ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5278 SHES SCR 2

850

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

(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 th 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

(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 110 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).

(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.

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

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. 2041 (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.

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 reha-

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).

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).

bilitated 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

(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. (§ 25 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;

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. 150 (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. 1428, 1436), 499 P.2d 1025 (1972).

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

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

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

(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,

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

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 change 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).

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-

(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 A.L.R2d 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)

(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.

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;

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).

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.

(3) conduct studies and prepare findings and recommendations on the need, number, type, construction, maintenance, and operating costs of juvenile homes, facilities and the other institutions, and adopt and submit a plan for construction of the homes, facilities, and institutions when needed, together with a plan for financing the construction programs;

(4) examine, where possible, all facilities, institutions, and places of juvenile detention in Alaska and inquire into their methods and the management of juveniles in them. (§ 5 art II ch 145 SLA 1957; am § 4 ch 110 SLA 1967; am § 4 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Sec. 47.10.170. Power of cities to maintain and operate home or facility. (a) A city having a population of 1700 or more, according to the latest decennial census, or found by the department to have a present population of 1700 or more may maintain and operate a juvenile detention home or facility.

(b) The city may receive grants-in-aid from the state for costs of operation of the homes or facilities. (§ 5 art II ch 145 SLA 1957)

Sec. 47.10.180. Operation of homes and facilities. (a) The Department of Health and Social Services shall adopt standards and regulations for the operation of juvenile detention homes and juvenile detention facilities in the state.

(b) The department may enter into contracts with cities and other governmental agencies for the detention of juveniles before and after commitment by juvenile authorities. A contract may not be made for longer than one year. (§ 8 art II ch 145 SLA 1957; am § 3 ch 97 SLA 1960; am § 6 ch 104 SLA 1971)

Cross references. — For the general powers of the department over juvenile institutions, see AS 47.10.150. For standards of care for the welfare of children under the care of the department, see AS 47.10.250.

NOTES TO DECISIONS

Standards and formal conditions for use of adjustment rooms in juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

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).

Sec. 47.10.190. Conditions governing detention. When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults. (§ 9 art II ch 145 SLA 1957)

(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, or 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;

Sec. 47.10.210. Youth counsellors. The department may employ youth counsellors. Youth counsellors shall exercise the duties of probation officers and shall prepare preliminary investigations for the information of the court. They shall also carry out other duties in the care and treatment of minors which are consistent with the intent of this chapter. Youth counsellors have the powers of a peace officer with respect to the service of process, the making of arrests of minors who violate state or municipal law, and the execution of orders of the court relating to juveniles. The youth counsellors shall assist and advise the courts in the furtherance of the welfare and control of minors under the court's jurisdiction. (§ 11 art II ch 145 SLA 1957)

Sec. 47.10.220. Grants-in-aid. The Department of Health and Social Services may accept grants-in-aid from the federal government or private foundations and may accept other gifts consistent with the purposes of this chapter. (§ 13 art II ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Article 3. Care of Children.

Sec. 47.10.230. Powers and duties of department over care of child. (a) Subject to (e) and (f) of this section, the Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance which are necessary to assure adequate care of the child, and may accept funds from the federal government which are granted to assist in carrying out the purposes of this chapter, or which are paid under contract entered into with a federal department or agency. A child under the care of the department may not be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement may include provisions for payment, in whole or in part, to the department for the minor's care

Cross references. — For similar provisions, see AS 47.10.130 and 47.10.140(g).

NOTES TO DECISIONS

This section prescribes conditions of confinement after the court has lawfully determined that a child should be confined in an institution. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

"Juvenile" used interchangeably with "minor". — The term "juvenile" is not defined, but throughout this section is used interchangeably with "minor." Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

The apparent intent of the legislature was the two terms "minor" and "juvenile" and to be construed identically. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Thus, instruction that "juvenile" defined identically to minor is correct. — Since, for the purposes of this section, a minor is a person under 18 years of age, an instruction that "juvenile" is identically defined is correct. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Department need not incarcerate over-18-year olds apart from adults. — The department is not limited in its options pertaining to the selection of a suitable facility for those over 18 years of age by the requirement of incarceration apart from adult offenders. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Problems when juvenile reaches 18 years before incarceration. — Difficult problems are presented when one who has committed an offense while under 18 years of age is ordered incarcerated at a later age. Great care must be exercised by the Department of Health and Social Services to provide for custody in an appropriate institution geared to the dual constitutional dictates of reformation of the juvenile and protection of the public. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Quoted in B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Sec. 47.10.200. Releasing juveniles after commitment. A juvenile delinquent who by conduct gives sufficient evidence of having reformed may be released at any time under the conditions and regulations which the department considers proper, if it appears to the satisfaction of the department that there is a reasonable probability that the juvenile will remain at liberty without violating the law. (§ 10 art II ch 145 SLA 1957)

NOTES TO DECISIONS

Jurisdiction over probation revocation proceedings. — The Department of Health and Social Services has the authority to conduct revocation proceedings when it has granted the probation allegedly violated, as a corollary to its power under this section to grant probation. However, until such time as the department chooses to establish procedures regarding probation revocation, jurisdiction over such cases will remain in the superior court. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

Hearing. — The requirement in Children's Rule 12(a) of a disposition hearing applies to a court-ordered revocation of a juvenile delinquent's administratively granted probation. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

The hearing in connection with a juvenile delinquent's probation revocation must be broader than merely determining probable cause that probation conditions are violated. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

NOTES TO DECISIONS

Quoted in E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Sec. 47.10.240. Adequacy of home or institution. (a) A representative of the department shall visit, as often as is considered necessary, every foster home or institution in which a child is placed, and if not satisfied as to the care given, may remove the child from the foster home or institution and place the child elsewhere.

(b) The person or institution receiving a child shall submit the reports the department requires as to the education, health and welfare of the child and the conditions under which the child is living. (§ 2 art III ch 145 SLA 1957)

Sec. 47.10.250. Standards of care. The Department of Health and Social Services shall establish standards of care and regulations desirable for the welfare of every child under its care. (§ 3 art III ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Cross references. — For the general powers of the department over juvenile institutions, see AS 47.10.150. For the operation of juvenile detention homes and facilities, see AS 47.10.180.

NOTES TO DECISIONS

Standards and formal conditions for use of adjustment rooms in juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

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).

Sec. 47.10.260. Payment of costs. The department shall pay the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in the enforcement of AS 47.10.230 — 47.10.260. (§ 4 art III ch 145 SLA 1957)

Article 4. General Provisions.

Section

270. Appropriation
290. Definitions

Sec. 47.10.270. Appropriation. Funds to carry out this chapter shall be provided for in the general appropriation act of the legislature. (§ 1 art IV ch 145 SLA 1957)

and treatment. The agreement entered into shall not operate to prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time.

(d) In addition to funds paid for the maintenance of foster children under (b) of this section, the department shall pay the costs of caring for physically or mentally handicapped foster children, including the additional costs of medical care, habilitative and rehabilitative treatment, services and equipment, special clothing, and the indirect costs of medical care, including child care, transportation expenses, and respite care. In this subsection "respite care" means child care not to exceed 12 hours in any 30-day period; it also means child care for a period not to exceed seven days in a year for the purpose of providing emergency protection for the child when the foster parent is away from the home because of an emergency and no other care is available for the child or when the foster parent is on vacation and the child, because of age or infirmity, cannot be placed in any other type of temporary care facility.

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

(f) If a blood relative of the child specified under (e) of this section exists and agrees that the child should be placed elsewhere, before placement elsewhere the department shall fully communicate the nature of the placement proceedings to the relative. Communication under this subsection shall be made in the relative's native language, if necessary. Nothing in this subsection or in (e) of this section applies to child placement for adoptive purposes. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 76 SLA 1976; am §§ 36, 37 ch 126 SLA 1977; am § 132 ch 6 SLA 1984)

Cross references. — For the legislative intent of amendments made in 1977, see § 35, ch. 126, SLA 1977.

Effect of amendments. — The 1984 amendment substituted "subsection" for "section" in the last two sentences of subsection (f).

The term "juvenile" is not defined, but throughout AS 47.10.190 is used interchangeably with "minor." Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Self-incrimination. — The possible consequences of proceedings brought under former AS 47.10.010(a)(3) or (6) and former paragraph (3) or (7) of this section do not give rise to a right against self-incrimination. E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

Applied in L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Quoted in In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (197[illegible] R.D.S.M. v. Intake Officer, Sup. Ct. No. 1449 (File No. 2821), 565 P.2d [illegible] (1977); Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Cited in In re White, Sup. Ct. Op. No. 507 (File No. 1013), 445 P.2d 813 (1968); In re White v. State, Sup. Ct. Op. No. 569 (File No. 1051), 457 P.2d 650 (1969); N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

Chapter 15. Uniform Interstate Compact on Juveniles.

