ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3214.65 HHESS HB 88

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 1985

This legislation has been introduced by the Governor as part of a total child protection package. The various sections of this legislation will increase the number and strength of prosecutions of persons charged with offenses against children, particularly sexual abuse of minors. As part of this child protection package, the Governor's operating budget for the Department of Law requests 19 new positions, including seven attorneys, seven paralegals, and five legal secretaries. Furthermore, the budget of Health and Social Services contains numerous new positions. These increases in the budget of the Department of Law and Health and Social Services will increase both reporting of new offenses and prosecution of those offenses.

The increase of prosecutions in child sexual assault offenses will necessitate six new positions for this agency. These positions are the bare minimum necessary to handle the anticipated increase in workload and avoid inordinate delays in processing these cases through the courts:

Fiscal Analysis

Second Judicial District		
Attorney III (Nome/Kotzebue)		
Personal Services		83.1
Travel		5.0
Contractual (office space, experts, etc.)		10.0
Supplies		2.0
Equipment (one time expenditure)		2.0
subtotal		102.1
Third Judicial District		
Attorney IV (Anchorage)	70.8	
Paralegal Asst II (Kenai)	45.5	
Paralegal Asst II (Palmer)	44.2	
Personal Services		160.5
Travel		15.0
Contractual (office space, experts, etc.)		17.0
Supplies		3.5
Equipment (one time expenditure)		4.5
subtotal		200.5

(continued)

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 198

Fourth Judicial District

Paralegal Asst II (Fairbanks)	48.7	
Paralegal Asst II (Bethel)	55.4	
Personal Services		104.1
Travel		10.0
Contractual (office space, experts, etc.)		16.5
Supplies		1.0
Equipment (one time expenditure)		3.0
subtotal		134.6
TOTAL ALL DISTRICT		437.2

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION
FOR ALASKA

A. Robert Hahn
630 Oceanview Drive
Anchorage, AK 99515

MEMORANDUM

TO: Representative Rick Uehling DATE: January 26, 1985

FROM: A. Robert Hahn
Committee on Publication for Alaska

RE: House Bill 88

New section 11.51.110, ENDANGERING THE WELFARE OF A MINOR, essentially covers the same idea in (a)(2) -- "failing to provide the child with ... medical attention" as is covered in 11.51.120, CRIMINAL NONSUPPORT, which has a specific exemption in subsection (b) which states:

> (b)...There is no failure to provide medical attention to a child if the child is provided treatment solely 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.

This exemption is important to Christian Scientists as it protects their right to provide treatment by prayer for their children in lieu of medical treatment. It is important to recognize that Christian Science treatment through prayer is recognized by the Federal government, the legislatures of the states and the health insurance industry as a viable and effective alternative to treatment by medical means. We feel sure the Alaska legislature will wish to retain the right of individuals to treat their children through prayer as that same protection is accorded elsewhere in the Alaska Statutes. Attached is a suggested addition to the proposed new section 11.51.110 to accomplish this result.

In A.S. 47.17.070(1) it is also our position that in order to be consistent in maintaining the exemption granted in other sections of the code (see for example, A.S. 47.10.080(k) and A.S. 47.10.085) the language contained in the attached amendment should be included in that section.

Your assistance in securing these amendments is deeply appreciated.

A. Robert Hahn
Committee on Publication
for Alaska

A.S.11.51.110(a)(2) shall include the following language in order to make said section consistent with A.S.11.51.120(b):

> There is no failure to provide medical attention to a child if the child is provided treatment solely 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.

A.S.47.17.070 is amended to read:

47.17.070 Definitions. (a) In this chapter

(1) ...etc....

(b) a child is not subjected to neglect or mental injury, solely by reason of a person related to and responsible for the welfare of a child under the age of 18 not providing medical attention to the child if the child is provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredicted practitioner of the church or denomination.

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 1, 1985

FROM: Victor D. Carlson
Superior Court Judge

SUBJECT: House Bill No. 88, Protection of Children

In general I find the proposed legislation to be consistent with current practice and will promote the protection of children and the fair determination of cases relating to children. However, I have several specific comments:

1. Section 11 concerning traffic, etc. offenses. The phrase "in a district court" is redundant and serves no purpose, it is possible that a traffic offense would be prosecuted in the superior court and not just before a superior court judge sitting as a judge of the district court. Further, I question if it is the intent of the legislature to have children convicted of traffic, fish and game, and parks and recreation facilities violations sentenced to serve time in jail, e.g., on an operating a motor vehicle while under the influence of alcohol or drug. The current wording of this statute leaves this question and the amendments do not cure it.

2. Section 12 concerning predisposition reports. Two working days for review of a report appears to be reasonable and if more time is needed, the attorney for the child can move for a continuance. Currently, the defense attorneys use the ten-day requirement to create undue strain on the probation officers, it is nearly impossible to prepare a predisposition report and have it typed and distributed within twenty days of disposition, the current rules provide that no more than thirty days are to elapse between adjudication and disposition.

3. Section 14 concerning notification of emergency custody. A note expressing legislative intent that every effort must be made to notify the custodian when a child is taken into custody including the leaving of a note at the place where custody was taken, informing a neighbor or relative and anything else that will help to i form the custodian should be appended. I believe the court should be informed each time a child is taken into custody without a court order and a sworn statement of probable cause made to the court. Requiring a report to the court with a statement of probable cause will tend to police the discretion of the social workers. The only other policing technique is the civil suit for damages which is generally ineffective.

VDC:rw

Adm. F-1
Rev. 2-73

TELECONFERENCE

I. INTRODUCTION
II. QUESTIONS
III. WHY INCEST AND SEXUAL ASSAULT SHOULD BE SEPARATED —
  A. THEY ARE DIFFERENT
  B. FOR THE SAKE OF THE FAMILY
    1. Physically
    2. Emotionally
      ∴ creation of latchkey children
IV. Goals of the state, defined
  A. To protect the children
  B. To preserve family life
V. How the goals of the state can ~~still~~ be ~~most~~ more effectively met ~~without creating~~
  A. Without creating latchkey children
  B. Without costing the state millions of dollars
  C. Without overcrowding the jails
  D. Without splitting up the family
  E. Without institutionalizing the offender (inmate) to the point that he is never capable of rehabilitation.

Members of the HESS committee
regarding HB 88

Because of an evening job I am unable to attend today's teleconference and so have asked that the entire hearing be taped so that I can listen to the feedback to the bills as well as to the items I wish to present.

I have a great deal of information which I would like to present but realize because of the subject matter that I may not have time to present it all.

Two questions on HB 88 have come to mind. The 1st is on page 4 line 17 & 18. Why is licensed foster care providers in bracketts following clergy when acting as counselor? Please explain this. #2 (next) page 10, line 25, 26 & 27 states that clergyman do not have to report if the communication was made in furtherance of a religious practice & not for counseling purposes. What do you mean by that? Does this refer to confessions to Catholic priests or does it also include protestant ministers or does it mean something totally different?

I noticed that none of these bills separate incest from sexual assault & I urge you to please consider that for the sake of the family, and also because they are different. "Incest is a psychological (behavioral)

necessary to remove the perpetrator from the home for a period of time but the perpetrator is generally no danger to society. He should in all ways possible be allowed and required to support the family financially. Incest occurs between two relatives who have known one another for a long time. There is a strong 'bonding' relationship between the victim & the perpetrator. There is this because of love and dependency for the incestuous perpetrator. Generally in most incest cases there is no violent physical attack. Whereas in sexual assault the act is almost always violent. Because of this 'bond' incest happens many times and the victim is reluctant to report it. Whereas in sexual assault or rape there is no bonding relationship and in most cases it is reported immediately. Therefore the victim is only (usually) assaulted one time. Most incest victims only want the act to stop and stay with the family. Whereas most sexual assault (rape) victims want the perpetrator to receive a long jail term."

A

Once the molestor is jailed, if he was the financial support for the family, the family now becomes destitute. If they qualify for welfare and aid, they become an additional burden to the taxpayers who are already supporting the molestor at the sum of 100 plus dollars a day.

B-1

But the worse part is emotionally. With the physical splitting up of the family, the children are left with either one parent or

2
a.

in foster homes, thus creating what an article in the Plain Truth magazine terms as latchkey children. Latchkey children are defined as children who are left alone at home for long periods of time or deprived of at least one parent. "Because they carry their own house key, they've been given the name latchkey children, a name derived from the common word used years ago for house key."

1
2
a

Basically Negative

Reality is, our modern latchkey child-rearing trend, no matter what the cause, is unhealthy. Vance Packard in his book *Our Endangered Children: Growing up in a Changing World* goes as far as to label this latchkey age "anti-child."

Some would say this label is too harsh. But today's downplay of family importance and family togetherness has led to "latchkey thinking," and it is a definite negative in child rearing.

Researchers confirm how negative latchkey child rearing is. A recent study found that, depending on the age of the child, latchkey children often suffer deep loneliness, terrible scare-filled anxieties, as well as periods of boredom.

It is reported that some small children experience recurring nightmares and obsessive concern for their safety because they've been left home alone for long periods of time.

Analysts say latchkey children are more likely to be involved in accidents, fires, drug abuse and juvenile delinquency. These same researchers say latchkey children, when left home without parental supervision and protection, are more likely to do poorly in school and be sexually abused by older siblings and children, or even adults.

On the other hand, some experts feel being a latchkey child may not necessarily be so bad. According to them the experience encourages "independence, responsibility, street savvy and pride." But let's look at the big picture.

Problems a Natural Result

Worldwide, young people in droves, most lacking proper, needed parental guidance and supervision, have plunged into the drug culture. As many as 75 percent of high school and secondary school students experiment with or regularly use drugs. It is not at all uncommon for grade school children to pop pills, take various kinds of drug trips or smoke marijuana.

Penal institutions are filled with errant youths. For the most part, they've gotten into trouble because they've lacked proper parental guidance and supervision. They've been latchkey children during major portions of their growing years.

Teenagers' ability to be confident and trusting, to have affection for their families and be able to master inner feelings and impulses, has been on a steady decline since the 1960s. That's made clear in a U.S. survey of two groups of teenagers by psychiatrist Daniel Offer and psychologists Eric Ostrov and Kenneth I. Howard.

Their published survey, *The Adolescent: A Psychological Self-portrait*, compared a group of 1960 teenagers to a group growing up in the 1970s and 1980s. About 20 percent of the latter group reported feeling empty emotionally, being confused most of the time and feeling they would rather die than continue living.

These children clearly lack needed parental supervision and guidance. That's not to say all latchkey children get into trouble, and those with adequate parental guidance and supervision do not. But common sense should tell us that the chances of latchkey children getting into trouble or having difficulty in society would be significantly higher.

Father's Importance

Fathers should especially consider their relationship with their children.

Dads must go out of their way and make a concentrated effort to spend time with children. Work and business concerns, as well as a barrage of outside-the-home activities, usually leave fathers with insufficient time to spend with children.

It can be a major irony. A father can think he himself needs to work

long hours to give his family and children the best. In reality he may be denying his family and children what they need most—Dad.

Children need Dad's time, his concern, teaching, guiding, giving, loving, playing and correction. Money alone cannot buy or give family and children what they need most from a father—father himself.

A father's presence is important. This is true during crucial preschool years when a child's sex-role identification, personality, motor skills, creativity and ability to achieve are being formed. It is also true when children are older, a time when they may need firm guidance and advice. Tests show that boys deprived of a father's presence on average have more limited chances of growing up to become well-adjusted, happy, productive young men. According to studies, father-deprived boys tend to exercise less self-control and lack somewhat in social responsibility.

Father-deprived girls also suffer in similar ways and especially suffer in their ability to relate appropriately to males as they grow into adulthood.

V. A & B

What are you doing by jailing these incest offenders and thus creating fatherless children when you clearly have another good alternative which will better meet your objective to protect the children, and yet preserve family life?

Page 8 line 23-27 of HB 88 states that your intent is to preserve family life whenever possible. If this is truly your goal consider these alternatives to incarceration:

1. Work release program
2. Live away from home for a period of time

3. Probation (either regular or at 1/2 time to be served
4. Treatment for the entire family through Parents United and/or private counseling
5. Physical or chemical castration (can only be used on a voluntary basis)
6. Suspended imposition of sentence with a condition that any time ~~served~~ that must be served be served as a condition of probation.
7. Halfway house
8. Visitations with the family on a controlled basis
9. Community service

V. C

Last week I sent a suggestion to Katie Hurley regarding the problem of overcrowding in the jails and how the problem could be solved by releasing those

INCEST

molestors whose families want them released and who upon ~~release~~ being released could then be placed on strict probation and into a treatment program.

STRICT PROBATION

I would like to elaborate on strict probation. Ideally I think the molestor should be required to report to a probation officer 3 times a week; however depending on how many were released this could put a great strain on the probation officers, so I am proposing that a probation officer should be seen at least once weekly and that ~~the [illegible]~~ the molestor should be involved in a counseling/treatment program also at least once weekly. Regular interviewing of the victim (possibly once weekly also) should also

STRICT PROBATION

be conducted as a means to insure that the molesting is never repeated and that if it does the molestor should then be immediately jailed until the child is fully grown and out of the home. length of time for continuing strict probation should be determined once yearly by a complete psychological evaluation to determine if a behavior change has taken place and the molestor is now "cured". Some molestors could well be off probation and through treatment within a very few years while others would be on strict probation and treatment until the children were grown and out of the home. But even this would not disrupt the family as much and creating latchkey children as throwing these molestors in jail would.

[illegible]RITY OF [illegible]

The list of alternatives to incarceration suggests in addition to probation that the molestors live away from home for a period of time and/or that visits with the family be on a controlled basis. I would suggest that this is a more extreme solution than strict probation but certainly a valid proposal. I believe that in cases of often & repeated molesting, rape or severe physical abuse & trauma that in addition to strict probation and treatment, the molestor should have to live away from home and only be able to visit the family on a controlled basis such as chaperoned.

Who decides severity of cases? We at

must agree that incest varies in degree of severity. We are being legislated to death. Allow the spouse and the victim freedom to decide if they want the molestor removed from the home (he should still be required to support the family financially) or if strict probation and counseling/treatment is enough. The victim and the spouse may need counseling to help decide this, but the decision should be theirs; not the governments' or the courts'.

The law defines severity of cases by the age of the child. I disagree with that. I think severity should be dependent on what actually occurred, extent of physical and emotional harm and the attitude of the molestor. If the molestor recognizes that he needs help & is willing to submit to a treatment program he should be granted that and not just slapped into jail. But to protect the child as well as ~~the family~~ to preserve the family unit, seriously consider and allow the wishes of first the victim and then the spouse whether those wishes be to press charges or to place a first offender on probation and treatment. (over pages)

as received in Nat-Sec L&O

1st

Repeated offenses should require mandatory jail until the children are grown & out of the home.

Now, those that are in jail at this time because of the old law.

The old law said that sexual assault in the 1st degree was a class A felony but page 1 of House Bill #881 makes it a class C felony & 2nd degree a class A misdemeanor. You have people in jail who are serving 15-20 year sentences because sexual assault in the 1st degree used to be a class A felony: mandatory 5 years per count. If this house bill 881 became law & sexual assault in the 1st degree was considered a class C felony these people could serve 4 years in Eagle River in a treatment program & be released

on probation for 15-20 years if appropriate. ~~[illegible]~~ Katie Hurley has a proposal I ~~[illegible]~~ that has a 3 fold purpose: ① it solves the overcrowding in the jails by reviewing the cases of those molestors who are in jail for incest, ② it provides for the protection of children because these molestors would be released on strict probation into a counseling or treatment program + ③ it preserves family life. ~~I will not repeat what I have said because Ms. Hurley has a copy of what I said to her.~~

CONCLUSION

I would like to end my statements with a quote from a friend who has done a lot of research into this problem: "The treatment program for incest offenders takes about 2 years to complete. Placing an offender in incarceration longer than is <u>NECESSARY</u> may <u>worsen</u> him and therefore he may <u>never</u> <u>be</u> <u>capable</u> of rehabilitation. It appears that the presumptive sentence could be good if there was parole to go with it. The offender may have a chance to complete a program for his incestuous crime and could become a productive citizen again. These are just a few of the things we must consider."

Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS

FROM: NANCY BENNETT, COMMITTEE STAFF

DATE: JANUARY 31, 1985

RE: HB 88 "RELATING TO CHILD PROTECTION"

ENCLOSED, PLEASE FIND BACKUP MATERIAL FOR HB 88, INTRODUCED BY THE GOVERNOR, WHICH IS SCHEDULED IN THE COMMITTEE FOR A HEARING ON TUESDAY, FEBRUARY 5TH AND FOR STATEWIDE TELECONFERENCES ON WEDNESDAY AND THURSDAY, FEBRUARY 6 AND 7.

THIS BILL IS AN ATTEMPT TO TAKE A COMPREHENSIVE LOOK AT CHILD ABUSE AND REVISES MANY STATUTES. IT IS A COMPLEX ISSUE, AND I HOPE YOU WILL HAVE TIME TO REVIEW THESE DOCUMENTS PRIOR TO THE HEARINGS.

IN THE PACKET YOU WILL FIND:

1. The bill, transmittal letter and fiscal notes.
2. A position paper from the Network on Domestic Violence and Sexual Assault.
3. A letter from Public Safety concerning criminal background checks.
4. Committee minutes from Senate HESS on a child abuse hearing conducted in August of 1984 and responses from the Departments of Law and Health and Social Services concerning issues raised at that hearing.
5. Copies of all statutes refernced in HB 88.

