801 HHESS CHILDRENS CODES (SB106-HB 204)

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

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

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

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

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

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

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

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

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

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

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

Sec. 14.

Sec. 47.10.080

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 16
AS 47.10.080

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

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

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

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

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

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

(i) both parents, or

(ii) the surviving parent, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under sec. 10(a)(2) of this chapter as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, 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, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

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

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

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

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

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

* Sec 19. AS 47.10.085 is amended to read:

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

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

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

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

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

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

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

Refer to Sec. 10. AS 47.10.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of <u>children in need of aid</u> [DEPENDENT] or delinquent minors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

(4) the visitation history between the parents and the child;

(5) whether additional services are needed to facilitate the

return of the child to his parents;

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

Sec. 47.10.084. LEGAL CUSTODY, GUARDIANSHIP, AND RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES. (a) When a child is committed under sec. 80(b)(1) or (c)(1) of this chapter to the department or released under sec. 80(b)(2) or (3) or (c)(2) of this chapter to his parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

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

Sec. 27
AS 47.10.290 (2)

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

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

Sec. 28
AS 47.10.290.

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

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

Sec. 29
AS. 47.10.080.

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

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

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

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

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

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

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

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

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

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

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

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

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

area from which the guardian ad litem may be selected.

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

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

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

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

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SIGNIFICANT ADDITIONAL

STATUTORY AMENDMENTS AFFECTING CHILDREN

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

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

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

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

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

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THIS PUBLICATION IS
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PREPARED BY THE
DIVISION OF SOCIAL SERVICES
ALASKA DEPARTMENT OF HEALTH & SOCIAL SERVICES

77-DSS-04

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMEORANDUM April 12, 1977

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

1. Sections 4 & 5 of HB 204 were deleted pursuant to Committee direction, because they relate to criminal laws on excusable homicide and delinquency which will be dealt with in the criminal law revision.

2. Subsection (4) in Section 6 of the bill and sections 7 - 15 have been deleted from HB 204 and introduced in a new separate bill HB 419. These sections deal with adoption, adoption assistance and voluntary relinquishment of parental rights. There is now a sponser substitute for HB 419 which allows for voluntary termination of parental rights either through the court or a representative of the Department of Health and Social Services or a licensed placement agency. This is the only change in HB 419.

3. The placement of the words "the child" in Section 20 of the original bill in line 13 pg 10 has been moved over to the beginning of each phrase in paragraphs (A) - (E). This should make reading of AS 47.10.010(a)(2) easier.

4. Section 20 of the original HB 204 is further changed by defining "mental harm" in line 24 pg 10. The new language reads in (a)(2)(B) "... prevent his suffering substantial physcial harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hositility toward others, and his parents are unwilling to provide the medical treatemnt." This new language should remove any vagu ness problems with the use of the term "mental harm".

5. Another change in Section 20 of the original bill is the addition of the word "either" in line 2 pg 11 after the word "abused". This is to make clear that the sexual abuse covered in (D) can be the result of three different situations.

6. In line 19 pg 22 of the original bill the three days has been changed to 10 days.

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

File
Ch Laws -
Other
States

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

THE GOVERNOR'S RECOMMENDATIONS FOR THE

1974 - 75 CHILDREN'S BUDGET

FACT SHEET

A Major Commitment to Children

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

1. a recommendation that 20.4 million new dollars be committed to programs and services to children;

2. the funding of thirty-nine area citizen Councils for Children in the amount of $150,000 for each Council to develop or continue new community-based services for special needs children and to provide each Council with some staff support.

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

A Major Accomplishment for Children's Advocacy Groups

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

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

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

1. determining how interdepartmental Project for Children monies are spent in their area;

2. developing, with the Office, area information, referral and advocacy programs for individual children in need of services;

3. setting priorities for the 1975-76 Children's Budget by systematically feeding their local priorities into central Office for Children.