Sec. 47.15.010. Execution of interstate compact. The governor shall execute a compact on the behalf of the state with any other state or states legally joining in it in substantially the following form:

INTERSTATE COMPACT ON JUVENILES

That Contracting States Solemnly Agree:

ARTICLE I

FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) cooperative supervision of delinquent juveniles on probation or parole;

(2) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact

Cross references. — As to acceptance of grants-in-aid, see AS 47.10.220.

Sec. 47.10.280. Purpose of chapter. [Repealed, § 1 ch 152 SLA 1976. For the purpose and policy of this title relating to children, see AS 47.05.060.]

Sec. 47.10.290. Definitions. In this chapter, unless the context otherwise requires,

(1) "caring" under AS 47.10.010(a)(2)(A) means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a mir or found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(6) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(7) "minor" is a person under 18 years of age.

(§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977)

Revisor's notes. — Reorganized in 1984 to alphabetize the terms defined.

Editor's notes. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.1[illegible] the superior court may designate district judges and magistrates as masters under Civil Rule 53."

NOTES TO DECISIONS

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).

Hence, 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).

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 who sells LSD is a "delinquent minor" under paragraph (2) of this section because the sale of LSD is a crime under former AS 17.12.010 [now see AS 11.71]. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

"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).

"Juvenile" and "minor" as used in AS 47.10.190 construed identically. — See Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Further affidavits and other documents which are considered proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing on it to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located, a written requisition for the return of such juvenile. This requisition shall set out the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or other person to take into custody and detain such juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon the order may be delivered over to the officer whom the demanding court has appointed to receive the juvenile, unless the juvenile is first taken immediately before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge of the court finds that the requisition is in order, the judge shall deliver the juvenile over to the

the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II

EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III

DEFINITIONS

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution under an order of the court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant of it means a place at which a home or regular place of abode is maintained.

ARTICLE IV

RETURN OF RUNAWAYS

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that

name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents which are deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to a peace officer or other appropriate person directing the officer or other person to take into custody and detain the delinquent juvenile. This detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order may be delivered over to the officer whom the demanding person or authority has appointed to receive the juvenile, unless the juvenile is first taken immediately before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court finds that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the demanding person or authority shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. But in this event, the juvenile must be taken immediately before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time, not exceeding ninety days, which will enable the juvenile's detention under a detention order issued on a requisition under this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juve-

officer whom the demanding court shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, the juvenile may be taken into custody without a requisition and brought immediately before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the juvenile's return to another state party to this compact pursuant to a requisition for the juvenile's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenil shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V

RETURN OF ESCAPEES AND ABSCONDERS

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the

or delinquent juvenile is being returned, order the juvenile or delinquent juvenile to return unaccompanied to the state and shall provide the juvenile or delinquent juvenile with a copy of the court order; in this event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VI[1]

COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept the delinquent juvenile, if the parent, guardian or person entitled to the legal custody of the delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting this permission, opportunity shall be given to the receiving state to make the investigations which it considers necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the

nile's legal custody or supervision there is pending in the state where the juvenile is detained a criminal charge or a proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to the further proceedings which are appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI

VOLUNTARY RETURN PROCEDURE

That a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the delinquent juvenile's legal custody or supervision in a state party to this compact, and a juvenile who has run away from a state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped or ran away. This consent shall be given by the juvenile or delinquent juvenile and the juvenile's or delinquent juvenile's counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the counsel or guardian ad litem, if any, consent to the return to the demanding state. Before this consent is executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile or delinquent juvenile to the duly accredited officer or officers of the state demanding return of the juvenile or delinquent juvenile, and shall cause to be delivered to the officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile

that the agreements will improve the facilities or programs available for the care, treatment and rehabilitation. The care, treatment and rehabilitation may be provided in an institution located within any state entering into the supplementary agreement. The supplementary agreements shall

(1) provide the rates to be paid for the care, treatment and custody of the delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing before being sent to another state for care, treatment and custody;

(3) provide that the state receiving the delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of the delinquent juvenile shall be secured before the juvenile is sent to another state; and

(7) make provision for other matters and details which are necessary to protect the rights and equities of the delinquent juveniles and of the cooperating states.

ARTICLE XI

ACCEPTANCE OF FEDERAL AND OTHER AID

That a state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or a local government, or an agency of it and from a person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize them subject to the terms, conditions and regulations governing the donations, gifts and grants.

ARTICLE XII

COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

receiving state a criminal charge or a proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state may transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII

RESPONSIBILITY FOR COSTS

(a) That the provisions of articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities for the payment of costs.

(b) That nothing in this compact shall be construed to prevent a party state or subdivision of it from asserting a right against a person, agency or other entity in regard to costs for which the party state or subdivision of it is responsible under articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX

DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in a prison, jail or lockup, or detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X

SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact, may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find

an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) Escapees and absconders who would otherwise be returned pursuant to article V of the Compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such article shall be made and furnished, but in place of the demand pursuant to article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(c) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(d) As used in this amendment:

(1) "sending state" means sending state as that term is used in article VII of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of article V of the Compact;

(2) "receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

(e) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "Compact Institution" and shall confine persons therein as provided in paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(f) Persons confined in "Compact Institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(g) All persons who may be confined in a "Compact Institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending

ARTICLE XIII

EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within the state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV

RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

ARTICLE XV

SEVERABILITY

That the provisions of this compact shall be severable and if a phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of a participating state or of the United States or the applicability of it to a government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability of it to the government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of a state participating in it, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XVI

OUT-OF-STATE CONFINEMENT

(a) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in

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.

Sec. 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by

state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if the delinquent had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(h) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(i) This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment. (§ 1 ch 88 SLA 1960; am § 2 ch 67 SLA 1966)

Editor's notes. — Section 1, ch. 67, SLA 1966, provides: "The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows in this Act."

Sec. 47.15.020. Juvenile compact administrator. Under the compact, the governor may designate an officer as the compact administrator. The administrator, acting jointly with like officers of other party states, shall adopt regulations to carry out more effectively the terms of the compact. The compact administrator serves subject to the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state. (§ 2 ch 88 SLA 1960)

Sec. 47.15.030. Supplementary agreements. The compact administrator may make supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service of this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose juris-

(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. Upon 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)

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.

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

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).

(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.

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

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;

(B) family and interpersonal counseling;
(C) community systems utilization:
(i) transportation,
(ii) community services systems,
(iii) community problem solving.

(b) Criteria for adventure-based education programs shall be established by the Department of Community and Regional Affairs and shall include provisions for

(1) staff members with background experience in Outward Bound, NOLS, Alaska Wilderness Experience, Inc., or other similar wilderness skills programs or indigenous cultural experience;

(2) minimum program standards. (§ 4 ch 86 SLA 1979)

Chapter 23. Child Support Enforcement Agency.

Cross references. — For the purpose of this chapter, see § 1, ch. 126, SLA 1977.

Editor's notes. — Section 6, ch. 251, SLA 1976, provides: "Section 1 of this Act

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

Effect of amendments. — The 1982 amendment added subsection (b). The amendment also, in present subsection (a), substituted the language beginning "subject to AS 47.23.025 and to federal law" and ending "arrearages of support that shall" for "a uniform schedule of fees which may" and "upon notice if child support payments" for "if the child support payments" in subparagraph (2)(C), and added paragraphs (6) and (7).

Sec. 47.23.025. Rates of penalty and interest. A penalty imposed under AS 47.23.020(a)(2)(C) may not be at a rate that exceeds the rate of interest imposed on delinquent taxes under AS 43.05.225. The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.05.225 or a lesser rate that is the maximum rate of interest permitted to be imposed under federal law. (§ 6 ch 118 SLA 1982)

Sec. 47.23.030. Establishment of fund. There is established in the state general fund a continuing, revolving, reserve account to receive collections and make the authorized disbursements of the agency. (§ 1 ch 251 SLA 1976)

Sec. 47.23.040. Determination of paternity. (a) The agency shall appear on behalf of minor children or their mother or legal custodian or the state and initiate efforts to have the paternity of children born out of wedlock determined by the court on voluntary application by the mother or other legal custodian.

(b) The agency may not attempt to establish paternity in any case involving incest or forcible rape, when legal proceedings for adoption are pending, or when it would not be in the best interests of the children or the state. (§ 1 ch 251 SLA 1976; am § 18 ch 126 SLA 1977)

NOTES TO DECISIONS

Appointment of counsel for indigent defendant. — In light of the fact that paternity suits, in effect, are brought by the state, the significance of the parent-child relationship involved and the peculiar problems presented in such a proceeding, due process requires the appointment of counsel for an indigent defendant. Reynolds v. Kimmons, Sup. Ct. Op. No. 1505 (File No. 3305), 569 P.2d 799 (1977).