ALSO SCHEDULED FOR FEBRUARY 5-7 ARE TWO OTHER CHILD ABUSE MEASURES:

HCR 2 - REQUESTING SCHOOL DISTRICTS TO CONDUCT APPROPRIATE BACKGROUND CHECKS ON EMPLOYEES WORKING WITH CHILDREN.

HB 67 - ALLOWING THE INTRODUCTION OF HEARSAY EVIDENCE IN GRAND JURY AND TRIAL FOR SEXUAL OFFENSES IN WHICH THE VICTIM IS A CHILD OF 10 OR YOUNGER.

Introduced: 1/16/85
Referred: Health,Education & Social Services,Judiciary and Finance

1 IN THE HOUSE BY PHILLIPS

2 HOUSE BILL NO. 67

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hearsay evidence in prosecutions
7 for certain sexual offenses; and amending Rules 803
8 and 804, Alaska Rules of Evidence, and Rule 6(r),
9 Alaska Rules of Criminal Procedure."

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

11 * Section 1. AS 12.40 is amended by adding a new section to read:
12 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
13 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
14 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise
15 admissible, made by a child under the age of 10 who is the victim of
16 the offense describing the conduct establishing the offense may be
17 admitted into evidence before the grand jury if
18 (1) the circumstances of the statement indicate its relia-
19 bility; and
20 (2) the child
21 (A) testifies at the grand jury proceeding; or
22 (B) is unavailable as a witness and there is addi-
23 tional evidence introduced to corroborate the statement.
24 (b) In this section,
25 (1) "statement" means an oral or written assertion or
26 nonverbal conduct if the nonverbal conduct is intended as an asser-
27 tion;
28 (2) "unavailable" means the child
29 (A) has a lack of memory of the subject matter of the

1 statement being offered;

2 (B) is unable to attend or testify at the hearing

3 because of death or then existing physical or mental illness or

4 infirmity;

5 (C) is declared incompetent to testify by the judge;

6 or

7 (D) is absent from the hearing and the proponent of

8 the statement has been unable to procure the child's attendance

9 by reasonable means.

10 (c) A child is not unavailable under this section if the un-

11 availability is due to the procurement or wrongdoing of the proponent

12 of the statement to prevent the child from attending or testifying.

13 * Sec. 2. AS 12.45 is amended by adding a new section to read:

14 Sec. 12.45.049. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL

15 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -

16 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise

17 admissible, made by a child under the age of 10 who is the victim of

18 the offense describing the conduct establishing the offense may be

19 admitted into evidence at trial if

20 (1) the court determines in a hearing outside the presence

21 of the jury that the circumstances of the statement indicate its

22 reliability;

23 (2) the child

24 (A) testifies at the trial; or

25 (B) is unavailable as a witness and there is addi-

26 tional evidence introduced to corroborate the statement; and

27 (3) the proponent of the statement informs the adverse

28 party of the intention to offer the statement and the contents of the

29 statement sufficiently before the proceedings to give the adverse

1 party a fair opportunity to respond to the statement.

2 (b) In this section,

3 (1) "statement" means an oral or written assertion or
4 nonverbal conduct if the nonverbal conduct is intended as an asser-
5 tion;

6 (2) "unavailable" means the child

7 (A) has a lack of memory of the subject matter of the
8 statement being offered;

9 (B) is unable to attend or testify at the hearing
10 because of death or then existing physical or mental illness or
11 infirmity;

12 (C) is declared incompetent to testify by the judge;
13 or

14 (D) is absent from the hearing and the proponent of
15 the statement has been unable to procure the child's attendance
16 by reasonable means.

17 (c) A child is not unavailable under this section if the un-
18 availability is due to the procurement or wrongdoing of the proponent
19 of the statement to prevent the child from attending or testifying.

20 * Sec. 3. AS 12.40.110, added by sec. 1 of this Act, has the effect of
21 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
22 hearsay evidence admissible in grand jury proceedings for certain sexual
23 offenses without requiring compelling justification.

24 * Sec. 4. AS 12.45.049, added by sec. 2 of this Act, has the effect of
25 amending Rules 803 and 804, Alaska Rules of Evidence, by allowing admission
26 at trial of hearsay evidence of certain statements made by certain victims
27 of certain sexual offenses.

Introduced: 1/16/85
Referred: Health,Education & Social
Services,Judiciary and Finance

1 IN THE HOUSE BY PHILLIPS

2 HOUSE CONCURRENT RESOLUTION NO. 2

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Relating to background checks on school
6 district employees who come into contact
7 with children.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS sexual abuse of minors is a serious and widespread problem;
10 and

11 WHEREAS existing law permits employers of individuals having contact
12 with children to obtain certain information on convictions of these indi-
13 viduals relating to sex crimes (AS 12.62.035);

14 BE IT RESOLVED by the Alaska State Legislature that local school
15 districts are encouraged to implement appropriate background checks on all
16 school district employees who come into contact with children.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation, was established in 1977 to facilitate coordination of domestic violence and sexual assault services on a statewide basis. The Network represents 20 domestic violence and sexual assault programs.

Network programs have been involved in the prevention, intervention, and treatment of child sexual assault through community education and public awareness efforts, curriculum development and implementation, theraputic counseling services, coordination with social service and criminal justice agencies, and legislative advocacy.

In June 1984 the Network formed a Child Sexual Assault Task Force for purposes of reviewing currently applied policies and practices to determine their appropriateness and the consistency of their application. The work product of the Task Force is the attached Summation of Major Issues Arising in Handling Child Sexual Assault Incest Cases and Recommendations for Resolution.

The Summation, which deals exclusively with child sexual assault perpetrated by a family member, outlines "ideal" policies and practices, those which we feel should be implemented in order to achieve the most favorable outcome. Some of these policies and practices have been implemented by some agencies in some communities; others are either inconsistently applied or not applied at all.

It is the Network's intention that the policies and practices detailed in the Summation be adopted by all agencies involved with child sexual assault cases. It is our firm belief that coordinated and comprehensive education, prevention, intervention, and treatment efforts will positively impact the high incidence of child sexual assault in our state.

We welcome your comments on this report, and suggest that you contact Ruth Lister, WICCA, Inc., Fairbanks (452-2293) or Rosemary Murray, Alaska Women's Resource Center, Anchorage (276-0528) to provide input or obtain additional information.

110 SEWARD #13 JUNEAU ALASKA 99801 (907) 586-3650

ALASKA NETWORK ON DOMESTIC
VIOLENCE AND SEXUAL ASSAULT

SUMMATION OF MAJOR ISSUES ARISING IN HANDLING CHILD SEXUAL ASSAULT INCEST CASES & RECOMMENDATIONS FOR RESOLUTION

Prepared by:

Child Sexual Assault Task Force
Ruth Lister, WICCA, Inc.
Rosemary Murray, Alaska Women's Resource Center
Co-chairs

110 SEWARD #13 · JUNEAU ALASKA 99801 (907) 586-3650

Summation of Major Issues Arising in Handling Child Sexual Assault Incest Cases & Recommendations for Resolution

In all phases of involvement with child sexual assault incest cases, the Network accepts the following as a philosophy: the child victim's disclosure is to be credited, the non-offending parent should be encouraged to be supportive and protective of the child victim, and responsibility for the assault always rests with the offender. All policy statements are predicated on that philosophy.

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
1. Intervention	child reports sexual assault to non-offending parent and/or others; child is protected by DFYS or criminal intervention; if possible, child stays in the home; child receives immediate advocacy and support; number of interviews required of child should be minimized	assessment of non-offending parent's ability to protect & be supporitve of child should be made; receives immediate advocacy to understand need to be supportive & protective of child; obtains TRO to protect child if needed	offender is investigated while child is protected; offender should be removed from the home if victim is living at home and non-offending parent is supportive
2. Coordination	DFYS and police/troopers coordinate investigation of victim's report of assault and provide protection of child; child is interviewed in private and is protected from onset of interview; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency	DFYS and police/troopers coordinate investigation of assault, with inclusion of advocate for non-offending parent, if requested; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency	DFYS and police/troopers coordinate investigation of offender; report of investigation is made to DA

DFYS coordinates immediate contact with qualified treatment and/or advocacy program/people

Communities should develop protocols for purposes of protection of the child and to facilitate coordination. Community protocols should be reviewed on an annual basis and should include input from DFYS, law enforcement, criminal justice system, Network programs, mental health centers, schools, and other agencies involved in child sexual assault cases

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
3. <u>SAFETY</u>	the priority issue is insuring the victim's safety so s/he is not placed in a position to be re-victimized	support given to non-offending parent in protecting the victim and other siblings; provide counseling, shelter, and support when domestic violence has also occurred	strict controls over access to victim and other potential victims are to be applied in setting bail conditions, incarceration, treatment, work release, and probation; safety issues are to be adequately addressed throughout the criminal justice process; regular monitoring and safety checks should occur while offender is on probation and should be conducted by Probation Officer; probation for no less than 10 years is recommended because of the possibility of suicide and violence to family, arrest should occur immediately
	Victim and family members must receive full protection from time of report. Monitoring and treatment services should be available for at least two (2) years		
4. <u>IMPRISONMENT</u>	victim is reassured that s/he is not responsible for the incarceration ; victim is encouraged to understand that the offender is being punished for wrong-doing	provided support in assuming role as single parent while offender is in prison and/or treatment and out of the home; non-offending parent should not be required to comply with unreasonable and/or non-theraputic court ordered obligations, such as vistitation, etc.	punishment for crime through imprisonment; treatment and rehabilitation will be provided in a secure facility; treatment will continue if offender is in a work release program or halfway house

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
5. Treatment	receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised	receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child; individual/group treatment is made available	1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members

All treatment staff must have adequate training in treatment model, and all treatment must be predicated on the basis that the responsibility for the assault always rests with the offender. The well-being of the child victim must be the primary concern for all family members and treatment providers. All decisions regarding the potential, possible, and/or actual reuniting of the family should be made only when the child victim agrees and only when treatment focusing on sexual deviancy will be continuing. Contact between the child victim and the offender or any other person who is not supportive of the child should be restricted and should only occur under circumstances that are theraputic for and agreed upon by the child

6. Rural Issues

Local safe homes and support and advocacy must be immediately available to victims and non-offending parents. Community education and organizing, and prevention and education for children and adults, are high priorities. All personnel who are a part of prevention, intervention, and/or treatment in child sexual assault cases must be specifically trained in the dynamics of child sexual assault

7. Community Safety

Through media, education, and community organizing, the harmful effects of child sexual assault and the need for protection are made clear. Age appropriate prevention information should be made available to all children

There is no known "cure" for sex offenders except their control over their own behavior. Provision and/or "completion" of a treatment or rehabilitation program should not be assumed to guarantee the safety of the child victim or potential victims

8. Adult Survivors

Treatment should be made available, either free of charge or at reasonable sliding scale fees, for adult survivors of child sexual assault by qualified treatment staff

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
9. <u>Training</u>	All therapists providing treatment in the areas of child sexual assault must have a minimum of forty (40) hours of specialized training in victim, survivor, or offender treatment Those working in the field without a master's degree in social work or counseling must, in addition to having received specialized training, be a staff member of a counseling agency or advocacy program and be supervised by a degreed person Training in the dynamics of child sexual assault and appropriate recognition and intervention techniques should be made available to all who come into contact with victims, non-offending parents, and offenders. This training should, at the minimum, be provided to law enforcement personnel, criminal justice personnel, teachers, day care providers, social workers, and staff members of agencies providing counseling and advocacy If limited funds are available for training, priority in allocation should be given to those agencies demonstrating a history of effective and broad based training experience and/or provision of service		

Incest as included within charge of rape, 76 ALR2d 484.

Criminal responsibility of husband for rape, or assault to commit rape, on wife, 84 ALR2d 1017.

Fraud or impersonation, rape by, 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient, 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 ALR3d 699.

Consent as defense in prosecution for sodomy, 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR3d 1228.

What constitutes offense of "sexual battery," 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only, 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 3 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

(2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) *[Repealed, § 10 ch 78 SLA 1983.]*

(4) *[Repealed, § 10 ch 78 SLA 1983.]*

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982, am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) of subsection (a).

The 1982 amendment substituted "an unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Consideration
II. Former Law
  A. Generally
  B. Age of Consent
  C. Procedure

I. GENERAL CONSIDERATION.

History of first degree sexual assault statute. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Constitutionality. — In order to prove [illegible] AS 11.41.410(a)(1) the state must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded his victim's lack of consent. Construed in this way, the statute does not punish harmless conduct and is neither vague nor overbroad. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Construing the Revised Code and the concurrent amendments governing sentences together indicates that the legislature has not irrationally failed to distinguish between degrees of culpability; and the penalty provisions of the sexual offenses provisions of the Revised Code did not subject defendant to cruel and unusual punishment or deny him substantive due process or the equal protection of the laws. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Categories constitute same offense. — All of the categories contained within the definition of sexual assault in the first degree under subsection (a)(1) through (a)(4) of this section, constitute the same offense for legal purposes. JUneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

And none is more serious than others. — Nothing contained in the statutory language of this section or the legislative history of the provision suggests that the type of conduct listed in any one of subsection (a)'s four paragraphs was meant to be inherently more serious than any of the others. To the contrary, the grouping of these four separate sets of conduct together under the same criminal heading, with identical classifications as class A felonies, is a forceful indication of the legislature's conclusion that all four paragraphs were meant to be viewed as involving equally serious conduct. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Subsection (a)(1) is akin to the common law definition of rape. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Mental state required under (a)(1). — Lack of consent is a "surrounding circumstance" which requires a complementary mental state as well as conduct to constitute a crime. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

No specific mental state is mentioned in subsection (a)(1) of this section governing the surrounding circumstance of "consent"; therefore, the state must prove that the defendant acted "recklessly" regarding his putative victim's lack of consent. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Constitutionality of conviction for similar offense. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Sufficient evidence of attempted assault. — A jury could reasonably infer that defendant's entering of victim's bed naked and uninvited and fondling her breasts were "substantial steps" toward the commission of sexual assault in the first degree so as to provide sufficient evidence of attempted assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial court did not commit plain error in failing to specifically instruct the jury that defendant had to recklessly disregard a substantial risk that the victim did not consent to intercourse before he could be convicted of first-degree sexual assault. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Instructions on lesser included offenses. — In a prosecution of first-degree sexual assault, where the undisputed evidence including defendant's testimony established sexual penetration, there was no duty to instruct on attempted sexual penetration or forcible sexual contact.

Hartley v. State, Ct. App. Op. No. 154 (File No. 5737), 653 P.2d 1052 (1982).

The 10-year presumptive term for first-degree sexual assault under the provisions of AS 12.55.125(c) was meant by the legislature to be appropriate in the majority of cases, which are those cases involving conduct that is characteristic of the offense of rape and that fall into the middle-ground between the most serious and least serious extremes for the offense, and it must be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury in the first-degree sexual assaults falling within the definition of subsection (a)(1) of this section. Junely v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Sentence upheld. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Where record supported finding that defendant was the leader of a group of three or more persons who participated in offense of sexual assault in the first degree, such evidence, combined with consideration of prior, similar actions and of defendant's apparent lack of remorse, warranted imposition of eight-year sentence. Willard v. State, Ct. App. Op. No. 240 (File No. 6285), 662 P.2d 971 (1983).

Sentence of 10 years imprisonment, with eight suspended, was not excessive for conviction of attempted sexual assault in first degree. Van Hatten v. State, Ct. App. Op. No. 269 (File No. 5877), — P.2d — (1983).

Sentence for attempted sexual assault and burglary held excessive. — See Hansen v. State, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Seymour v. State, Ct. App. Op. No. 196 (File No. 6227), 655 P.2d [illegible] (1982); Howard v. State, Ct. App. Op. No. 200 (File No. [illegible]), [illegible] P.2d [illegible] (1982).

Stated in [illegible] v. State, Ct. App. Op. No. 44 (File No. [illegible]), [illegible] P.2d 1032 (1981); [illegible] v. State, Ct. App. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d [illegible] (1982); [illegible] v. State, Ct. App. Op. No. 194 (File No. [illegible]), [illegible] P.2d [illegible] (1982).

Cited in [illegible] v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d [illegible] (1980); [illegible]

Koganaluk v. State, Ct. App. Op. No. 176 (File No. 6531), 655 P.2d 339 (1982); Eckhart v. State, Ct. App. Op. No. 185 (File No. 6241), 656 P.2d 1199 (1982); Ecker v. State, Ct. App. Op. No. 190 (File No. 6726), 656 P.2d 577 (1982); Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), — P.2d — (1983).

II. FORMER LAW.

A. Generally.

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.120 and 11.15.130.

Forcible rape ranks among the most serious crimes. Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); Ahvik v. State, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980).

The reason such a crime as forcible rape is most serious is because it amounts to a desecration of the victim's person which is a vital part of her sanctity and dignity as a human being. Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 501 P.2d 772 (1972); Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); Ames v. State, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing on other grounds, 537 P.2d 1116 (1975); Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); Bordewick v. State, Sup. Ct. Op. No. 1500 (File No. 3341), 569 P.2d 184 (1977); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978).

Definition of rape under former law. — Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Criminal intent was required for conviction of statutory rape. — See State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Although former AS 11.15.120 was silent as to any requirement of intent, the requirement of criminal intent was inferred. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Rape is a general intent crime, and all that is required for a conviction is proof of the voluntary commission of the prohibited act. Walker v. State, Sup. Ct. [illegible]

Lesser included offense. — The Alaska statutes do not proscribe fornication, and therefore, it could not be considered an offense of a lesser degree to statutory rape. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978); Tookak v. State, Ct. App. Op. No. 108 (File No. 4656), 648 P.2d 1018 (1982).

