able to detect. If anything, there has been a worsening in L.M.'s condition and a hardening

6. The Family Court has interpreted AS 47.10.030(c) to authorize the court to order the police to pick up runaways; cf. AS 47.10.140(e) and Children's Rule 5.

other defenses. The significant struggle between the mother and child, which goes back for many years and has been exacerbated by the mother's recent marriage, still appears to be present. I am not sure of all the factors which enter into this will struggle.

The second possibility would appear to be a placement in a group home. It is not clear whether there is either parental desire for such a placement or whether the girl would indeed stay in such a placement. Some possibilities would include, if age requirements are met, the Booth Memorial Home or the Jesse Lee Home.

A third possibility would appear to be foster placement, but in view of Mr. Ellis' concern about the availability of an adequate placement here and the girl's serious problems, I would see this as having about the same chance of success as placement in the parental home. . . .

The disposition hearing was finally held on January 11, 1973, before the Honorable Wayne Ross, Master for the Family Court.

At the hearing Mr. Ellis testified under oath. He repeated most of the material in his written report and added that as a result of her continual running away from home, L.M. had missed a substantial part of her school year. Master Ross filed his recommendation that the minor be "released to her parents" with the Superior Court and Judge Butcher executed a release on January 11, 1973. No specific disposition pursuant to AS Sec. 47.10.080 was ever made. ^{7/}

7. AS Sec. 47.10.080 provides in relevant part:

(a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.

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

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

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

On March 19, 1973, L.M. was brought back to court by Mr. Fredericks, the intake officer. He represented to the court that L.M. had "been a runaway almost

7. (Cont'd)

AS Sec. 47.10.080(c) provides:

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

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

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

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

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

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

(i) both parents, or

(ii) the surviving parent, or

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

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

constantly since the time the court released her." Further, he indicated that he had been contacted by Central Junior High School and informed that L.M. was constantly truant from school. He further indicated that Mrs. "C", L.M.'s mother, had contacted a new psychiatrist who had agreed to work with L.M. He therefore requested that L.M. be detained at McLaughlin Youth Center until the psychiatrist could meet with her. During the colloquy that followed, it appeared that Mr. Ross was under the impression that L.M. was on probation though, in fact, she was not. In any event, he ordered her detained for two days to permit a "further investigation."

On March 21, 1973, the intake officer filed a petition with the court alleging that the minor was a "child in need of supervision" by virtue of having been truant from school in violation of AS Sec. 47.10.010(3) and AS Sec. 14.30.010 (Truancy). 8/

On March 21, 1973, a further hearing was held before the Honorable Wayne Ross, Master of the Family Court. At that time, Mr. Ross disqualified himself from further participation in the case and directed that the matter be brought to the attention of a Superior Court judge. The matter was then assigned to me and I held a hearing on March 21, 1973.

At that hearing Mr. Fredericks informed the court that L.M. was presently in detention having run away from home, and having been the subject of a petition

7. (Cont'd)

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

8. AS Sec. 47.10.010(3) provides:

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

alleging frequent truancy from school. He further stated that Mrs. "C" had obtained a child psychiatrist, Dr. Barbare Ure, who had met with the child and her mother, and

8. (Cont'd)

(3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; . . .

AS Sec. 14.30.010 provides in relevant part:

When attendance compulsory. (a) Every child between seven and sixteen years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and sixteen years of age shall insure that the child is not absent from attendance.

AS Sec. 14.30.020 provides:

Violation. A person violating Sec. 10 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$200, plus the cost of prosecution, and may be imprisoned until the fine and costs are paid or until he has served one day for every \$2 of the fine and costs, at which time the fine and cost are automatically discharged. Each unlawful absence is a violation and if an absence is extensive there is a new violation each time five consecutive days of the absence elapse. The court may suspend sentence, stay or postpone enforcement of execution, or release from custody a person found guilty upon the conditions which are in the best interests of the child. In any event, at the expiration of the school year, the person shall be released and discharged from all penalties provided by this section.

While arguably a child's violation of this section would bring him within Sec. 47.10.010(a) (1), i.e. a minor who violates a law of the state . . ., the Family Court takes the position that the specific governs the general and that Sec. 47.10.010(3) which speaks specifically to truancy as a condition for being determined in "need of supervision" prevents a finding of delinquency predicated on "truancy" i.e. violation of AS 14.30.010-.020, supra.

together they had worked out some program of counseling. He further stated that the parties had agreed that L.M. would be placed in a foster home during a period of counseling. Mr. Fredericks further informed the court that L.M.'s present status was uncertain as a previous petition alleging that she was a child in need of supervision had been sustained but that in lieu of disposition the Master, being convinced that the minor required a close setting and believing that under current statutory and case law he could not place the minor in a close setting, concluded that there was nothing the law could do and, therefore, dismissed the matter and directed that no further child in need of supervision petitions be presented since in the Master's opinion, such would be a waste of the parties' time and money. ^{9/} After explaining L.M.'s legal rights to her and convincing myself that she understood them at least to the extent that a fourteen year old could, I accepted the parties' stipulation that L.M. be placed in a foster home. Having previously explained to her that if she violated a court order she could be held in contempt of court and incarcerated, I explained to her that she was not to leave the foster home without contacting her psychiatrist, her social worker, or her mother. She agreed. The minor was released from McLaughlin on March 31, 1973, and placed in a foster home. She ran away on April 2, 1973, without giving the required notification, and was out of contact with her psychiatrist, her social worker and her mother for approximately one month, until apprehended on May 4, 1973. A detention hearing was held before Master Rhoads on May 4, 1973, and L.M. was detained

9. The Master apparently met off the record with the intake officer at or about the time of the most recent petition. There is nothing on the record indicating a "dismissal of the petition." The results of the "disposition hearing" are discussed above.

pending further proceedings. In the meantime, L.M. was rushed to a hospital for medical care, resulting in further continuances until May 14, 1973.

A further hearing was held on May 14, 1973, before me, at which time L.M. was charged with contempt of court by the intake officer. The intake officer requested that if L.M. admitted the allegations of the petition, she be sentenced to the McLaughlin Youth Center for thirty days as a sanction for contempt of court. Because of the uncertainty of the law in this area, and the possibility of further incarceration of L.M., I appointed the Public Defender to represent her. ^{10/} To enable the Public

10. Children's Rule 14 provides in relevant part:

(a) Right to counsel. Where a juvenile matter has not been closed by informal adjustment or disposition, the juvenile, his parents, guardian, or custodian, upon the filing of a petition for adjudication, be informed of their respective rights to be represented by counsel in all subsequent stages of the proceedings. The court shall advise the juvenile, his parents, guardian, or custodian on the record, of the right to court-appointed counsel provided their circumstances qualify them under the provisions of Rule 15.

(b) Waiver of right to counsel. If the right to counsel is waived and the court is satisfied that the waiver was intelligently and understandingly made, it shall be accepted. If the court is not satisfied that the waiver was intelligently and understandingly made and the interests of justice appear to so require, it shall appoint counsel unless specifically requested not to do so by the party concerned.

Children's Rule 15(a)(4):

When the court shall appoint counsel. The court shall appoint counsel to represent the juvenile . . . (4) for the juvenile . . . in any situation where, in the opinion of the court, the interests of justice and the nature of the case warrant providing the assistance of counsel at the taxpayer's expense.

Consideration should also be given to Rule 11(a) permitting the court to appoint a guardian ad litem for the juvenile when her welfare requires it. Cf.

and L.M. continued in detention until that time. On May 15, 1973, a further hearing was held. Mr. Van Winkle, of the staff of the Public Defender Agency, appeared as counsel for L.M. He requested a two-day continuance to respond to the allegation that L.M. was in contempt of court. This was granted. However, with L.M.'s permission, Dr. Barbare Ure was permitted to testify regarding her contacts with L.M. in the interim and a proposed plan for L.M.'s rehabilitation.

Dr. Ure testified that the minor would not stay in a foster home, would not stay in her own home, had missed the better part of the school year, and required placement in a secure setting until such time as she could "reintegrate herself" since this was the only way to insure that L.M. would remain around for "treatment." Dr. Ure further testified that the circumstances of L.M.'s hospitalization indicated that her freedom in the community was hazardous to her health. Dr. Ure recommended institutionalization at McLoughlin Youth Center.

I asked Dr. Ure for what period of time she felt L.M. would require institutionalization.

She responded that the current children's rights movement had substantially complicated the answer to my question. She continued:

I have found in my experience of working with these young people that frequently they've got to be in a setting where they know that it's not up to them and

10. (Cont'd)

AS Sec. 47.10.050 and AS Sec. 47.10.110. It is the policy of the family court to appoint attorneys for alleged children in need of supervision (usually the Public Defender) but only upon request. L.M. had refused counsel in the past. While I would agree that a child involved in a dependency or delinquency proceeding could theoretically waive the right to an attorney if some adult, i.e. the state in the former and a parent in the latter case, were present to protect the child's interest, I do not believe an alleged child in need of supervision can effectively waive counsel unless a guardian ad litem is appointed since in such a proceeding almost by definition there is a conflict of interest between parent and child (see n. 24, infra, and accompanying text). I have carefully reviewed the record and concluded beyond reasonable doubt that L.M. was not prejudiced by the court's failure to appoint an attorney before I appointed the Public Defender.

. . . in the control system of the impulses . . . if the child has to control himself and it's up to the child, many children cannot really take the responsibility until they know that it's not really up to them, that it's inevitable, that control is a necessity. In other words, my experience has been that as long as there's an opening, a way out of having to face the problem, they don't face it. They will -- they will continue to -- to avoid facing the real conflicts, the real problems, the real painful struggles that hurt just as long as they possibly can and only when they've reached the end of the road . . . only then can they begin to pull themselves together and decide what kind of a person they're going to be, how they're going to live their life and what's important. Consequently, . . . I can't really say for sure how long it would take L.M. to reintegrate or in other words pull herself together and say it's the (sic) inevitable.

The court then, at Mr. Van Winkle's request, recessed the hearing for two days.

The hearing resumed on May 17, 1973. The state, represented by Mr. Tim Middleton, argued that a child in need of supervision could not be held in contempt of court and incarcerated, but that a child guilty of "criminal contempt" could on that basis be adjudicated a "delinquent child and thereafter institutionalized. The state, therefore, moved to dismiss the petitions alleging contempt of court and substitute a petition of alleged delinquency. The court denied the motion but permitted the state to file an amended petition alleging as a separate count an act of delinquency predicated upon "criminal contempt. L.M. through counsel moved to dismiss the existing petitions on the ground that the court had no jurisdiction to enter an order requiring her to stay in a foster home, and, therefore, could not hold her in contempt for violating the order. This motion was denied without prejudice to its renewal supported by authorities. The court granted the parties a one-week continuance to prepare a response to the existing petitions. The court continued L.M. in detention pending that hearing but authorized her placement at the ACS receiving home if an opening was found and if the Division of Family and Children's Services could guarantee her appearance at further hearings. A petition alleging delinquency was filed on May 23, 1973, at which time a hearing was held. The court reviewed

of counsel, she denied the allegations and requested a trial. A date for the trial was set. 11/ Pending trial, L.M. was released from McLaughlin Youth Center for placement at the Alaska Children's Services receiving home. She agreed that she would remain on the premises of the receiving home twenty-four hours a day and would not leave except in the company of an employee of the home.

A further hearing was held on June 7, 1973, at which time the adjudication hearing was further continued until July 20, 1973 to permit the court to participate in the Trial Judges' College held at the University of Nevada. At the request of L.M. and with the concurrence of the Department of Family and Children's Services and the District Attorney's Office, L.M. was extended the general privileges of the receiving home during the intervening period.

A written order was entered on June 8, 1973, specifically setting out the conditions under which L.M. would reside at the receiving home pending her adjudication hearing. Specifically, it provided:

- (1) The child is to inform the authorities of the Anchorage Children's Christian Home of her whereabouts at all times when she is not on the premises of the home.
- (2) The child is not to remain away from the Anchorage Children's Christian Home overnight without the permission of the appropriate adult authorities of the home.
- (3) The child will obey the house rules that are set by the authorities at the Anchorage Children's Christian Home.