Sec. 47.23.045. Determination of support obligation. The agency may appear in an action seeking an award of support in behalf of a child owed a duty of support, and may also appear in an action seeking modification of a support order, decree or judgment already entered. Action under this section may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 47.23.120(a) or (b). (§ 19 ch 126 SLA 1977)

Sec. 47.23.050. Legal assistance. The agency shall contract with the Department of Law to provide needed legal services. (§ 1 ch 251 SLA 1976; am § 20 ch 126 SLA 1977)

has the effect of amending Rule 67, Rules of Civil Procedure, by identifying situations where child support payments need not be made to the agency. The section containing the change in court rule must be approved by an affirmative vote of two-thirds of the membership to which the house is entitled."

Legislative history reports. — For report on ch. 251, SLA 1976 (HCS SSSB 659 [Rules]), see 1976 House Journal, p. 1583.

Sec. 47.23.010. Creation of child support enforcement agency. There is created in the Department of Revenue the child support enforcement agency. (§ 1 ch 251 SLA 1976; am § 16 ch 126 SLA 1977)

Cross references. — For the Uniform Reciprocal Enforcement of Support Act, see AS 25.25.

Sec. 47.23.020. Duties and responsibilities of the agency. (a) The agency shall

(1) obtain, enforce, and administer child support orders of the superior courts of the state;

(2) adopt regulations to carry out the purposes of this chapter including regulations which establish

(A) schedules for determining the amount an obligor is liable to contribute toward the support of an obligee under this chapter and under 42 U.S.C. 651—665 (Title IV-D, Social Security Act);

(B) procedures for hearings conducted under AS 47.23.170; and

(C) subject to AS 47.23.025 and to federal law, a uniform schedule of penalties and a rate of interest on arrearages of support that shall be charged the obligor upon notice if child support payments are 10 or more days overdue or if payment is made by a check backed by insufficient funds;

(3) administer and enforce the Uniform Reciprocal Enforcement of Support Act (AS 25.25);

(4) establish, enforce, and administer child support obligations administratively in accordance with this chapter;

(5) administer the state plan required under 42 U.S.C. 651—665 (Title IV-D, Social Security Act), as amended;

(6) disburse child support payments collected by the agency to the obligee together with interest charged under (2)(C) of this subsection; and

(7) deposit penalties charged under (2)(C) of this subsection in the general fund.

(b) In determining the amount of money an obligor must pay to satisfy the obligor's immediate duty of support, the agency shall consider all payments made by the obligor directly to the obligee or to the obligee's custodian. (§ 1 ch 251 SLA 1976; am § 17 ch 126 SLA 1977; am §§ 3 — 5 ch 118 SLA 1982)

(2) the agreement is signed at the time it is made by both the obligor and the person acting for the obligee.

(b) When the right to receive child support has been assigned to a governmental entity, an agreement under (a) of this section that has not been adopted as an administrative order of the agency is not effective during a period when the obligee is receiving public assistance under AS 47.25.310 — 47.25.420.

(c) In a separation, dissolution, or divorce proceeding, a court may not accept a waiver of support by a custodial parent without proof that the custodial parent can support the needs of the child adequately. (§ 6 ch 144 SLA 1984).

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.070. Order to assign wages for support. (a) In a proceeding in which the court has ordered either or both parents to pay for the support of a minor child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture and education of the minor child.

(b) The order of assignment is binding upon an employer upon service of a copy of the order upon the employer and until further order of the court. The employer may, for each payment made under the order, deduct $1 from other wages or salary owed to the employee.

(c) The assignment made under court order has priority as against an attachment, execution or other assignment unless otherwise ordered by the court.

(d) An employer may not terminate an employee's employment because wages of the employee are subject to an order under this section. (§ 1 ch 251 SLA 1976; am § 22 ch 126 SLA 1977)

Sec. 47.23.080. Enforcement of support orders. (a) A court order requiring payment of child support shall be modified to order payments be made to the agency upon application.

(b) The agency on behalf of the custodian or the state shall take all necessary action permitted by law to enforce child support orders so entered, including petitioning the court for orders to aid in the enforcement of child support.

(c) The determination or enforcement of a duty of support is unaffected by any interference by the custodian of the child with rights of custody or visitation granted by a court. When the agency appears on behalf of a child in an action seeking to establish or enforce support, the court may not adjudicate custody, visitation, or property rights in the same action.

NOTES TO DECISIONS

Legal services for Department of Health and Social Services. — Under this section, the Department of Law may provide needed legal services for the Department of Health and Social Services. Reynolds v. Kimmons, Sup. Ct. Op. No. 1505 (File No. 3305), 569 P.2d 799 (1977).

Sec. 47.23.060. Order of support. (a) An order of support establishes a relationship by which the custodian of the child is the administrator for the purposes of administering child support on behalf of the child. The court shall carefully consider the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce. The court shall also consider the effect on the support obligation of a change in custodian. The need of the child for support shall be considered regardless of the sex of the parent awarded custody of the child.

(b) *[Repealed, § 21 ch 126 SLA 1977.]*

(c) In a court proceeding where the support of a minor child is at issue, the court may order either or both parents to pay the amount necessary for support, maintenance, nurture and education of the child. Upon a showing of good cause the court may order the parents required to pay support to give reasonable security for payments. An order for prospective child support may be modified or revoked as the court considers necessary. (§ 1 ch 251 SLA 1976; am § 21 ch 126 SLA 1977)

NOTES TO DECISIONS

Effect of waiver of child support. — A waiver freely executed by custodial parent can be asserted by noncustodial parent to bar recovery of child support arrearages without any formalities such as consideration or contemporaneous judicial scrutiny, absent a finding that such a result would be deleterious to the child. Malekos v. Chloe Ann Yin, Sup. Ct. Op. No. 2580 (File Nos. 5767, 5817), 655 P.2d 729 (1982).

Retraction of waiver. — Custodial parent may retract waiver of decretory child support at any time by initiating proceedings to enforce support obligation, and once withdrawn, the support obligation is renewed, subject to the court's continuing authority to modify the support obligation in light of changed circumstances. Malekos v. Chloe Ann Yin, Sup. Ct. Op. No. 2580 (File Nos. 5767, 5817), 655 P.2d 728 (1982).

Sec. 47.23.065. Waiver of child support. (a) A custodian of a child, including a custodial parent, owes a duty to that child to ensure that child support is paid by a noncustodial parent who is obligated to pay it. An agreement to waive past or future child support, made between an obligor and a person who is entitled to receive support on behalf of an obligee, is not enforceable unless

(1) the agreement is put in writing at the time the agreement is made; and

Revisor's notes. — As amended by § 7, ch. 118, SLA 1982, this section contained a subsection (b) which has been redesignated as AS 47.23.103.

Effect of amendments. — The 1981 amendment, in present subsection (a), substituted the present second sentence for the former second and third sentences which read "If the obligee is indigent or otherwise unable to pay for these services, the agency shall act without charge to the obligee. If the agency determines that the obligee is financially able to pay, costs shall be assessed according to regulations adopted by the department and be paid into the fund established in AS 47.23.030."

Sec. 47.23.103. Payments to agency. An obligor may make child support payments to the agency. An obligor may pay money to the agency to satisfy the obligor's immediate duty of child support as well as any additional amount of money intended by the obligor to be used for support of the child. The agency shall disburse that portion of a payment that exceeds the amount of money necessary to satisfy the obligor's immediate duty of support in accordance with the instructions of the obligor. The agency shall credit money disbursed under this subsection toward satisfaction of the obligor's duty of support. (§ 7 ch 118 SLA 1982)

Revisor's notes. — Enacted as AS 47.23.100(b). Renumbered in 1982.

Sec. 47.23.105. Audit of collections. Within 10 working days after receipt of a written request from an obligor or the obligor's legal representative, the agency shall provide an audit of all child support payments made by the obligor and received by the agency. The audit shall include the date and amount of each payment, the name of the obligee, and the total amount of arrearages of support past due and amount of unpaid penalties and interest imposed under AS 47.23.020(a)(2)(C). The agency is required to provide an audit for an obligor under this section only once each year. (§ 8 ch 118 SLA 1982)

Sec. 47.23.110. [Renumbered as AS 47.23.900.]

Sec. 47.23.120. Obligor liable for public assistance furnished obligee. (a) An obligor is liable to the state in the amount of assistance granted under AS 47.25.310 — 47.25.420 to a child whom the obligor owes a duty of support except that if a support order has been entered, the liability of the obligor may not exceed the amount of support provided for in the support order.

(b) An obligor is liable to the state in the amount of the cost incurred if the state is maintaining a child whom the obligor owes a duty of support in a foster home or institution, except that if a support order has been entered, or an agreement for payment of that cost executed between the obligor and the state, the liability of the obligor may not exceed the amount provided in the support order or agreement. (§ 29 ch 126 SLA 1977)

(d) An order of arrest may not be issued in the enforcement of child support unless the court has reason to believe that the obligor may flee the jurisdiction or unless the obligor has been ordered to appear in the action and has failed to do so. (§ 1 ch 251 SLA 1976; am § 23 ch 126 SLA 1977; am § 7 ch 144 SLA 1984)

Revisor's notes. — The wording of AS 47.23.080(d), as it appeared in ch. 126, SLA 1977 used the term "obligee" which appears to be a clear error and has been changed to "obligor."