The offense of assault with intent to commit rape is a lesser included offense to rape. Tuckfield v. State, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981).

Attempt. — Every element of an attempt is comprised in an assault with intent to commit the offense of rape. Sekinoff v. United states, 283 F. 38 (9th Cir. 1922).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

B. Age of Consent.

Female under age of consent is in law incapable of consent. — The crime of rape is commited upon a female under the age of consent with or without her consent since she is in law incapable of consent. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Thus, it is not necessary to establish her consent as an essential element of the crime. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Indictment need not allege consent of female under age of consent. — An indictment for rape of a girl under the age of consent is not insufficient because it fails to allege that the act was done with her consent. Callahan v. United States, 240 F. 683 (9th Cir. 1917); Rose v. United States, 240 F. 685 (9th Cir. 1917).

Defense of reasonable mistake of age. — A charge of statutory rape was defensible where an honest and reasonable mistake of fact as to the victim's age was shown. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

The charge of statutory rape was legally unsupportable unless a defense of reasonable mistake of age was allowed. To reduce criminal liability without any criminal mental element. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

While, where an offender was aware he was committing an act of fornication, a mistake of fact did not serve as a complete defense, it should have served to reduce the offense to that which the offender would have been guilty of had he not been mistaken. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Under former AS 11.15.120, if an accused had a reasonable belief that the person with whom he had sexual intercourse was 16 years of age or older, he could not have been convicted of statutory rape. If, however, he did not have a reasonable belief that the victim was 18 years of age or older, he could still have been criminally liable for contribution to the delinquency of a minor. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

For approved instruction on consent of female under age of consent, see Rose v. United States, 240 F. 685 (9th Cir. 1917).

C. Procedure.

Indictment charging attempted rape and citing only the rape statute held sufficient. — See State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Charging defendant with the crime of murder committed "in the attempt to perpetrate a rape" fails to allege the separate crime of rape with sufficient clarity to support a conviction. Alto v. State, Sup. Ct. Op. No. 1443 (File No. 2339), 565 P.2d 492 (1977).

Severance of counts involving various victims. — Where defendant was prosecuted on multiple counts of unlawful entry with intent to rape, rape, assault, and burglary, involving various victims, the trial court did not err in denying severance of the counts since evidence regarding the attack on each of the alleged victims would have been admissible in the trial of each of the other charges if the charges had been separately tried. Nix v. State, Ct. App. Op. No. 157 (File No. 5841), 653 P.2d 1093 (1982).

Character evidence. — See Freeman v. State, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

Questioning victim's credibility. — While a defendant could properly seek to question the victim's credibility [illegible]

extrinsic evidence on a collateral matter. Moss v. State, Sup. Ct. Op. No. 2239 (File No. 4389), 620 P.2d 674 (1980).

Corroboration of prosecutrix's testimony. — No corroboration of the prosecutrix's testimony is necessary in statutory rape cases. Burke v. State, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

Evidence of prior history of sexual activity with victim. — Whether evidence in a statutory rape prosecution of prior history of sexual activity with the prosecutrix is justified as background or the ongoing nature of the relationship is probative, the nexus of these reasons justifies an exception to the general rule against admissibility of prior bad acts. Burke v. State, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

Evidence of prior misconduct. — See Freeman v. State, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

Evidence of prior sexual offenses. — See Freeman v. State, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

Determining age from appearances. — See Toores v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Admission of defendant's driver's license into evidence to establish his age was harmless beyond a reasonable doubt. Torres v. state, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Psychiatric testimony. — See Freeman v. State, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

Psychiatric evidence showing that an individual accused of sexually deviant miscon'uct is not a sexual psychopath should [illegible]perly be regarded to be character ev'lence. Freeman v. State, Sup. Ct. Op. No. '03 (File No. 1046), 486 P.2d 967 (1971).

He: rsay testimony. — It was not error to admit hearsay testimony concerning complaints made by a rape victim to her mother and a school counselor. Greenway v. State, Sup. Ct. Op. No. 2206 (File No. 4754), 626 P.2d 1060 (1980).

Failure at preliminary hearing to state all the facts attending a claimed rape in response to an instruction to proceed and tell what happened is not a ground of impeachment. Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

Error to admit recording of sodium entothal interview. — In a prosecution for statutory rape and sodomy, it was error to admit the recording of a [illegible]

prior consistent statement for the limited purpose of rehabilitating an impeached witness. Lindsey v. United States, 16 Alaska 268, 237 F.2d 893 (9th Cir. 1956).

Or to exclude public from trial. — The trial court erred in assuming the power of excluding the public from a trial on the charge of rape of an adult woman. Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

It would be denying the defendant his presumption of innocence and a predecision by the court of his guilt to hold that a married woman must be relieved of the embarrassment of a public trial because she is called upon to testify to the story of the defendant's crime and her shame. Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944)

Verdict supported by evidence. — Testimony of complaining witness of her conduct before and after the alleged rape, corroborated and contradicted, and h[illegible] sole evidence of the rape itself, supports the verdict on the inference that the defendant's defense was untrue, and that she was the unfortunate victim of a brutal outrage. Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

Instructions. — The use of the following instruction in a statutory rape case is prohibited: "A charge such as that made against the defendant in this case is one which is easily made and, once made, difficult to defend against, even if the person accused is innocent. Therefore, the law requires that you examine the testimony of the female person named in the indictment with caution." Burke v. State, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

Since specific intent is not an element of the offense of rape, giving an instruction that the law assumes that every person intends the natural consequences of his voluntary acts was not error. Walker v. State, Sup. Ct. Op. No. 2570 (File No. 4921), 652 P.2d 88 (1982).

Instruction sufficiently covering question of impeachment. — See Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

For approved instruction on consent of female under age of consent, see Rose v. United States, 240 F. 685 (9th Cir. 1917).

Sentencing. — The recommended five year maximum, except for cases involving particularly serious offenses, dangerous offenders and professional criminals, of Donlun v. State, Sup. Ct. Op. No. 1092 [illegible]

not ap[illegible] to the crime of rape of a person under 16 years by a person 19 years or older, made punishable by former AS 11.15.130(a) by "any term of years." Edenshaw v. State, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981).

What must be reflected in sentence for forcible rape. — Although the perpetrator of such a crime as forcible rape may not be beyond rehabilitation, the crime itself deserves community condemnation; in addition to serving rehabilitative purposes the sentence must reflect such condemnation as well as act as a deterrent to the offender and to others. Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).

Sentence for rape upheld. — See Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 5[illegible] P.2d 772 (1972); Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); Ames v. State, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing, 537 P.2d 1116 (1975); Coleman v. State, Sup. Ct. Op. No. 1288 (File No. 2331), 553 P.2d 40 (1976); Nukapigak v. State, Sup. Ct. Op. No. 1410 (File No. 2915), 562 P.2d 697 (1977), aff'd on rehearing, 576 P.2d 982 (1978); Bordewick v. State, Sup. Ct. Op. No. 1500 (File No. 3341), 569 P.2d 184 (1977); Morrell v. State, Sup. Ct. Op. No. 1577 (File No. 2790), 575 P.2d 1200 (1978); Alexander v. State, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); Moore v. State, Sup. Ct. Op. No. 1880 (File No. 4032), 597 P.2d 975 (1979); Wagner v. State, Sup. Ct. Op. No. 1897 (File No. 4381), 598 P.2d 936 (1979); Wikstrom v. State, Sup. Ct. Op. No. 1987 (File No. 4535), 603 P.2d 908 (1979); Tate v. State, Sup. Ct. Op. No. 2020 (File No. 4550), 606 P.2d 1 (1980); Mallott v. State, Sup. Ct. Op. No. 2027 (File No. 3364), 608 P.2d 737 (1980); Alexander v. State, Sup. Ct. Op. No. 2077 (File No. 3522), 611 P.2d 469 (1980); Cochrane v. State, Sup. Ct. Op. No. 2086 (File No. 4531), 611 P.2d 61 (1980); Helmer v. State, Sup. Ct. Op. No. 2181 (File No. 4383), 616 P.2d 884 (1980); Tuckfield v. State, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981); Edenshaw v. State, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981); Kompkoff v. State, Ct. App. Op. No. 015 (File No. 5324), 626 P.2d 1091 (1981); Williams v. State, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

Sentence for rape held excessive. — See Ahvik v. State, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981); Qualle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentences of 15 years for rape of one victim; 10 years concurrent with the 15-year term for burglarizing her residence; 10 years for burglarizing another victim's residence; six months concurrent with the 10-year burglary term for assault on the second victim; 15 years for rape of a third victim; and 10 years concurrent with the 15-year sentence for burglarizing the third victim's residence, for a total of 40 years incarceration, was error. Nix v. State, Ct. App. Op. No. 157 (File No. 5461), 653 P.2d 1093 (1982).

Sentence for rape too lenient. — See State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); State v. Jensen, Ct. App. Op. No. 126 (File No. 5879), 650 P.2d 422 (1982).

Sentence for attempted rape upheld. — See Shelton v. State, Sup. Ct. Op. No. 2074 (File No. 3908), 611 P.2d 24 (1980) (decided under former AS 11.15.130).

Sentence for assault with intent to rape upheld. — See Fomin v. State, Sup. Ct. Op. No. 2214 (File No. 5013), 619 P.2d 718 (1980).

Sec. 11.41.420. Sexual assault in the second degree. (a) An offender commits the crime of sexual assault in the second degree if the offender engages in

(1) sexual contact with another person without consent of that person; or

(2) sexual penetration with a person who the offender knows

(A) is suffering from a mental disorder or defect which renders the person incapable of appraising the nature of the conduct under circumstances in which a person who is capable of appraising the nature of the

(B) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsection (a).

NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11.41.410.

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Constitutionality of conviction where original charge was under AS 11.41.410. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the offenses, and his conviction for the lesser offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Evidence. — Where victim woke up in the early morning hours to find defendant in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sentence upheld. — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).

Sec. 11.41.430. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.134 and former AS 11.41.410(a)(4).

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Physical conduct punished under former statute. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Former section prohibited fellatio. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Mitigating Factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. Hodges v. State, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Sentence under former AS 11.15.134 upheld. — See Noble v. State, Sup. Ct. Op. No. 1286 (File No. 2468), 552 P.2d 142 (1976); Buchanan v. State, Sup. Ct. Op. No. 1316 (File No. 2553), 554 P.2d 1153 (1976); Morgan v. State, Sup. Ct. Op. No. 1908 (File No. 4187), 598 P.2d 952 (1979); Baker v. State, Sup. Ct. Op. No. 1968 (File No. 4631), 602 P.2d 797 (1979); Alvarado v. State, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence under AS 11.15.134 held excessive. — See Quandle v. State, Ct. App. Op. No. 138 (File No. 5366), 652 P.2d 481 (1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Applied in Seymore v. State, Ct. App. Op. No. 196 (File No. 6195), 655 P.2d 786 (1982).

Sec. 11.41.436. Sexual abuse of a minor in the second degree. (a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the [illegible]me of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender eng[illegible] sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

Effect of amendments. — The 1980 amendment rewrote subsection (a).

The 1983 amendment rewrote this section.

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Applied in Goulden v. State, Ct. App. Op. No. 201 (File No. 6465), 656 P.2d 1218 (1983).

Cited in St[illegible]es v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980); Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Collateral references. — Civil liability for carnal knowledge with actual consent of girl under age of consent, 45 ALR 780; 79 ALR 1229.

Assault with intent to ravish or rape consenting female under age of consent, 81 ALR 599.

Parent or person in loco parentis, liability for rape of minor child, 19 ALR2d 460.

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent, 65 ALR2d 748.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age, 73 ALR2d 874.

Sec. 11.41.445. General provisions. (a) In a prosecution under AS 11.41.410 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless

(1) the spouses were living apart; or

(2) the defendant caused physical injury to the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1978)

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. Hartwell v. State, Sup. Ct. Op. No. 391 (File No. 704), 423 P.2d . 82 (1967), decided under former AS 11.40.110.

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 36 ALR2d 1299.

Sexual intercourse between persons related by half blood, 72 ALR2d 706.

Prosecutrix as accomplice or victim, 74 ALR2d 705.

Rape, incest as included within charge of, 76 ALR2d 484.

Sec. 11.41.455. Unlawful exploitation of a minor. (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality; or

(6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.

Effect of amendments. — The 1983 amendment, in subsection (a), substituted "magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person" for "or magazine that depicts such conduct, the person," substituted "18 years" for "16 years" in two places, and added "the following actual or simulated conduct" to the end, all in the introductory paragraph; substituted "lewd" for "obscene" in paragraphs (2), (3) and (6); and deleted "female" preceding "breast" in paragraph (3). The amendment also redesignated former subsection (b) as subsection (c) and added present subsection (b).

NOTES TO DECISIONS

Applied in Qualle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sec. 11.41.460. Indecent exposure. (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(3) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Effect of amendments. — The 1983 amendment deleted "that a person is" preceding "temporarily incapable" and substituted "one's own conduct and" for "his conduct and is" in paragraph (1) and deleted "imminent" preceding "death" and preceding "kidnapping" in paragraph (3)(A).

NOTES TO DECISIONS

Applied in Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982); Juneby v. State, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983); Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), P.2d (198).

Quoted in Woods v. State, Sup. Ct. Op. No. 2698 (File No. 6180), P.2d (1983).

Cited in Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

Chapter 50. Syndicalism.

[Repealed, § 21, ch. 166, SLA 1978. For Law on terroristic threatening, see AS 11.56.810.]

Chapter 51. Offenses Against the Family.

Section
100. Endangering the welfare of a minor
120. Criminal nonsupport
125. Failure to permit visitation with a minor
130. Contributing to the delinquency of a minor
140. Unlawful marrying

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55, 65-74; 47 Am. Jur. 2d, Juvenile Courts, Etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-87.

10 C.J.S., Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 38; 67 C.J.S., Parent and Child, §§ 41, 165-178.

SECTION 1 & 2

Sec. 11.51.100. Endangering the welfare of a minor. (a) A person commits the crime of endangering the welfare of a minor if, being a parent, guardian, or other person legally charged with the care of a child under 10 years of age, the person intentionally deserts the child in any place under circumstances creating a substantial risk of physical injury to the child.

(b) Endangering the welfare of a minor is a class C felony. (§ 5 ch 166 SLA 1978)

Collateral references. — Liability of parent for injury to unemancipated child caused by parent's negligence — modern cases, 6 ALR4th 1066.

Sec. 11.51.120. Criminal nonsupport. (a) A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child under 18 years of age, the person fails without lawful excuse to provide support for the child.

(b) As used in this section "support" includes necessary food, care, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if the child is provided treatment solely 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.

(c) Criminal nonsupport is a class A misdemeanor. (§ 5 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.35.010, 11.35.090 and 11.35.100.

A father has a primary and continuing obligation to support his children. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

And the inability of a father to engage in his chosen trade may not excuse him from that obligation. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

There is no room for professional or occupational pride where the duty of child support is involved. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Former section included person's postdivorce obligation to support. — See Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Applicability of former statute to putative fathers of illegitimate children. — See S.L.W. v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 736 (File No. 1333), 490 P.2d 42 (1971).

The purpose of contempt proceedings for nonpayment of child support decrees is to coerce the defendant to pay money. It is not to punish him for his past failure to pay. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Alaska statutes classify indirect contempts for nonsupport as a crime. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

And a jury trial is available. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

If the defendant asserts that he lacks the ability to comply with the court's order of child support, then he is entitled to a jury trial on this issue. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Procedural aspects of contempt proceedings in nonsupport cases. — For delineation of the procedural aspects of contempt proceedings in nonsupport cases where the purpose is to coerce the defendant's performance of his obligation, see Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Changes of venue in nonsupport contempt cases. — It can be expected that courts hearing nonsupport contempt cases in the future may choose in some cases to make use of the discretionary authority vested in them by AS 22.10.030 and will grant changes of venue. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Inability to comply with a child support order is an affirmative defense. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

In a contempt action the father will not be permitted to succeed on the defense of having a legitimate reason or excuse for not complying with an order of child support where he has not made a reasonable effort to employ his earning capacity in directions other than the one he has chosen as his chief means of livelihood. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Burden of proving noncompliance with court order of child support. — At a contempt trial, the burden of proving noncompliance, by a preponderance of the evidence, with the court's order of child support should be on the plaintiff, who initiates the action. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Defendant must prove his inability to comply with a court order of child support. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

In almost all child support contempt cases, the crucial issue will concern the defendant's ability to comply. The burden of proof in this respect should remain with the defendant. This is where it presently rests, in this state and in other jurisdictions; such allocation of the burden of proof is appropriate. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

The shifting of the burden of proof entails a partial change of the ordinary standard employed in criminal cases. But this is still advantageous to both parties. The defendant's protection increases as the burden of proof is shifted. He needs only to show by a preponderance of the evidence that he is unable to pay. Once he has met this burden, incarceration, as a coercive method, serves no useful purpose. At the same time the interest of the complainants, is receiving money which defendant is able to pay, is protected under this approach. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

(6) the person recklessly creates a hazardous condition for others by an act which has no legal justification or excuse; or

(7) the offender intentionally exposes the offender's buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

(b) As used in this section, "noise" is "unreasonably loud" if, considering the nature and purpose of the defendant's conduct and the circumstances known to the defendant, including the nature of the location and the time of day or night, the conduct involves a gross deviation from the standard of conduct that a reasonable person would follow in the same situation. "Noise" does not include speech that is constitutionally protected.