BUDGET DETAILS

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

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

Office for Children - $3.131.750

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

Department of Mental Health - $1,100,000

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

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

Department of Public Welfare - $1,750,000

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

Department of Public Welfare - $1,984,790

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

Department of Public Welfare - $1,000,000

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

Office for Children - $100,000

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

Department of Public Health - $371,000

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

Department of Public Health - $74,960

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

Department of Mental Health - $53,790

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

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

Department of Public Welfare - $2,200,000

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

New Proposed Rates

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

Department of Public Welfare - $452,000

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

Department of Public Welfare - $18,825

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

Office for Children - $58,159

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

Department of Public Welfare - $100,000

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

Department of Mental Health - $243,316

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

Department of Public Welfare - $500,000

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

Department of Public Welfare - $1,115,505

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

Department of Public Welfare - $84,601

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

Department of Public Welfare - $660,000

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

Department of Mental Health - $245,559

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

Department of Youth Services - $1,920,000
Increase in purchase of service account will cover cost increases and provide selective expansion of programs in the Department of Youth Services.

Department of Youth Services - $125,000
Funds to staff a new fiscal control system planned by the Department of Youth Services are aimed at putting the agency on a firm financial footing.

Department of Mental Health - $500,000
The 20-acre campus of the former Northampton School for Girls is the site of a planned interdepartmental children's center serving Western Massachusetts. This new center would provide a wide variety of day and short-term residential services for children with special needs. The Office for Children and the Department of Mental Health would jointly coordinate the development of these privately-run programs according to recommendations made by a broadly-based task force made up of both parents and professionals in the area.

Department of Public Health - $15,000
Recent legislation authorized the creation of a state-wide screening program to detect deafness in children thought to be at risk. The fiscal year 1975 budget would allocate additional funds to carry out this program in the Department of Public Health, beginning in 1974.

Office for Children - $130,000
The Office for Children would purchase inter-regional programs of state-wide significance for children with special needs not being served by state agency programs.

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

Department of Public Welfare - $500,000
Funds in the new budget would cover rate increases in group homes and institutional programs for children separated from their families.

Department of Public Welfare - $288,000
Additional money is earmarked in the budget to provide foster parents with an increased allowance for clothing and hospital care to keep up with today's costs.

Department of Public Health - $265,000

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

Department of Public Health - $395,000

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

Department of Mental Health - $1, 020,000

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

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

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

CRITERIA FOR EVALUATING NATIONAL CHILD DEVELOPMENT LEGISLATION

prepared by the

National Association of State Directors of Child Development

I. Type of Service. We believe that national child development legislation, if it is to be most effective, should provide for the following direct and support services for children. In some instances, services for the child are delivered to the parent or parents.

A. Direct services

1. Child care
2. Health care
3. Nutrition
4. Education
5. Legal services and child advocacy
6. Social services
7. Mental Health services

B. Support services

1. Transportation
2. Training
3. Facilities
4. Research and Development
5. Planning, Coordination and Technical Assistance
6. Monitoring and Evaluation

II. Eligibility. We believe that eligibility guidelines written into child development legislation should:

A. focus primarily on the prenatal through five year old period

B. provide programs for children above five years of age with special need; not now being met

C. provide for the unmet needs of all children regardless of economic level, race or creed

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

A. Funds should flow to the States

B. States should provide a comprehensive state plan for child development which would:

1. contain an assessment of needs and resources
2. address federal priorities if state assessment indicates that federal priorities are not being met
3. address the question of interagency coordination
4. include a process for the involvement of local private and public agencies and parents.

C. In the absence of state action, local governmental units may submit plans

D. All state agency plans for receipt of funds for child development services must tie into the state comprehensive plan for child development.

JBHSr/de
12-12-73

COUNCILS FOR CHILDREN

State Government and Community Decision-Making

OFFICE FOR CHILDREN
120 Boylston Street
Boston, Mass. 02116

January, 1974

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

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

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

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

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

THE MAKING OF A TYPICAL COUNCIL FOR CHILDREN -- HIGHLIGHTS

The Organizing Process

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

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

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

Proposal Review

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

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

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

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

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

Monitoring and Evaluation

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

Child Abuse

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

Lead Paint Poisoning

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

Chapter 766

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

Other Council Committees:

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

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

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

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

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

Supreme Court of Alaska.
Nov. 15, 1971.

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

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

1. Infants ⇐16.2, 16.3
A child can be declared a dependent minor, a child in need of supervision, or a delinquent minor. AS 47.10.080(b) (1), 47.10.290(2, 7).

2. Infants ⇐16.12
Superior Court exceeded its authority in ordering the institutionalization of minor who was found to be a child in need of supervision and since child was not found to be a delinquent minor no legal basis existed for her incarceration. AS 47.10.080(b) (1), 47.10.290(2, 7).