Cross references. — For legislative findings and purpose in connection with the 1984 amendment of this section, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment added the second sentence of subsection (c).

Editor's notes. — Section 34, ch. 126, SLA 1977, provides: "Section 23 of this Act has the effect of changing Rule 67(b) of the Rules of Civil Procedure of the Alaska Supreme Court. It removes the requirement that the court accept reasonable agreements as to method of payment of child support. It requires that the court order payments to be made to the child support enforcement agency only upon application, and not in every child support matter coming before the court."

NOTES TO DECISIONS

Quoted in Malekos v. Chloe Ann Yin, Sup. Ct. Op. No. 2580 (File Nos. 5767, 5817), 655 P.2d 728 (1982).

Sec. 47.23.085. Subpoenas. The agency, with the concurrence of the commissioner of revenue, may subpoena persons, books, records, and documents to determine the extent and location of assets of any obligor who is more than 45 days in arrears in a child support obligation established either by court or administrative order. (§ 8 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.090. Reducing arrears to judgment. [Repealed, § 24 ch 126 SLA 1977.]

Sec. 47.23.095. Agency exempt from execution. Execution may not issue against money held in the fund established under AS 47.23.030. (§ 25 ch 126 SLA 1977)

Sec. 47.23.100. All persons may use agency. The agency shall provide aid to any person due child support under the laws of this state upon application. The agency may not impose a fee for services provided under AS 47.23.010 — 47.23.280 unless required by federal law. (§ 1 ch 251 SLA 1976; am § 26 ch 126 SLA 1977; am § 3 ch 96 SLA 1981)

(b) Notice served under (a) of this section shall state the amount of the obligor's liability under the support order and that the property of the obligor is subject to execution in that amount in accordance with the procedures prescribed in AS 47.23.230 — 47.23.270 at the expiration of 30 days from the date of service of the notice. (§ 29 ch 126 SLA 1977)

Sec. 47.23.160. Administrative establishment of support obligations; notice and finding of financial responsibility. (a) An action to establish a duty of support authorized under AS 47.23.140(a) is initiated by the agency serving on the alleged obligor a notice and finding of financial responsibility. The notice and finding served under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice and finding is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

(b) The notice and finding of financial responsibility served under (a) of this section shall state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under AS 47.23.130 if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because (A) no duty of support is owed, or (B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property of the person will be subject to execution in accordance with AS 47.23.230 — 47.23.270 in the amounts stated in the finding without further notice or hearing. (§ 29 ch 126 SLA 1977)

Sec. 47.23.170. Administrative establishment of support obligations; hearing. (a) A person served with a notice and finding of financial responsibility is entitled to a hearing if a request in writing for a hearing is served on the agency by registered mail, return receipt requested, within 30 days of the date of service of the notice of financial responsibility.

(b) If a request under (a) of this section is made, the execution under AS 47.23.230 — 47.23.270 shall be stayed pending the decision on the hearing, or the decision of a court, if appealed. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

Sec. 47.23.130. Subrogation of state. (a) If the obligor is liable to the state under AS 47.23.120(a) or (b), the state is subrogated to the rights of the obligee to

(1) bring an action in the superior court seeking an order of support;

(2) proceed under AS 47.23.160 — 47.23.270 to establish a duty of support; or

(3) enforce by execution, in accordance with AS 47.23.230 — 47.23.270, or otherwise, a support order entered in favor of the obligee.

(b) To establish or enforce an order of support, based on the subrogation of the state, the agency is not limited to the amount of assistance being granted to the minor child.

(c) The recovery of any amount for which the obligor is liable that exceeds the total assistance granted under AS 47.25.310 — 47.25.420 shall be paid to the obligee. (§ 29 ch 126 SLA 1977; am § 5 ch 96 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

Sec. 47.23.140. Power of agency to administratively establish and enforce support obligation; procedures to be utilized. (a) If no support order has been entered, the agency may establish a duty of support utilizing the procedures prescribed in AS 47.23.160 — 47.23.220 and may enforce a duty of support utilizing the procedure prescribed in AS 47.23.230 — 47.23.270. Action under this subsection may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 47.23.120(a) or (b).

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in AS 47.23.150 and 47.23.230 — 47.23.270.

(c) A decision of the agency determining a duty of support shall include an income assignment order as provided under AS 09.65.132. (§ 29 ch 126 SLA 1977; am § 6 ch 96 SLA 1981)

Effect of amendments. — The 1981 amendment added subsection (c).

Sec. 47.23.150. Required notice in administrative enforcement of support orders. (a) Action to enforce a support order administratively under AS 47.23.230 — 47.23.270 is initiated by the agency serving a notice on the obligor of the obligor's liability under the support order. Notice under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

(b) The agency shall grant a hearing upon a petition made under (a) of this section if affidavits submitted with the petition make a showing of good cause and material change in circumstances sufficient to justify action under (e) of this section.

(c) If a hearing is granted, the agency shall serve a notice of hearing together with a copy of the petition and affidavits submitted on the obligee or the obligee's custodian and the obligor personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

(d) A hearing shall be set not less than 15 nor more than 30 days from the date of mailing of notice of hearing, unless extended for good cause.

(e) Modification of future periodic support payments may be ordered upon a showing of good cause and material change in circumstances. (§ 29 ch 126 SLA 1977)

Sec. 47.23.200. Administrative establishment of support obligations; use of standards in determination of support payments. In making its findings under AS 47.23.160 and in establishing and modifying amounts of periodic support payments under AS 47.23.180 and 47.23.190, the agency shall consider the standards adopted by regulation under AS 47.23.020 and any standards for determination of support payments used by the superior court of the district of residence of the obligor. (§ 29 ch 126 SLA 1977)

Sec. 47.23.210. Administrative establishment of support obligations; obtaining judicial review. (a) Judicial review by the superior court of an agency decision establishing or modifying a duty of support or amounts of support due may be obtained by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. A notice of appeal shall be filed within 30 days of the decision.

(b) The complete record of the proceedings, or the parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in the superior court within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate surety bond equal to the estimated cost.

(c) The complete record includes

(1) the notice and finding of financial responsibility;

(2) the request for a hearing;

(3) the decision of the hearing officer;

(4) the exhibits admitted or rejected;

(5) the written evidence;

(c) If a hearing is requested, it shall be held within 30 days of the date of service of the request for hearing on the agency.

(d) The hearing officer shall determine the amount of periodic payments necessary to satisfy the past, present, and future liability of the alleged obligor under AS 47.23.130, if any, and under any duty of support imposable under the law. The amount of periodic payments determined under this subsection is not limited by the amount of any public assistance payment made to or for the benefit of the child.

(e) The hearing officer shall consider the following in making a determination under (d) of this section:

(1) the needs of the alleged obligee, disregarding the income or assets of the custodian of the alleged obligee;

(2) the amount of the alleged obligor's liability to the state under AS 47.23.125 if any;

(3) the intent of the legislature that children be supported as much as possible by their natural parents;

(4) the ability of the alleged obligor to pay.

(f) If the alleged obligor requesting the hearing fails to appear at the hearing, the hearing officer shall enter a decision declaring the property of the alleged obligor subject to execution in accordance with AS 47.23.230 — 47.23.270 in the amounts stated in the notice and finding of financial responsibility. (§ 29 ch 126 SLA 1977; am § 7 ch 96 SLA 1981)

Effect of amendments. — The 1981 amendment, in subsection (f), substituted "finding" for "filing" preceding "of financial responsibility."

Editor's notes. — The reference to AS 47.23.125 in paragraph (2) of subsection (e) is apparently incorrect. AS 47.23.120 would appear to be the intended reference.

Sec. 47.23.180. Administrative establishment of support obligations; decision. (a) Within 20 days of the date of the hearing, the hearing officer shall adopt findings and a decision determining whether a duty of support exists and, if a duty of support is found, the amount of periodic payments or sum for which the alleged obligor is found to be responsible.

(b) Liability to the state under AS 47.23.130 is limited to the amount for which the obligor is found to be responsible under (a) of this section.

(c) A decision rendered under (a) of this section is modified to the extent that a subsequent order, judgment, or decree of a superior court is inconsistent with the decision entered under (a) of this section. (§ 29 ch 126 SLA 1977)

Sec. 47.23.190. Administrative establishment of support obligations; modification of a finding or decision of responsibility. (a) Unless a support order has been entered, the obligor, or the obligee or the obligee's custodian, may petition the agency or its designee for a modification of the finding or decision of responsibility previously entered with regard to future periodic support payments.