(c) Disorderly conduct is a class B misdemeanor and is punishable as authorized in AS 12.55 except that a sentence of imprisonment, if imposed, shall be for a definite term of not more than 10 days. (§ 7 ch 166 SLA 1978; am § 6 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment, in paragraph (a)(7), removed personal pronouns and substituted "buttock or anus" for "genitals, buttock, anus, or female breast."

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.080 and 11.45.030.

Constitutionality of former disorderly conduct statute. — See Poole v. State, Sup. Ct. Op. No. 1060 (File No. 2104), 524 P.2d 286 (1974); State v. Martin, Sup. Ct. Op. No. 1122 (File No. 2143), 532 P.2d 316 (1975).

Disorderly conduct statute cannot be applied to behavior which is constitutionally exempt from criminal prohibition. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Policemen presumed least likely to be provoked. — Insofar as the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, one must suppose that policemen, employed and trained to maintain order, would be least likely to be provoked to disorderly responses. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

It is only in the most limited circumstances that speech may be punished. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

For discussion of speech prohibited under former disorderly conduct statute, see Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Telephone call criticizing public officer. — There is neither legislative language nor constitutional power to read this section as including within its ambit a single telephone call criticizing a public officer for the performance of his official duties. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

That an officer was personally offended by defendant's telephone call did not render the defendant's conduct a crime. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

As to application of former AS 11.40.080, prohibiting indecent exposure and exhibition, see E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

Collateral references. — 12 Am. Jur. 2d, Breach of Peace, Etc., §§ 18-40.

11 C.J.S., Breach of the Peace, §§ 1-16.

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct, 65 ALR2d 1152.

Misuse of telephones as disorderly conduct, 97 ALR2d 504.

Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct, 12 ALR3d 1448.

Larceny as within disorderly conduct statute or ordinance, 71 ALR3d 1156.

Sec. 11.61.120. Harassment. (a) A person commits the crime of harassment if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury;

(5) subjects another person to offensive physical contact; or

(6) violates a provision of an order issued under AS 25.35.010(b) or 25.35.020 restraining the respondent from communicating directly or indirectly with the petitioner.

(b) Harassment is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 10 ch 61 SLA 1982)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

Effect of amendments. — The 1982 amendment added paragraph (6) to subsection (a).

NOTES TO DECISIONS

For case construing former AS 11.45.035 relating to illegal use of telephones, see Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Collateral references. — Misuse of telephones as disorderly conduct, 97 ALR2d 504.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

Sec. 11.61.125. Distribution of child pornography. (a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for sale or distribution, or

in the state possesses, prepares, publishes, or prints with intent to distribute, sell, or exhibit to others for commercial consideration, any material that visually depicts conduct described under AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) Distribution of child pornography is a class C felony. (§ 2 ch 57 SLA 1983)

Cross references. — For crime of unlawful exploitation of a minor, see AS 11.41.455.

Sec. 11.61.130. Misconduct involving a corpse. (a) A person commits the crime of misconduct involving a corpse if

(1) except as authorized by law or in an emergency, the person intentionally disinters, removes, conceals, or mutilates a corpse;

(2) the person engages in sexual penetration of a corpse; or

(3) the person detains a corpse for a debt or demand or upon a lien or charge.

(b) Misconduct involving a corpse is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 22 Am. Jur. 2d, Dead Bodies, §§ 47-50.

25A C.J.S., Dead Bodies, §§ 8(2)-8(4).

Action at law for desecration of grave, 172 ALR 554.

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 ALR2d 244.

Liability in damages for withholding corpse from relatives, 48 ALR3d 240.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

Effect of amendments. — The 1980 amendment rewrote the section.

The 1982 amendment inserted "(a)(1) or (a)(2) of" in the introductory language of subsection (b).

Editor's notes. — The provisions of paragraphs (2) and (3) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.61.145.

Collateral references. — 4 Am. Jur. 2d, Animals, §§ 27-30.

3A C.J.S., Animals, §§ 99-112.

Cruelty in trapping animals, 79 ALR 1308.

What constitutes statutory offense of cruelty, 82 ALR2d 794.

Sec. 11.61.145. Promoting an exhibition of fighting animals. (a) A person commits the crime of promoting an exhibition of fighting animals if the person

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes, or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money, and other personal property used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense and a class B misdemeanor for the second and each subsequent offense. (§ 2 ch 78 SLA 1980)

Sec. 11.61.150. Obstruction of highways. (a) A person commits the crime of obstruction of highways if the person knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; or

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

(b) Criminal possession of explosives is a

(1) class A felony if the crime intended is murder in any degree or kidnapping;

(2) class B felony if the crime intended is a class A felony;

(3) class C felony if the crime intended is a class B felony;

(4) class A misdemeanor if the crime intended is a class C felony;

(5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 31 Am Jur. 2d, Explosions and Explosives, §§ 121-130.

35 C.J.S., Explosives, § 12.

Possession of bomb, molotov cocktail, or similar device as criminal offense, 42 ALR3d 1230.

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if the person furnishes an explosive substance or device to another knowing that the other intends to use the substance or device to commit a crime.

(b) Unlawful furnishing of explosives is a class C felony. (§ 7 ch 166 SLA 1978)

Chapter 65. Offenses Against Public Convenience.

Secs. 11.65.010 — 11.65.020. [Renumbered as AS 30.50.020 and 30.50.010.]

Sec. 11.65.030. Tampering with posted notices. [Repealed, § 21, ch. 166, SLA 1978.]

Chapter 66. Offenses Against Public Health and Decency.

Article
1. Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)
2. Gambling Offenses (§§ 11.66.200 — 11.66.280)

Article 1. Prostitution and Related Offenses.

Section
100. Prostitution
110. Promoting prostitution in the first degree
120. Promoting prostitution in the second degree
130. Promoting prostitution in the third degree
140. Corroboration of certain testimony not required
150. Definitions

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

There is nothing in this article which would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Collateral references. — 63 Am. Jur. 2d, Prostitution, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 73 C.J.S., Prostitution, § 1 et seq.

Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases, 77 ALR3d 519.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. Eleazar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956), decided under former AS 11.40.220.

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Actual payment of a fee is not required; an act of prostitution is complete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of $200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.

Entrapment to procure women for immoral purposes, 18 ALR 186; 66 ALR 478; 86 ALR 263.

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force;

(2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a)(2) of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978; am §§ 1, 2 ch 50 SLA 1983)

Effect of amendments. — The 1983 amendment added "Except as provided in (d) of this section" to the beginning of subsection (c) and added subsection (d).

NOTES TO DECISIONS

For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).

For case construing former procurement statute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

Sentence for procurement upheld. — See Price v. State, Sup. Ct. Op. No. 1450 (File No. 2794), 565 P.2d 858 (1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

Collateral references. — Transporting female for purpose of prostitution, 74 ALR 330.

Woman conniving or consenting to own transportation, 84 ALR 376.

Sec. 11.66.120. Promoting prostitution in the second degree. (a) A person commits the crime of promoting prostitution in the second degree if the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see Pias v. State, Sup. Ct. Op. No. 1904 (File Nos. 3529, 3530), 598 P.2d 966 (1979).

Instruction. — Trial court did not err in refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Separate acts of taking earnings of or support from prostitute as separate or continuing offenses of pimping, 3 ALR4th 1195.

Sec. 11.66.130. Promoting prostitution in the third degree. (a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.260, 11.40.300, 11.40.330, 11.40.410, and 11.40.420.

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law. Eleazar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).

Lessor may be guilty as keeper. — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes, with his knowledge, he is guilty as keeper. Rosencranz v. United States, 155 F. 38 (9th Cir. 1907).

As well as agent of lessor. — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be found guilty as a keeper. Rosencranz v. United States, 155 F. 38 (9th Cir. 1907).

For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).

For case construing former statute prohibiting pimping, see Johnson v. United States, 260 F. 783 (9th Cir. 1919).

For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see Dunn v. State, Sup. Ct. Op. No. 409 (File No. 735), 426 P.2d 993 (1967).

Sec. 12.05.010. Crime commenced outside state but consummated inside. When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant. (§ 1.06 ch 34 SLA 1962)

Legislative history reports. — For report on original bill, see 1962 House Journal, pp. 224-231.

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 386.

Chapter 10. Limitations of Actions.

Section
10. General time limitations
20. Specific time limitation

Section
30. When period of limitation runs
40. When period of limitation does not run

Sec. 12.10.010. General time limitations. A prosecution for murder may be commenced at any time. Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not murder, unless the indictment is found or the information or complaint is instituted within five years next after such offense shall have been committed. (§ 1.02 ch 34 SLA 1962; am § 1 ch 99 SLA 1962)

Cross references. — For limitations on prosecutions under the election laws, see AS 15.13.120(e) and AS 15.56.[illegible]0.

NOTES TO DECISIONS

The statute of limitations is jurisdictional. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

It is to be construed in favor of the defendant. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Statute of limitations for manslaughter. — While there is no statute of limitations in Alaska for the offense of murder, the crime of manslaughter is subject to a five-year statute of limitations. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Defendant may not be convicted of time-barred lesser included offense. — Just as a defendant may not be charged with a time-barred offense, he may not be convicted of it, even as a lesser offense included in one which is not time-barred. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

But jury may be instructed on elements of such offense. — A criminal trial jury may be instructed on the elements of a lesser included offense when the statute of limitations has run on the lesser offense but not the charged offense. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Where defendant was charged with first degree murder and the statute of limitations had run on the lesser offense of manslaughter, while the jury should not be instructed that they might find defendant guilty of manslaughter, defendant was entitled to an instruction on the

mitigating effects of passion and provocation, requiring the jury to acquit him if he presented such evidence in mitigation and the state did not negate it. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

A statute of limitations can be waived if the trial court determines that the following prerequisites have been met: (1) The waiver is knowing, intelligent, and voluntary; (2) it is made for the defendant's benefit and after consultation with counsel; and (3) the defendant's waiver does not handicap his defense or contravene any other public policy reasons motivating the enactment of the statute. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Since defendant's waiver of the relevant statute of limitations was knowingly, intelligently, and voluntarily entered; it was made for defendant's benefit and after consultation with counsel; and defendant's waiver did not contravene any of the policy reasons underlying criminal statutes of limitations, the superior court possessed jurisdiction to accept defendant's plea of nolo contendere to the charge of manslaughter after the statute of limitations had run. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Case-by-case analysis as to waivability issue. — Although most courts have treated the waivability issue as dependent on whether a statute is treated as jurisdictional or as an affirmative defense, this arbitrary distinction should be abandoned in favor of a case-by-case analysis focusing on the language of the applicable statute of limitations and the public policies behind its enactment. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

By seeking an instruction on an offense which is time-barred, defendant does not waive the defense of this section. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Applied in Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978).

Stated in Yarbor v. State, Sup. Ct. Op. No. 1240 (File No. 2397), 546 P.2d 564 (1976); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Cited in Marks v. State, Sup. Ct. Op. No. 787 (File No. 1414), 496 P.2d 66 (1972); In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 223 et seq.

22 C.J.S., Criminal Law, § 223 et seq.

SECTION 4

~~**Sec. 12.10.020. Specific time limitation.**~~ (a) Even if the general time limitation has expired, a prosecution for any offense which includes a material element of fraud or breach of fiduciary obligation may be commenced within one year after the discovery of the offense by an aggrieved party or by a person who has legal capacity to represent an aggrieved party or a legal duty to report the offense and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) Even if the general time limitation has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced within one year after discovery of the offense by a person having a duty to report such offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 — 11.41.460 for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16, whichever occurs first. This subsection does not extend the period of limitation by more than five years. (§ 1.03 ch 34 SLA 1962; am § 7 ch 78 SLA 1983)

Cross references. — For applicability of (c) of this section, see § 11, ch. 78, SLA 1983, in the Temporary and Special Acts.

Effect of amendments. — The 1983 amendment added subsection (c).

NOTES TO DECISIONS

Stated in State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Sec. 12.10.030. When period of limitation runs. (a) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution is commenced either when an indictment is found or when a warrant is issued, provided that such warrant is executed without unreasonable delay. (§ 1.04 ch 34 SLA 1962)

NOTES TO DECISIONS

Warrant requirements. — Subsection (b) and AS 12.10.040(b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. Shaw v. State, Ct. App. Op. No 50 (File No. 5311), 634 P.2d 381 (1981).

Reasonable delay found. — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months, and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under AS 12.10.040(b) which, when combined with the finding of the trial court that under subsection (b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 157.

Sec. 12.10.040. When period of limitation does not run. (a) The period of limitation does not run during any time when the accused, with a purpose to avoid detection, apprehension, or prosecution, is outside the state or is absent from the accused's usual place of abode within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this state. (§ 1.05 ch 34 SLA 1962)

NOTES TO DECISIONS

Warrant requirements. — AS 12.10.030(b) and subsection (b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Pending prosecution found. — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months, and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under subsection (b) which, when combined with the finding of the trial court that under AS 12.10.030(b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Collateral references. — Necessity of alleging in indictment or information limitation-tolling facts, 52 ALR3d 922.

Chapter 15. Parties.

[Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.16.]

Chapter 20. Bars to Actions.

Section
10. Conviction or acquittal elsewhere as bar
20. When acquittal or dismissal is no bar
30. When acquittal is a bar
40. When conviction or acquittal is a bar to other offenses
50. Dismissal as bar
60. Discharge of codefendant as bar

Sec. 12.20.010. Conviction or acquittal elsewhere as bar. When an act charged as a crime is within the jurisdiction of the United States, another state, or a territory, as well as of this state, a conviction or acquittal in the former is a bar to the prosecution for it in this state. (§ 1.11 ch 34 SLA 1962)

and amounts on the checks, including those to be uttered, and assisted in running the checks through the check protector, could have been indicted and punished for the offenses of which the defendants were convicted and was an accomplice. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

Facts showing witness was not accomplice. — General statement by witness that he and defendant, "had talked over the fact of burglarizing King Builders" was not enough to show that he conspired in a prearranged plan to commit the particular crimes with which defendant was charged, or that he in any manner aided, abetted, assisted or participated in the criminal acts. Taylor v. State, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

That witness later disposed of the stolen goods, knowing they were stolen, did not make him an accomplice. Taylor v. State, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

Evidence not connecting defendants with crime. — Where the facts and circumstances relied upon for corroboration did no more than show an opportunity for the defendants to have committed the crimes or connect them with the perpetrators, such evidence did not tend to connect the defendants with the commission of the crimes of which they were convicted. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

Sufficiency of corroborating testimony. — Corroborating testimony is not sufficient if it requires the interpretation and direction of the testimony to be corroborated. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

The statutory requirement of corroboration is satisfied when the corroborating evidence tends to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Dimmick v. State, Sup. Ct. Op. No. 632 (File No. 1098), 473 P.2d 616 (1970).

The corroborative evidence fulfills the requirement that it tend to connect the defendant with the commission of the crime where it serves as a means of inducing in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Pulakis v. State, Sup. Ct. Op No. 649 (File No. 1108), 476 P.2d 474 (1970).

Corroborating evidence need only be sufficient to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Anthony v. State, Sup. Ct. Op. No. 1025 (File No. 1774), 521 P.2d 486 (1974).

Evidence was sufficient to satisfy the statutory requirement of corroboration. Thomas v. State, Sup. Ct. Op. No. 200 (File No. 384), 391 P.2d 18 (1964).

In a prosecution for unnatural carnal copulation, there was ample corroboration of alleged accomplice's testimony. Christy v. United States, 17 Alaska 107, 261 F.2d 357 (9th Cir. 1958), cert. denied, 360 U.S. 919, 79 S. Ct. 1438, 3 L. Ed. 2d 1535, rehearing denied, 361 U.S. 857, 80 S. Ct. 47, 4 L. Ed. 2d 96 (1959).

Raising issue of erroneously allowing uncorroborated testimony to go to jury. — That it was error for the court to allow uncorroborated testimony to go to the jury is an issue properly raised by a motion for judgment of acquittal. Beavers v. State, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

Section inapplicable to grand jury proceedings. — This section's evidentiary requirement of corroboration is inapplicable to grand jury proceedings. Merrill v. State, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Hence, indictment may be returned without corroboration of accomplice's testimony. — There is no requirement in either Alaska's Code of Criminal Procedure, or in its Rules of Criminal Procedure, that an accomplice's testimony be corroborated before an indictment can be properly returned. Merrill v. State, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Applied in Carman v. State, Sup. Ct. Op. No. 1979 (File No. 3555), 602 P.2d 1255 (1979); Miller v. State, Ct. App. Op. No. 24 (File No. 4972), 629 P.2d 546 (1981).

Quoted in Oksoktaruk v. State, Sup. Ct. Op. No. 2089 (File No. 3986), 611 P.2d 521 (1980); Price v. State, Ct. App. Op. No. 100 (File No. 5083), 647 P.2d 611 (1982).

Stated in Daniels v. State, Sup. Ct. Op. No. 165 (File No. 295), 388 P.2d 813 (1964).

Secs. 12.45.030 — 12.45.040. Evidence required in certain cases. [Repealed, § 21 ch 166 SLA 1978.]

Section 6

~~Sec. 12.45.045. Evidence of past sexual conduct in trials of rape and assault with intent to commit rape.~~ (a) In prosecutions for the crime of sexual assault in any degree or an attempt to commit sexual assault in any degree, evidence of the complaining witness' previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant may apply for an order of the court at any time before or during the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions which shall be permitted. The defendant may then offer evidence under the order of the court.