The order specifically set out an acknowledgement for L.M.'s signature.

The acknowledgement provided:

I acknowledge having received a copy of this order, having read it and completely understand what is expected of me.
I recognize that any violation of this order on my part will

11. A brief pretrial conference was held in chambers. Present were Mr. Rice and Mr. Middleton representing the state, and Mr. Van Winkle representing L.M. At the conference L.M. requested and was granted a jury trial on the allegations of delinquency. All parties agreed that all safeguards available to adult criminal defendants except bail would thereafter be extended to L.M.

constitute contempt of court and may be used to be filed against me. I agree to abide by the conditions of this order.

The writing bears L.M.'s signature as well as her attorney's, Mr. Van Winkle, and Mr. Frederick's, the in-take officer, signatures as witnesses.

On July 26, 1973, Mr. Jay Warner, Intake Officer for the Family Court, filed a petition for revocation of conditions of release pending adjudication hearing.

The petition stated in relevant part:

. . . On or about July 2, 1973, at an unknown hour, at or near Anchorage, in the Third Judicial District, State of Alaska, L.M., a minor child, without permission and without informing the authorities of the said Anchorage Children's Christian Home left said children's home and remained away until July 3, 1973, when she returned. And that on or about July 3, 1973, at approximately 4:00 p.m., at or near Anchorage, in the Third Judicial District, State of Alaska, L.M., a minor child, without permission and without informing the authorities of the said Anchorage Children's Christian Home, left said children's home and remained away until July 24, 1973.

A detention hearing was held on July 26, 1973. At that hearing Mr. Frank Koziol, Assistant Public Defender, substituted for Mr. John Van Winkle as attorney for L.M. At that time Mr. Koziol indicated to the court that he had thoroughly discussed the facts of the case with L.M. and Mr. Van Winkle, and that the three of them had determined that it would be in the best interest of L.M. that she admit the allegations of the petition of alleged delinquency filed on May 23, 1973. Mr. Koziol made it clear that the minor was only admitting the facts and reserving the right to litigate the legal consequences of those facts.

I therefore discussed the factual content of the petition with L.M. I pointed out to her that a charge of contempt of court based upon violation of a court order has four elements: first, a person must be ordered to do something by the court; second, he or she must know that they have been ordered to do it; third, they must have the ability to comply with the order; and, fourth, they must willfully and knowingly violate that order. I told L.M. that unless all of these factors were present, she should not admit the petition. I pointed out to L.M. that if she was at all confused

about the order, its meaning or her responsibilities, she should not admit the petition. Further, I pointed out that if the conduct of any other person compelled her to violate the court order, she should not admit the petition; and, finally, I pointed out that if she had any doubts about the matter at all, she should not admit the petition. L.M. then admitted the facts of the petition in the presence of her attorney, Mr. Koziol.

We then proceeded to a consideration of the petition for revocation of conditions of release pending adjudication hearing filed on July 26, 1973. This petition was read to L.M. and in the presence of her attorney, after being advised of her legal rights, she admitted those allegations as well. L.M. then requested through her attorney that a disposition hearing be scheduled within thirty days and stipulated that she remain at the McLaughlin Youth Center in the interim.

A disposition hearing was then set for August 21, 1973, and ultimately held in two sessions: the first, on August 28, 1973, and the second, on August 31, 1973.

Dr. Joseph Bloom, a psychiatrist associated with the Langdon Clinic, and Kord Rosen-runge, testified as experts on behalf of the minor. Dr. Barbare Ure, a child psychiatrist in private practice in this area, and Susan Roguzka, a probation officer employed by the Division of Corrections of the State Department of Health and Social Services, testified on behalf of the State. Neither the minor nor her parents testified. The expert testimony pointed up the substantial differences of opinion both as to principle and policy that exists regarding runaways and their treatment. Generally, Mr. Rosen-runge and Dr. Bloom testified in support of a system that would permit minors who did not get along with their parents to obtain conciliation services and, if unsuccessful, separate maintenance or, in extreme cases, a divorce from those parents. In no event would these witnesses advocate court

support court intervention and institutionalization in the case of chronic or habitual runaways who could not otherwise be treated in the community. All of the witnesses opposed institutionalization as a treatment modality for the average child in need of supervision. Probation officer Roguzka indicated that detention had definitely been used in the past too frequently with children in need of supervision, and that while

12. A number of recent law review articles support the position taken by Mr. Rosen-runge and Dr. Bloom. See, e.g., Novak, The Incurable Child under the New Penn. Juvenile Act: An Unsound Unsupportable and Unfortunate Policy Choice, 35 Univ. of Pittsburg L. Rev. 73 (1973); McNutty, The Right to be Left Alone, 12 Journal of Family Law 229 (1972-73); Chused, The Juvenile Court Process: A Study of Three New Jersey Counties, 26 Rutgers L. Rev. 488, 531-33 (1973); Comment, Non-Delinquent Children in New York: The Need for Alternatives to Institutional Treatment, 8 Columbia Journal of Law and Social Problems 251 (1972); Comment, Juvenile Delinquency Laws: Juvenile Women and the Double Standard of Morality, 19 U.C.L.A. L. Rev. 313 (1971); Green and Essetyn, The Beyond Control Girl, 23 Juvenile Justice 13 (Nov. 1972); Comment, Juvenile Law: A Potential for Calif. Change, 2 Pacific L.J. 737 (1971). These writers advocate a community conciliation system for parents and children who don't get along in lieu of the present children's court. While conciliation proceeded the state would provide an alternate living situation for the child. Should the child not wish to reconcile with his parents, or the parents fail to make needed concessions, the alternate living situation would become permanent. In no event would any pressure be applied to the child to conform to parental wishes.

Implicit in this model for dispute resolution is an assumption that the relationship between state, parent and child is one of trust wherein the state is trustor, the parent trustee, and the child both the corpus of the trust and its beneficiary. Viewed in this way, the state and the parent have reciprocal rights and duties as do the child and the state, but as between the parent (the trustee) and the child (the beneficiary), the parent has only duties, e.g., to feed, clothe and house the child; and the child has only rights, e.g., to be fed, clothed and housed. Thus, if it is determined that a parent has a legal right to the custody of his child enforceable against the child, the trust analogy fails and the argument outlined above collapses.

I express no opinion as to which model, i.e. children's rights or parental rights, is the more appropriate or will win posterity's approval. Such questions are for the legislature, not the judiciary. MY sole concern must be what do the statutes currently require.

some such children would only benefit from treatment in an institution, there was a substantial risk that institutionalization would be used too often in "frustrating" situations. Dr. Bloom also testified that while a "closed setting" might be theoretically defensible, he feared giving to a possibly vindictive court system imbued with a punitive philosophy the power to authorize it.

After considering all of the evidence, the court accepted the recommendation of the Division of Corrections and ordered the minor institutionalized, but deferred execution of the order for a period of sixty days to give L.M. one more opportunity to establish that she could be rehabilitated within the community. During the sixty-day deferred period, L.M. was assigned to the intensive care unit of the Division of Corrections Probation Department under the supervision of Sheila Lankford, it being understood that Ms. Lankford would carry a small caseload and, therefore, be able to spend a substantial amount of time with L.M.

On September 25, 1973, Ms. Lankford filed a petition with the court alleging that L.M. had violated the conditions of her probation in that she had run away from home on September 23, 1973, and stayed away until September 25, 1973, at which time she returned voluntarily. Ms. Lankford indicated that the child and family were in counseling and had regularly attended counseling sessions, and that the minor's behavior with the exception of the two-day absence without leave had been exceptional. Consequently, Ms. Lankford asked that the deferred order be continued and that the minor remain on probation. I accepted this proposal.

On November 2, 1973, this court, on the request of Ms. Lankford, vacated the deferred order of institutionalization and placed the child on regular probation having been advised that L.M. was functioning effectively within the community. In her report to the court, Ms. Lankford indicated that the minor and her parents had continued to participate in regularly scheduled family counseling with Dr. Ure, Melissa Middleton (of the Alaska Youth Advocates) and herself; that the parents had attended a class in

transactional analysis and family systems offered by the Corrections Department; and that the minor and her parents had mutually agreed upon a written contract setting out each's expectations of the other. She concluded that while L.M. had to a minor degree violated the conditions of her probation by going A.W.O.L. the week-end of September 25, 1973, and on other occasions missing her curfew, these problems were being worked out within the family and did not justify further court intervention.

On November 5, 1973, the minor ran away but returned of her own accord on November 7, 1973. On November 9, 1973, the minor ran away again and remained away until December 5, 1973, when she was apprehended by the police department. On December 6, 1973, Ms. Lankford petitioned to revoke the minor's probation. A hearing was held on December 6, 1973, at which time the minor denied the allegations of the petition and the matter was set for hearing on December 11, 1973.

The December 11, 1973, hearing was held, the court heard the testimony of Sheila Lankford, probation officer; Dr. Ure, child psychiatrist; L.M.; and her mother, L.C.; and a child care worker from Alaska Children's Services, Patricia Brown. Ms. Lankford testified that L.M. was now amenable to treatment and requested that L.M. not be institutionalized. The court detained L.M. for an additional week and took the matter under advisement. On December 18, 1973, I granted the petition to revoke probation but reinstated it on new conditions. I continued the minor in the custody of the Division of Health and Social Services under Ms. Lankford's supervision, and directed that she be placed in an appropriate home setting; and as a further condition of probation, directed that she be detained at McLaughlin Youth Center for a period of thirty days but allowed credit for any time spent since December 5, 1973. At the request of Ms. Lankford the minor was transferred upon leaving McLaughlin from her own home to the Alaska Children's Services Receiving Home.

On March 18, 1974, Ms. Lankford filed a further petition seeking revocation of probation. In it she alleged that on February 20, 1974, the minor ran away from the receiving home and remained away until March 16, 1974, when she was apprehended by the police.

In a hearing on March 19, 1974, the minor represented by Mr. Herb Soll of the Public Defender's Office denied the allegations of the petition and requested a hearing. The hearing was held on March 22, 1974, at which time after hearing all of the evidence the court found the minor had violated the conditions of her probation and had run away from the receiving home. The court heard further from Ms. Lankford who testified that she had exhausted community resources available to L.M. and recommended that the minor be institutionalized at the McLaughlin Youth Center. The court considered the minor's objections presented by her attorney and, after considering the evidence and the argument of the parties, directed that the minor be institutionalized. The judgment is dated March 28, 1974.

DISCUSSION

As previously indicated L.M. seeks to have her adjudication of delinquency set aside on a number of grounds. These grounds will be dealt with in order.

Before a party may be held in criminal or civil contempt for failure to abide by a court order, four elements must be established: (1) the existence of a valid order directing the alleged contemnor to do or refrain from doing something and the court's jurisdiction to enter that order; (2) the contemnor's notice of the order within sufficient time to comply with it; (3) the contemnor's ability to comply with the order; and (4) the contemnor's willful failure to comply with the order. Where the requested sanction is a period of incarceration, the party seeking citation for contempt must in addition prove that his rights or those of another party to the action have been materially prejudiced by the alleged contempt.

L.M. challenges the validity of the subject order on two grounds: first she contends that while the statute providing for disposition in cases of children in need of supervision does use the phrase "probation" as an alternate disposition, in fact a reading of the entire statute establishes the impropriety of "probation" for children in need of supervision and requires a finding that the legislature intended dispositions of children in need of

supervision to be identical to dispositions of children found to be dependent. L.M. relies upon a reading of the entire statute as impliedly interpreted by Children's Rule 12 in support of this position. ^{13/} Consequently, she concludes, the court had no jurisdiction to place her on probation and cannot hold her in contempt for violating the terms of such an invalid probation.