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court judgment or agency order. (§ 29 ch 126 SLA 1977)

Sec. 47.23.225. Support payment obligations as judgments. A court order ordering a noncustodial parent obligor to make periodic child support payments to the custodian of a child is a judgment that becomes vested when each payment becomes due and unpaid. The custodian of the child, or the agency on behalf of that person, may take legal action under AS 47.23.226 to establish a judgment for child support payments ordered by a court of this state that are delinquent. (§ 9 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.226. Action to collect child support. To commence an action to collect the payment due, the custodian of a child, or the agency on behalf of that person, shall file with the court (1) a petition requesting establishment of a judgment; (2) an affidavit that states that one or more payments of child support are 30 or more days past due and that specifies the amounts past due and the dates they became past due; and (3) notice of the obligor's right to respond. Service on the obligor shall be in the manner provided by the rule of civil procedure for service of summons in a civil action. The child's custodian, or the agency on behalf of the custodian, shall file with the court proof of service of the petition, affidavit, and notice. The obligor shall respond no later than 15 days after service by filing an affidavit with the court. If the obligor's affidavit states that the obligor has paid any of the amounts claimed to be delinquent, describes in detail the method of payment or offers any other defense to the petition, then the obligor is entitled to a hearing. After the hearing, if any, the court shall enter a judgment for the amount of money owed. If the obligor does not file an affidavit under this section, the court shall enter a default judgment against the obligor. (§ 9 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.227. Nature of remedies. AS 47.23.225 and 47.23.226 provide remedies in addition to and not as a substitute for any other remedies available to the parties. (§ 9 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

(6) all other documents in the case.

(d) Upon order of the superior court, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed when this chapter is silent, and when not in conflict with this chapter.

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully or unreasonably withheld, the superior court may compel the agency to initiate action. (§ 29 ch 126 SLA 1977)

Sec. 47.23.220. Administrative establishment of support obligations; procedure on review. (a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may

(1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence; or

(2) admit the evidence at the appellate hearing without remanding the case.

(e) The court shall enter judgment setting aside, modifying, remanding, or affirming the decision, without limiting or controlling in any way the discretion legally vested in the agency.

(f) The court in which proceedings under this section are started may stay the operation of the decision until

(1) the court enters judgment;

(2) a notice of further appeal from the judgment is filed; or

(3) the time for filing the notice of appeal expires.

(g) A stay may not be imposed or continued if the court is satisfied that it is against the public interest.

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Sec. 47.23.250. Order to withhold and deliver. (a) At the expiration of 30 days from the date of service of notice under AS 47.23.150, or from the date of service of a notice and finding of financial responsibility under AS 47.23.160, the agency may issue to any person, political subdivision, or department of the state an order to withhold and deliver property.

(b) All real or personal property belonging to the obligor is subject to an order to withhold and deliver, including, but not limited to, earnings which are due, owing, or belonging to the debtor.

(c) The agency may issue an order to withhold and deliver when it has reason to believe that there is in the possession of a person, political subdivision, or department of the state property which is due, owing, or belonging to the obligor.

(d) The order to withhold and deliver shall be served upon the person, political subdivision, or department of the state possessing the property in the manner provided for service of liens under AS 47.23.240. The order shall state the amount of the obligor's liability and shall state in summary the terms of AS 47.23.260 and 47.23.270.

(e) Any person, political subdivision, or department of the state served with an order to withhold and deliver is required to make true answers to inquiries contained in the order under oath and in writing within 30 days of service of the order and is further required to answer all inquiries subsequently put.

(f) If any person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision, or department shall withhold the property immediately upon receipt of the order and shall deliver the property to the agency upon demand after the expiration of the 30-day period from the date of service of the order. The agency shall hold property delivered under this subsection in trust for application against the liability of the obligor under AS 47.23.130 or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond conditioned upon final determination of liability in lieu of requiring delivering of property under this subsection.

(g) Delivery to the agency of the money or other property due, owing, or belonging to the obligor shall satisfy the requirement of the order to withhold and deliver. Delivery of money due and owing to the obligor under any contract of employment, express or implied, or held by any person, political subdivision, or department of the state, and subject to withdrawal by the obligor, shall be delivered by remittance payable to the order of the agency.

(h) The agency shall defend and hold harmless for such actions people withholding or delivering money or property to the agency in accordance with this section.

Sec. 47.23.228. Court costs. The court may order an obligor to pay all court costs involved in a proceeding resulting in a court order described in AS 47.23.225, and in a proceeding under AS 47.23.226. (§ 9 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.230. Assertion of lien. (a) At the expiration of 30 days from either (1) the date of service of notice under AS 47.23.150, or (2) the date of service of a notice and finding of financial responsibility under AS 47.23.160, the agency may assert a lien upon the real or personal property of the obligor, in the amount of the obligor's liability.

(b) No lien filed under this section has any effect against earnings, or bank deposits or balances, unless it states the amount of the obligor's liability under this chapter and unless the lien is served in accordance with AS 47.23.240.

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of filing of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business.

(d) Whenever a lien has been filed under this section and there is in the possession of any person, political subdivision, or department of the state having actual notice of the lien any property which may be subject to the lien, that property may not be paid over, released, sold, transferred, encumbered or conveyed unless

(1) a written release or waiver signed by a representative of the agency has been delivered to the person, political subdivision, or department of the state; or

(2) a decision has been made in a hearing held under AS 47.23.170 or by a superior court ordering release of the lien on the grounds that no debt exists or that the debt has been satisfied. (§ 29 ch 126 SLA 1977)

Sec. 47.23.240. Service of lien. (a) The agency may at any time after filing of a lien filed under AS 47.23.230 serve a copy of the lien upon any person, political subdivision, or department of the state possessing earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to the obligor.

(b) A lien filed under AS 47.23.230 shall be served upon a person, political subdivision, or department of the state personally or by registered, certified, or insured mail, return receipt requested. (§ 29 ch 126 SLA 1977)

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Effect of amendments. — The 1981 amendment added "or an income assignment order under AS 09.65.132" following "honor an assignment of wages" and added "or income" preceding "together with costs."

Sec. 47.23.265. Service; notification of change of address. (a) Except as otherwise provided under this chapter, when a notice, paper, or other document is required by this chapter to be given or served upon a person by the agency, the notice, paper, or other document may be sent by registered or certified mail to the last known address of that person. Service by mail under this chapter is effected when the notice, paper, or other document is properly addressed, registered or certified, and mailed.

(b) A person required by court order to make child support payments through the agency shall keep the agency informed of the person's current address. (§ 11 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.270. Judicial relief from administrative execution. Any person against whose property a lien has been filed under AS 47.23.230 or an order to withhold and deliver served in accordance with AS 47.23.250 may apply for relief to the superior court. (§ 29 ch 126 SLA 1977)

Sec. 47.23.273. Reporting of payment information concerning delinquent obligors. (a) The agency may provide to credit bureaus or lending institutions of any kind information about delinquent child support owed by obligors. The information so provided must consist solely of the payment history of the obligor for a period not to exceed 10 years before the date the information is provided.

(b) Upon an obligor's payment of delinquent child support, the agency shall immediately notify all credit bureaus and lending institutions that were furnished information about the obligor under (a) of this section that the obligor is no longer delinquent. (§ 12 ch 144 SLA 1984)

(i) Exemptions under AS 09.38 do not apply to proceedings to enforce the payment of child support under AS 47.23.230 — 47.23.270; however, 50 percent of the obligor's net disposable earnings is exempt from execution under AS 47.23.230 — 47.23.270. In this subsection, "net disposable earnings" has the meaning given in 15 U.S.C. 1672. (§ 29 ch 126 SLA 1977; am § 8 ch 96 SLA 1981; am § 134 ch 6 SLA 1984; am § 10 ch 144 SLA 1984)

Cross references. — For legislative findings and purpose in connection with the 1984 amendment of this section, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Effect of amendments. — The 1981 amendment, in subsection (i), added "however, 50 percent of the gross wages of the obligor or $100 a week, whichever is less, is exempt from execution under AS 47.23.230 — 47.23.270" at the end of the present first sentence.

The first 1984 amendment substituted "Exemptions under AS 09.38" for "The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1)" in subsection (i).

The second 1984 amendment, in subsection (i), substituted "obligor's net disposable earnings" for "gross wages of the obligor of $100 a week, whichever is less" in the first sentence and added the second sentence.

Sec. 47.23.253. Earnings subject to an order or lien. (a) A person, political subdivision, or department of the state shall withhold the earnings of the obligor subject to an order or lien at each succeeding interval of payment until the entire amount of the debt stated in the order to withhold and deliver has been withheld.

(b) An order to withhold and deliver issued to the Department of Revenue remains in effect throughout the calendar year in which it is served. That order applies to any tax refund or other disbursements to which the obligor is entitled even if the tax refund or disbursement is issued more than 30 days after service of the order. (§ 9 ch 96 SLA 1981)

Sec. 47.23.255. Income assignment orders. (a) The agency shall pay the obligee all money recovered by the agency under an income assignment order except for costs that are recovered from the obligor.