(b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness' sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(c) In this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section. (§ 1 ch 165 SLA 1975; am § 18 ch 166 SLA 1978)

Cross references. — For similar court rule, see Evid. R. 404(a)(2).

NOTES TO DECISIONS

In camera hearing before presenting evidence. — In prosecution for attempted sexual assault in the first degree, defendant's counsel should have moved for an in camera hearing before presenting any evidence relating to the victim's prior sexual conduct. Baden v. State, Ct. App. Op. No. 285 (File No. 6832), 667 P.2d 1275 (1983).

Applied in Padgett v. State, Sup. Ct. Op. No. 1801 (File No. 3317), 590 P.2d 432 (1979); Moss v. State, Sup. Ct. Op. No. 2239 (File No. 4389), 620 P.2d 674 (1980); Kvasnikoff v. State, Ct. App. Op. No. 314 (File No. 5588), 674 P.2d 302 (1983).

Collateral references. — Modern status of admissibility, in forcible rape prosecution, of complainant's prior sexual acts, 94 ALR3d 257.

Modern status of admissibility, in statutory rape prosecution, of complainant's prior sexual acts or general reputation for unchastity, 90 ALR3d 1300.

Effect of amendments. — The 1983 amendment inserted "and in AS 12.62.035" near the beginning of subsection (a).

Sec. 12.62.035. Access to certain crime information. (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former As 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under As 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (e), in paragraph (1), substituted "former AS 11.40.130; or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and inserted "or former AS 11.40.130," and in paragraph (3) substituted "former AS 11.15.120, 11.15.134, or 11.15.160; former 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and "sections listed in this paragraph" for "above sections."

Sec. 12.62.040. Security, updating, and purging. (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations adopted under AS 12.62.010;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

Sec. 12.62.050. Interstate systems for the exchange of criminal justice information. (a) The commission shall regulate the participation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Chapter 41. Powers of Third Class Boroughs.

Section
10. Powers of third class boroughs
20. Assembly to serve as school board

Sec. 29.41.010. Powers of third class boroughs. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.33.070 — 29.33.245 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 per cent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.58.150 — 29.58.340.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of

district in which the military reservation is located. (§ 2 ch 118 SLA 1972; am § 4 ch 32 SLA 1973; am § 7 ch 72 SLA 1974; am § 7 ch 13 SLA 1975; am § 35 ch 124 SLA 1975; am §§ 1, 2 ch 93 SLA 1977)

Legislative history reports. — For report on ch. 72, SLA 1974 (HCS CSSB 122 [Finance] am H), see 1974 House Journal, p. 519.

NOTES TO DECISIONS

Operation of military reservation schools. — Nothing in the legislature's 1975 amendments requires local school districts that take over operation of military reservation schools to assume any risk of loss or duty to insure school buildings. State v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

The state must bear the loss resulting from the fire destruction of a military reservation school operated by a local school district in the absence of provisions to the contrary. State v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

Sec. 29.41.020. Assembly to serve as school board. The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power. (§ 2 ch 118 SLA 1972; am § 30 ch 94 SLA 1980)

Effect of amendments. — The 1980 amendment deleted the former second sentence, which read: "Where applicable, weighted voting shall apply to board decisions."

Chapter 43. Powers of Cities Outside Boroughs.

Section
10. Additional powers
20. Assessment and tax collection
30. Education
40. Planning and zoning

Section
100. Extension of curfews outside cities
105. Enforcement of curfews
110. Penalty for violation of curfew

Sec. 29.43.010. Additional powers. In addition to the powers granted by AS 29.48, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated. (§ 2 ch 118 SLA 1972)

Sec. 29.43.020. Assessment and tax collection. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by AS 29.53 for boroughs. Cities outside boroughs

NOTES TO DECISIONS

Applied in City of Yakutat v. Ryman, Sup. Ct. Op. No. 2581 (File Nos. 6033, 6099), 654 P.2d 785 (1982).

Sec. 29.43.030. Education. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.33.050 for boroughs. (§ 2 ch 118 SLA 1972)

Sec. 29.43.040. Planning and zoning. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs. (§ 2 ch 118 SLA 1972; am §§ 8, 9 ch 93 SLA 1977)

Effect of amendments. — The 1977 amendment inserted "first and second class" preceding "boroughs" in two places in subsection (a) and added subsection (b).

Sec. 29.43.100. Extension of curfews outside cities. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area. (§ 1 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978. Also in 1978, the words "or village" following the word "city" were deleted as the classification of municipalities in this title no longer includes villages. See AS 29.08.

Sec. 29.43.105. Enforcement of curfews. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.43.100 — 29.43.110 the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality. (§ 3 ch

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Sec. 29.43.110. Penalty for violation of curfew. The penalty for violation of AS 29.43.100 — 29.43.110 is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both. (§ 2 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Chapter 48. Powers Applicable to All Municipalities.

Article

1. General Powers (§§ 29.48.010 — 29.48.020)
2. Facilities, Services and Regulation (§§ 29.48.030 — 29.48.110)
3. Municipal Enactments (§§ 29.48.130 — 29.48.220)
4. Miscellaneous Provisions (§§ 29.48.250 — 29.48.270)
5. Construction of Powers (§§ 29.48.310 — 29.48.330)

Article 1. General Powers.

Section

10. General powers
20. Second class borough powers outside cities

Sec. 29.48.010. General powers. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal

Sec. 47.08.140. Definitions. In AS 47.08.010 — 47.08.140

(1) "applicant" means a person who has suffered a catastrophic illness and is applying for assistance under AS 47.08.010 — 47.08.140 or is the subject of an application for assistance under AS 47.08.010 — 47.08.140;

(2) "applicant's share" means the amount of the total medical expense related to the catastrophic illness which the committee determines the applicant can reasonably be expected to pay based on income, assets, and number of dependents under AS 47.08.060;

(3) "catastrophic illness" means illness or injury which results in medical expenses of over $1,000 during a period not to exceed 12 months, after all other sources of third-party payment have been exhausted;

(4) "committee" means the Catastrophic Illness Committee, created under AS 47.08.020;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a person;

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from the applicant's permanent place of abode;

(9) "nonliquid assets" means all assets which are not liquid assets;

(10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization, which has provided services not excluded by AS 47.08.050 to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workers' compensation, violent crime compensation, Indian Health Service of the United States Department of Health and Human Services, and awards in legal actions. (§ 1 ch 107 SLA 1978)

Chapter 10. Delinquent Minors and Children in Need of Aid.

Article

1. Children's Proceedings (§§ 47.10.010 — 47.10.142)
2. Juvenile Institutions (§§ 47.10.150 — 47.10.220)
3. Care of Children (§§ 47.10.230 — 47.10.260)
4. General Provisions (§§ 47.10.270 — 47.10.290)

NOTES TO DECISIONS

Cited in Flores v. Flores, Sup. Ct. Op. No. 1875 (File No. 3832), 598 P.2d 893 (1979).

Article 1. Children's Proceedings.

Section

10. Jurisdiction
20. Investigation and petition
30. Summons and custody of minor
40. Release of minor
50. Appointment of guardian ad litem or attorney
60. Waiver of jurisdiction
70. Hearings
75. Young adult advisory panels
80. Judgments and orders
81. Predisposition hearing reports
82. Best interests of the child
83. Review hearing information
84. Legal custody, guardianship, and residual parental rights and responsibilities
85. Child in need of aid; religious treatment
90. Records
95. Arrest of a minor
100. Retention of jurisdiction over minor
110. Appointment of guardian or custodian
120. Support of minor
130. Detention
140. Temporary detention and detention hearing
142. Emergency custody and temporary placement hearing

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

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

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

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 47.10.080 or voluntarily relinquished;

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

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

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.21 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the Department of Health and Social Services, and payment of support money to the department may be ordered. (§ 1 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982)

Cross references. — See Rules of Children's Procedure, Alaska Rules of Court Procedure and Administration. For waiver of jurisdiction, see AS 47.10.060. For provisions relating to child protection, see AS 47.17. For provisions establishing office of child advocacy, see AS 47.50.

Effect of amendments. — The 1982 amendment added subparagraph (2)(F) to subsection (a).

Editor's notes. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

Section 32, ch. 63, SLA 1977, provides: "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 Rules of Children's Procedure."

NOTES TO DECISIONS

Applicability of 1977 amendment. — All cases pending at the time of the enactment of the new children's statute by the 1977 acts are entitled to hearing under the new, rather than the old, standards. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

In order to provide guidance to the superior court for the administration of juvenile justice, children adjudged dependent under the standards of former subsection (a)(5) of this section prior to its repeal in 1977 are entitled, on request, to a dispositional hearing under the standards of the newly-enacted subsection (a)(2)(C) of this section. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

Children adjudged dependent under former (a)(5) of this section are entitled on request to an adjudicative hearing under the standards of subsection (a)(2)(C). In re C.L.T., Sup. Ct. Op. No. 1860 (File No. 3607), 597 P.2d 581 (1979).

Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction. Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under this section as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1860 (File No. 3607), 597 P.2d 518 (1979).

The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Child is exempt from criminal prosecution until children's court waives jurisdiction. — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Deferring action against child until 18th birthday would frustrate purpose of juvenile courts. — To allow officials charged with the execution of the law to prosecute a child offender as a criminal merely by deferring action until the child's 18th birthday would frustrate the purpose of juvenile courts. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Serious constitutional issues would arise if the nature of the proceedings against a child offender were to depend on the arbitrary decision of law-enforcement officials. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, Sup. Ct. Op. No. 47 (File No. 122), 363 P.2d 361 (1961).

"Delinquent" status depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with paragraph (a)(1) of this section and AS 47.10.080(b)(1). M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

State may interfere with certain conduct of children in need of aid. — Conduct of children alleged to be in need of supervision [see now children alleged to be in need of aid], such as running away from home and foster home placement, may constitutionally be interfered with by the state. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Interests to be protected by legislation regarding children in need of aid. — See L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Means chosen by the state to protect children are closely and substantially related to an appropriate government interest. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The purpose of the supervision or treatment contemplated by the creation of the child in need of supervision [see now child in need of aid], and its predecessor noncriminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under subsection (a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1802 (File No. 3840), 596 P.2d 22 (1979).

A minor who has been adjudged a child in need of supervision [now child in need of aid] 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).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], 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).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Minor properly declared delinquent. — Where the lower court determined that a minor would not abide by any orders it entered regarding her supervision under former subsection (j) of AS 47.10.080, this behavior constituted willful criminal contempt of the court's authority; were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Where the parents' interests are hostile to the child's, the parents may not select the child's attorney. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

Then the child may retain the attorney of his choice or, in the alternative, ask the court to appoint an attorney for him. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

And court must respect choice. — If the child has retained counsel, the court must respect the child's choice. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

The required standard of proof has been increased from "a preponderance of the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Privilege against self-incrimination. — See E.L.L. v. State, Sup Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977) (decided prior to the 1977 amendment to this section).

Violation of former law relating to purchase of intoxicating liquors by minors. — See Purdy v. United States, 16 Alaska 173, 146 F. Supp. 762 (D. Alaska 1956).

Prosecution for joyriding. — Subsection (b) of this section and former AS 28.35.010(d) demonstrated a clear legislative intent to exclude from the coverage and requirements of the juvenile code those cases involving alleged misdemeanor violations of Alaska's "joyriding" statute by persons under 18 years of age. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

Termination of parental rights due to abandonment. — In proceeding to terminate parental rights, although trial judge orally stated that he considered involuntary incarceration to constitute abandonment, where written findings of fact, submitted by state and signed by court, referred to parent's voluntary absence from October of 1980 to June of 1981 as the relevant conscious disregard of parental obligations, there was no reversible error. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Applied in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Quoted in In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); R.D.S.M. v. Intake Officer, Sup. Ct. Op. No. 1449 (File No. 2821), 565 P.2d 855 (1977); N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979); E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Stated in D.R.C. v. State, Ct. App. Op. No. 94 (File No. 4905), 646 P.2d 252 (1982).

Cited in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); P.S. v. State, Ct. App. Op. No. 194 (File No. 6870), 655 P.2d 1319 (1982); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7816), P.2d (1984).

Collateral references. — 27 Am. Jur., Infants, §§ 101 to 112; 31 Am. Jur., Juvenile Courts and Delinquents, Dependent and Neglected Children, §§ 13 to 50.

43 C.J.S., Infants, §§ 6, 93 et seq.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court, 11 ALR 147; 78 ALR 317; 146 ALR 1153.

Vagrancy of minors, 14 ALR 1507.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child, 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 ALR 657.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents, 14 ALR2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 ALR2d 506.

Sec. 47.10.020. Investigation and petition. (a) Whenever a person informs the court of the facts which bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of......................., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and shall be verified. It shall include the following information:

(1) the name, address and occupation of the petitioner, together with the petitioner's relationship to the minor, and the petitioner's interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts which bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If the petitioner does not know a fact required in this section, the petitioner shall so state in the petition. (§ 5 art I ch 145 SLA 1957)

Cross references. — For the preliminary inquiry referred to in (a) of this section, see Children's Rule 4, Alaska Rules of Court. As to the petition, see Children's Rule 8.

NOTES TO DECISIONS

Distinctions between this section and AS 25.24.310. — See Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 4[illegible]2 (1979).

Cited in M.O.W. v. State, C[illegible]p. Op. No. 95 (File No. 4846), 645 [illegible] 1229 (1982).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14 to 17, 20, 22 et seq.; 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 13 to 33.

43 C.J.S., Infants, §§ 6, 93 et seq.

Sec. 47.10.030. Summons and custody of minor. (a) After a petition is filed and after further investigation which the court directs, if

the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons which (1) recites briefly the substance of the petition; (2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the Department of Health and Social Services for possible adoption; and (3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

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

(c) If the minor is in such condition or surroundings that the minor's welfare requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor which the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971; am § 9 ch 63 SLA 1977)

NOTES TO DECISIONS

Editor's notes. — RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971) and John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971), cited below, were decided prior to the 1977 amendment to this section, which rewrote subsection (b).

The child and his parents must receive notice which would be deemed adequate in a civil or criminal proceeding. These requirements suggest that Alaska civil and criminal rules should be looked to for techniques of service on children. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 ([illegible]).

Personal service upon the child is required. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. RLR v.

Sec. 47.10.060. Waiver of jurisdiction. (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) *[Repealed, § 8 ch 110 SLA 1967.]*

(c) *[Repealed, § 8 ch 110 SLA 1967.]*

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the 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) A person who has been tried as an adult under this section, or the Department of Health and Social Services on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. 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. A person may not use these sealed records 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. (§ 9 art I ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971; am § 13 ch 63 SLA 1977)

Cross references. — For hearings before the juvenile court, see AS 47.10.070. See also, Children's Rule 3, Alaska Rules of Court.

NOTES TO DECISIONS

Non-criminal treatment of child offenders is to be rule. — The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Section provides means to determine amenability to treatment available for child offenders. — The waiver procedure set out in this section and in Rule of Children's Procedure 3 provides the means by which the children's court judge determines, prior to adjudicating the delinquency petition, that an accused child is not a suitable subject for the treatment available for child offenders. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The court's authority to impose a penal sentence on a juvenile is limited under the strict procedures of subsections (a) and (d) and Children's Rule 3. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor may move to waive children's court jurisdiction pursuant to subsection (a). M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

A minor under the age of 18 cannot "elect" to be tried as an adult. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Where no waiver hearing has been conducted, the court has no authority to sentence a delinquent child as an adult. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Before treating a juvenile as an adult, the court must first conduct a waiver hearing. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Option available to prosecution absent waiver. — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under subsection (a) of this section, and the standards established in subsection (a) are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

But hearing is not criminal in nature. — A waiver hearing is not criminal in nature and is dispositional, rather than adjudicatory. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

And right to attend may be waived. — Although a minor had a constitutional right to attend her waiver hearing, she waived that right when she voluntarily failed to appear at the hearing by refusing to waive extradition from another state. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

Findings necessary to justify waiver. — To justify waiver, the children's court judge must find, on sufficient evidence, that probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and the child is not amenable to the treatment provided under this article. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As a prerequisite to criminal prosecution, the children's court must find not only that the child is properly accused but also that he would not be receptive to the rehabilitative programs available to the court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The inability to predicate a plan for a defendant during the short time remaining before his 19th birthday coupled with the obvious need of treatment as disclosed by the record may be sufficient to justify a waiver to adult jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The court may close out the case as a juvenile matter only upon finding cause to believe that the minor is delinquent and that the minor is not amenable to treatment. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A court must find that there is probable cause to believe that the minor is delinquent and that the minor is not amenable to treatment before jurisdiction may be waived. In re J.H.B., Sup. Ct. Op. No. 1626 (File No. 2947), 578 P.2d 146 (1978).

Subsection (d) is clear on its face that age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The 1977 amendments of this section and 47.10.080 show that it is the legislature's intent that age 20 is the age to be used in determining the amenability issue. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Binding advance consent to treatment. — In order to give effect of the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

Waiver decision without testimony of psychologist or psychiatrist. — A waiver of juvenile jurisdiction decision can be made without the testimony of a psychologist or psychiatrist, since such testimony is germane to at most two of the four factors set out in subsection (d) of this section, and not all four of those facts need be determined adversely to the youth to warrant waiver of juvenile jurisdiction. In re J.R., Sup. Ct. Op. No. 2165 (File No. 5194), 616 P.2d 865 (1980).