3. Infants ⇐16.12
Only instance authorizing institutionalization or incarceration of minor is when child has violated laws of state or any of its political subdivisions and in turn has been adjudged a delinquent minor. AS 47.10.080 (b) (1).

4. Infants ⇐16.4
Notions of benevolent protective policies for children cannot be used to validate departures from positive law relating to adjudicative and dispositive phases of children's proceedings. AS 47.10.010(a) (2, 3, 6), 47.10.080(b) (1), (c) (1), (j), 47.10.290 (2, 7); Rules of Children's Procedure, rule 12(b).

5. Infants ⇐16.12
Department of Health and Welfare does not possess authority to institutionalize any minor, including one who has been declared a child in need of supervision and who has been committed to its custody, and statute prescribes conditions of confinement after a court has lawfully determined that a child should be confined in an institution. AS 22.20.022, 47.10.080(c) (1), (j), 47.10.190.

6. Infants ⇐16.14
Right of appeal existed from dispositive order that minor, who had been adjudged a child in need of supervision, should be institutionalized. AS 22.05.010, 47.10.080(i), 47.10.290(7); Supreme Court Rules, rules 6, 23.

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

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

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

OPINION

RABINOWITZ, Justice.

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

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

... Those provisions include a minor

... by reason of being wayward or ... ally disobedient is uncontrolled by ... parent, guardian, or custodian;

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

• • •

... associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others.[1]

Regarding the dispositive phase of children's proceedings, Alaska's children's code provides that if the court determines the minor is a child in need of supervision, it shall make any of the following orders of disposition regarding the minor's 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.[2]

Under section (c) of AS 47.10.080, the court is empowered to order the minor committed to the Department of Health and Welfare or order the minor released to his parents, guardian, or some other suitable person.[3]

In the case at bar, the superior court found that E. M. D., a 14-year-old runaway girl, was a child in need of supervision. The court's findings were made after several hearings before a master and the superior court, and were based largely upon the master's findings of fact and recommendations. In the dispositive portion of the trial court's judgment, it was ordered that E. M. D. be

> committed to the custody of the Department of Health and Welfare for an indeterminate period * * *.

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

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

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

1 *Compare* R. 12(b), Rules of Children's Procedure.

2 AS 47.10.080(j).

3 AS 47.10.080(c) reads in part as follows:

> (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. • • •

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

> may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department. * * *[5]

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

[4] In reaching this conclusion, we have rejected the state's contention that the trial court's order of incarceration is sustainable in light of the legislature's broad policy declaration to the effect that protection of children is the paramount purpose governing its enactment of laws pertaining to children's courts and institutions.[7] In another context we recently held that the benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards.[8] As to the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

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

4. AS 47.10.290(2).

5. AS 47.10.080(b) (1).

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

7. AS 47.10.280 provides:

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

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

9. The state argues that even if the trial court lacks power to institutionalize a child in need of supervision, it can order the child committed to the Department of Health and Welfare which in turn can place the child in a detention facility. The argument is that under AS 47.10.080(c) (1) a minor can be committed to the Department of Health and Welfare. The state argues that AS 47.10.190 permits the department to institutionalize any minor committed to them. AS 47.10.190 reads as follows:

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

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

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

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

Counsel for the minor reads *White* as requiring the filing of a petition for review because the final judgment rule embodied in Supreme Court Rule 6 applies only to civil or criminal actions.[11] Such an expansive reading of *White*, assuming without deciding its continued validity in light of several of our recent decisions which vindicated certain constitutional and procedural rights of children in children's proceedings,[12] would result in precluding any review of children's decisions. For the rules which delineate this court's review jurisdiction limit such jurisdiction to "any order or decision of the superior court, not otherwise appealable under Rule 6, in any action or proceeding, civil or criminal. * * *"[13] Adoption of counsel's interpretation of *White* would also conflict with AS 22.05.010 which places final appellate jurisdiction in all cases in the supreme court.[14] We think *White* should be limited to its interpretation of the peremptory disqualification statute. On the other hand, we hold that the right to appeal from the type of disposition order which was entered in this children's proceeding has been clearly established by the legislature. In this regard, AS 47.10.080(i) provides:

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

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

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

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

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

> An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or information.