(b) Notwithstanding AS 47.23.250, an income assignment order contained in a decision of the agency that has not been set aside by the superior court under AS 47.23.220 shall be enforced under the procedure established in AS 09.65.132. (§ 9 ch 96 SLA 1981)

Sec. 47.23.260. Civil liability upon failure to comply with an order or lien. If any person, political subdivision, or department of the state (1) fails to make answer to an order to withhold and deliver within the time prescribed in AS 47.23.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien filed under AS 47.23.230 to or for the benefit of the obligor or any other person; (4) fails or refuses to surrender upon

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Effect of amendments. — The 1984 amendment repealed paragraph (8), which defined "disposable earnings."

Chapter 24. Protection of the Elderly.

Cross references. — For statement of legislative purpose in enacting AS 47.24, see § 1, ch. 36, SLA 1983, in the Temporary and Special Acts.

Collateral references. — 70 Am. Jur. 2d. Social Security and Medicare, § 1 et seq.

81 C.J.S., Social Security and Public Welfare, § 1 et seq.

Licensing and regulation of nursing or rest homes, 97 ALR2d 1187.

Sec. 47.24.010. Reports of harm. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that an elderly person has suffered harm shall, not later than 24 hours after first having cause for the belief, report the harm to the Department of Health and Social Services:

(1) a physician or other licensed health care provider;

(2) a mental health professional as defined in AS 47.30.915(11);

(3) a pharmacist;

(4) an administrator of a nursing home, residential care or health care facility;

(5) a guardian or conservator;

(6) a police officer;

(7) a village public safety officer;

(8) a village health aide;

(9) a social worker;

(10) a member of the clergy;

(11) a staff employee of a project funded by the Older Alaskans Commission;

(12) an employee of a homemaker program or home health aide program;

(13) an emergency medical technician or a paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include

(1) the name and address of the elderly person;

Cross references. — For legislative findings and purpose, see § 1, ch. 144, SLA 1984 in the Temporary and Special Acts.

Sec. 47.23.275. Location of children. Upon the written request of the obligor and notice to the obligee, the agency shall release information concerning the location of children to whom a duty of support is owed if the obligor has paid all support payments that are due and there is a visitation or joint custody agreement or order in effect. (§ 11 ch 96 SLA 1981)

Sec. 47.23.280. Severability: Alternative when method of notification held invalid. If any provision of this chapter or the application of it to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state for service of process in a civil action shall be substituted for the method held invalid. (§ 29 ch 126 SLA 1977)

Sec. 47.23.900. Definitions. In this chapter

(1) "agency" means the child support enforcement agency;

(2) "department" means the Department of Revenue;

(3) "duty of support" includes a duty of child support imposed or imposable by law, by a court order, decree or judgment, or by a finding or decision rendered under this chapter whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid together with penalties and interest on arrearages imposed under AS 47.23.020(a)(2)(C);

(4) "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or other similar description and includes the gain derived from the investment of capital, from labor, or from a combination of investment and labor;

(5) "obligee" means a person to whom a duty of support is owed;

(6) "obligor" means a person owing a duty of support;

(7) "support order" means any judgment, decree, or order of child support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered. (§ 1 ch 251 SLA 1976; am §§ 27, 28 ch 126 SLA 1977; am § 4 ch 96 SLA 1981; am § 9 ch 118 SLA 1982; am § 133 ch 6 SLA 1984)

Revisor's notes. — Formerly AS 47.23.110. Renumbered in 1984. Reorganized in 1984 to alphabetize the terms defined.

Editor's notes. — For legislative findings, see § 1, ch. 189, SLA 1972, in the 1972 Temporary and Special Acts.

Sec. 47.50.010. Office of Child Advocacy. There is created in the Office of the Governor the Office of Child Advocacy to act as a coordinating body for services for children from prenatal to age 18. The Office of Child Advocacy is administered by a director appointed by the board of directors with the approval of the governor. Staff may be employed in accordance with appropriate budgets. (§ 2 ch 189 SLA 1972)

Sec. 47.50.020. Board of directors for the Office of Child Advocacy. There is created a board of directors for the Office of Child Advocacy. The board consists of the Alaska State Council on the Coordination of Community Child Care plus four members not more than 18 years of age appointed by the governor for a term of two years each, or until the youthful member attains the age of 19 years. (§ 2 ch 189 SLA 1972)

Sec. 47.50.030. Compensation and expenses. Members of the board of directors for the Office of Child Advocacy receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions. (§ 2 ch 189 SLA 1972)

Revisor's notes. — Formerly AS 47.50.040. Renumbered in 1972.

Sec. 47.50.040. Powers and duties of board and director. (a) The board of directors for the Office of Child Advocacy shall determine policy, establish program priorities and serve as a child advocacy agency in the state. The board shall

(1) coordinate public and private programs and priorities which affect children and child development;

(2) develop guidelines to improve children and child development services throughout the state, including the development of program standards, training for paraprofessionals and professional personnel and monitoring and evaluation procedures;

(3) assist local communities in the initiation of child development programs including the provision of information about pertinent legislation and funding and consultant resources;

(4) identify, coordinate and develop a comprehensive plan for the use of public and private resources, including the services of volunteers;

(5) provide leadership in recommending legislative change which affects the provision of children and child development services, and review existing state policies as they relate to, and affect the legal status and well-being of children;

Sec. 47.45.130. Death or cessation of residency. The commissioner of administration shall establish procedures to stop a bonus when a recipient under this chapter no longer qualifies. When a recipient dies or discontinues residency in the state the recipient's qualification for a bonus shall stop at the time of the recipient's last approved monthly application. (§ 1 ch 205 SLA 1972; r § 11 ch 38 SLA 1984)

Sec. 47.45.140. Penalty for false statements. A person who wilfully or knowingly makes a false statement, or falsifies or permits to be falsified any record required by this chapter, 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 six months, or by both, forfeits all rights under this chapter, and shall make adequate restitution for any bonuses illegally received. (§ 1 ch 205 SLA 1972; r § 11 ch 38 SLA 1984)

Sec. 47.45.150. Definitions. In this chapter

(1) "bonus" means a monthly Alaska longevity bonus payment made to a person or the person's beneficiary who qualifies under this chapter;

(2) "resident" or "resident of the state" means an individual who is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state; a person demonstrates the requisite intent by maintaining a principal place of abode in the state for one year and by providing other proof of intent the commissioner may require by regulation, including proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state. (§ 1 ch 205 SLA 1972; am § 5 ch 38 SLA 1984; r § 11 ch 38 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "the person's" for "his" in paragraph (1) and substituted present paragraph (2) for former paragraph (2), which defined "domicile."

Sec. 47.45.160. Applicability of Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) does not apply to this chapter. (§ 1 ch 205 SLA 1972; r § 11 ch 38 SLA 1984)

Sec. 47.45.170. Purpose. [Repealed, § 6 ch 38 SLA 1984.]

Chapter 50. Office of Child Advocacy.

Chapter 08. Catastrophic Illness Assistance.

Section
50. Services excluded from coverage

Sec. 47.08.050. Services excluded from coverage. Annually, the committee shall determine in light of appropriated funds and expected need the medical expenses reimbursable under this chapter, except that the following are not reimbursable:

(1) dentistry and optometry unless prescribed by a licensed dentist or physician as medically necessary as the result of the injury or illness;

(2) elective medical or surgical procedures;

(3) drugs and medications not prescribed by a licensed physician;

(4) services received as a result of a pregnancy or birth without unusual complications;

(5) private psychological or psychiatric treatment or private alcoholism treatment, unless not available from public agencies or programs;

(6) chiropractic services and services provided by a person who practices naturopathy;

(7) services not of a medical nature;

(8) medical services currently provided to persons in the custody of the Department of Corrections;

(9) costs incurred before July 1976. (§ 1 ch 107 SLA 1978; am. E.O. No. 55, § 41 (1984); am § 7 ch 56 SLA 1986)

Effect of amendments. — The 1986 amendment, effective May 30, 1986, at the end of paragraph (6) added "and services provided by a person who practices naturopathy."

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

Article
1. Children's Proceedings (§§ 47.10.010, 47.10.120, 47.10.140, 47.10.141, 47.10.142)
3. Care of Children (§ 47.10.230)
4. General Provisions (§ 47.10.290)

Article 1. Children's Proceedings.

Section
10. Jurisdiction
120. Support of minor
140. Temporary detention and detention hearing
141. Runaway and missing minors
142. Emergency custody and temporary placement hearing

(6) develop innovative approaches for involving parent-consumers on both the state and local level in program planning and policy making.

(b) The director shall carry out the policies and programs set out by the board of directors. (§ 2 ch 189 SLA 1972)

Revisor's notes. — Formerly AS 47.50.030. Renumbered in 1972.

Sec. 47.50.050. Departments to assist Office of Child Advocacy. The Department of Health and Social Services, the Department of Education, the Department of Labor and all other departments and agencies of the state which have programs or services pertaining to children shall cooperate with the Office of Child Advocacy and shall furnish technical assistance and personnel, if available, upon request. (§ 2 ch 189 SLA 1972)

Chapter 60. Multi-Purpose Senior Centers.