There is no conflict between subsection (d) and AS 47.10.080(b)(1). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between subsection (d) of this section and 47.10.080(b)(1) that existed prior to the 1977 amendments to these sections has been eliminated in that subsection (d) now provides that the determinative age is 20 and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is to the age of 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in judging seriousness of alleged offense. — In judging the seriousness of the alleged offense, the children's court judge may consider not only the type of crime charged but also the circumstances surrounding its commission, the factors leading to delinquency, history of delinquency, and facilities available for rehabilitation. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The amenability decision rests in the sound discretion of the children's court judge. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

But the latitude afforded him is not unbounded. The proper exercise of that discretion must be predicated not only upon procedural regularity sufficient to satisfy the basic requirements of due process but also on a full inquiry into the amenability issue. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The trial court must make an evidentiary record and make written findings of fact, as required by Children's Rule 3(h), as to each of these four factors enunciated in subsection (d). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

These findings must be supported by substantial evidence. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Substantial evidence must be presented before jurisdiction may be waived. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in determining amenability. — Subsection (d) of this section suggests four factors which may be considered by the court when inquiring into the amenability issue: (1) the seriousness of the offense; (2) the delinquency of the minor; (3) the probable cause of the delinquent behavior; and (4) the facilities available for the treating of the minor. J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

All four factors listed in subsection (d) need not be resolved against the child to justify waiver. Nor is there value in requiring the children's court to make an arithmetic calculation as to the weight to be given each factor. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

But there must be a thorough examination of the child, his background and alternative strategies of rehabilitation short of adult criminal treatment. Lacking such an examination, the children's court has no evidentiary basis for the decision. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Though the standards for determining amenability to treatment through the children's court lack explicit definition, it is clear from the statute that the court in most cases must go beyond the circumstances surrounding the alleged delinquent acts and the age of the child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Even though the children's court may have independent knowledge concerning children's treatment programs and facilities, it is necessary to make the existence and evaluation of such programs a part of the waiver proceedings to enable proper review by the supreme court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At a waiver hearing there must be a thorough examination of (1) the probable

cause for believing that the child committed the act with which he was charged and (2) the amenability of the child to juvenile treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

In the absence of such an examination there is no evidentiary basis for a waiver decision. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The record must disclose the existence and evaluation of the available children's treatment programs in all future cases in order to establish the validity of the hearing. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The constitutional prerequisites for a valid waiver of juvenile court treatment are reflected in Rule of Children's Procedure 3 which guarantees the child a hearing before the children's court judge after adequate notice thereof, counsel at the hearing who has had access to records and reports relevant to issues before the court, and a statement of reasons accompanying the waiver order. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Compliance with Rule of Children's Procedure 3(h) is essential to insure that the waiver hearing is not a "mere ritual" and to provide a meaningful basis for review. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The waiver hearing is a critically important stage in criminal proceedings against a child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At stake at a child's waiver hearing is the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction. Because the consequences of waiver are great, the hearing must measure up to the essentials of due process and fair treatment. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The investigation at a waiver hearing cannot be a mere ritual. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

There must be a hearing which measures up to the essential of due process and fair treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The right of confrontation applies to children's proceedings in which the child is charged with misconduct for which he may be incarcerated. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Waiver without hearing is denial of due process. — To waive children's court jurisdiction without a hearing or opportunity for adversary presentation is a denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As is waiver without substantial evidence of unamenability to treatment. — To waive children's court jurisdiction without substantial evidence having been presented that the child is unamenable to juvenile rehabilitation programs is denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The proper standard of proof as to the amenability of a minor to treatment is the "preponderance of the evidence" standard. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Probable cause determination cannot be based on hearsay testimony. — The probable cause determination of a court at a waiver hearing concerning juveniles cannot be based upon hearsay testimony. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Exclusion of testimony held proper. — Although proffered testimony was relevant to the amenability issue, the superior court did not abuse its discretion in excluding it because its prejudicial impact outweighed its probative value. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Insufficient evidence. — Where the court had little information concerning the probable cause of the minor's delinquent behavior, it was aware only of the nature of the offenses, of the fact that the minor was apparently not in need of funds, and of his statement that he regarded the commission of the crimes as a game, this information was insufficient to satisfy the requirements of this subsection. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Waiver hearing did not comply with the standards set forth in this section and Rule of Children's Procedure 3. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

Trial court's conclusion that minor was amenable to treatment was abuse of discretion. — See In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Prosecution for joyriding. — One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

Applied in State v. Jensen, Ct. App. Op. No. 126 (File No. 5879), 650 P.2d 422 (1982).

Quoted in Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Cited in E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 787 (1977); State v. R.H., Ct. App. Op. No. 375 (File No. 7758), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7816), P.2d (1984).

Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. A hearing may be held before a young adult advisory panel in accordance with AS 47.10.075. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a child's rights to a public trial and to a trial by jury. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966; am § 53 ch 71 SLA 1972)

Cross references. — For waiver hearings, see AS 47.10.060.

Editor's notes. — John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971) and RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971), cited below, were decided prior to the 1972 amendment to this section.

NOTES TO DECISIONS

Constitutionality. — See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

Constitutional requirements apply to children. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Hence, states must afford juveniles due process of law in delinquency proceedings that might result in the child's incarceration, and accordingly juveniles must be afforded the right to be represented by counsel, must be given proper and timely notice, must be given the right of confrontation and cross-examination of witnesses, and afforded the privilege against self-incrimination. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While the U.S. Supreme Court has not held that children must be afforded due process rights in the pre-adjudication stages of the juvenile process, the Alaska supreme court believes that due process safeguards are necessary not only at the adjudicative hearing, but at any stage which may result in deprivation of the child's liberty. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The extension to children of fundamental constitutional rights does not mean a total substitution of the adult criminal model for the present children's court system. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The problems of pre-adjudication treatment of juveniles are unique to the juvenile process; hence, what is held with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Due process standards must be observed at a detention inquiry since it may result in the deprivation of the child's liberty. Due process requires at the very least that detention orders be based on competent, sworn testimony, that the child have the right to be represented by counsel at the detention inquiry, and that the detention order state with particularity the facts supporting it. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Incarceration, when applied to children, is a taking of liberty under the 14th amendment, regardless of benevolent-sounding labels. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The due process clause of the 14th amendment applies when a child is charged with misconduct for which he may be incarcerated in an institution, regardless of the labels of the adjudication and institution, so the child is entitled to notice of charges, counsel, confrontation and cross-examination, and the privilege against self-incrimination. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The right to grand jury indictment is not so fundamental that due process is offended by alternate methods for instituting children's proceedings where the child is charged with having violated a criminal statute. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children who are charged with acts which would be chargeable only by grand jury indictment, if committed by an adult, need not be indicted by a grand jury. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children are constitutionally entitled to jury trial in the adjudicative stage of a delinquency proceeding. However, due to the uniqueness of some facets of the procedures governing children's court proceedings and the potential damage which may accrue to the child by a public trial, the child should first consult with his counsel and his parents or guardian when appropriate, and then affirmatively assert the right to a trial by jury before it is finally granted. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971). But see McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), in which it was held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement.

Whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, Alaska Const., art. I, § 11, guarantees him the right to jury trial. To the extent In re White, Sup. Ct. Op. No. 507 (File No. 1013), 445 P.2d 813 (1968) [subsequently overruled, in re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972)] is inconsistent with this opinion, it is overruled. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The purposes of the right to jury trial, such as protection against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, apply as much in children's cases as in adults' cases. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child waives jury trial, the state may not require it, but jury trial shall be provided only on demand. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The Hammonds test of waiver [Hammonds v. State, Sup. Ct. Op. No. 483 (File No. 828), 442 P.2d 39 (1968)], applies to infants as well as adults. The consequences of application will differ for infants, because some decisions can be "knowingly and intelligently" made only by persons of fuller knowledge and maturity. An infant not advised by an attorney could make few knowledgeable and intelligent decisions about whether to waive rights in judicial proceedings. On the other hand, in areas where an adult ordinarily delegates to his attorney decision-making authority, as in deciding whether to object to introduction of evidence, the competence of the attorney rather than of the client generally determines whether waivers satisfy the Hammonds criteria. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The right to counsel extends to children charged with delinquency. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

A juvenile must be afforded the right to be represented by counsel at the delinquency proceeding, and a denial of that right violates due process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Right to reasonable time to prepare for trial. — It is unquestionable that the right to the assistance of counsel of necessity includes the concomitant right to have a reasonable time in which to prepare for trial. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

This section provides for the exclusion of the public from children's hearings. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

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).

Cited in In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (198[illegible]).

Collateral references. — Power of juvenile court to require testimony by children, 151 ALR 1229.

Applicability of rules of evidence in juvenile delinquency proceedings, 43 ALR2d 1128.

Degree of p[illegible] in juvenile delinquency proceedings, [illegible] ALR2d 1138.

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school while serving as a panel member. A student may not serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

Legislative history reports. — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

Sec. 47.10.080. Judgments and orders. (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 delinquent or a child in need of aid.

(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 AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's 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 released to the minor's 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 probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's 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.

(5) order the minor committed to the Department of Health and Social Services for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed.

(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 minor'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 the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's 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 minor'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 AS 47.10.010(a)(2) 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.

(d) An order issued under (c) (3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(f) A minor found to be delinquent or a child in need of aid is a ward of the state while committed to the department or the department has the power to supervise the minor's actions. The court shall review an order made under (b) or (c)(1) or (2) 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. The department, the minor, the minor's parents, guardian, or custodian are 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.

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

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings which result in the release of the minor.

(i) A minor, the minor's parents or guardian acting on the minor's 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.

(j) *[Repealed, § 29 ch 63 SLA 1977.]*

(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. (§ 10(2) art I ch 145 SLA 1957; am § 2 ch 10 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974; am §§ 14—18, 29 ch 63 SLA 1977; am § 6 ch 86 SLA 1979)

Cross references. — For the standard of proof for findings under this section, see Children's Rule 21, Alaska Rules of Court. See also, Children's Rules 22 and 23.

Editor's notes. — Section 31, ch. 63, SLA 1977, provides: "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."

Section 34, ch. 63, SLA 1977, in the first sentence provides: "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 (August 26, 1977) so that the commitment, probation or supervision of minors by the department before the effective date of this Act (August 26, 1977) shall continue, but may not exceed two years from the effective date of this Act (August 26, 1977) unless two-year extensions have been granted by the court under this Act." Subsection (j) of AS 47.10.080 was repealed by § 29, ch. 63, SLA 1977.

NOTES TO DECISIONS

Each category of children mandates differences regarding content of dispositional orders. — Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a delinquent child was sentenced for a fixed time period and ordered to an adult institution, this amounted to a penal sentence as opposed to the juvenile disposition required under subsection (b)(1). B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Court cannot place child in particular institution. — Under this section as amended, the court no longer has discretion to order the delinquent child placed in a particular institution. The court only has authority to commit the child to the department, which then places the child. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974); A.A. v. State, Sup. Ct. Op. No. 1181 (File No. 2400), 538 P.2d 1004 (1975).

Authority to order placement of delinquent child. — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Paragraph (b)(3) of this section provides the court authority to order the delinquent minor placed on probation to the Department of Health and Social Services; it is then up to the department to determine whether the minor should be placed with his parents or in another setting. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Review of placement decision. — The superior court has the authority to review the decision of the department to determine if the placement is in the best interest of the minor, but in reviewing a decision of the department, the superior court may not substitute its judgment for the judgment of the department; since the legislature has committed the decision of placement to the department's discretion, the question for the court is whether the agency abused its discretion. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Where a delinquent child was under the age of 18 at the time the acts of delinquency were committed, he is considered a minor for the purposes of adjudication and disposition. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Option available to prosecution absent waiver under AS 47.10.060(a). — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under AS 47.10.060(a), and the standards established in that section are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

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 was nothing in the amendatory legislation to this section that indicated 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).

There is no conflict between subsection (b)(1) and AS 47.10.060(d). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between AS 47.10.060(d) and subsection (b)(1) of this section that existed prior to the 1977 amendments to these sections has been eliminated in that AS 47.10.060 (d) now provides that the determinative age is 20 and subsection (b)(1) provides that the maximum limitation of confinement of minors is 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Binding advance consent to treatment. — In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2091 (File No. 4333), 608 P.2d 12 (1980).

A minor may bindingly consent to an additional period of supervision as provided by subsection (b)(1) of this section. In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. State v. F.L.A., Sup. Ct. Op.

No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

While it is true, as indicated in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978), that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The lower court erred in considering the purported consent of a minor to an additional year of supervision because: (1) the minor could withdraw his consent upon reaching majority and (2) even assuming the minor's consent could not be withdrawn, subsection (b)(1) requires that the department petition the court and that additional commitment be in the minor's best interests before the court has jurisdiction to order the additional one-year period. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Subsection (b)(1) requires that the department petition for an additional one-year period of supervision and that continued supervision be in the best interests of the minor before the court may order an additional year. Thus, a minor's prospective consent to additional supervision is not a material factor unless the other two conditions of the statute are fulfilled. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

This statute contemplates that the decision to extend the period of supervision be made after the initial dispositional hearing. To give effect to the minor's advance consent would thus be contrary to the apparent intent of the legislature. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

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

Court-ordered probation. — Probation cannot be deemed court-ordered under subsection (b) of this section unless it is directly ordered. It cannot be "triggered" by a decision of the department that the juvenile has successfully completed a rehabilitation program, even if the court judgment states that institutionalization will end upon such successful completion. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

The hearing judge erred by placing a delinquent child on probation until his 20th birthday. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Petition necessary to extend probation beyond 19th birthday. — The superior court was without authority to extend probation beyond the delinquent child's 19th birthday without a petition from the department to extend the probationary period for an additional year. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor who has been adjudged a child in need of supervision [see now child in need of aid] 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 is found to be a child in need of supervision [see now child in need of aid], 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 declared a child in need of supervision [see now child in need of aid], 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).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under AS 47.10.010 as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Parental right to custody and control is not absolute. — While a parent has a right to the care, custody and control of his or her children, this right is not absolute, and "courts have become increasingly aware of the rights of children." The Alaska legislature has struck a balance between these potentially competing rights by requiring the state to prove its allegations by clear and convincing evidence in parental rights termination cases. Once this burden of proof has been met, however, the statute mandates a termination. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under AS 47.10.010(a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

Statutory provisions governing judgments and orders terminating parental rights have been changed. In order to terminate parental rights, the court must now find that the child is in need of aid under AS 47.10.010(a)(2) as the result of parental conduct proved by clear and convincing evidence and that the parental conduct is likely to continue to exist if there is no termination of parental rights, proved again by clear and convincing evidence, AS 47.10.080(c)(3). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

In order to terminate parental rights under this section, the court must find by clear and convincing evidence (1) that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct, and (2) that the parental conduct is likely to continue. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Under former AS 47.10.010(a)(5) and subsection (a) and former subsection (c)(3)(D) of this section, in order to terminate parental rights, the superior court was required to find (1) that the child was a "dependent minor" and (2) that the parent had demonstrated by her conduct, proved by clear and convincing proof, that she was unfit to continue to exercise her parental rights and responsibilities. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Parent's impulsive personality disorder not ground for termination of rights. — Where after finding that child was in need of aid, trial judge found that the parent "is likely to continue to demonstrate a conscious disregard of the obligation owed by a parent to a child even after her release from incarceration because she suffers from an impulsive personality disorder," such finding was insufficient to satisfy requirement of clear and convincing evidence that conduct leading to determination that child is in need of aid is likely since an impulsive personality disorder itself is not conduct and thus, not a ground for termination. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

Findings. — A finding that the parental conduct is likely to continue must be made expressly on the record prior to ordering the termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Abandonment. — For cases construing former language in subsection (c) providing for termination of parental rights and responsibilities when the child had been abandoned, see D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973); In re B.J., Sup. Ct. Op. No. 1110 (File No. 2161), 530 P.2d 747 (1975); In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

A rehabilitation program is not a common practice in the trial courts absent approval by a representative of the state. In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Trial court did not abuse discretion in failing to consider possibility of setting up plan for reestablishing family relationship between father and son. — See In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Role of trial court in proceeding involving termination of parental rights. — See In re E.J. (T.), Sup. Ct. Op No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Applicability of burden of proof. — A burden of proof is not applicable to a dispositive hearing other than when termination of parental rights is involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976). See also In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Determination of the standard to be applied by the court at the dispositive phase of a child hearing was not tantamount to establishing a burden of proof requirement. Such a requirement had been set forth in former subsection (c)(3)(D) [see now subsection (c)(3)]. No such requirement had been set forth in situations such as where termination of parental rights was not involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Standard of proof held constitutional. — Allowing parental rights to be terminated based on a standard of proof less stringent than "beyond a reasonable doubt" does not violate the due process clause of the United States Constitution or the Alaska Constitution. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Since in proceedings brought to terminate parental rights, the parent is neither charged with criminal behavior nor subject to incarceration as a direct consequence of the proceeding, there is nothing in the federal constitution that compels adoption of the proof beyond a reasonable doubt standard in termination proceedings. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Clear and convincing proof is a more demanding standard than a mere preponderance of the evidence and is adequate to protect the parent's substantial interest in his or her child custody rights. This evidentiary standard balances the competing interests involved in a proceeding brought to terminate parental rights, one of which is the right of a child to an adequate home. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

The due process clause did not require a standard of proof greater than clear and convincing evidence when the state sought to terminate parental rights because of unfitness under former subsection (c)(3)(D). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Standard of proof under former subsection (c)(3)(D) calling for "clear and convincing" evidence of the natural mother's unfitness for the care and custody of the child was held proper. In re K.S., Sup Ct. Op. No. 1219 (File No. 2359), 543 P.2d 1191 (1975).