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

13. Supreme Ct.R. 23.

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

POSITION PAPER/Department of Health and Social Services

Position Paper

on

Senate Bill No. 106

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

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

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

The Department supports the Bill.

Recommended by: _____ Date: 2/9/77
Director of Social Services

_____ Date: 3/1/77
Director of Corrections

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

Comments by Governor's Office:

By: _____ Date: _____

I. REQUEST

Bill/Resolution No. Senate Bill No. 106

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

Requested by _____ Date 2/8/77

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services

Program Category Affected Division of Social Services

Budget Request Unit(s) Affected Program Services

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

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

IV. DATE 2/8/77 PREPARED BY Sam J. Granato, Director

AGENCY Division of Social Services

PHONE 465-3170

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

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

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

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

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

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

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

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

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

Sec. 47.10.080. Judgments and orders.

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

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

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

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

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

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

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

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

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

(i) both parents, or

(ii) the surviving parent, or

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

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

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

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

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

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

Effect of amendments.

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

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

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

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

Nor to justify dispensing with constitutional safeguards. — The benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Abandonment to be determined objectively.—Whether or not there has been an abandonment within the meaning of this section is to be determined objectively, taking into account not only the verbal expressions of the natural parents, but their conduct as parents as well. D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973).

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

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

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

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

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

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

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

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

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

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

A child adjudicated delinquent for selling LSD may be incarcerated, possibly even in a city jail, until age 19, which may be many years. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 47.10.100. Retention of jurisdiction over minor.

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

August 28, 1975

M E M O R A N D U M

TO : Legislative Council

FROM : Children's Code Revision Task Force

BY : Anne D. Carpeneti, Legislative Counsel

SUBJECT: Monthly Report

Please see attached report.

Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

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

August 28, 1975

WORK PLAN

Legislative Council Task Force

Children's Law Revision

I. PURPOSE

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

II. GOALS AND OBJECTIVES

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

III. ASSUMPTIONS

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

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

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

IV. TASKS

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

(1) update the draft of the Child Law Compilation prepared by the Legislative Affairs Agency in October 1974;

(2) role of the guardian ad litem in the Alaska Court System;

(3) the treatment of children classified as dependent, neglected, delinquent and in need of supervision in the Alaska Statutes;

(4) the treatment of emotionally disturbed children;

(5) the protection of the property rights of orphaned children in the state, particularly the rights of children under the Alaska Native Claims Settlement Act;

(6) the scope of the term "care of the child" under AS 47.10.230;

(7) the adequacy of the statutes dealing with child abuse in the state;

(8) the treatment of status offenders.

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

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

ADC:hg

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

(907) 465-3800

September 30, 1975

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

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

1/ attorneys appointed are often not interested or knowledgeable in issues involving children;

2/ the length of time a guardian ad litem is responsible for the child after disposition of the case;

3/ the availability of persons in the bush areas to act as guardians ad litem; and

4/ the duties and powers of guardians ad litem are vague.

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

1/ that the present discretionary appointment by the court of guardians ad litem continue to remain in effect;

2/ that the scope of the guardian ad litem's duties be clearly delineated and include

a/ investigation of the legal and factual issues of a particular child's case and report these to the court;

b/ the power as guardian ad litem exist no longer than the particular matter is before the court, in other words from the time of the filing of a petition, which will involve a child's present or future care, custody or control, until the court's disposition of that matter; and

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

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

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

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

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

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

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

4/ removing status offenders from the court system entirely;

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

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

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

1/ eliminate the category of children in need of supervision;

2/ remove the "fault" approach from consideration of dependent children;

3/ devising a way that children and their parents may be ordered by the court to receive diagnostic treatment and services;

4/ define "intake services" with greater specificity; and

5/ define "juvenile detention home," "institution," and "juvenile correctional school" with more specificity.

AC:cb

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M March 24, 1977

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

TO: Members of Senate HESS and House Judiciary Committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMB:hjd

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 22, 1977

The Honorable Glenn Hackney
Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Jay S. Hammond
Governor

MEMORANDUM April 7, 1977

SUBJECT: SB 54 and SSHB 419
TO: Representative Terry Gardiner, Chairman House Judiciary Committee
FROM: Andrew Brown

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

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

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