Sec. 47.60.010. Legislative findings. The legislature finds that there is a need for multi-purpose senior centers in certain areas of the state to provide certain services for elderly persons, that this need can be at least partially met utilizing nonprofit corporations which would undertake the establishment of multi-purpose senior center projects, and that the establishment of these projects constitutes a public purpose worthy of the cooperation of the state. (§ 1 ch 87 SLA 1974)

Sec. 47.60.020. Authorization of nonprofit corporations for establishment of multi-purpose senior centers. Private, nonprofit corporations, incorporated under state law, may undertake or may be incorporated for the purpose of undertaking the development and operation of multi-purpose senior centers. (§ 1 ch 87 SLA 1974)

Sec. 47.60.030. Purposes of multi-purpose senior centers. A multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins, and education programs. (§ 1 ch 87 SLA 1974)

(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. (§ 4 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; am § 5 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) in paragraph (2) in subparagraph (B) inserted "in need of treatment for," substituted "parent, guardian, or custodian has knowingly failed" for "parents are unwilling," and deleted "medical" preceding "treatment," and in subparagraph (D) inserted "or being in imminent and substantial danger of being."

NOTES TO DECISIONS

"Judicial proceeding related to a report made under this chapter". — The phrase "judicial proceeding related to a report made under this chapter" in AS 47.17.060 only refers to child protection proceedings under AS 47.10.010. State v. Wetherhorn, Ct. App. Op. No. 375 (File No. 7768), 683 P.2d 269 (1984).

Applied in K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984); D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

Stated in D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

Cited in In re J.R.S., Sup. Ct. Op. No. 2869 (File Nos. 7421, 7422), 690 P.2d 10 (1984); In re J.R.B., Sup. Ct. Op. No. 3029 (File No. S-907), 715 P.2d 1170 (1986).

Sec. 47.10.020. Investigation and petition.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.10.060. Waiver of jurisdiction.

NOTES TO DECISIONS

Finding of unamenability to treatment not error. — Superior court did not abuse its discretion in finding that defendant was not amenable to treatment as a minor. C.G.C. v. State, Ct. App. Op. No. 483 (File No. A-328), 702 P.2d 648 (1985).

Quoted in W.M.F. v. Johnstone, Ct. App. Op. No. 571 (File No. A-1243), 711 P.2d 1187 (1986).

Sec. 47.10.070. Hearings.

NOTES TO DECISIONS

"Compatible." — In the absence of contrary authority, it is appropriate to accord the word "compatible" its usual meaning. W.M.F. v. Johnstone, Ct. App. Op. No. 571 (File No. A-1243), 711 P.2d 1187 (1986).

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 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 in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the 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, or being in imminent and substantial danger of being, 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.

Sec. 47.10.082. Best interests of the child.

NOTES TO DECISIONS

Applied in D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

Cited in K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities.

NOTES TO DECISIONS

The phrase "reasonable visitation" in subsection (c) does not imply an absolute right to visitation; this section should be read in conjunction with the rest of the chapter to allow parental visits to be barred when the visits are not in the best interests of the child. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

The following procedures should be followed when visitation rights are denied prior to the termination of parental rights: first, the Department of Health and Social Services, Division of Family and Youth Services should have primary authority to set visitation based on the best interests of the child, since the division is in the best position to make this decision in the first instance; and secondly, either the guardian ad litem or the parents should be entitled to request an expedited evidentiary hearing of a denial of visitation, which would consist of an independent determination by the superior court that clear and convincing evidence showed that the child's best interests were served by disallowing parental visitations. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

Applied in In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), P.2d (1986).

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.10.120. Support of minor. (a) When a child in need of aid or a delinquent minor is committed under this chapter, the court shall, after giving the parent or legal guardian a reasonable opportunity to be heard, adjudge that the parent or guardian pay to the department in a manner that the court directs a sum that is based on the fee schedule adopted under AS 44.29.022 to cover in full or in part the maintenance and care of the child or 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.

(d) The commissioner of administration shall separately account for support fees collected under this section that the Department of Health and Social Services deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section. (§ 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; am § 88, 89 ch 138 SLA 1986)

Sec. 47.10.080. Judgments and orders.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Cited in In re J.R.S., Sup. Ct. Op. No. 2869 (File Nos. 7421, 7422), 690 P.2d 10 (1984); Coney v. State, Ct. App. Op. No. 471 (File Nos. 7456, 7471), 699 P.2d 899 (1985).

II. DELINQUENT MINOR.

Standards for use in choosing alternatives under subsection (b). — See R.P. v. State, Ct. App. Op. No. 620 (File No. A-1100), 718 P.2d 168 (1986).

Findings insufficient to sustain order institutionalizing juvenile. — See R.P. v. State, Ct. App. Op. No. 620 (File No. A-1100), 718 P.2d 168 (1986).

III. CHILD IN NEED OF AID.

Section not in conflict with Indian Child Welfare Act. — The application of the clear and convincing standard to the findings that a child is in need of aid as a result of parental conduct and that the paternal conduct is likely to continue does not conflict with section 1912(f) of the Indian Child Welfare Act (ICWA). Section 1912(f) looks to likely future harm to the child, requiring only a finding beyond a reasonable doubt of likely harm to the child with continued custody by the parent or Indian custodian. In contrast, this section is concerned with the present condition of the child and the likely future conduct of the parent and requires a finding by clear and convincing evidence that the child is in need of aid as a result of parental conduct and that the parental conduct that placed the child in need of aid is likely to continue. The Alaska statute requires findings additional to that required by the ICWA, thus providing a level of protection to the parental rights beyond that provided by the ICWA, and is not preempted by the ICWA. In re J.R.B., Sup. Ct. Op. No. 3029 (File No. S-907), 715 P.2d 1170 (1986).

Authority to direct placement of minor. — Once a court declares a minor a child in need of aid and commits the minor to the Department of Health and Social Services under subsection (c)(1), the department has the authority to direct the placement of the minor. The court can review the department's decision to see if it constitutes an abuse of discretion, but it cannot make a specific placement order once legal custody has been granted to the department. In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), P.2d (1986).

The Department of Health and Social Services is not required to file an additional petition for adjudication in order to change the physical placement of minors in its legal custody. In re B.L.J., Sup. Ct. Op. No. 3039 (File No. S-648), P.2d (1986).

Court authority to set conditions on parent for placement of child in parental home. – Court possessed authority to require parent to complete alcohol abuse program and maintain sobriety as a precondition to placement of the child in the parental home by the department under (c)(1) of this section. D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

Burden of proof under subsection (c)(3). — Although subsection (c)(3) does not place the burden of proving 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 that the parental conduct is likely to continue on either party, the Supreme Court of Alaska has assigned the burden of proof to the Department of Health and Social Services, Division of Family and Youth Services. K.T.E. v. State, Sup. Ct. Op. No. 2877 (File No. S-50), 689 P.2d 472 (1984).

Superior court's decision to terminate mother's parental rights on the basis of her abandonment of her child was supported by substantial evidence. — See D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

Sec. 47.10.141. Runaway and missing minors. (a) Upon receiving a request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. As soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minor described in (a) of this section if the minor is not otherwise subject to arrest or detention. The peace officer shall honor the minor's preference to either (1) return the minor to the legal custodian or (2) take the minor to an office specified by the Department of Health and Social Services or a facility or contract agency of the department. If an office specified by the department or a facility or contract agency of the department does not exist in the community, the officer shall take the minor to another suitable location and promptly notify the department. A minor under protective custody may not be housed in a jail or other detention facility. Immediately upon taking a minor into protective custody the officer shall advise the minor orally and in writing of the right to social services under AS 47.10.142(b), and, if known, the officer shall advise the legal custodian that the minor has been taken into protective custody. (§ 2 ch 42 SLA 1985)

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, and the department determines that immediate removal from the minor's surroundings is necessary to protect the minor's life or provide immediate necessary medical attention;

(3) the minor has been subjected to child abuse or neglect by a person responsible for the minor's welfare, as "child abuse or neglect" is defined in AS 47.17.070, and the department determines that immediate removal from the minor's surroundings is necessary to protect the minor's life or that immediate medical attention is necessary; or

Effect of amendments. — The 1986 amendment effective July 1, 1986, rewrote subsection (a) and added subsection (d).

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, a minor may be detained only by court order.

(f) *[Repealed, § 3 ch 42 SLA 1985.]*

(g) *[Repealed, § 3 ch 42 SLA 1985.]* (§ 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; am §§ 1, 3 ch 42 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote subsection (e) and repealed subsections (f) and (g).

Effect of amendments. — The 1985 amendment rewrote subsections (a) and (c).

NOTES TO DECISIONS

Quoted in D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Article 3. Care of Children.