Protection provided by Indian Child Welfare Act. — The Indian Child Welfare Act, 25 U.S.C. §§ 1901 — 1963, enacted in 1978, provides a higher standard of protection to the rights of parents in termination proceedings involving Indians and Native Alaskans than that provided in this section. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Orders terminating parental rights met statutory and rule of court requirements regarding findings of fact. — See In re C.L.T., Sup. Ct. Op No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Review of orders terminating parental rights. — Orders made under subsection (c)(3) of this section are not entitled to automatic review, inasmuch as subsection (f) of this section specifies which orders are entitled to this review and orders under subsection (c)(3) of this section are not included within the list. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

All orders made pursuant to this section, including orders under subsection (c)(3) of this section, are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

As long as a child remains the ward of the court, under subsection (f) of this section his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Where, when a mother applied for a hearing before the superior court, she indicated that as a result of a 14-month rehabilitation program she had overcome the problems that had led to the termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing a warm and loving home for the child, this was a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if the child had not yet been adopted. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with AS 47.10.010(a)(1) and paragraph (b)(1) of this section. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Children's Rule 22(f), see footnote 30 in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

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).

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, 415 U.S. 308, 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 Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L.Ed.2d 106 (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's 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. Alaska, 415 U.S. 308, 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. Alaska, 415 U.S. 308, 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. Alaska, 415 U.S. 308, 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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Conflict between section and decision in Davis v. Alaska is superficial. — The conflict between this section and the supreme court's decision in Davis v. Alaska, 415 U.S. 308, 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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Since disclosure required because of probationary status, not juvenile adjudication. — The constitutional requirement of disclosure in the facts in Davis v. Alaska, 415 U.S. 308, 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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

State adjudications directed solely at credibility do not conflict with confrontation right. — Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently probative to create a genuine conflict with the defendant's right of confrontation. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (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).

Privilege against self-incrimination. — When a person under the age of 18 years violated former AS 47.10.010(a)(1), he could be adjudged a "delinquent minor," one possible consequence of which adjudication was commitment to a juvenile facility until the age of 19 [now 20]. Moreover, if there was probable cause to believe the minor was delinquent and the court found that he was not amenable to treatment as a juvenile, he could be prosecuted as if he were an adult. Thus, there was always some danger of incarceration, or other criminal sanctions, when a child committed an act which would have been a crime if committed by an adult. Under such circumstances a child had a privilege against self-incrimination. E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

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).

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, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender. Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section. Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

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).

Review of custody orders. — The new children's law, as a result of the 1977 acts, provides for review of custody orders annually or more often if good cause is shown. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

Appeal of detention order. — Under this section and Children's Rule 29(a), a minor who is detained may appeal his detention order. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appellants are authorized to bring juvenile bail appeals under App. R. 207 to ensure that juvenile detention hearings are not insulated from review. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appeal from detention order dismissed as untimely. — See A.M. v. State, Ct. App. Op. No. 1[illegible] (File No. 6105), 653 P.2d 346 (1982).

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).

Applied in L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976); Adams v. Ross, Sup. Ct. Op. No. 1281 (File No. 2458), 551 P.2d 948 (1976); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Quoted in Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1420, 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); D.L.J. v. W.D.R., Sup. Ct. Op. No. 2433 (File No. 5411), 635 P.2d 834 (1981); S.O. v. W.S., Sup. Ct. Op. No. 2491 (File No. 5856), 643 P.2d 997 (1982).

Collateral references. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 ALR3d 1141.

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, the child's parents and the attorneys representing the parties and the guardian ad litem that the predisposition 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 child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Applied in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.082. Best interests of the child. In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public, and in making its dispositional order under AS 47.10.080(c) 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 the child's best interests under AS 47.10.010 — 47.10.142. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Showing required to justify termination of parental rights. — While best interests of the child become relevant at some point, there first must be a showing of parental conduct sufficient to justify termination. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

Cited in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

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 AS 47.10.080(f) unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under AS 47.10.010(a)(2) 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 the child's parents;

(6) when return of the child can be expected. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities. (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's 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 may 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 treatment, 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. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Effect of being foster parents on husband-wife evidentiary privilege. — A foster child is a child of the foster parents for purposes of applying the exception to the husband-wife privilege set forth in Alaska Evidence Rule 505(a)(2)(D)(i); one foster parent cannot rely on the husband-wife privilege to refuse to testify against the other concerning evidence relating to an assault on the foster child. Daniels v. State, Ct. App. Op. No. 357 (File No. A-366), P.2d (1984).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.085. Child in need of aid; religious treatment. In a case in which the minor's status as a child in need of aid is sought to be based on the 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 AS 47.10.020(a). (§ 8 ch 1 SLA 1972; am § 19 ch 63 SLA 1977)

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

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 by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, 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

making a preliminary investigation for the information of the court. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records 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.

(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 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.

(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; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977)

Cross references. — For explanation of how amendments in 1975 changed Rules of Children's Procedure, see § 2, ch. 90, SLA 1975).

NOTES TO DECISIONS

Purpose for enacting subsection (a). — Reading this section together with other sections of the laws relating to children's proceedings leads one to believe that subsection (a) was enacted principally for the purpose of protecting the child against the possible adverse effects an unauthorized revelation of his social record would have. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

The supreme court could not say with certainty that this section would be construed to forbid the use, in a subsequent criminal action against a parent, of testimony that the parent gave at a children's proceeding. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

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).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

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. (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 the minor's best interest, for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, 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. 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 parties and the appropriate department, take action which it considers appropriate.

(b) If the court determines at a rehearing that it is for the best interests of the minor to be released to the care or custody of the minor's parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent or a child in need of aid before the minor's 18th birthday, the court may retain jurisdiction over the minor after the minor's 18th birthday for the purpose of supervising the minor's rehabilitation, but the court's jurisdiction over the minor under this chapter never extends beyond the minor's 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. The department may retain jurisdiction over a child between the child's 18th and 19th birthdays for the purpose of supervising the child's rehabilitation, if the child has been placed under the supervision of the department before the child's 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. (§ 11 art I ch 145 SLA 1957; am §§ 16, 17 ch 245 SLA 1970; am § 21 ch 63 SLA 1977)

NOTES TO DECISIONS

When one commits a criminal offense after reaching the age of 18 years, he is no longer entitled to claim the benefits of the Children's Code. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Offenses to which court's jurisdiction not extended. — Neither subsection (a) nor subsection (c) purports to extend the court's juvenile jurisdiction to newly committed offenses occurring between the offender's 18th and 19th birthdays. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Jurisdiction defeated only by expressly retroactive statute. — Once the sentencing court acquires jurisdiction over the individual, only an expressly retroactive statute could defeat its continuing jurisdiction for the duration of the sentence originally imposed. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

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 the minor's 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 desires, the court shall consider them. (§ 12 art I ch 145 SLA 1957; am § 6 ch 104 SLA 1971; am § 22 ch 63 SLA 1977)

Collateral references. — 39 Am. Jur. 2d, Guardian and Ward, § 17.

39 C.J.S., Guardian and Ward, §§ 20 to 29.

Right of infant to select his own guardian, 85 ALR2d 921.

Sec. 47.10.120. Support of minor. (a) When a child in need of aid 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. 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.

(b) If a parent wilfully fails or refuses to pay the sum fixed, the parent may be proceeded against as provided by law in cases of family desertion and nonsupport.

(c) The sum collected from a parent under this section shall be directly credited to the general fund of the state. (§ 13 art I ch 145 SLA 1957; am § 1 ch 31 SLA 1959; am § 1 ch 141 SLA 1959; am § 23 ch 63 SLA 1977)

Sec. 47.10.130. Detention. No minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately. (§ 14 art I ch 145 SLA 1957)

Cross references. — For conditions of detention, see Children's Rule 27, Alaska Rules of Court.

NOTES TO DECISIONS

A detention which was twice continued by the master of the children's court for a total period of six days exemplifies a usurpation of judicial power. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Sec. 47.10.140. Temporary detention and detention hearing. (a) A peace officer may arrest a minor who violates a law or ordinance in the officer's presence, or whom the officer reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. The officer may have the minor detained in a juvenile detention facility if in the officer's opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court, the minor's parents or guardian, and the Department of Health and Social Services of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing or temporary detention under (f) of this section, a minor may not be detained except by court order.

(f) A peace officer may detain a minor who is evading the person having the minor's legal custody if the minor is not otherwise subject to arrest or detention under (a) of this section, for the sole purpose of either (1) returning the minor to the person having legal custody or (2) if the minor prefers, taking the minor to an office specified by the Department of Health and Social Services, facility or contract agency of the Department of Health and Social Services where such exists in the community. Immediately upon detaining a minor under this provi-

sion, the peace officer shall advise the minor of the right to social services under AS 47.10.142(b), and, if known, the peace officer shall advise the person having the legal custody of the minor of the detention.

(g) A minor who is detained under (f) of this section may not be detained in a jail or other facility unless kept out of contact with adult persons convicted or accused of a crime. A minor may not be detained in a jail or other detention facility which has not been approved by the Department of Health and Social Services before detention of the minor. (§ 15 art I ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 1, 2 ch 128 SLA 1972)

Cross references. — For custody without a court order, see Children's Rules 6 and 7, Alaska Rules of Court.

NOTES TO DECISIONS

Detention orders neither based on competent testimony nor accompanied by the required statement of facts are invalid. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Appeal of detention order. — See notes under this catchline, AS 47.10.080, A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

SECTION 13

Sec. 47.10.142. Emergency custody and temporary placement hearing. (a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by the minor's parents or guardian as "neglect" is defined in AS 47.17.070(5), so that immediate removal from the minor's surroundings is, in the determination of the department, necessary to protect the minor's life;

(3) the minor has been abused, as "abuse" is defined in AS 47.17.070(1), so that immediate medical attention is necessary, in the determination of the department;

(4) the minor has been sexually abused under circumstances listed in AS 47.10.010(a)(2)(D).

(b) A minor who has left home and is evading the person having legal custody of the minor may obtain the services of the department. The department shall assess the situation and furnish the minor with the social services it considers appropriate to protect the well-being of the minor and to preserve the minor's family life if preserving it is considered desirable under the circumstances. If, after assessing the situation, considering the wishes of the minor, and furnishing appropriate social services, the department considers it necessary, the department may take emergency custody of the minor.

(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.

(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 the minor's health permits, and the minor's 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, as defined in AS 47.10.290. The court shall inform the minor, and the minor's parents or guardian if they can be found, of the reasons given as constituting probable cause and the reasons given as authorizing the minor's temporary placement.

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order the minor returned to the custody of the minor's parents or guardian subject to the department's supervision of the minor's care and treatment. If the court finds no probable cause it shall order the minor returned to the custody of the minor's parents or guardian. (§ 3 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 24 ch 63 SLA 1977; am § 2 ch 104 SLA 1982)

NOTES TO DECISIONS

Effect of amendments. — The 1982 amendment added paragraph (4) to subsection (a).

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Article 2. Juvenile Institutions.

Section
150. General powers of department over juvenile institutions
160. Duties of department
170. Power of cities to maintain and operate home or facility
180. Operation of homes and facilities
190. Conditions governing detention
200. Releasing juveniles after commitment
210. Youth counsellors
220. Grants-in-aid

Sec. 47.10.150. General powers of department over juvenile institutions. The Department of Health and Social Services may

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of children in need of aid or delinquent minors;

(2) adopt plans for construction of juvenile homes, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance and operation of all juvenile detention homes, facilities, and institutions;

(4) inspect periodically each juvenile detention home, facility, other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) adopt the regulations necessary to carry out this chapter;

(9) accept donations, gifts or bequests of money or other property for use in construction of juvenile homes, institutions or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or correctional school or treatment institution all minors committed to its custody under this chapter. (§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977)

Cross references. — For operation of juvenile detention homes and facilities, see AS 47.10.180. For standards of care for the welfare of children under the care of the department, see AS 47.10.250.

NOTES TO DECISIONS

Department ordered to promulgate standards for operation of juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Collateral references. — 60 Am Jur. 2d, Penal and Correctional Institutions, § 1 et seq.

Sec. 47.10.160. Duties of department. The Department of Health and Social Services shall

(1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under AS 47.10.230(c), and provide for the welfare, control, care, custody, and placement of these minors in accordance with this chapter;

(2) require and collect statistics on juvenile offenses and offenders in Alaska;

diction the institution is operated, or whose department or agency is charged with performing the service. (§ 3 ch 88 SLA 1960)

Sec. 47.15.040. **Financial arrangements.** The compact administrator, subject to the approval of the commissioner of administration, may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact. (§ 4 ch 88 SLA 1960)

Sec. 47.15.050. **Appointment of attorney or guardian.** Appointment of an attorney or guardian ad litem under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 — 44.21.440. (§ 5 ch 88 SLA 1960; am § 55 ch 94 SLA 1980; am § 16 ch 55 SLA 1984)

Cross references. — See Admin. R. 13, Alaska Rules of Court.

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "A council or guardian ad litem appointed under the provisions of this compact may be paid as provided in the Rules Governing the Administration of all Courts."

Sec. 47.15.060. **Enforcement.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

Sec. 47.15.070. **Additional procedures not precluded.** In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

Sec. 47.15.080. **Short title.** This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

Chapter 17. Child Protection.

Section
10. Purpose
20. Persons required to report
25. Duties of public authorities
30. Action on reports; termination of parental rights
40. Central registry; confidentiality
50. Immunity
60. Evidence not privileged
64. Photographs and x-rays
68. Penalty for failure to report
70. Definitions

Sec. 47.17.010. **Purpose.** In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

Effect of amendments. — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

NOTES TO DECISIONS

Use of reports. — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984). See also notes to AS 47.17.060, under catchline "Judicial proceeding."

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 16, 17.

43 C.J.S., Infants, §§ 36 to 39, 70 to 75, 94.

Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

Sec. 47.17.020. **Persons required to report.** (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members;

(3) social workers;

(4) peace officers, and officers of the Department of Corrections;

(5) administrative officers of institutions;

(6) licensed day care providers and paid staff;

(7) licensed foster care providers.

(b) This section does not prohibit the named persons from reporting cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984))

Effect of amendments. — The 1982 amendment, in subsection (a), added "and school administrative staff members" at the end of paragraph (2) and added paragraphs (6) and (7).

The 1984 amendment substituted "Department of Corrections" for "division of corrections" in paragraph (4) of subsection (a).

NOTES TO DECISIONS

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — Civil liability of physician for failure to diagnose or report battered child syndrome, 97 ALR3d 338.

Sec. 47.17.025. Duties of public authorities. (a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. pon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report and, within 72 hours of the receipt of the report, shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

(b) The report of harm to a child from abuse required from the department by this section shall include:

(1) the names and addresses of the child and the child's parent or other persons responsible for the child's care, if known;

(2) the age and sex of the child;

(3) the nature and extent of the harm to the child from abuse;

(4) the name and age and address of the person known or believed to be responsible for the harm to the child from abuse, if known;

(5) information that the department believes may be helpful in establishing the identity of the person believed to have caused the harm to the child from abuse. (§ 6 ch 104 SLA 1982)

NOTES TO DECISIONS

Applied in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c)(3), it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310. (§ 1 ch 100 SLA 1971; am § 1 ch 222 SLA 1976; am § 17 ch 55 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence in subsection (e).

NOTES TO DECISIONS

Effect of subsection (d). — Subsection (d) of this section is clearly intended to prevent further abuse by providing protective services to the child, and it does not place a mandatory duty on the state to provide counseling and other support services to the family prior to seeking termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Applied in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Quoted in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Collateral references. — 43 C.J.S., Infants, §§ 71, 72.

Physical abuse of child by parent as ground for termination of parent's right to child, 53 ALR3d 605.

Sexual abuse of child by parent as ground for termination of parent's right to child, 58 ALR3d 1074.

Validity of state statute providing for termination of parental rights, 22 ALR4th 774.

Sec. 47.17.040. Central registry; confidentiality. (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. A person, not acting in accordance with department regulations, who makes public information contained in confidential reports is guilty of a misdemeanor. (§ 1 ch 100 SLA 1971; am § 2 ch 222 SLA 1976)

NOTES TO DECISIONS

Psychotherapist/patient privilege. — Child abuse reports are not open to the public, and are therefore not within A.R.E.R. 504(d)(5), which provides that there is no physician or psychotherapist/patient privilege "as to information that the physician or psychotherapist is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection." State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.050. Immunity. A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

Sec. 47.17.060. Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

NOTES TO DECISIONS

For discussion of constitutional problems in interpreting this section to abrogate psychotherapist privilege in criminal proceedings, see State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Applicability to psychologists. — The court assumed but did not decided that this section applies to psychologists, who are not physicians. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

"Judicial proceeding". — This section only applies to child protective proceedings instituted under AS 47.10 and not to criminal proceeding for sexual abuse. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Giving the Department of Health and Social Services primary control of the abused child again indicates a legislative intent that the "judicial proceedings" referred to in this section occur through the department in relation to protective services, and are civil rather than criminal. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Since AS 47.17.025 refers to the Department of Law, without reference to the criminal division, AS 47.17.025 does not, standing alone, necessarily resurrect the requirement of former AS 11.67.040 that the district attorney receive child abuse reports; nor does it establish an intent that child abuse reports result in criminal prosecutions; and consequently, the Court of Appeals could not find that a criminal prosecution for child sexual abuse is necessarily "a judicial proceeding related to a report made under this chapter" pursuant to this section. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.064. Photographs and x-rays. The department or a person required under AS 47.17.020(a)(1) to report that a child suffered substantial harm as a result of physical abuse or neglect may without the permission of the parents

(1) take or have taken photographs of the areas of trauma visible on the child; and

(2) if medically indicated, have a radiological examination of the child performed. (§ 7 ch 104 SLA 1982)

Sec. 47.17.068. Penalty for failure to report. A person required to file a report of abuse or neglect under AS 47.17.020 who wilfully or knowingly fails or refuses to report the harm required under AS 47.17.020 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982)

Cross references. — For penalties for misdemeanors, see AS 12.55.135.

Sec. 47.17.070. Definitions. In AS 47.17.010 — 47.17.070

(1) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(2) "child" means a person under 18 years of age;

(3) "department" means the Department of Health and Social Services;

(4) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(5) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(6) "practitioner of the healing arts" includes chiropractors, dentists, health aides, nurses, optometrists, osteopaths, physical therapists, physicians, psychiatrists, psychologists, religious healing practitioners, and surgeons;

(7) "sexual exploitation" means

(A) permission or encouragement to a child for prostitution prohibited by AS 11.66.100 — 11.66.150 by a person responsible for the child's welfare;

(B) permission, encouragement, or activity involved in the unlawful exploitation of a minor prohibited by AS 11.41.455 by a person responsible for the minor's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982)

Effect of amendments. — The 1980 amendment substituted "18" for "eighteen" near the middle of paragraph (1), and substituted "18" for "16" in paragraph (2).

The 1982 amendment inserted "or neglect" and "sexual exploitation" in paragraph (1) and added paragraph (7).

NOTES TO DECISIONS

Where parents refuse permission for blood transfusion because of religious conviction, the state may intercede and make the child a dependent minor by the parents' failure to provide medical attention under paragraph (5) of this section, obtaining custody and thereafter consenting to the operation. In re Lausterer, Superior Court, 3rd Jud. Dist., No. CP2720 (1972).

Chapter 20. Exceptional Children.

Section
05. Purpose
10. Assistance authorized
20. Standards for assistance
50. Definitions

Sec. 47.20.005. **Purpose.** It is the purpose of AS 47.20.005 — 47.20.050 to provide appropriate public education and training for the exceptional children in this state who have not reached the age of three. To the maximum extent possible, the department shall establish a learning program which emphasizes individual needs, is home based, and involves parents in the education and training of their children. (§ 1 ch 77 SLA 1978)

Sec. 47.20.010. **Assistance authorized.** (a) The department shall provide professional guidance and financial assistance to organized groups of parents, nonprofit corporations, school districts, and regional educational attendance areas according to regulations adopted by the department for providing special services, evaluation, and special training required by exceptional children.

(b) The program established under (a) of this section shall emphasize individual needs and, where possible, be home based and involve parents in the education and training of their children. (§ 2 ch 118 SLA 1961; am § 6 ch 104 SLA 1971; am § 2 ch 77 SLA 1978)

Sec. 47.20.020. Standards for assistance. The department shall assist organized parental groups, school districts, regional educational attendance areas, and nonprofit corporations which have requested assistance and have arranged for the necessary facilities and equipment for training centers for exceptional children. (§ 3 ch 118 SLA 1961; am § 3 ch 77 SLA 1978)

Secs. 47.20.030 — 47.20.040. Appropriations; purpose. [Repealed, § 6 ch 77 SLA 1978.]

Sec. 47.20.050. Definitions. In this chapter

(1) "department" means the Department of Health and Social Services;

(2) "evaluation" means the physical and mental examinations necessary to determine the extent of the handicap;

(3) "exceptional children" includes those children who have not reached age of three and whose development is significantly delayed due to mental retardation, physical, neurological, or emotional handicaps;

(4) "professional guidance" means the consultative services or other medical and educational specialists developed by the department for the education and training of exceptional children;

(5) "special service" means evaluation and special training;

(6) "special training" means (A) nursery or pre-school training to compensate for the special handicaps of exceptional children in order to prepare them when possible, for admission to special classes in a regular school at the age determined by law, or (B) training in self-help skills, safety, social and simple occupational skills for trainable mentally retarded children of school age who are incapable of academic subjects. (§ 5 ch 118 SLA 1961; am §§ 4—6 ch 77 SLA 1978)

Revisor's notes. — Reorganized in 1984 to alphabetize the terms defined.

Chapter 21. Adventure-Based Education.

Section
10. Establishment
20. Program

(C) manifests a current intent to carry out plans of serious harm to that person's self or another;

(11) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; and a social worker with a master's degree in social work and substantial experience in the field of mental illness;

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(13) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court;

(14) "professional person in charge" means the senior mental health professional at a facility or that person's designee; in the absence of a mental health professional it means the chief of staff or a physician designated by the chief of staff;

(15) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center, or other health care facility designated by the department to accept for treatment patients who are ordered to undergo involuntary outpatient treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(16) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making the allegations, any other significant witnesses who can readily be contacted for interviews, and, if possible, the respondent, and an investigation and evaluation of the reliability and credibility of persons providing information or making allegations;

(17) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (§ 1 ch 84 SLA 1981; am §§ 26-30 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment inserted "or operated by the federal government" in paragraph (5); added the subparagraph (A) designation in paragraph (7), added "or" to the end of that subparagraph, and added subparagraph (B); reworded subparagraphs (10)(A) and (C) and paragraph (12) to remove personal pronouns; deleted "imminent and substantial" preceding "bodily harm" and substituted "behavior causing, attempting or threatening that harm" for "attempts at suicide or bodily harm" in paragraph (10)(A); substituted "harm to others" for "imminent and substantial bodily harm to one or more other persons" and the language beginning "recent behavior causing, attempting" or "behavior causing or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization" in paragraph (10)(B); substituted "manifests" for "demonstrates" in paragraph (10)(C); substituted "trained in clinical psychology and licensed" for "with a clinical psychology or counseling specialty licensed" near the middle of paragraph (11); and inserted "substantial" preceding "experience" near the end of paragraph (11).

Chapter 35. Private Institutions.

Section

10. Powers of department
20. License or permit required
30. Authority to issue regulations
40. Licensing
55. Provisional license
60. Records required
70. Violations
75. Licensure of providers of care for dependent adults by municipalities
90. Licensing and supervision of maternity homes
100. License required
900. Definitions

Sec. 47.35.010. Powers of department. (a) The department may

(1) license and supervise boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults;

(2) investigate and supervise licensees;

(3) enforce the standards established by it;

(4) contract with private or municipal agencies to investigate and make recommendations to the department for the licensing and supervision of boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to nurseries under this section and under AS 47.35.040 — 47.35.060 to a municipality which has adopted an ordinance providing for day care licensing under home rule powers or as authorized under AS 29.48.035(a)(20). A municipality to which these powers have been delegated may waive or modify any regulation or standard established by the department under the authority of AS 47.35.010 — 47.35.080 as it applies to nurseries or the application of any such regulation or standard as it applies to a particular day care licensee but must notify the department of any waiver. (§ 2 ch 17 SLA 1951; am §§ 1, 2 ch 42 SLA 1973; am §§ 1, 2 ch 253 SLA 1976; am § 1 ch 45 SLA 1977; am § 1 ch 98 SLA 1977; am § 135 ch 6 SLA 1984)

Revisor's notes. — In 1984 "former" was inserted before the reference to AS 47.35.050. That section was repealed by sec. 5, ch. 97, SLA 198?.

Effect of amendments. — The 1984 amendment changed an internal reference in subsection (b).

NOTES TO DECISIONS

Cited in J.M.A. v. State, Sup. Ct. Op. No. 1201 (File No. 2391), 542 P.2d 170 (1975).

Sec. 47.35.020. License or permit required. A person may not, without a license or permit to do so,

(1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution, or other place for the regular reception or care of children under 16 years of age, or a foster home, group home, or institution for the care of dependent adults; or

(2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977; am § 1 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "for more than 90 days" near the beginning of paragraph (1) and made minor changes in style.

Sec. 47.35.030. Authority to issue regulations. The department may adopt regulations and standards consistent with other requirements of law. This authority does not deny a religious group from establishing and operating an institution solely because of the prior installation or operation of another religious group in the same area. The authority to adopt regulations and standards shall be exercised to insure compliance with the intents and purpose of AS 47.35.010 — 47.35.100. The department may inspect and examine an institution, home or place, or the performance of a service. (§ 4 ch 17 SLA 1951; am § [illegible] ch 77 SLA 1967)

Sec. 47.35.040. Licensing. (a) The department shall issue a license to a facility if it determines that the facility has met the standards for operation set out in AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080.

(b) A license is valid for two years after the date of issuance unless it is revoked or modified. The department may revoke a license or modify a license to provisional status if it determines that a facility is not in compliance with AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may waive compliance with a standard set out in regulations adopted under AS 47.35.010 — 47.35.080 if an acceptable alternative is established that meets the purpose of the provision and reasonably assures the well-being of persons in care.

(d) A license may not be transferred to a different facility or owner.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department. (§§ 5, 8 ch 17 SLA 1951; am § 4 ch 42 SLA 1973; am § 2 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 47.35.050. Duration of license or permit. [Repealed, § 5 ch 97 SLA 1982. For current law see AS 47.35.040(b) and (e).]

Sec. 47.35.055. Provisional license. (a) The department shall issue a provisional license to a new facility if the facility submits to the department an acceptable plan for operation that is in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.0[illegible]. After the department determines that the new facility is operating in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080, the department shall issue a license under AS 47.35.040 to the facility.

(b) The department may issue a provisional license to a facility that is licensed under AS 47.35.040 but is temporarily unable to conform to the provisions of AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may issue a provisional license under (b) of this section only if the facility submits to the department an acceptable plan to bring the facility into conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080 within the time specified in the provisional license.

(d) A provisional license is valid for a period not exceeding one year from the date of issuance. The department may renew a provisional license for an additional period not to exceed one year. (§ 3 ch 97 SLA 1982)

Sec. 47.35.060. Records required. Each licensee or permit holder shall keep records regarding each child or adult in its control and care, or placed by it, which the department prescribes, and shall report to the department the facts which the department requires with reference to the children or adults. All records regarding individuals placed for care in an institution or home under this chapter are confidential and shall be safeguarded from improper disclosure by the agency or department. (§ 9 ch 17 SLA 1951; am § 4 ch 45 SLA 1977)

SECTION 2k: **Sec. 47.35.070. Violation.** A person who violates a provision of AS 47.35.010 — 47.35.100 or a regulation adopted under AS 47.35.010 — 47.35.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $200. (§ 11 ch 17 SLA 1951; am § 2 ch 77 SLA 1967)

Sec. 47.35.075. Licensure of providers of care for dependent adults by municipalities. A first or second class borough or a first or second class city outside a first or second class borough may license and supervise institutions caring for dependent adults. If a borough or city chooses not to license care providers for dependent adults, the department shall be the licensing authority; if a borough or city chooses to license care providers for dependent adults, the borough or city may exercise any power or responsibility granted to the department under this chapter and shall enforce regulations adopted by the department under AS 47.35.030. (§ 5 ch 45 SLA 1977)

Sec. 47.35.080. [Renumbered as AS 47.35.900.]

Sec. 47.35.090. Licensing and supervision of maternity homes. Maternity homes shall be licensed and supervised in the same manner as boarding homes or foster homes, nurseries and other institutions caring for children as provided in AS 47.35.010 — 47.35.080. In this section "maternity home" means an institution or place of residence whose primary function is to give care to pregnant girls or women, regardless of age, before or during confinement, or which provides care, as needed, to mothers and their infants after confinement, with or without compensation. (§ 1 ch 108 SLA 1960)

Sec. 47.35.100. License required. (a) Without a license issued by the department in accordance with its regulations a person may not operate an agency providing any of the following services:

(1) the placement of children for foster home care;

(2) the placement of children for adoption; or

(3) individual and family counseling.

(b) The license shall remain in effect until revoked for cause. The department shall give written notice of revocation at least 90 days before the effective date of the revocation.

(c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section. (§ 4 ch 77 SLA 1967)

Sec. 47.35.900. Definitions. In this chapter

(1) "boarding home or foster home" means an establishment providing regular care for less than six children not related by blood or marriage to the foster parents;

(2) "department" means the Department of Health and Social Services;

(3) "facility" means the administration, program, and physical plant of a nursery caring for children, or a foster home, group home, or institution caring for children or dependent adults;

(4) "group home" means a small establishment providing care and services for 10 or fewer children not related by blood, marriage or legal adoption to the foster parent and which is

(A) noncontiguous to another institution; and

(B) stresses normal family living.

(5) "institution" means an establishment providing regular care and services for 11 or more children not related by blood or marriage to the owner or operator;

(6) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational. (§ 1 ch 17 SLA 1951; am § 3 ch 77 SLA 1967; am § 1 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 42 SLA 1973; am § 4 ch 97 SLA 1982)

Revisor's notes. — Formerly AS 47.35.080. Renumbered in 1984.

Reorganized in 1984 to alphabetize the terms defined.

Effect of amendments. — The 1982 amendment added paragraph (3).

Chapter 37. Uniform Alcoholism and Intoxication Treatment Act.

Section
10. Declaration of policy
20. Office of alcoholism and drug abuse
30. Powers of office
40. Duties of office
50. Interdepartmental coordinating committee
60. Review board on alcoholism
70. Composition
80. Qualifications of board members
90. Term of office and vacancies
100. Compensation, per diem, or expenses
110. Duties
120. Alcoholism program coordinator
130. Comprehensive program for treatment; regional facilities
140. Public and private treatment facilities
150. Acceptance for treatment
160. Voluntary treatment of alcoholics
170. Treatment and services for intoxicated persons and persons incapacitated by alcohol
180. Emergency commitment
190. Involuntary commitment of alcoholics
200. Hearing on petition for involuntary commitment of alcoholics
210. Records of alcoholics and intoxicated persons
220. Visitation and communication of patients
230. Establishment of emergency service patrol
240. Payment for treatment
245. Wages of patients
250. Nonapplicability
260. Application of Administrative Procedure Act
270. Definitions

Revisor's notes. — AS 47.37.070 — 47.37.270 were enacted as AS 47.37.062 — 47.37.210. Renumbered in 1972.

Collateral references. — 41 Am. Jur. 2d, Incompetent Persons, § 7.

28 C.J.S., Drunkards, § 1 et seq.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

DOCUMENT #85-47

February 20, 1985

The Honorable Max Gruenberg
Co-Chairman
House Health, Education and
Social Services Committee
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

The House HESS Committee has requested that the Division of Family and Youth Services (DFYS) respond to questions raised by individuals testifying to the committee regarding HB 88, Section 12.

DELINQUENCY AND CINA CASES

The committee was asked if the amended version of AS 47.10.081(c) (Sec. 12 HB 88) would apply in child in need of aid cases (CINA). The propos amended version only changes the time period hence it would, as does the present law, apply both to delinquent cases and CINA cases. Both DFYS Regional Managers of social workers and Regional Administrators of Youth Services have requested that change, in order to give their workers more time to properly evaluate and treat children in their custody.

PREDISPOSITION HEARING REPORT RECOMMENDATION

The committee received several comments stating that the time period of two days as proposed in SEC. 12 does not allow an attorney sufficient time in a CINA case to advise and counsel their client. The Barrow office of Alaska Legal Service Corporation (ALSC) was contacted and they would accept a compromise of five days in the place of two working days, although they would prefer five working days. After discussions with field managers the department agrees to support a "five day rule". Therefore the department requests that the wording of the proposed amended statute be changed to "five days", rather than the "two working days" proposed in HB 88.

HISTORY AND RATIONALE

When Title 47.10 was substantially amended in 1977, a new section was added entitled 47.10.081, Predisposition hearing reports. Paragraph (c) of that section requires that predisposition reports prepared by DFYS workers will be available for distribution to the child, his parents, attorney, and Guardian Ad Litem not less than ten days before the disposition hearing.

AS 47.10.08(c) was introduced at the recommendation of a specifically formed Children's and Family Code Task Force which had been formed by a joint effort of the legislative and executive branches of government to recommend modifications to Title 47. The Task Force recommended reports be available to parties three days prior to hearing. Prior to the statutory change, disposition reports could be submitted by DFYS workers as late as the actual hearing. During the legislative process, ten days was substituted for three days on the recommendation of the Public Defender Agency.

In delinquency dispositions where there are 30 or fewer calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to the court hearing. The current ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process.

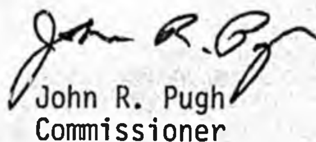
In practice, the so-called "ten day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations, and disposition hearings must be postponed.

In CINA cases the social workers must complete their investigation, assess the child's needs, and institute a treatment plan after taking custody of a child and before a disposition report can be submitted. In those areas of the state where the adjudication and disposition hearings are held together, the current "ten day rule" is a hardship on the social worker. Often the social worker will have 10-12 days to work on the case before the disposition report is due. This is an unrealistic time period to build a case, make a case plan, and provide services. As in delinquent proceedings, the legal community in some cases has as much time to review what the social worker has done and plans to do as the social worker has available to assist the child and prepare the disposition report prior to the disposition hearing.

There is no question that parties to a disposition hearing including a child's attorney must have prior access to our investigative reports. A full five days availability would be a reasonable time for parties to review our reports.

Thank you for the opportunity to respond to these questions.

Sincerely,



John R. Pugh
Commissioner