A review of the file establishes, however, that L.M. was never placed on probation prior to her adjudication as a delinquent child. Her earliest petitions were all dismissed prior to adjudication or disposition on the recommendation of the intake officer in order to pave the way for informal disposition. The only adjudication for child in need of supervision which proceeded to the disposition stage resulted in a recommendation by the master, confirmed by Judge Rutchter, releasing the minor to her parents without disposition. Her subsequent readjudication as child in need of supervision for truancy resulted in an informal disposition by stipulation of the parties where the minor remained under the supervision of the Division of Family and Children's Services, the agency supervising dependent children, rather than the Division of Corrections with a proposed placement in a foster home and counseling by Dr. Ure. Thus, that disposition and resulting order was one consistent with treating the minor as a "dependent" rendering L.M.'s argument about "probation" irrelevant.

In her trial brief L.M. contends that she was denied procedural due process in that the court did not give her adequate notice of her obligations and what she was required to do under the March 21 order. While L.M. is correct that as a matter of con-

13. Children's Rule 12 provides in relevant part:

12 (b) . . .

A minor under the age of 18 years who (1) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others; or (2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian may be designated as a child in need of supervision and the procedure provided under these rules for the determination and disposition of dependency shall apply to him.

stitutional law she cannot be held in contempt for violating an order of which she had no notice, she cannot be held in contempt for violating an order of which she had no notice under the common law without reference to the constitution. However, notice is a question of fact. L.M. was entitled to have a jury determine on all the evidence whether she did or did not have adequate notice of the order in question. After initially requesting a jury trial on this issue, L.M. withdrew that request and admitted the allegations of the petition. If this was error, L.M.'s remedy is to move to set aside her admission rather than challenging the adjudication predicated upon it.

While the Children's Rules make no express provision for withdrawal of an admission to the allegations of the petition, the Criminal Rules which to this extent at least are in pari materia do make specific provision (see Criminal Rule 32(d)). ^{14/}

14. Criminal Rule 32(d) provides in relevant part:

(d) Plea withdrawal. (1) The court shall allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct manifest injustice.

(i) A motion for withdrawal is timely and is not barred because made subsequent to judgment or sentence if it is made with due diligence.

(ii) Withdrawal is necessary to correct a manifest injustice whenever the defendant demonstrates that:

(aa) He was denied the effective assistance of counsel guaranteed to him by constitution, statute or rule, or

(bb) The plea was not entered or ratified by the defendant or a person authorized to so act in his behalf, or

(cc) The plea was involuntary, or was entered without knowledge of the charge or whether the sentence actually imposed could be imposed, or

(dd) He did not receive the charge or sentence concessions contemplated by the plea agreement, and

(A) The prosecuting attorney failed to seek or opposed the concessions promised in the plea agreement, or

(B) After being advised that the court no longer concurred and after being called upon to affirm or withdraw his plea, he did not affirm his plea.

It is clear from the reported cases that the alleged contemnor need have notice only of the order itself. I have found no case that requires as a precondition for holding someone in contempt of court for failing to heed a court order that the alleged contemnor had prior knowledge of the existence of the contempt power and the sanctions that could be imposed when it is invoked. ^{15/}

L.M. has conceded that she had the ability to comply with these orders and willfully violated them. Therefore, there is a factual base for holding her in contempt of court.

L.M. contends that she cannot be held in contempt of court because of the exclusive remedy provisions of AS 47.10.010(1) ^{16/} and AS 47.10.080 (g). ^{17/}

The majority rule holds that comparable provisions do not prevent holding a minor in contempt of court at least where "civil contempt" is involved, i.e. a proceeding to force

14. (Cont'd)

(iii) The defendant may move for withdrawal of his plea without alleging he is innocent of the charge to which the plea has been entered.

(2) Once the plea has been accepted by the court and absent a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty or nolo contendere as a matter of right. Before sentence, the court may in its discretion allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

(3) A plea of guilty or nolo contendere which is not accepted or has been withdrawn shall not be received against the defendant in a criminal proceeding.

I assume that this procedure is available to L.M.

15. As a practical matter in this case L.M. was told that if any orders were made involving her, and she violated them, she could be held in contempt of court and incarcerated. I do not consider this notification necessary to an invocation of the contempt power.

16. See footnote 2, supra.

a child to do something in the future, e.g., testify in court (see e.g. Young v. Knight, 329 S.2d 195 (Ky. 1959); Application of Balucan, 353 P.2d 631 (Hawaii 1960); Accord, Bryant v. State, 271 N.E.2d 127, 129-30 (Ind. 1971)).

One case, In Re Williams, 306 F. Supp. 617 (D. C.D. 1969) has applied this rule to "criminal contempt of court." There certain minors were held in criminal contempt of court for violation of an injunction but the court held that the minors if convicted were to be housed in the juvenile facility rather than the jail.

The state agrees in part with L.M., at least to the extent that "criminal contempt" is involved. The state contends that "criminal contempt" by a minor is a violation of statute and thus is governed by AS 47.10.010(1)(a)(1) and AS 47.10.080(g). See Annotation, Court's Power to Punish for Contempt a Child within the Age Group ^{17a /} Subject to Jurisdiction of Juvenile Court, 77 A.L.R.2d 1004 (1961).

The governing statutes support the state's position that any criminal activity by a child must be prosecuted in the Children's Court in a delinquency proceeding. The question then is, under Alaska law, was L.M.'s willful failure to abide by certain court orders involving her placement pending disposition as a child in need of supervision, a crime. There is substantial dispute in the authorities as to whether failure to abide by a court order can ever be a criminal contempt (see, e.g., Goldfarb, The Contempt Power (New York & London: Columbia Univ. Press 1963), passim, esp. pp. 49-67.

Goldfarb states:

As a result, one is left with but few and vague guides.
A wrongdoer may never know, at the time of his wrong-

17. AS 47.10.080(g) provides in relevant part:

. . . nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter . . .

ful act, whether he has committed a civil or criminal contempt or what the form of his sanction will be. Courts appear to survey all concomitants of a case and decide on the basis of the special characteristics of the act, the remedies sought, the nature of the action, and the aim of the remedy, whether the act looks like what has been vaguely considered civil or criminal contempt in the past. To this end the key issues considered by courts have been: Who will primarily gain from exercise of the contempt powers; is exercise of the power to punish a completed act or to coerce a future one; will the contempt proceeding constitute a separate action or will it be part of the execution of the original one; and what standard indicia of civil or criminal proceedings appear to attach to the processing of the power in the instant case . . . (id. at 66)

Goldfarb goes on to point out that disobedience to court orders, judgments and decrees is generally handled as "civil contempt" but he concludes:

. . . A thorough consideration of the cases leaves a distinct impression that courts supply an ad hoc kind of accounting to contempt situations and arrive at conclusions which, no matter how just in the immediate case, compose only the most casual and intellectually unsatisfying link with any body of law or legal principle (id. at 67).

The Alaska Supreme Court in Johansen v. State, 491 P.2d 759 (Alaska 1971) has, however, determined that a violation of a court order is criminal rather than civil contempt where incarceration is imposed for a fixed period under AS 09.50.020^{17b/} to punish a completed act rather than to coerce future conduct pursuant to AS 09.50.050.^{18/} Thus, the court has adopted the "nature of the punishment" test. Specifically, the court

17a. Cf. AS 47.10.060 (Waiver of Jurisdiction) which requires inter alia a finding that the minor is "not amenable" to treatment as a minor before jurisdiction can be waived. In light of Dr. Ure's testimony, L.M. is clearly amenable. See Davenport v. McGinnis, _____ P.2d _____ (Alaska 1974, Op. No. 1049); R.J.C. v. State, _____ P.2d _____ (Alaska 1974); and P.H. v. State, 504 P.2d 837 (Alaska 1972).

17b. See n. 3, supra.

18. AS 09.50.050 states in relevant part:

When the contempt consists of the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he has performed it.

held that where the contempt power was invoked to punish the alleged contemnor for "past, willful, flouting of the court's authority" pursuant to AS 09.50.010(5) (cf. AS 09.50.020), contempt was criminal and the defendant was entitled to all substantive and procedural criminal safeguards; but where the contempt proceeding was instituted to "coerce future conduct" pursuant to AS 09.50.050, the contempt is civil but the defendant is entitled to a jury trial on the issue of his ability to comply with the order. Applying that distinction here, L.M. no longer has the power to comply with the orders she has previously violated, though she certainly has the power to comply with similar orders in the future. Thus, if the state proceeds against her to sanction past conduct, as they are doing, it must be for a "crime", i.e., violation of AS 09.50.010(5), and such proceeding is limited by AS 47.10.010(1)(a)(1) and AS 47.10.080(g) to a delinquency proceeding in the Children's Court. Cf. State v. Browder, 486 P.2d 925 (Alaska 1971) which supports the state's contention that any contempt which does not meet the test of AS 09.50.050 is a crime by an adult and, therefore, an act of delinquency by a child.

In Johansen, supra, the Supreme Court noted certain inadequacies in this procedure stating at 491 P.2d 764, n. 22:

There are two disadvantages to the character-of-the-punishment test which affect primarily the trial courts and to which we call attention here. The first is that punishment is not determined until the end of the proceeding, whereas the need for classification exists from the beginning. Trial courts may overcome this in most instances by announcing at the outset the goal of the contempt action, specifying whether the action is designed primarily to vindicate the court's authority or to coerce compliance with one of its orders for the benefit of a third party. The second is that the alleged contemnor, at the time of his wrongful act, has no way of knowing whether he has committed a civil or criminal contempt, or what his sanction will be. . . . We deem this disadvantage outweighed by the benefits of an otherwise workable classificatory scheme and mitigated, for purposes of due process notice requirements, by the trial court's announcement, at the beginning of the proceedings, of the purpose of any punishment imposed.

L.M. does not deny that she knew from the inception of the contempt proceedings the state's intent, nor that she was afforded all the procedural safeguards mandated by Johansen, supra, and Browder, supra, but she contends that this procedure is unfair

as applied to her. She reasons that Johansen could only be found guilty of civil contempt to the extent that he had the immediate ability to comply with the order, and only under those circumstances could he be imprisoned and then only until he complied with the order. Should the state have proceeded against Johansen for "criminal contempt", then the maximum penalty that could be imposed would be imprisonment for a period of six months. In her case, however, if her violation of court order is deemed a crime, and therefore an act of delinquency, she can be imprisoned until her nineteenth birthday for a period of five years. This problem arises because the legislature did not distinguish between felonies and misdemeanors in making violation of a statute or ordinance, i.e., crimes, acts of delinquency while they did distinguish between felonies and misdemeanors for purposes of setting periods of imprisonment for adults. Thus, L.M.'s argument is really directed to permitting misdemeanors to be a basis for a finding of delinquency. ^{19/}

The counter-argument usually made is that while the minor's exposure is to a greater period of incarceration, in fact the overwhelming majority of alleged delinquents are handled informally without even a court appearance and of the remainder, the majority are placed on probation. Of the institutionalized, the actual period of time spent in an institution is usually less than six months to a year. Witnesses testified that the minor, if institutionalized, would probably have to spend approximately four months at the McLaughlin Youth Center, but could during that period and thereafter earn her release by modifying her behavior. They testified further that it was unlikely that anyone would spend more than nine months in the institution (though on cross-examination by Mr. Van Winkle Ms. Lankford did agree that some of the girls at McLaughlin had been there for

19. It is likely that the overwhelming majority of those found delinquent for violation of a statute have committed acts which if committed by adults would be misdemeanors rather than felonies, i.e., shoplifting, joy-riding, malicious mischief, minor in possession of alcohol or possession of marijuana. Thus, the majority of her fellow delinquents share L.M.'s complaint. This problem is mitigated, I believe, by the court's duty to reduce any claimed misdemeanor violation from "delinquency" to child in need of supervision where the child does not pose a substantial threat to the community and appears amenable to treatment as a child in need of supervision (cf. In Re H., 354 N.Y.S.2d 293 (N.Y. Fam. Ct. 1974)).

over a year). Nevertheless, to a certain extent the minor does "hold the key to her release" in her own hands since by her behavior in the institution she can effect her release within six months. Further, the legislature has afforded those adjudicated delinquent certain benefits that do not accrue to adult misdemeanants. For example, AS 47.10.080 provides in relevant part:

(g) No adjudication under this chapter upon a status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction of a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceeding in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state. 19a/

The thrust of L. M.'s argument is essentially that subjecting her as a minor contemnor to a greater potential period of incarceration than an adult contemnor denies her the equal protection of the laws. This argument has generally been rejected (see In Re K.V.N., 16 N.J. Sup. 580, 283 A.2d 337, aff. 291 A.2d 577 (N.J. 1972); In Re W., 264 A.2d 614 (Pa. 1970)). As the Alaska Supreme Court pointed out in Alex v. State, 484 P.2d 677, 684 (Alaska 1971):

The requirement of equal protection amounts to a prohibition of laws which, in their application, make unjust distinctions between persons (footnote omitted). If a rational basis for a classification is reasonably apparent, there is no denial of equal protection. It is elementary that the power to define crimes and fix punishments rests in the legislature. In the performance of that function, that body is to use the discretion lodged in it, and not be confined by narrow or unduly restrictive limits. We cannot say that a legislative judgment was unreasonable if it bears a rational connection to a legitimate public purpose, so long as a legislative classification

19a. See cases cited in n. 17a, supra, for a discussion of the benefits accruing to a minor under Title 47.

is not based upon an arbitrary or unjustifiable distinction and does invidiously discriminate between two groups, there is no denial of equal protection.

Given the fact that a child cannot be incarcerated with adults (AS Secs 47.10.190, 47.10.130), the purposes to be served by placement at the McLaughlin Youth Center, the fact that the minor is entitled to immediate release when and if her conduct will justify it (AS 47.10.200 and see AS 47.10.080(f)), the fact as noted in Alex, supra, that there is no obligation to institutionalize upon the finding of a contempt of court, or in fact no obligation to predicate delinquency on any act including a contempt of court if under all the facts and circumstances a finding of delinquency is not warranted, 19b/ it does not seem that the potentially greater exposure to incarceration facing minors than adults for contempt of court, or for that matter facing minors than adults for misdemeanors, denies the minors the equal protection of the law.

Cases from other jurisdictions are in disagreement as to whether violation of court order can be an act of delinquency. Due to the substantial differences between the statutory schemes in those jurisdictions and in Alaska, I have given them little consideration. In Re Presley, 47 Ill.2d 50, 264 N.E.2d 177 (1970) held, pursuant to a statute specifically making violation of a court order an act of delinquency, that a girl's running away from a foster home after having been previously adjudicated a child in need of supervision in violation of an order to remain in the home was an act of delinquency supporting her institutionalization (Accord, People v. Sekeres, 48 Ill.2d 431, 270 N.E.2d 7 (1971)). An intermediate Colorado appellate court held to the contrary (see People ex rel D. R. v. E. R., 29 Colo. App. 525; 487 P.2d 824 (1971)). The Colorado court based its

19b. This seems implicit in the statute. Certainly if the intake officer has discretion to not proceed formally against a child who admits commission of a crime, the court has equal discretion, if all of the facts warrant the exercise of discretion. Further, it would seem that the court has discretion to treat all delinquents whose crime was a "misdemeanor" as children in need of supervision if warranted by the circumstances. See n. 19, supra.

determination on two considerations: first, that while the state did specifically allow a finding of delinquency based upon a violation of court order, a reading of the entire statute rendered this provision ambiguous since the legislature had gone to great lengths to distinguish between two classes, namely delinquents and children in need of supervision, and had specifically provided that a child in need of supervision could not be placed in the state training school. The court reasoned that the legislature could not have intended that conduct which initially could only result in an adjudication as a child in need of supervision would, if continued, result in a finding of delinquency and exposure to the state training school. This is a non-sequitur since the majority of modern statutes make exactly this provision, i.e., that children which we would classify as children in need of supervision cannot at the first instance be placed in a state training school, but may if the behavior which brought them to the attention of the court continues after adjudication as a child in need of supervision be placed in a state training school. ^{20/}

In fact, without changing the classification from child in need of supervision to delinquent, this was exactly the procedure then applicable in Colorado (see Sec. 22-3-12, Laws of Colorado, Supplement 1967)). ^{21/}

20. See California Welfare Institution Code, Secs. 601, 730 and 777. This is the recommendation included in most of the model acts (see Novak, supra, n. 12, pp. 78-80); see also Forer, A Children and Youth Court: A Modest Proposal, 4 Col. Human Rights Law Review 337, proposed section 2(3) which defines as guilty of a delinquent act a child who "without cause repeatedly runs away from home but there shall be recognized justifiable runaways from an unjustifiable home." Id. at 348. Foere would permit institutionalization.

The Colorado courts' position is a variant of the argument made by the authorities cited in n. 12, supra, that there is no conceptual difference between running away before and after the entry of a court order. This argument shows ignorance of the entire history of the contempt power and the fact that most imprisonment for contempt follows violation of injunctions against conduct which is not independently a crime. In fact, for years equity would not prevent a commission of a crime.

21 It should be noted that the provision barring initial commitment at the state training schools in Colorado was repealed by Colorado Laws 1971, p. 294, sec. 2, so that at the present time children may be assigned to the state training school immediately upon adjudication as children in need of supervision. This cannot be done in Alaska; see In Re E.M.D., 490 P.2d 658 (Alaska 1971).

The second argument of the Colorado court was that the legislature had set up a specific procedure to be followed in the case of violation of probation, thereby precluding the necessity of resort to a finding of delinquency. The Colorado statute provided that after a hearing to determine whether the conditions of probation had in fact been violated, the court could make any order that it initially could have made. Included among those orders was commitment to the Colorado Youth Center. The Colorado law as it then existed permitted placement in the state training schools only at the direction of the Department of Corrections and not at the court's own order. (This practice was specifically rejected by our Supreme Court in In Re E.M.D., 490 P.2d 658 (Alaska 1971).)

In Alaska as one of the dispositions available for a child in need of supervision, the legislature has permitted the court to place the minor on probation under those conditions and limitations that the court may proscribe (see AS 47.10.080(j)); there is no provision in the statute or in the court rules governing what happens if the child violates the conditions of that probation. In fact, L.M. has argued throughout this case that the legislature's failure to spell out the consequences of a child in need of supervision's violation of her probation, coupled with the legislature's withholding of the power to institutionalize, establishes that the legislature did not really mean the word "probation" used in connection with children in need of supervision to have its functional or traditional meaning. Thus, she argues, the only available disposition is to treat her as a dependent child. Whether or not she is correct, it is clear that Alaska, unlike Colorado, does not have a "definitive" set of provisions governing revocation of probation that would conflict with a finding of contempt.

Before leaving this issue, it should be pointed out that L.M.'s primary argument in this case is that as a child in need of supervision whose conduct from the inception of the case to the present has not changed, should not be placed in a closed setting, i.e. one where the doors may be locked. The cases upon which L.M. relies proceed to a different point, namely, that the child should not be placed in a state training school. In Colorado, California, Illinois and New York, children in need of supervision can at

the first instance be placed in juvenile halls or youth centers, i.e. places with locked doors, but cannot be placed at the state training school, i.e. maximum security institutions. The McLaughlin Youth Center in Anchorage is more the equivalent of a juvenile hall than it is a state training school. It should be noted that Alaska has contracts with Colorado and California to place Alaska delinquents who are too sophisticated for McLaughlin in the state institutions in those states. Thus L.M. is not threatened with placement at either the California or Colorado training schools; she is threatened with placement at the McLaughlin Youth Center which is the equivalent of a California county juvenile hall or the Colorado Youth Center, dispositions which in California and Colorado are available for status offenders.

Finally, the recent New York Court of Appeal's decision in C. v. Redlich, 32 N.Y.2d 588, 347 N.Y.S.2d 51, 300 N.E.2d 424 (1973) requires comment. That court had recently held in Matter of Thomasita Ann, 30 N.Y.2d 927, 335 N.Y.S.2d 683, 287 N.E.2d 377 (1972) that the New York Code provisions similar to our provisions establishing children in need of supervision as a class were constitutional and that a child in need of supervision could be placed in a closed setting and deprived of her freedom. In that case Thomasita Ann had been sent to the state training school but had been released prior to the determination on appeal, thus, making that issue moot. In Redlich, supra, the court held that children in need of supervision could not be placed in the same facilities that treated delinquent children. The decision was made with specific reference to the New York state training schools. Those institutions are set aside for the most hardened of the delinquents. The court specifically did not hold that a child in need of supervision could not be placed in a "closed setting", i.e., one where the doors were locked and the child was not permitted to come and go as she pleased. The only placement that was precluded was one in a school for delinquents.

Substantial evidence was introduced during the many hearings of this case regarding the population at the McLaughlin Youth Center. Based upon that evidence, it

seems clear that the kind of children who are extremely aggressive, and extremely hardened in delinquency, are not treated at McLaughlin Youth Center, but are sent outside for placement at schools in Colorado and California under contract with the State of Alaska. While the population at McLaughlin is made up at the present time exclusively of "delinquents", the evidence introduced at trial, together with my own experience in the juvenile court, convinces me that while delinquency in some form is a prerequisite to gaining admission to McLaughlin, it is not the real reason that the child is at McLaughlin. The overwhelming majority of delinquents with strong family ties are treated in the community. Those delinquents who end up at McLaughlin are by and large there for the same reason that L. M. may be there, namely, an unwillingness to remain at home or a home substitute, and heed parental or a custodian's regulations. It should also be noted that the overwhelming majority of institutionalized delinquents committed misdemeanors, not felonies. Based upon the evidence I am convinced that L. M. and other chronic runaways would not be distinguishable in sophistication, exposure to criminal activity, etc. from the average girl in the population at McLaughlin, and that therefore the reasoning of the New York Court of Appeals should not apply to Alaska. ^{21a/}

Finally, L. M. argues that the Alaska Supreme Court in Breeze v. Smith, 501 P.2d 159 (Alaska 1972) ruled that the right to liberty set out in Art. I, Sec. 1 of the Alaska State Constitution ^{22/} guarantees every Alaskan regardless of age ". . . total

21a. It should also be noted that the group homes operated by Alaska Children's Services contract with both the Division of Corrections and the Division of Family and Children's Services, and consequently L. M. has met and will meet the same girls in the group homes as in the Youth Center. There is no empirical evidence of which I am aware that would enable an Alaskan court to distinguish between girls who will not live at home and as a result of shoplifting, joy riding, etc., end up at McLaughlin, and girls who as chronic runaways end up in group homes. In fact, I know of no evidence that either group comprises a homogenous class identifiable as such.

22. Art I of the declaration of rights of the Alaska State Constitution, Sec. 1, provides:

Inherent rights. This constitution is dedicated to the principle that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the state.

personal immunity from governmental control: the right to be let alone . . ." (citing id. at 501 P.2d 168) , which L.M. contends the Supreme Court qualified only to the extent that it " . . . must yield when (it) intrudes upon the freedom of others . . ." citing id. at 501 P.2d 170 (matter in parentheses supplied); therefore, L.M. continues, a citizen's right to liberty as enunciated in Breeze, supra, (bolstered by the more recently enacted "right to privacy"^{23/} cannot be infringed by preventing him from doing anything that does not injure a specific definable victim. Consequently L.M. concludes since her conduct, i.e., running away from home and foster home placement did not injure anyone (except perhaps herself which she contends has not been proved) , it necessarily follows that it cannot constitutionally be interfered with by the state.

It is not necessary to determine whether the Supreme Court has in fact read John Stewart Mill's essay on liberty into the Alaska State Constitution since L.M.'s conduct does satisfy both Mill's test and her test of controllable conduct, i.e., a definable victim whose rights are prejudiced by the conduct to be controlled.

L.M. begs the question when she assumes that the only interest to be protected by legislation affecting children in need of supervision is that of the subject child. In fact the parents' interest, paramount in the past, must be considered.^{23a/} Properly understood proceedings against children alleged to be in need of supervision are in substance and effect custody disputes where the contestants are parent and child, and the parent appeals to the court to vindicate and enforce his custody rights in the child against that child.^{24/} Viewed in this light, the statutes creating the status "child in need of supervision" bear the same relationship to a parent's custody rights as those

23. Alaska Constitution, Art. 1, Sec. 22, provides:

Right to privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

defining theft bear to a citizen's right to private property. In each case the statute recognizes and protects a right deemed important by the community by punishing interferences with that right and, second, by providing a judicial remedy discourages

23a. The U.S. Supreme Court has on a number of occasions held that a parent's "right" to the custody and control of his child was constitutionally protected. See Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed2d 147 (1973); Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972); Stanley v. Illinois 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed.2d 551 (1972); Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L.Ed.2d 62 (1965); May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L.Ed. 1221 (1953); Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L.Ed. 1070 (1925); Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1932). See discussion in: Burt, Forcing Protection on Children and their Parents, 69 Mich. L. Rev. 1259, 1268-1288 (1971); Dobson, The Juvenile Court and Parental Rights, 4 Family L.Q. 393 (Dec. 1970); Sullivan, Child Neglect: The Environmental Aspects, 29 Ohio State L.J. 85 (1968); Young, The Problem of Neglect: The Legal Aspects, 43 J. of Fam. Law 29 (1964); and Note: Child Neglect: Due Process for the Parent, 70 Col. L. Rev. 465 (March 1970).

Admittedly, only Wisconsin v. Yoder, *supra*, addresses the possible conflict between parental and children's rights and there expressly reserves the question, though there is strong dicta in some of the opinions favoring the rights of parents over their children and Justice Douglas disagrees.

Finally, it should be recognized that statutes penalizing runaways and incorrigible children as criminal substantially antedate the foundation of children's courts and the statutes establishing them. In fact, such statutes existed in colonial times. See Commonwealth v. Brasher, 270 N.E.2d 389 (Mass. 1971).

24. While there is much discussion of parental rights in reported cases, few cases attempt to define those rights making discussion difficult. A careful review of the literature, both case law, treatise and law review, indicates that the following have been listed as "parental rights" protected by the constitution:

- (1) Physical possession of the child which, in the case of a custodial parent includes the day to day care and companionship of the child in the case of a non-custodial parent, the right to visitation.
- (2) The right to discipline the child which includes the right to inculcate in the child the parent's moral and ethical standards.
- (3) The right to control and manage a minor child's earnings.
- (4) The right to control and manage a minor child's property.
- (5) The right to be supported by an adult child.
- (6) The right to have the child bear the parents name.
- (7) The right to prevent an adoption of the child without the parents' consent.

resort to self-help and the attendant risk of violence. ^{25/} Lest I be misunderstood, I do not hold that a parent's custody right is a property right. The theft analogy is just an analogy, nothing more.

Thus, before L.M. can sustain her case that the child in need of supervision procedure including the invocation of the court's contempt power to enforce orders made pursuant to it is an unconstitutional invasion of her liberty and privacy, she must first establish that her mother has no legally enforceable right to her custody. For if a parent has a legal right to the custody of his child, it necessarily follows that the right is enforceable against the child as well as others, since by definition a legal right is one enforceable in a court of law and the existence of the right in the parent entails the correlative duty in the child as well as others to respect that right. ^{26/} True, like all legal rights a parent's right to the custody of his child is not absolute and may be

24. (Cont'd)

Of these so called residual parental rights, those that remain after custody is placed in another, include the right to consent to an adoption and by withholding consent prevented, the right to visitation and the right to have the child bear the parents' name.

25. By withdrawing court assistance (and police assistance) from embattled parents the state is not inducing compromise but is in fact encouraging violence, since parents have the right under Alaska law to physically control their children. See AS 11.15.110 (1) as interpreted (in Oregon) in State v. England, 349 P.2d 668 (Ore. 1960), and compare the civil liability of parents for disciplining their children which is discussed in Hebel v. Hebel, 435 P.2d 8, 14-15 (Alaska 1967). See also Levee, Criminal Liability for the Punishment of Children, 43 Journal of Criminology, Criminal Law and Police Science, 719 (1952-1953) and Annot., Liability for Punishment of Children, 89 A.L.R. 2d 396 (1963).

In this context consideration should be given to the case of State v. Rigler, 266 A.2d 887 (Del. Supp. 1970) where a 15-year old girl cut her classes and went to her boyfriend's apartment, her mother followed and with the help of the mother's boyfriend, removed the girl from the apartment resulting in a scuffle leading to the boyfriend's conviction for technical assault on the mother.

Consideration should also be given to the fact that in our society the family relation is a frequent source of violence (see Pamas, Judicial Response to Inter-family Violence, 54 Minn. L. Rev. 585, esp. 641-44 (1970) and Id. The Response of Some Relevant Community Resources to Interfamily Violence, 44 Ind. L.J. 159 (1969); and id. The Police Response to Domestic Disturbances, 1967 Wis. L.Rev. 914. If parents have a right to the custody of their children and the right to use force to protect that right as they apparently do under Alaska law, then the availability of a judicial form for the resolution of inter-family disputes may be a necessary alternative to substantial inter-family violence.

lost through divorce, ^{27/} by conduct depriving the child of the necessities of life, ^{28/}
by abandonment, ^{29/} by the child's emancipation, ^{30/} or, subject to constitutional
limitations, where the child's best interests would be served by a limitation or termination
of parental rights. ^{31/}

26. For the meaning of legal right and its relation to its correlative legal duty, see Wesley N. Hohfeld, Some Fundamental Conceptions as Applied in Judicial Reasoning, Part I, 23 Yale L.J. 16, 28-32 (1913); Part II, 26 Yale L.J. 710 (1917); J. C. Gray, The Nature and Source of the Law (2nd Ed.) (N.Y.: The McMillan Co. 1948, pp. 7-26, esp. p. 12.

27. AS 09.55.205 gives a court in a divorce action the right to provide for the custody of the children. The Supreme Court has indicated that a parent is entitled to a preference over third parties in an action for custody unless the third party establishes that the parent is unfit or alternatively that the welfare of the child requires placement with someone other than the parent (see Bass v. Bass, 437 P.2d 324 (Alaska 1968).

28. See AS 47.10.010(a) (5) which, when read in conjunction with AS 47.10.080(c) and AS 47.10.290(3), permits the state to take custody of a child who "lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian."

29. See AS 47.10.010(a) (4) which authorizes the state to take custody of a child who has been abandoned. See D.M. v. State, 515 P.2d 1234 (Alaska 1973); it would appear that the common law doctrine of "constructive desertion" would apply here as well as in domestic relations disputes. Under that doctrine, a spouse who leaves the family home because of cruelties or indignities is deemed not to have deserted the home but in fact to have been constructively deserted by the spouse causing the indignities or cruelty even though the spouse causing the cruelty continues to offer to maintain a home for the spouse that has left.

30. A child is emancipated as a matter of law when he or she reaches the age of majority which in Alaska is 19 years of age; AS 25.20.010. See R.L.R. v. State, 487 P.2d 27 (Alaska 1971). The legislature has the power to fix and change the age of majority (see Ruhsam v. Ruhsam, 515 P.2d 1199 (Ariz. App. 1973).

The common law permits emancipation where a parent by act or omission extinguishes parental rights and duties and removes the disabilities of infancy. See Vaupel v. Bellach, 154 N.W.2d 149, 150, 51 (Ia. 1967); Allen v. Arthur, 220 N.E.2d 658 660, 119 Ind. App. 460 (); Perkins v. Roberbson, 295 P.2d 972, 975, 140 Ca.2d 536 (); but there is a strong presumption against emancipation prior to the age of majority (ibid.) and the acts of the child standing alone are not enough. See Schirtzinger v. Schirtzinger, 117 N.E.2d 42, 43-44, (Ohio App. 1952), but cf. Roe v. Doe, 29 N.Y.2d 188, 324 N.Y.S.2d 71, 272 N.E.2d 567 (1971). Generally, before a child can be said to be "emancipated" he must be capable of supporting

L.M. was given an opportunity to show any of the foregoing as a defense to a finding that she was a "child in need of supervision" or, subsequent thereto, to a finding that she had committed criminal contempt of court and was therefore delinquent by violating

30. (Cont'd)

himself. In this context Alaska law substantially limits the ability of a child less than 16 to support himself (see e.g. AS 23.10.325-23.10.370, esp. 23.10.335, as interpreted by 8 AAC 05.010 and 8 AAC 05.030 which requires that a child between the ages of 14 and 16 not be employed during school hours.

31. As previously indicated the "best interests of the child" is the test normally applied in custody disputes whether between parents (see n. 27, supra) or third parties (see Hickey v. Bell, 391 P.2d 447 (Alaska 1964); Wilson v. Mitchell, 406 P.2d 4 (Alaska 1965); and Bass v. Bass, 437 P.2d 24 (Alaska 1968)). AS 47.10.010 gives the court jurisdiction "in a controversy concerning custody of a minor" to appoint a guardian of the person and property of a minor or place custody in the state Department of Health and Social Services and require a parent to support the child without a finding of dependency (see AS 47.10.010(c)).

And, while AS 47.10.080(f) is open to more than one interpretation, it appears to make the child's "best interest" the test of continued placement, probation or supervision for all dependents, delinquents and children in need of supervision, though the public interest is to be considered as well.

However, there are substantial constitutional problems where the "best interest of the child test" is used outside of the area of custody disputes between parents. See Levine, Caveat Parens: A Demystification of the Child Protection System, 35 Univ. of Pittsburgh L. Rev. 1 (1973); Thomas, Child Abuse and Neglect, Part I: Historical overview, Legal Matrix, and Social Perspectives, 50 N. Car. L. Rev. 293 (1972); Burt, Forcing Protection on Child and their Parents, 69 Mich. L. Rev. 1259, 1268-1288 (1971); Dobson, The Juvenile Court Parental Rights, 4 Family L.Q. 393 (Dec. 1970); Sullivan, Child Neglect: The Environmental Aspects, 29 Ohio State L.J. 85 (1968); Young, The Problem of Neglect: The Legal Aspects, 43 Journal of Family Law 29 (1964); and Note, Child Neglect: Due Process for the Parent, 70 Colum. L. Rev. 465 (March 1970). While each of these authorities criticizes the state's use of dependency proceeding to deprive parents of their children, because of disagreement traceable to social, cultural and economic considerations regarding proper child rearing techniques, they would seem to apply more forcefully where the state seeks to deprive a parent of his child for no cause at all other than the child's wishes. See cases cited supra, n. 23a.

It should be noted that Alaska law in a number of circumstances permits a child over the age of 14 to participate in the selection of a custodian or guardian; but California, with identical statutes, has held that such selection while entitled to consideration is not binding on the court (see Comment: The Role of The Child's Wishes in California Custody Proceedings, 6 U.C. Davis L.R. 332, 353 (1973)). Implicit in the court's power to order a custody arrangement over the child's objection is the power to enforce that order against the child. Of course, the exercise of that power is discretionary, not mandatory.

orders regarding her placement but she failed to do so.

Thus, by refusing to participate in a program of rehabilitation, i.e., by constantly running away in violation of the court order, L.M. directly defeated and prejudiced her mother's right to her custody, exposing L.M. to imprisonment if she were an adult (AS 09.50.020)^{32/} and adjudication as a delinquent if a minor (see AS 47.10.010(a)(1)).

It might be argued that the foregoing only applies while L.M. is residing with her mother, and that L.M.'s running from the foster home and later the group home could not affect her mother's custodial rights which had already been suspended by the foster placement and assumption of custody in fact if not in law by the state. Further L.M. might argue whatever rights the state might have correlative to their duty to feed, clothe, shelter and supervise her did not rise to the level of the rights contemplated by AS 09.50.020.

Since it is clear that L.M.'s conduct even after placement in foster care prejudiced her mother's right, it is not necessary to determine whether (1) action prejudicial to the state's rights as custodian would justify imprisonment pursuant to AS 09.50.020; and if not, whether (2) a contempt must be punishable by imprisonment if committed by an adult, e.g., rather than merely a fine, before it can qualify as an act of delinquency if committed by a child.

L.M.'s argument again assumes that children in need of supervision are simply a sub-class of dependents and that the "supervision" contemplated by the statute is

32. While it is unlikely that an adult under contemporary law would find herself in a position exactly analogous to that of L.M. at common law a spouse was frequently imprisoned for leaving his or her spouse without just cause, i.e. without divorce or a decree granting separate maintenance, and a law to this effect remained on the books in Scotland until 1971. (Matrimonial proceedings and Property Act 1970 Sec. 20, repealing Matrimonial Causes Act 1965 Sec. 13; but see note in 3 The Juridical Review 156 (1891).) It should be noted that L.M. seeks separation from her mother for reasons that would not enable one spouse to divorce or obtain separate maintenance from the other in a jurisdiction, not recognizing incompatibility as a ground for divorce.

simply the furnishing of food, clothing, shelter and schooling in lieu of that which would otherwise have been provided by a parent. But this assumption begs the question for in fact, viewed historically, the purpose of the supervision or treatment contemplated by the creation of the status child in need of supervision and its predecessor non-criminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control (cf. AS 47.10.280). Thus, the state's efforts regarding the child are not directed solely at providing an alternate living situation (as they are in a true case of dependency) but at putting the child back in her own home and the reestablishment of her mother's custody and supervision over her and any foster placement is merely a means to that end, not an end in itself. Thus, by rejecting "treatment" L.M. defeats, or at least slows, this reintegration process and thereby prejudices her mother's right to her custody and control, subjecting herself to the more severe sanction contemplated by AS 09.50.020.

CONCLUSION

Whether we characterize L.M. as a delinquent child, a child in need of supervision, a dependent child, or merely a child whose custody is disputed in a domestic relations proceeding,^{33/} the court has (under existing law) authority to

33. It must be understood that a minor L.M.'s age without doing anything to attract court attention, could have her custody placed in issue in a divorce or other domestic relations proceeding. The court would issue an order ultimately resolving the custody dispute which would be as binding on the child as on the disputants. True, the child if reasonably mature would be permitted to state a preference (see AS 09.55.205 (1) and cf. AS Secs. 13.26.040 and 13.26.055 which make fourteen the age at which a minor may express a preference as to his guardian); but the child's decision is not binding on the court if the child's proposed appointed guardian or custodian is, in the court's opinion, not consistent with the child's best interests (see AS 13.26.055). Hatherly, in his article The Role of The Child's Wishes in California Custody Proceedings, 6 U.C. Davis L. Rev. 332 (1973) discusses the California cases which interpret the interplay between the California equivalence of AS Secs. 09.55.205(1) and 13.26.055. But as the cases establish, the "child's best interest" is an ambiguous standard which

make orders affecting her custody (after extending to her all procedural safeguards including notice and an opportunity to be heard and, in appropriate cases, the appointment of counsel) and enforce those orders against her. Certainly, conciliation should precede coercion; and if coercion is necessary, mild sanctions should first be tried before more severe sanctions are imposed. But where mild sanctions fail, the court's orders must be enforced and severe sanctions will be imposed if necessary. I have considered those sanctions other than institutionalization, which are suggested in the literature, and must reject them for reasons which I will set out.

No sanction may be imposed on a child either directly or as a condition of probation unless it is clearly spelled out in the appropriate statutes. See In Re M.L., 317 A.2d 65, 64 N.J. 438 (1974). Thus, I cannot impose a fine on L.M. (ibid.),^{34/} and the same principle precludes use of corporal punishment.^{35/}

33. (Cont'd)

means different things to different judges and appellate courts hesitate to overturn such decisions unless there is an apparent inadequacy in the trial court's chosen custodial home. See, e.g., Nichols v. Nichols, 516 P.2d 1215 (Alaska 1973). Thus, many children involved in child custody disputes will in the ordinary course find themselves placed with a less favorite parent and yet this decision will be binding upon them and enforceable against them. I have attempted to protect the interest of minor children in divorce cases by appointing counsel to represent them and treating them as parties to the case as I believe they are (see Hatherly, supra, esp. pp. 352-353), but this is not a general practice. The point I am making is that most children (and adults) who are permitted to fully participate in a court proceeding and have their position heard accept the judgment of the court whether they agree with it or not, and no problem of enforcement arises. But when a party does not acquiesce and refuses to comply with the court's orders, regardless of the nature of the proceeding, the contempt power is waiting.

34. L.M. being an unemployed minor, a fine would be an unproductive sanction in any event.

35. I have listed corporal punishment as a "milder" sanction than institutionalization because I believe most children (and adults) would prefer it to any extended period of incarceration. I also realize that a good argument could be made for the proposition that in cases such as this one (and most adult misdemeanors by other than hardened criminals), it would be a more effective sanction than incarceration. See Levy, Criminal Liability for Punishment of Children, 43 J. of C.C. and P.S., 719, 725 (1953-1963); cf. Singer, Psychological Studies of Punishment, 58 Calif. L.Rev. 405(1970). But Virginia is the only state which has ever permitted it as a juvenile disposition and

I have tried short periods of confinement unsuccessfully with L.M. and accept Ms. Lankford's testimony that short-term, i.e. 30 days or less, confinement would have no effect on L.M.'s future behavior; and if repeated each time L.M. ran away, would continue almost indefinitely into the future with L.M. enjoying brief periods of general freedom in the community between periods of confinement subjecting L.M. to all of the disadvantages of confinement with none of the advantages of participation in an institutional program. ^{36/}

Finally, I have suggested placement outside the community in a private school or other open setting as an alternative to a closed setting in this community, but L.M. (through her attorney); her mother and the State of Alaska have all rejected this proposal and requested that L.M. remain in this community. Consequently, we are faced with the following facts: L.M. is a frequent, if not constant, runaway. While verbally willing to cooperate with state supervision towards reintegration into her family, she has consistently rejected it by her actions. She has been counseled by representatives of the Division of Mental Health, the Division of Corrections, and the Division of Family and Children's Services, as well as two separate private psychiatrists -- those connected with the

35. (Cont'd)

that statute was repealed (see Levy, supra, citing Virginia Code Sec. 63-303 (1950) repealed Acts 1950, p. 698); and the Alaska statute clearly does not authorize it. Consequently, it is not necessary to determine whether corporal punishment, with or without the child's informed consent (e.g. as a condition of continued probation) would be constitutional. Cf. Ware v. Estes, 328 F. Supp. 653 (N.D. Tex. 1971, aff. 458 F.2d 1360 (5th Cir. 1971), cert. den. 409 U.S. 1027, 93 S. Ct. 463, 34 L.Ed.2d 321 (1972)); Glaser v. Marietta, 351 F. Supp. 555 (D.C. Pa. 1972); Gonyaw v. Ladue, 361 F. Supp. 366 (D.C. Vt. 1973). (The foregoing all hold that corporal punishment in public schools is constitutional against a variety of challenges on the ground that it has historically been practiced there and is nationally a common practice, i.e. a usual practice, with Nelson v. Heyne, 355 F. Supp. 451 (D.C. Ind. 1973) (holding that corporal punishment in a juvenile correctional institution is unconstitutional on the ground that it is "cruel" and unusual, i.e. a practice which occurs in only a few states).) As previously indicated, I know of no state that permits corporal punishment as a judicial disposition in juvenile cases, either directly or as a condition of probation. (art. 491 Fzd 351 (7th Cm. C. & C. 94 S. Ct. 2183 (1974))

36. Those in detention do not participate in the institution's "program".

Langdon Clinic and Dr. Barbare Ure, and if anything, her problem has continued to increase. In summary, every effort at in-community conciliation has been tried and I cannot but find on this record that her parents have cooperated fully in the conciliation program, meeting in group sessions with representatives of the Division of Corrections, Dr. Ure, Melissa Middleton, and the minor. We have reached the point in these proceedings where the court can find as a matter of fact that L.M. will not abide by any orders it enters regarding her supervision under AS 47.10.080 (j), and is therefore in willful criminal contempt of the court's authority. Were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior; and all of these, save institutionalization, have been tried and have been unsuccessful. Since her adjudication as a delinquent, L.M. has twice left her custodial placements and been away in the community for a period in excess of thirty days without notifying any of the adults allegedly responsible for her. Consequently, the court has no choice but to order her institutionalization.

DATED at Anchorage, Alaska, this 13 day of June, 1974.



JAMES K. SINGLETON, JR.
JUDGE OF THE SUPERIOR COURT

cc: Honorable H. J. Butcher
John Van Winkle, Assistant Public Defender
Joseph D. Balfe, District Attorney
Timothy G. Middleton, Assistant Attorney General
Sheila Lankford, Probation Officer
Mr. and Mrs. Robert Crow

HB

211

CS HB 211

① 41.45.010 line 16 delete "commodity"

② 41.45.040 (b)

41.45.060.

41.40.070 Sec 4

} reflect 5 state + 5 federal members

③ 41.45.080 (2) delete present wording + substitute "encourage the early + effective development of common management agreements among federal + state agencies + private landowners"

1 CSHB 211 (Judiciary)
Offered in the HOUSE

By the House Judiciary Committee

2 AS 41.45.100 is amended by adding a subsection to read:

3 (b) the exemption from any property tax or special assessment for
4 capital improvements shall not apply to any land within ~~an organized~~
5 ~~borough~~ or municipality with taxing powers unless the governing
6 body of that borough or municipality has provided for the exemption
7 by ordinance.

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HB

221

Brown - 3889

3/14/77

Judiciary Committee Meeting

~~AB 16~~

Gardner

Spackling

Miles

Dankworth.

Reid

0730

HB 19 -

49.

120 ft on tape.

Miller - Testimony

① primary^{good} - people have voice

② secondary reason

↳ no candidates - or other
representatives come to state

↳ primary - would hopefully draw
candidates to the state.

Supported by Gordon Evans.

CSHB 19.

1.0

2nd Tuesday in April - available nationwide
is prior to state convention.

2.0 made by Lt Gov. - sole discretion.

3/16/77

Judiciary Committee Meeting

cut off date - first Tuesday in March
w/drawal date second Tuesday in March.

Delegates p. 3 =

Fiscal Note $274,000.00$
 ~~$229,000.00$~~
over 4 years

~~John~~ Ann
H819 Polly - Director of elections

problem deadlines - worked
ok in the ~~at~~ CSAB 19

fiscal note $274,000.00$ based on
last elections
as written in committee substitute
machinery will work.

Dankworth question - should it be on
a referendum -
Miller - ~~no~~ - too small of a price
tag - we are here to make decisions.

for { Speaking - move bill out of committee
Dankworth
Miles
Gardner
Rudd

3/16/77

0755

HB 271

800

Lathin -

action - { get A.G. opinion
and draft a committee report.

discussion redraft - of B.

Open Bill Night

HCR 31

Held. for committee substitute.

CSHB 71 - ~~the~~ brought up.

moved out -

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 17, 1977

Minutes
March 16, 1977
7:00 p.m.

Present at the meeting were Chairman Gardiner, Vice Chairman Miles, Rep. Rudd, Rep. Specking, Rep. Dankworth, Rep. Brown appeared late. Absent was Rep. Eliason.

The Committee took up HB 19, relating to preferential presidential primary elections. Testimony was given by the primary sponsor, Rep. Miller. Rep. Miller outlined some of the major considerations behind the bill. One that would give the people of the State of Alaska a voice in the choosing of their parties presidential nominee, and secondly it would hopefully be an insentive for candidates or high Representatives of candidates to come to this State prior to the nominating conventions and would give the people of the State of Alaska an opportunity to learn more about the candidates.

HB 19

Ms. Polley, Director of Elections also testified on the bill relating some problems with the original bill regarding the deadline set out that the elections committee could not physically meet. But that the CS for HB 19 which was substituted in State Affairs Committee was acceptable to the Dir. of Elections and that the present machinery as set out would work. She also noted that the fiscal note given on this bill was 274,000 dollars based upon the last election.

Motion to move the bill out of Committee was made and passed and the bill was referred to the Rules Committee for placement on the House Calendar.

HB 221

HB 221 Relating to the Impeachment of Civil Officers, was considered. Rep. Lethin testified in favor of the bill. After some discussion paragraph (b) was rewritten as a CS. There was also a request by the Committee for an AG's opinion on the bill prior to taking any further action. The bill was kept in Committee until receipt of the AG's opinion.

HCR 31 Was considered by the Committee although it was not on the HCR 31 Calendar. Relating to the inclusion of a correctional industry study in any studies done on correctional institutes by the executive, judicial, or legislative branches. The Committee made two amendments to the wording of the resolution and then moved the resolution out of Committee for transmission to the Rules Committee.

Minutes
House Judiciary
March 17, 1977
Page 2

CSHB 71 Was brought up, relating to biodegradable shellfish pots.
After a brief discussion, the bill was moved out of the Committee to CSHB71
the rules Committee.

The Committee adjourned at approximately 8:45.

Copy taken to Bill Bennet 3/17 ~~Walter~~
Held for CS

Introduced: 2/16/77
Referred: Judiciary

BY LETHIN, BENNETT, BRADLEY,
CARPENTER, DANKWORTH, HAYES,
KELLY, MCKINNON, MALONE,
MEEKINS AND SWANSON

1 IN THE HOUSE

2 CS HOUSE BILL NO. 221

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the impeachment of civil officers."

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

8 * Section 1. AS 39.10 is amended by adding a new section to read:

9 Sec. 39.10.020. IMPEACHMENT. (a) A civil officer appointed by
10 the governor and confirmed by the legislature is subject to impeachment
11 for malfeasance or misfeasance in the performance of his official
12 duties. Any impeachment shall be under art. II, sec. 20 of the Consti-
13 tution of the State of Alaska.

14 (b) When an executive department expends public funds beyond the
15 amount authorized by legislative appropriation, malfeasance or mis-
16 feasant on the part of the principal executive officer may be presumed.

17
18 (b) Use of public funds beyond the amount
19 authorized by the legislative appropriation, may
20 be grounds for finding
21 ~~be presumed as~~ malfeasance or misfeasance
22 on the part of the ~~principal executive officer~~,
23 ~~civil~~ reasonable civil
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Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 30, 1977

MEMO

TO: Judiciary Committee

FROM: Staff

re; HB 221

At the last Committee meeting a request was made for an Attorney General's opinions regarding the effect of enacting an impeachment section such as described in HB 221.

Assistant Attorney General Pegues is drafting such an opinion and will be prepared in the next day or two but we had a general discussion of the issue on 3/29/77.

~~Basically, its our mutual feelings that enactment of any provision dealing with impeachment which attempts to further define the constitutional provisions of impeachment in Article 2 Section 20, will be interpreted as a limiting provision.~~

For example, in the proposed HB 221 paragraph (a), civil officer is limited to those persons appointed by the Governor and confirmed by Legislature, therefore all other division heads, directors and other top ranking officials who are not subject to confirmation by the Legislature are specifically excluded from impeachment by this statute.

The terms malfeasance or misfeasance are introduced into the concept of impeachment which is not within the constitutional provision and could also be interpreted as a further limiting feature.

The Committee substituted language for description of misuse of public funds as a grounds for malfeasance or misfeasance and is possibly another limiting factor in the instance that that is a description or an example of what the Legislature was contemplating at the time.

The general opinion of both the AG's office and myself is that the area of impeachment should not be infringed upon without a great deal of study. There were some works compiled during the Nixon Impeachment process by the Congressional staff dealing with the comprehensive history of the impeachment concept both in the United States and in the Parliamentary Governments. Perhaps some further research work should be done by one obtaining those works and corresponding with other States regarding the impeachment process for procedure they have provided for in their constitution.

Walber

Introduced: 2/16/77
Referred: Judiciary

BY LETHIN, BENNETT, BRADLEY,
CARPENTER, DANKWORTH, HAYES,
KELLY, MCKINNON, MALONE,
MEEKINS AND SWANSON

1 IN THE HOUSE

2 HOUSE BILL NO. 221

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the impeachment of civil officers."

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

8 * Section 1. AS 39.10 is amended by adding a new section to read:

9 Sec. 39.10.020. IMPEACHMENT. (a) A civil officer appointed by
10 the governor and confirmed by the legislature is subject to impeachment
11 for malfeasance or misfeasance in the performance of his official
12 duties. Any impeachment shall be under art. II, sec. 20 of the Consti-
13 tution of the State of Alaska.

14 (b) When an executive department intentionally expends public funds beyond the
15 amount authorized by legislative appropriation, malfeasance or mis-
16 feasance on the part of the principal executive officer may be presumed.

① intentionally
②
Responsible
for others actions
not "knowing"
but

grounds
for impeachment

29

#

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT Legis

ATTENTION Rep Gardner

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

*File in
HB 221*

FROM:
MAIL STATION NUMBER 3100

DEPARTMENT Legis

BY Rep L. Thier DATE _____



Alaska State Legislature

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

MEMORANDUM

TO: All House Members

DATE: April 11, 1977

FROM: Kris W. Lethin
Representative

SUBJECT: HB 221
Memo of 3/30/77 to
Judiciary Committee
from Staff

By adding the words, "but not limited to", to paragraph (a) of HB 221, there will not be a limiting effect on Article II, section 20, of the Constitution of the State of Alaska.

Ie:

(a) A civil officer is subject to impeachment for malfeasance or misfeasance in the performance of his official duties. A civil officer defined as, but not limited to, an employee appointed by the governor and confirmed by the legislature.

attachment: HB 221
subject memo

es

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 30, 1977

MEMO

TO: Judiciary Committee

FROM: Staff

re; HB 221

At the last Committee meeting a request was made for an Attorney General's opinions regarding the effect of enacting an impeachment section such as described in HB 221.

Assistant Attorney General Pagues is drafting such an opinion and will prepared in the next day or two but we had a general discussion of the issue on 3/29/77.

Basicly its our mutual feelings that enactment of any provision dealing with impeachment which attempts to further define the constitutional provisions of impeachment in Article 2 Seciton 20, will be interpreted as a limiting provision.

For example, in the proposed HB 221 paragraph (a), civil officer is limited to those persons appointed by the Governor and confirmed by Legislature, therefore all other division heads, directors and other top ranking officials who are not subject to confirmation by the Legislature are specifically excluded from impeachment by this statute.

The terms malfeasance or misfeasance are introduced into the concept of impeachment which is not within the constitutional provision and could also be interpreted as a further limiting feature.

The Committee substituted language for description of misuse of public funds as a grounds for malfeasance or misfeasance and is possibly another limiting factor in the instance that that is a description or an example of what the Legislature was contemplating at the time.

The general opinion of both the AG's office and myself is that the area of impeachment should not be infringed upon without a great deal of study. There were some works compiled during the Nixon Impeachment process by the Congressional staff dealing with the comprehensive history of the impeachment concept both in the United States and in the Parlimentary Governments. Perhaps some further research work should be done by one obtaining those works and corresponding with other States regarding the impeachment process for procedure they have provided for in their constitution.

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HB

230

HB 230

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making membership and procedural changes in the statutes creating and delineating the authority of the Governor's Commission on the Administration of Justice, to bring those statutes into compliance with recent changes in the federal Omnibus Crime Control and Safe Streets Act of 1968. The Governor's Commission on the Administration of Justice and its staff, the Criminal Justice Planning Agency, as well as a number of municipal crime prevention and control programs, are directly funded through the Omnibus Act, which requires state planning agencies to meet certain base-line criteria established by the federal government.

The amendments which I am now proposing expand membership of the commission from 13 to 15 members to include the administrative director of courts and a judge of the superior court to be selected by me from a list of nominees submitted by the chief justice of the Supreme Court of Alaska. The bill also emphasizes the commission's expanded role in furnishing municipalities and state agencies with various forms of technical assistance in conducting experimental crime control programs and in program planning.

Sincerely,

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 14B 230
 Title An Act relating to the Governor's Commission on the Administration of Justice
 Requested by the Governor Date 2/7/77

II. FISCAL DETAIL

Agency Affected OFFICE OF THE GOVERNOR
 Program Category Affected ADMINISTRATION OF JUSTICE
 Budget Request Unit(s) Affected CRIMINAL JUSTICE PLANNING AGENCY

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	.7	2.5	2.6	2.7	2.9	3.1
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	.1	.1	.2	.2	.2	.1
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	0.8	2.6	2.8	2.9	3.1	3.2

FUNDING (Thousands of Dollars)

GENERAL FUND	.3	.8	.9	.9	1.0	1.0
FEDERAL FUNDS	.5	1.8	1.9	2.0	2.1	2.2
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

See Attached for Fiscal detail.

IV. DATE February 17, 1977

PREPARED BY Charles G. Adams, Jr.
 AGENCY Criminal Justice Planning Agency
 PHONE 465-3535

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

<u>TRAVEL</u>	<u>77</u>	<u>78</u>	<u>79</u>	<u>80</u>	<u>81</u>	<u>82</u>
IN-STATE						
2 - Anchorage/Ketchikan RT. \$412	412	-	-	-	-	-
8 - Anchorage/Juneau RT \$1264	-	1,264	1,327	1,394	1,463	1,536
LIMO:						
2 X \$7 Round Trip \$14	14	-	-	-	-	-
8 X \$7 \$56	-	56	59	62	65	68
PER DIEM:						
2 X \$50/day X 3 days \$300	300	-	-	-	-	-
8 X \$50/day X 3 days \$1200	-	1,200	1,260	1,323	1,389	1,459
TOTAL TRAVEL	<u>726</u>	<u>2,520</u>	<u>2,646</u>	<u>2,779</u>	<u>2,917</u>	<u>3,063</u>
<u>COMMODITIES</u>						
POSTAGE:						
2 X \$2 each \$4	4	-	-	-	-	-
8 X \$2 each \$16	-	16	17	18	19	20
ZEROX:						
.07 /copy X 200 Copies X 2 \$28	28	-	-	-	-	-
.07 /copy X 200 Copies X 8 \$112	-	112	118	123	130	136
TOTAL COMMODITIES	32	128	135	141	149	156
TOTAL	<u>\$758</u>	<u>\$2,648</u>	<u>\$2,781</u>	<u>2,920</u>	<u>3,066</u>	<u>3,219</u>

NOTE: 5% Inflation calculated in each year beginning with FY79.
Funding ratio calculated at FY78 budget submission

69% Federal
31% Required General Fund

HB

237

March 14, 1977

MEMO

To: Terry

From: Chottie C

O.K.

I called Art Snowden in Anchorage regarding HB278 and HB 237.

Re: HB 278- Providing for geographic cost-of-living salary differentials for judicial officers

Mr. Snowden understood that this bill would be taken up again at the time that the other salary bills are considered. If desired, he'll have Susan Burke do further research on it. Otherwise, he understood that the committee had basically already cleaned it up with a few minor changes.

Re: HB 237- Appointment and compensation of local registrars and deputy local registrars of vital statistics

This bill is presently being negotiated with the Dept. of Health and Social Services. Mr. Snowden suggested that you just hold this in the drawer and perhaps try to move it early next year. (This is what he would prefer at this time.)

House Judiciary
March 8, 1977

The meeting was called to order at 3:00 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Eliason, Brown and Specking. Mrs. Rudd was absent.

HB 112 Appropriation for capital improvements within the court system HB 112

Mr. Miles explained the memo that he had written to the committee regarding HB 112.

Art Snowden, Director of the Court System, explained that the costs indicated in this bill were provided on the basis of consultation with the Department of Public Works.

Mr. Brown reminded the committee that the \$710,000 figure for the Fairbanks Court Building had been amended to be reduced to \$60,000.

Mr. Miles asked if these figures in the bill are still valid. Rick Barrier, Manager of Fiscal Operations for the Court System, answered that "yes", they were.

There was a general discussion about other court building projects and their costs.

Mr. Brown moved that the Dillingham figure be changed to 1,063,027 (instead of 1,458,000). He also moved that a letter be sent to the Finance Committee with the bill to have them consider a lease-back program for the Dillingham Court Building.

The committee generally feels that the costs are unrealistic. The Finance Committee will probably adjust the figures. The bill was moved out of committee. Gardiner will write a letter to the Finance Committee- to accompany the bill- saying that the Judiciary Committee felt that the figures provided by Public Works were unrealistic.

HB 279 Judicial compensation HB 279

Art Snowden explained the purpose of this bill as being to make it so that all judges are paid the same salary, rather than having the salaries vary from one part of the state to another.

This bill does essentially the same thing as the salary commission recommendation. Only one or the other will be adopted.

This bill will be taken up again at a later date with similar Malone bills.

House Judiciary
March 8, 1977 (con't)

HB 278 Geographic cost of living salary differentials for judicial officers HB 278

Art Snowden explained that the purpose of this bill would be to provide judges with a cost of living differential, like other state employees. It provides the same % cost of living increase as for other state employees.

It was indicated that the 7.5 % for the retirement system wouldn't apply to judges presently sitting, but it would apply to judges coming on after the effective date of the act.

Susan Burke, Staff Counsel for the Court System, also answered some questions about the bill.

Mr. Brown objected to the title of the bill. He felt it was not broad enough to cover section 4 on retirement. The committee agreed.

Mr. Brown indicated that Section 25.25.049 may be redundant with other law. If not, the interest rate referred to in the bill needs to be more specific.

This bill will be considered again at a later date.

HB 238 Inquiries into cause of death HB 238

Susan Burke explained the intent of the bill. She said, however, that this was the first time that she had seen section 2... and she doesn't feel that a coroner's inquest should be completely illuminated (which line 19 would do).

Mr. Eliason moved that section 2 of the bill be deleted. He also moved the bill out of committee. Both motions passed and the bill was moved out of committee.

HB 237 Appointment and compensation of registrars of vital statistics HB 237

Art Snowden and Susan Burke explained the purpose of the bill.

Mr. Gardiner requested that Rick Barrier, Manager of fiscal operations for the court system, get together with the Department of Health and Social Services to come up with a fiscal note for this bill.

Lois Jund, Deputy Commissioner for the Department of Health and Social Services, was here but indicated that they would need more information about the bill before being able to testify.

This bill will come up again later.

The meeting was adjourned at 4:20 p.m.

HB

240

House Judiciary
March 7, 1977

The meeting was called to order at 3:10 p.m. by Vice-Chairman, Miles. Members present were Miles, Dankworth, Eliason and Rudd. Mr. Specking and Mr. Brown were absent. Mr. Gardiner came in to the meeting later.

HB 240 Alcoholic beverages

HB
240

Frank Williamson, Commissioner of Health and Social Services, was here to explain the purpose of and provisions in the bill. He stated that this bill is a response of the Dept. of H & SS and the state government to offer to local communities some mechanism where-by they may control their alcohol problems at a local level.

Bob Cole, Coordinator of the Office of Alcoholism, and Louis Snapper were also here to explain the bill and to answer questions.

There was a lengthy discussion and question/answer session. This bill will come up for consideration again at a later date.

The meeting was adjourned at 4:40 p.m.

HB 240

contact Jim Rolle
Ak Muni League

1 1

586-1325

HB 240

February 18, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill dealing with various aspects of and problems related to alcoholic beverages. This bill is based on several recommendations of the Interdepartmental Coordinating Committee on alcoholism (created by AS 47.37.050). Since excessive consumption of alcoholic beverages is the root of many of Alaska's most serious social, criminal, and economic problems, the general purpose of the bill is the reduction of that consumption.

The major elements of this bill are :

- A new class of license, a limited community liquor license, would be created and added to the ballot in local option elections. The holder would be permitted to sell at a retail store no more than 2.4 wine gallons a day to any one customer, with orders being placed two weeks in advance of delivery. Local option elections would be extended and clarified for cities, organized boroughs, unified municipalities, and election precincts in the unorganized borough.
- The holder of a retail license would not be permitted to sell liquor which has been ordered by mail or telephone from a municipality or precinct which has prohibited its sale or a municipality which holds a limited community license, if the governing body (or the electorate of the precinct) votes in opposition to mail and telephone sales and notifies the Alcoholic Beverage Control Board of its position.

- The bill authorizes issuance of an in-flight catering license for selling liquor with prepared meals aloft. This fills a gap in existing law.
- Provision would be made by this measure for compensation by the state to municipalities which have prohibited the sale of alcoholic beverages. This will, at least partially, compensate for municipal loss of revenue resulting from loss of sales tax due to that prohibition. I expect this provision to be funded from the alcohol excise tax increase that I have proposed in HB 196.
- The bill would prohibit holders of all types of license, except manufacturing and wholesaling, from advertising in Alaska newspapers and magazines, or on broadcasting stations or community cable systems in the state, but would not seek to limit national advertising of alcoholic beverages.
- The possession of more than one case of hard liquor and two of beer or wine would be made a misdemeanor in areas which have prohibited the sale of liquor or have a limited community liquor license. The sale of intoxicating liquor in an area where it has been prohibited by local option would be made a felony instead of a misdemeanor, with the ceiling on possible fines raised to \$30,000, and provision would be made for the seizure and forfeiture of conveyances used to transport such illegally sold liquor.
- Other features of the bill make minor amendments to AS 4, such as removing the constitutional infirmity of AS 04.15.090 which currently only prohibits females from soliciting drinks.

Sincerely,

Jay S. Hammond
Governor

ELEMENTS OF THE GOVERNOR'S ALCOHOL PACKAGE

EXCISE TAX-- HB 196/SB167

A conservative estimate is that alcohol abuse cost the state over \$17 million last year. Alcohol excise taxes generated only \$7 million. This bill would make up the difference. The price for a fifth of liquor would be up 50¢, a fifth of light wine up 30¢, heavy wine up 50¢ a fifth, and a six-pack of beer up 28¢. Studies have said that a price rise far higher than this would be necessary to significantly reduce alcohol sales.

In HB 241/SB ___ the Governor proposes to allocate an additional \$1.5 million for prevention, education, and treatment programs for alcohol abuse and alcoholism. Note that should the appropriations bill pass and this tax measure not pass the Governor will not be able to sign the appropriations bill.

-- SB 76

This bill links excise taxes, including these alcohol taxes, to the consumer price index. The legislature retains the right to disapprove increases.

SALES TAX--HB 232

This bill would allow municipalities to tax beverage alcohol at a rate higher than other commodities. This should encourage local treatment and begin to recompense local governments for their alcohol-caused expenses.

ALCOHOL LAW-- HB 240/SB ___ (Title 4)

Local Option Election

Upon petition of 35% of voters, or action of the governing body, an election will be held which will allow the voters to choose the following alcohol options.

--Completely restrict the sale of beverage alcohol in the community. (*Secs. 13 & 14)

--Completely restrict sale, plus ban shipment of mail or telephone ordered alcohol. (*Sec. 4)

--Have a Limited Community Liquor License which would allow the community to run a liquor store which would only be allowed to sell a limited amount (equivalent to a case of fifths) of alcohol which had been ordered two weeks in advance. (*Sec. 7)

--Have a Community Liquor License which would allow the community to run its own liquor store. The advantages are that under community management, the store may limit sales, and control sale hours to minimize abuses of alcohol and binge drinking. The profits may be used by the community for any purpose, including local treatment and alcohol-caused costs. (*Sec. 6)

Dry Communities

Should a town vote itself dry (no type of liquor store) or if a town has already voted dry, the following things will happen.

-- Compensation: Communities which limit liquor sales should not have to pay the penalty of lost sales tax revenue. Communities which are presumed-dry should have the benefit of more effective alcohol law enforcement. Therefore, the state will pay each voted dry community \$10 per resident. (*Sec. 14-end)

-- Possession Limits: In order to reduce bootlegging no person in a dry community will be allowed to possess more than the equivalent of a case of fifths of liquor and 4.5 gallons of wine and beer. (*Sec. 18)

-- Illegal Sale Penalties: Sale in violation of local option (bootlegging) will be punished as a felony with a maximum sentence of 6 years and fine of \$30,000; up from one year and \$5,000. It is thought that the present penalties are so low as to be an acceptable cost of doing business to bootleggers making up to \$100,000 a year. (*Sec. 19)

-- Confiscation of Vehicles Used in Illegal Sale: As a further deterrent to bootleggers using automobiles, aircraft or boats, the state may

sieze a vehicle used in bootlegging activities. Upon conviction of the offender the court may order the conveyance transfered to the community where the offence took place, or to the state. Owners of common carriers having no knowledge of the illegal transaction and mortgage or lien holders will be protected. (*Sec. 20)

Public Notice

The requirements for public notice when a liquor license is applied for or renewed are changed from advertised notices to posted notices unless the A.B.C. Board determines that advertised notices are in the public interest. Other technical changes are included in this section. (*Sec. 8)

In-Flight Licenses

The bill authorizes the issuance of license to permit sale of alcohol aloft. This fills a gap in existing law. (*Sec. 5)

Advertising Ban

Holders of liquor licenses may not advertise alcohol in any newspaper, magazine or on any cable or broadcast television or radio station. (*Sec. 15)

Solicitation

This section now makes it illegal for men as well as women to solicit the purchase of alcoholic beverages at licensed establishments. (*Sec. 16)

APPROPRIATIONS FOR ALCOHOL TREATMENT HB 241

This measure would spend \$1.5 million of the money generated by the excise taxes of HB 196 on prevention, education, and treatment programs for alcohol abuse and alcoholism. These funds will be administered by the Office of Alcoholism, DHSS.

OFFICES OF ALCOHOLISM AND DRUG ABUSE COMBINED

--Alcohol and Drug Abuse offices will be combined, with a combined budget. Grantees in the field will remain separate.

--Advisory boards will be combined from current nine member boards into a single nine member board.

--Office of Alcoholism's current ambiguous "approval" authority over treatment facilities will be changed to a specific licensing authority.

--Involuntary commitments to treatment facilities will be simplified by allowing the court to commit directly to a licensed facility rather than to the Office of Alcoholism.

DRAFT

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Why any

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OFFICES OF ALCOHOLISM AND DRUG ABUSE COMBINED *MORE ENFORCEMENT*

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DRAFT

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 16, 1977

Dick Whittaker
#4 Creek Street
Ketchikan, Alaska 99901

Dear Dick:

Thank you for the letter in regard to liquor licensing statutes. I have HB 240- introduced by the Governor- in the committee. This bill revamps many of the liquor license laws, especially relating to the rural areas. The problem seems to be that the Administration who drew this bill up did not confer enough with rural legislators. Even though the bill is designed to help the liquor problem in the rural areas, the rural legislators are at this time opposed to it.

I am not sure if the bill will go anyplace this year. I will bring the issue up of de-regulating liquor in larger municipalities if the bill is before the committee again.

Sincerely,

Terry Gardiner
State Representative
Alaska Legislature

LAW OFFICES

RICHARD WHITTAKER
PETER R. ELLIS
JOHN L. SUND

ELLIS, SUND & WHITTAKER, INC.

NO. 4 CREEK STREET
KETCHIKAN, ALASKA 99901
907-225-6174 or 907-225-5333
ZENITH 4444

CATHY V. CANORRO*
ANTHONY B. CANORRO
DENNIS L. McCARTY

11 March 1977

*Washington Bar Only

House of Representatives
Pouch V
State Capital
Juneau, Alaska 99801

Attn: The Honorable Terry Gardiner

Dear Terry:


Peter asked me to write you with a suggestion that at such time as the Liquor Licensing Statutes are being revamped as I understand they are now, you take a look at the possibility of easing restrictions in the larger communities. The reason is that they are generally able to regulate and restrict and care for the problems of alcohol without the need for State Control. Peter would prefer amending the section in the code which provides for a restriction on the number of licenses as one for every 1,500 population, so as to exempt municipalities of 5000 population or more.

My own view, being very involved in the war against alcoholism is that we would be very much ahead in getting rid of the vested interests in the alcohol business by deregulating the number of licenses everywhere and letting the market apply so there wouldn't be the control by the beverage industry that there is now.

Hope to see you soon to discuss this and other matters.

Sincerely yours,

ELLIS, SUND & WHITTAKER, INC.

By 
Richard Whittaker

RW:sjs