Section
230. Powers and duties of department over care of child

Sec. 47.10.230. Powers and duties of department over care of child. (a) Subject to (e) and (f) of this section, the Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance which are necessary to assure adequate care of the child, and may accept funds from the federal government which are granted to assist in carrying out the purposes of this chapter, or which are paid under contract entered into with a federal department or agency. A child under the care of the department may not be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement must include provisions for payment of fees under AS 44.29.022 to the department for the minor's care and treatment. The agreement entered into may not prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time.

(d) In addition to funds paid for the maintenance of foster children under (b) of this section, the department shall pay the costs of caring for physically or mentally handicapped foster children, including the additional costs of medical care, habilitative and rehabilitative treatment, services and equipment, special clothing, and the indirect costs of medical care, including child care, transportation expenses, and

(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. If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 12 hours after custody was assumed, a petition alleging that the child is a child in need of aid. If the department releases the child within 12 hours after taking the child into custody and does not file a child in need of aid petition the department shall, within 12 hours after releasing the child, file with the court a report explaining why the child was taken into custody.

(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; am §§ 6, 7 ch 39 SLA 1985)

respite care. In this subsection "respite care" means child care not to exceed 12 hours in any 30-day period; it also means child care for a period not to exceed seven days in a year for the purpose of providing emergency protection for the child when the foster parent is away from the home because of an emergency and no other care is available for the child or when the foster parent is on vacation and the child, because of age or infirmity, cannot be placed in any other type of temporary care facility.

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

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

(g) The department may enter into agreements with Alaska Native villages or Native organizations under 25 U.S.C. 1919 (Indian Child Welfare Act of 1978) respecting the care and custody of Native children and jurisdiction of Native child custody proceedings. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 76 SLA 1976; am §§ 36, 37 ch 126 SLA 1977; am § 132 ch 6 SLA 1984; am § 1 ch 127 SLA 1986; am § 90 ch 138 SLA 1986)

Effect of amendments. — The first 1986 amendment added subsection (g).

The second 1986 amendment, effective July 1, 1986, in subsection (c), substituted "must include provisions for payment of fees under AS 44.29.022" for "may include provisions for payment, in whole or in part" in the second sentence and substituted "may not prohibit" for "shall not operate to prohibit" in the third sentence.

NOTES TO DECISIONS

Preferences in adoptive placement. — Subsection (e) does not entitle natural relatives to a preference in the adoptive placement of children. In re W.E.G. & J.R.G., Sup. Ct. Op. No. 2998 (File Nos. S-777, S-778, S-803), 710 P.2d 410 (1985).

Quoted in In re J.R.S., Sup. Ct. Op. No. 2869 (File Nos. 7421, 7422), 690 P.2d 10 (1984); D.E.D. v. State, Sup. Ct. Op. No. 2970 (File No. S-553), 704 P.2d 774 (1985).

Article 4. General Provisions.

Section
290. Definitions

Sec. 47.10.290. Definitions. In this chapter, unless the context otherwise requires,

(1) "care" or "caring" under AS 47.10.010(a)(2)(A), 47.10.120(a) and 47.10.230(c), means to provide for the physical, emotional, mental, and social needs of the child;

(2) "child in need of aid" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2);

(3) "court" means the superior court of the state;

(4) "delinquent minor" means a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1);

(5) "department" means the Department of Health and Social Services.

(6) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(7) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(8) "minor" is a person under 18 years of age. (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977; am §§ 91, 92 ch 138 SLA 1986)

Revisor's notes. — Paragraph (5) was enacted as (a). Renumbered in 1986.

Reorganized in 1984 and 1986 to alphabetize the terms defined.

Effect of amendments. — The 1986 amendment, effective July 1, 1986, inserted "'care' or" and "47.10.120(a) and 47.10.230(c)" in paragraph (1) and added paragraph (5).

Chapter 17. Child Protection.

Section
20. Persons required to report
22. Training
23. Reports regarding child pornography
24. Photographs and x-rays
68. Penalty for failure to report
69. Protective injunctions
70. Definitions

Sec. 47.17.010. Purpose.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their occupational duties, have cause to believe that a child has suffered harm as a result of child 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 of public and private schools;

(3) social workers;

(4) peace officers, and officers of the Department of Corrections;

(5) administrative officers of institutions;

(6) child care providers;

(7) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900.

(b) This section does not prohibit the named persons from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting a child's harm that the person has cause to believe is a result of child 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.

(d) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the 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.

(e) A person listed in (a) of this section, who in the performance of the person's occupational duties has cause to believe that a child has suffered harm as a result of abuse, shall promptly report the harm to the nearest law enforcement agency if the person making the report (1) has cause to believe that the harm was caused by a person who is not responsible for the child's welfare; or (2) is unable to determine (A)

who caused the harm to the child; or (B) whether the person who is believed to have caused the harm has responsibility for the child's welfare. If a person making a report under this subsection cannot reasonably contact the nearest law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency. In this subsection, "abuse" means the physical injury, sexual abuse, sexual exploitation, or maltreatment of a child by any person under circumstances that indicate that the child's health or welfare is harmed or threatened. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984); am §§ 8—10 ch 39 SLA 1985; am § 2 ch 114 SLA 1986)

Effect of amendments. — The 1985 amendment rewrote subsections (a) and (b) and added subsection (d). The 1986 amendment added subsection (e).

Sec. 47.17.022. Training. (a) A person employed by the state who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect.

(b) Each department of the state that employs persons required to report abuse or neglect of children shall provide

(1) initial training required by this section to each new employee during the employee's first six months of employment, and to any existing employee who has not received equivalent training; and

(2) appropriate in-service training required by this section as determined by the department.

(c) Each department that must comply with (b) of this section shall develop a training curriculum that acquaints its employees with

(1) laws relating to child abuse and neglect;

(2) techniques for recognition and detection of child abuse and neglect;

(3) agencies and organizations within the state that offer aid or shelter to victims and the families of victims of child abuse or neglect; and

(4) procedures for required notification of suspected abuse or neglect.

(d) Each department that must comply with (b) of this section shall file a current copy of its training curriculum and materials, with the Council on Domestic Violence and Sexual Assault. A department may seek the technical assistance of the council or the Department of Health and Social Services in the development of its training program. (§ 1 ch 1 SLA 1986)

Sec. 47.17.023. Reports regarding child pornography. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter. (§ 11 ch 39 SLA 1985)

Sec. 47.17.030. Action on reports; termination of parental rights.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.040. Central registry; confidentiality.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.060. Evidence not privileged.

"Judicial proceeding". — The phrase "judicial proceeding related to a report made under this chapter" in this section only refers to child protection proceedings under AS 47.10.010. State v. Wetherhorn, Ct. App. Op. No. 375 (File No. 7768), 683 P.2d 269 (1984).

Sec. 47.17.064. Photographs and x-rays. (a) The department or a practitioner of the healing arts may, without the permission of the parents, guardian, or custodian, take the following actions with regard to a child believed to have suffered physical harm as a result of child abuse or neglect:

(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 by a person who is licensed to administer a radiological examination.

(b) The department or a practitioner of the healing arts shall notify the parents, guardian, or custodian of a child as soon as possible after taking action under (a) of this section with regard to the child. (§ 7 ch 104 SLA 1982; am § 12 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 47.17.068. Penalty for failure to report. A person who knowingly fails or refuses to report as required under AS 47.17.020 or 47.17.023 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982; am § 13 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 47.17.069. Protective injunctions. (a) A court may enjoin or limit a person from contact with a child if the attorney general establishes by a preponderance of the evidence that the person

(1) has sexually abused a child;

(2) has physically abused a child; or

(3) has engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child.

(b) This section does not limit the authority of the attorney general or the court to act to protect a child. (§ 14 ch 39 SLA 1985)

Sec. 47.17.070. Definitions. In this chapter

(1) "child" means a person under 18 years of age;

(2) "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;

(3) "child care provider" means an adult individual, or an employee of an organization, who provides care and supervision to a child for compensation;

(4) "department" means the Department of Health and Social Services;

(5) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(6) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(7) "organization" means a group or entity that provides care and supervision for compensation to a child not related to the caregiver, and includes a child care facility, pre-elementary school, head start center, child foster home, residential child care facility, recreation program, children's camp, and children's club;

(8) "person responsible for the child's welfare" means the child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged child abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution;

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, naturopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, religious healing practitioners, and surgeons;

(10) "sexual exploitation" includes

(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 — 11.66.150, by a person responsible for the child's welfare;

(B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1973; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982; am §§ 15, 16 ch 39 SLA 1985; am § 8 ch 56 SLA 1986; am § 3 ch 114 SLA 1986; am § 14 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment rewrote paragraph (9) and added paragraphs (3), (7), and (8).

The first 1986 amendment, effective May 30, 1986, in paragraph (9) inserted "naturopaths."

The second 1986 amendment rewrote paragraph (10).

The third 1986 amendment inserted "audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55," near the end of paragraph (9).

Chapter 23. Child Support Enforcement Agency.

Sec. 47.23.020. Duties and responsibilities of the agency. (a) The agency shall

(1) seek enforcement of child support orders of the superior courts of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state: